THE SHARI'A COURTS OF MOGADISHU:

BEYOND "AFRICAN ISLAM" AND "ISLAMIC LAW"

BY

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ABSTRACT

The Shari'a Courts of Mogadishu: Beyond "African Islam" and "Islamic Law"

By

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Advisor: Vincent Crapanzano

This dissertation, based on a year and eight months of fieldwork, is a historical ethnography of a Shari'a-based movement which appeared in Mogadishu, Somalia within a year after the complete disintegration of the central government in 1991. The movement originated when religious authorities and "traditional" elders established centers in various neighborhoods in Mogadishu to deal with the vacuum of power after the fall of the state. Since Shari'a structures of authority and discourse were integral to the formation and functioning of the centers, they became known as Shari'a courts. My work on the Shari'a courts intervenes in the literature on contemporary Islamic movements in two ways: a) I argue that the practices, norms, and discourses referred to as Shari'a which informed the Shari'a court movement in Mogadishu cannot simply be equated with the concept of "law." Rather, Shari'a was an overarching ethical framework that set the standards of right and wrong in the conduct of life, including the legal; b) Contrary to much of the literature on "African Islam," which holds that political Islamic movements in sub-Saharan Africa are inspired by ideologies that are foreign to the countries and regions of the continent, I argue that such movements should be understood within the deeply rooted historical legacies and traditions of Islam in sub-Saharan Africa.

Key words: Religion, Islam, Shari'a, Africa, Horn of Africa, Somalia, and political Islam.

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For Tashu and Asha

Introduction

I receive a call in the middle of the day from a friend, Awiye, who has been helping me with the research. He informs me that he located a man, Mooge[1], whom I have been trying to talk to regarding his involvement in the establishment of one of the Shariʿa courts of Mogadishu. Mooge not only lived in the neighborhood where the Shariʿa Court of Sissi[2] was formed but was himself intimately involved in the events that led to the formation of the court. His name frequently came up in conversations about this court. Luckily for me, Awiye knew Mooge because they were distant relatives. Awiye told me that Mooge was going to wait for us after midday prayer (*duhur*) at his local mosque. Awiye and I were to meet at a well-known intersection near the mosque from where we would together go to the mosque where Mooge awaited us. I hurriedly dressed and rushed to the nearest street to hail a rickshaw. As with many of Mogadishu's residents, I relied on rickshaws to get around the city. In the pot-hole ridden, wreckage strewn, meandering streets and alleys that make-up the city's transportation network, the rickshaw, commonly known as bajaj, is the most efficient means of transportation, much to the discontent of taxi drivers. For $2 and a ten minute ride later the rickshaw dropped me off at the intersection where Awiye was waiting for me with his car.

Slightly built and smartly dressed, Awiye is in his early 30s and is doing alright for himself given the dire economic conditions in Mogadishu. He juggles three different jobs to make ends meet: he is a government employee, works for a local NGO, and has his own business. Because of his connection to the government Awiye is very careful about his

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[1] Most of the names I use are not real so as to protect the identity of the interviewees.
[2] The courts of Sissii was established in 2003 in one of the most insecure areas of Mogadishu

movements in the city. Anyone who works for the UN-sponsored and supported government is considered by al-Shabaab, the Islamist militant group, to be an apostate and, therefore, a legitimate target. I asked Awiye, why we couldn't meet Mooge at one of the local restaurants? That way I could at least buy him lunch. Awiye replied that Mooge insisted on meeting in the mosque, and he suspected that Mooge was doing that as a security precaution. He most likely didn't want to be seen in the company of a stranger in the eyes of the locals. Such is the pervasiveness of suspicion and fear in Mogadishu where al-Shabaab is waging a deadly campaign of bombings and assassinations against the weak government and anyone associated with it or with the international effort at state-building.

On our way to the mosque, Awiye and I stopped at various locations that were places of significance in the emergence of the Shari'a Court of Sissi, such as the garage where hostages[3] were kept and the tree under which Sheikh Sharif Sheikh Ahmed[4] and other religious figures used to give speeches. After about half an hour of driving with my curious eyes wandering, careful not to provoke the suspicion of neighborhood residents, we drove towards the mosque where Mooge awaited us. After driving through winding streets which snaked through and around small stone houses we finally came to a stop at the end of a road. Awiye pointed to a small structure distinguishable from the others only by its minaret. We walked into Mosque Rahiim's first and only floor. Three men slept on a green rug in the far left corner, while an older man and a teenage boy sat on the opposite side. The old man waved his hand and Awiye and I walked up and greeted him. He stood up and warmly

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[3] Beginning in the early 2000s, kidnapping for ransom became widespread throughout Mogadishu.
[4] Sh. Sharif Sh. Ahmed was at that time a well-respected local teacher who was chosen to lead the newly established Shari'a court of Sissi. Later, after the various courts of Mogadishu unified, he became the chairman of the Union of Islamic Courts (UICs). After the UICs was overrun by an Ethiopian invasion, he reconciled with "the international community," after a brief exile, and became the president of the UN-backed government in Mogadishu.

greeted us. Mooge is a heavyset man, probably in his 60s, with a henna-dyed beard and small but lively eyes. After brief introductions, I asked Mooge to tell me about the day when he led a congregation from this very mosque to a garage a few blocks away that served as the center for a city-wide criminal network. The event that took place at this mosque that day was part of a general uprising throughout Mogadishu against petty thieves, militias, and warlords. An uprising which took the form of and led to the formation of Shari'a courts throughout the city. Mooge described what happened on that Friday at Mosque Rahiim as follows:

> *It was sometime in 2003 maybe 2002, I am not sure. You know Mogadishu was divided between the Abgal and Habar Gidir.[5] Each area had its own terrible place where there was a lot of crime, but the worst was here in Sissii. I used to live in Madina (a district on the other side of the city) but I fled here after two militias began to fight over Madina. Sissi wasn't so bad then, but it became really bad later on. For example, there was a girl who came back from Sweden. She came to visit her family but soon as she came back her father was kidnapped.*

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[5] The two dominant lineage groups in Mogadishu. They are both members of the larger lineage known as Hawiya. Scholars, following the example of British social anthropologist I. M. Lewis (1961) divide the "Somali nation" into four large lineage groups: Darood, Dir, Hawiya, and Digil-Mirifle. Lewis referred to the large genealogical groupings as "clan-families." There are also innumerable small "clans" that do not belong to any of these. In this dissertation I prefer to use the terms lineage, descent, or genealogical unit/group rather than "clan" to refer to kinship-based identities or political alliances because I find these terms to be less saddled by controversy. Within the small field of Somali studies debates about the nature of kinship identity is a constant feature. I. M. Lewis (1961) first proposed that kinship relations were the organizing principle in the social and political identities of the Somali people. "Clan," according to him, was a key social unit expressing the importance of kinship relations. Lewis maintained that position throughout his career. Others, Abdi I. Samatar (1992) and Catherine Besteman (1996, 1998), have disagreed with Lewis and argued that whatever the category of clan might have signified in precolonial Somalia, it has been transformed through its deployment as an administrative category by colonial powers. Moreover, important identities such as class and race have been just as important in shaping economic and political cleavages in postcolonial Somalia. For more on this see the exchange between Besteman (1996, 1998) and Lewis (1998) in the journal *Cultural Anthropology*. As will be clear from the dissertation, the Somalia conflict played along and exasperated lineage politics. As a result, most of my interlocutors' descriptions and understanding of the conflict is through lineage politics. See chapters 4 & 5 for more on how kinship identities influenced the conflict and how the Shari'a courts simultaneously reflected and opposed kinship and lineage politics.

Hostages were burnt with plastic. This woman was pregnant. Her father died while they were torturing him. This incident really bothered me. There were traditional elders but some of them were bad. They are 'pirates of tradition' (bur'ad dhaqameed). They worked with the criminals. When a person was kidnapped or property taken, they would broker a deal (dilal) between the criminals and the victim. For example, if your relative was kidnapped, they would come to you and tell you, 'this is how much the kidnappers are asking for,' and you would tell them, 'this is how much I can pay,' and so forth. I know some of these elders, but I don't want to name names. In Islam when you see evil being done you must do something. So one day, it was Friday, after Friday prayers I stood up and said 'I have something to say. Anyone who leaves now is a thief.' I told them that 'the people who are doing all these reprehensible things (munkar) are our boys. In fact, some of them may be praying here with us. How can we be in the mosque everyday praying when Muslims are being burnt and killed in front of us? What happened to us? Our family (reer) used to be known all over Somalia for its goodness, for its religiosity.' I told them in Islam when there is evil taking place where you live you have two options: either you move away and go live elsewhere (hajir) or you must do something about it. I said these are the only options, so what are we going to do? I didn't plan to give a speech. I was just moved, my body was shaking. I couldn't stop my tears from flowing. I saw other people were also crying. There was a sheikh there and he stood up and said I was right. I am not a sheikh, I am Tabliqh.[6] I joined the Tabliqh in 1995. But I know

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[6] *Jama'at al-Tabliqh* is a transnational Islamic piety (*da'wa*) movement, which originates from India. For more on this movement see Barbara D. Metcalf "'Remaking Ourselves:' Islamic Self-Fashioning in a Global Movement of

the religion and I always worked so that people would understand the religion. I have always worked to protect those who were suffering injustice and tell people they are equal in religion. Also, my family is respected, we are listened to. After I finished my talk a young boy stood up and said, has anyone gone to the garage where the criminals keep their stolen property and hostages and told them how evil and un-Islam their actions are? After the young boy said that, I said let's go to the garage now and tell them. So we all left and went to the garage. We were about 100. When we got closer to the garage they started shooting at us. Everyone ran away except three of us. We kept going straight. They yelled at us 'we will kill you.' We said 'only Allah can kill, and we will tell you what we need to tell you.' They stopped shooting at us. We told them what they were doing was wrong and all the people wanted them to stop. We asked them 'will you stop what you are doing or not?' They told us 'we won't stop, do whatever it is you think you can do.' We left and we stopped on the road and we prayed. A few days later we heard what the madani[7] did. Then Sheikh Sharif Sheikh Ahmed joined the madani and a Shari'a court was declared. I think Allah answered our prayer. I, of course, joined the people who were working with the court. After the court was established, the bad guys came to us and said they wanted to join the court. They heard the court was giving food and some money to its security force. We allowed them to join. We didn't say you were a thief, so you can't join. We allowed them

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Spiritual Renewal." In *Accounting for Fundamentalism*, ed. Martin E. Marty and R. Scott Appleby (Chicago: University of Chicago Press, 1994).

[7] A self-organized and all voluntary neighborhood watch group, which directly confronted the militias in the neighborhood. Chapter four will describe in more detail the events leading to the formation of this court, as well as som of the other courts.

to join, but we opened a madrassa where they learned religion, and a center

where they trained on how to use weapons. I worked in both places.[8]

The vignette above is one man's memory of an event that took place days before the formation of one of the Shariʿa courts of Mogadishu, the Court of Sissii. The history of the Shariʿa courts occurred between 1992, when the first Shariʿa court appeared, and 2006, when the previously independent and communal Shariʿa courts unified and metamorphed into a political formation with the name the Union of Islamic Courts (UICs).[9] In that decade and half, following the disintegration of the regime of longtime dictator Mohamed Siyad Barre in 1991, Somalia had become known throughout the world for conflict, famine, and piracy. Beginning in the early 1990s economic and political reform and liberalization led to the disengagement of the postcolonial developmentalist state in many sub-Saharan African societies resulting in social and political-economic upheavals. Somalia was effected by the same economic and political developments, but it stood out for the magnitude and duration of its crises as the organs of the central government completely disintegrated and have remained so to this date. Since then the name Somalia has become synonymous with "state failure" or "collapsed state." The absence of the organs of the central government, however, hasn't meant lack of governance in general. Contrary to the "state failure" narrative (Bates 2008; Herbst 1997; Miliken 2003; Zartman 1995),[10] which equates the absence of the state with anarchy, the disintegration of the Somali Republic has led to the emergence of varied forms of local governance (Doornbos 2002; Menkhaus 2006/2007;

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[8] Interview in Mogadishu, July 2015.

[9] The UICs is also referred to as the Islamic Courts Union (ICU). In this dissertation I prefer the UICs because I think this rendering is a better translation of the Somali name, *Midowga Mahmakadaha Islaamka*.

[10] The critiques of the "state failure" narrative (Bellagamba and Klute 2008; Call 2011; Hagmann and Hoehne 2009; Hagmann and Peclard 2010) argue that this narrative takes for granted the universality of the ideal model of the rational-legal state. The narrative assumes that societal problems are rooted in the "absence" of properly functioning state institutions. The remedy to the problems is therefore to establish the state, with international intervention if necessary.

Verhoeven 2009). Rather than viewing the prolonged absence of the state as a political vacuum, the nonexistence of state institutions created conditions for experimenting with various types of governing arrangements leading to the emergence of political complexes that are relatively novel in today's world. Communities, from neighborhood to regional levels, have organized to defend themselves and to govern their internal affairs.[11] These "governances without government" (Menkhaus 2006/2007) provide a unique opportunity to understand the kind of socio-political formation and governance arrangements that are possible in a world where the postcolonial nation-state is increasingly being questioned. To be sure the literature has taken stock of the emergence of new regimes and centers of authority (Ferguson 2006; Roitman 2005) as African societies have creatively responded to the weakening of state institutions (Raeymaekers et al., 2008; Bellagamba and Klute 2008). There have been very few works, however, that attempt to link the formation of new authorities and governing arrangements in the wake of state withdrawal to contemporary Islamic movements in sub-Saharan Africa. This dissertation does this through a historical ethnography of one of the most important of the self-governance initiatives that appeared throughout Somalia, the Shari'a courts of Mogadishu.

The origin, development, and ultimate demise of the Shari'a courts of Mogadishu is the subject of this dissertation. The history of the courts demonstrate how and why social and political crises in Muslim societies generate a renewed engagement with centuries-old traditions of Islamic jurisprudence, the historically rooted practices and concepts through which this engagement is

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[11] Many scholars who comment on the new governing arrangements and political complexes that have emerged in Somalia since the dissolution of the state (Bradbury 2008; Jhazbhay 2009; Richards 2014; Sandstrom 2013; Walls 2014) view the secessionist region in the north, Somaliland, as the most significant of the new political complexes in Somalia. Utilizing a neat distinction between the international and the indigenous, this literature views Somaliland as an example of a successful "grassroots" state-building. I contend that the experience of the Shari'a courts of Mogadishu in the south of the country is historically much more significant, particularly because the history of the courts provides a unique perspective into contemporary Islamic movements.

expressed, the images of society and notions of leadership that are generated through the renewed engagement, and what the trajectory and fate of movements brought into existence by such an engagement say about the Shari'a in the contemporary world and its relations to the organizing structures of the modern world. Many commentators (Hagman and Hoehne 2009; Le Sage 2004; Menkhaus 2005, 2006/2007; Rotberg 2005; Waal 2004) contend that the Shari'a courts in Somalia emerged when fundamentalist clerics, influenced by "foreign" networks, took advantage of the vacuum of power and a vulnerable population to impose their harsh and literal interpretation of the Shari'a. On the contrary, I argue that the prolonged absence of the state and with that its modernizing project of cultural and religious reform meant that the attempt to separate Shari'a-informed communal ethics and morality from politics came to an end. The Shari'a courts were an expression of organic forms of governance that were grounded in the practices, concepts, and discourses of the historically-rooted Islamic tradition of the community from which the courts emerged. Rather than assuming the courts were a vehicle for the spread of and a local manifestation of a global "radical" militant Islam, and therefore essentially foreign to Somali society, this dissertation provides a social and historical contextualization of the courts through an in-depth historical ethnography. Because of Somalia's exceptional circumstance of prolonged statelessness, the history of the Shari'a courts provides a fresh perspective into some of the most fascinating aspects of contemporary Islamic movements.

After decades, and in some cases centuries, of the adoption of secular and Western legal codes throughout the Muslim world, Muslim activists are today calling for the implementation of the Shari'a as the "law" of the state (Hefner 2011). This demand is made because the enactment of the Shari'a as the law of the state is seen as crucial to reforming society in the image of what Muslim activists consider a proper Muslim society. The call to implement the Shari'a is the central

demand animating the diverse phenomenon collectively referred to as the Islamic Awakening, which has taken the Muslim world by storm over the past few decades. In making this demand, Muslim activists conceptualize the Shari'a as the "religious law" of Islam. Scholars (Hallaq 2005, 2009; Messick 1993; Vikor 2005; Zubaida 2003) have analyzed the historical developments that have shifted the conceptualization of the Shari'a from an overarching ethical framework to something resembling state law. Some scholars (Asad 2003; Hallaq 2004, 2013) assert that it's impossible to take a centuries-old jurisprudential tradition, developed outside the sphere of political power to regulate relations between the individual and God ('ibadat) as well as human interactions (mu'amalat) articulating a comprehensive ethical framework, and turn it into codes in state courts. The fact that the demand to implement the Shari'a as the "law" of the state is integral to contemporary Islamic movements, the argument continues, illustrates the dominance of the logic of the state. Additionally, it shows that these movements are products of modernity, caught in its predicaments (Hallaq 2004, 2013). In studying the Shari'a court movement of Mogadishu, I take up the question of what animates the call for the Shari'a. Unlike the predominant majority of contemporary Islamic movements, whose demand to implement the Shari'a is aimed at supplanting secular state, the Shari'a of the Shari'a court movement, had nothing to do with an already present state. Rather, the Shari'a of the Shari'a courts provided the language and rationale for establishing and governing a community in the complete absence of state institutions.

For a period of 15 years the Shari'a courts of Mogadishu governed communal relations in a social milieu where state authorities and institutions no longer existed. The Shari'a politics (Hussin 2016) of the Shari'a courts was therefore not over-determined by the structures and logic of the state, rendering the experience of the Shari'a courts of Mogadishu a unique case in the contemporary world. Because of the complete absence of the state, Shari'a practice and

conceptualization within the Shariʻa courts was concerned with and articulated through communal organization and governance. The individuals and communities that established the Shariʻa courts did so as members of neighborhoods attempting to resolve neighborhood problems. The history of the Shariʻa courts therefore provides a unique example of local and ground-up governance based on the ethical framework, practices, and concepts from the Shariʻa tradition, within the material context of Somali history. However, their eventual transformation into a political formation in the form of the UICs entailed the introduction of organizational and structural principles that undermined local control over Shariʻa authority and practice in favor of centralized and codified practices of governance.

One of the funadamental arguments in this dissertation is that the Shariʻa courts, which existed, in one form or another, for over a decade and half before the formation of the UICs in 2006, were qualitatively different than the UICs. The nature of authority, politico-religious leadership, Shariʻa practice, and governance marked this difference between the independent local Shariʻa courts and the UIC. Thus the courts' metamorphosis into the UICs entailed a dramatic transformation. The differences between the Shariʻa courts and the UICs has been unappreciated because the history of the courts has been subsumed into that of the UICs, which itself has received very little academic analysis.[12] Appreciating and analyzing the differences between the Shariʻa courts and the UICs is one of the assumptions and goals of this dissertation. I argue that the

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[12] One of the few academics to attempt an analysis of the UICs is political scientist Aisha Ahmad (2012; 2015). She posits a rational economic explanation of the rise of the UICs. She argues that behind the rise of the UICs were the economic interests of a local business class who supported the UICs to provide the security which no-one else could. She asserts that the UICs, unlike the warlords, could appeal to a cross section of society and was therefore unfettered by lineage politics. For sure, the role of a local business class was significant in the rise of the UICs, but the idea that the economic interests of a business class is solely responsible for the emergence of the UICs is very simplistic. Furthermore, it ignores the history of the Shariʻa courts that preceded the UICs and which made the formation of the UICs possible. In this sense, Ahmad's work on the UICs is a good illustration of my argument that the UICs has overshadowed the history of the Shariʻa courts, and thereby concealed what's most important about of them.

emergence of the Shari'a courts out of the ashes of state collapse and the subsequent social upheavals allows for a unique opportunity to understand how discourses, concepts, and practices from the Islamic tradition enabled communal organizing and governance. The metamorphosis of the Shari'a courts into the UICs entailed the implementation of organizational principles, such as bureaucratization, that are integral to the modern state. A study of the Shari'a courts' transformation into the UICs and those leading that process allows one to understand the impact bureaucratization has on Shari'a practice as well as the contestation over religious authority between differently schooled politico-religious authorities. A brief history of the Shari'a courts followed by the UICs is in order to better appreciate the differences between the two.

The Shari'a courts of Mogadishu

The Shari'a courts of Mogadishu caught the attention of the media and the concerns of policy makers in July 2006, when, seemingly out of no-where, the unified courts defeated a U.S.-backed coalition of warlords. After defeating the warlords, the Shari'a courts and allied groups created the Union of Islamic Courts (UICs). The emergence of the UICs effectively turned Somalia into a front in the Global War on Terror (GWOT), and dramatically altered the dynamics of the country's history since. The emergence of the UICs and the subsequent developments have overshadowed the history of the Shari'a courts which preceded the UICs.

After about a decade of armed insurgency throughout the 1980s, the regime of longtime dictator Mohamed Siyad Barre disintegrated in early 1991. Barre fled Mogadishu in January of 1991 as the forces of one of the rebel groups, the United Somali Congress (USC) made-up of members of the large lineage group Hawiya, entered the city.[13] Following the collapse of Barre's

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[13] For more on the armed rebellion against the Siyad Barre regime and the dynamics of the subsequent civil war see Daniel Compagnon, "Somali Armed Movements: The Interplay of Political Entrepreneurship & Clan-Based

regime, Somalia was thrown into a prolonged period of conflict marked by the complete absence of a central government. To this date, Somalia remains without a functioning central government, making Somalia the longest instance of state collapse and statelessness in the modern world. Mogadishu was one of the worst effected areas by the violence that followed the disintegration of the Barre regime. The USC rebel group, whose forces took control of Mogadishu and most of southern Somalia, split up into two and an intense fighting within the USC ensued. The viciousness of the civil war was made worse by the famine of 1991-1992, leading to a staggering loss of life and large population displacement. An international mission led by the U.S., through the offices of the U.N., intervened in 1992 to help with the delivery of aid to famine afflicted populations. The international intervention eventually ended in 1995 after failing to find a political solution to the conflict. From then on, as far as the "international community" and the world was concerned, Somalia became a dark corner of the world. Mogadishu, the epicenter of the conflict, became known as the most dangerous city in the world. The USC continued to fragment such that by the mid-90s Mogadishu was divided into countless fiefdoms controlled by various militias and warlords. At the same time, large scale conflict ended because the capture of the state, which defined the conflict early on, was no longer an important goal. The militias, common criminals, and warlords of Mogadishu fought a continuous turf war just to maintain their daily upkeep. A war economy materialized as a result. Moreover, because of the way lineage and descent was politicized to mobilize the population by the warring parties, the residents of Mogadishu separated roughly along the lines of kinship and lineage identities. The different neighborhoods and districts

Factions," in *African Guerrillas*, edited by Christopher Clapham (Oxford: James Currey, 1998); Africa Watch, *Somalia, a Government at War with Its Own People* (New York: Africa Watch, 1990); William Reno, "Somalia and Survival: In The Shadow Of The Global Economy," *QEH Working Paper Series – QEHWPS100* (Northwestern University, 2003); Hussein Adam, *From Tyranny to Anarchy: The Somali Experience* (NJ: The Red Sea Press, Inc., 2008); Catherine Besteman and Lee V. Cassanelli, *The Struggle for Land in Southern Somalia: The War Behind the War* (UK: Westview Press, 1996).

of Mogadishu were thus predominated by a specific lineage group and often controlled by a militia and a strongman that identified with that lineage group. The militias, however, weren't concerned with the protection of the people, often their fellow kinsmen, who lived in the areas they controlled. Rather, they viewed the areas they controlled and the people residing in it as their racketeering fiefdoms from which income was to be generated. For the population of Mogadishu, life became increasingly difficult. They were prisoners of gun-toting and unruly young men who arbitrarily subjected the population to daily robbery, kidnapping, rape, and murder.[14] It was in this context and in response to these problems that the Shari'a courts of Mogadishu began to appear.

The first Shari'a court was founded in 1992, about a year after the disintegration of the Barre regime. As mentioned above, the politicization of kinship identities in the post-state collapse conflict resulted in the division of Mogadishu into lineage or "clan" and "sub-clan" enclaves controlled by competing militias. Thus the communities that established and run the Shari'a courts were close kinsmen, which explains why the Shari'a courts were known as "clan courts."[15] The processes of a Shari'a court's formation generally followed similar steps. When the level of insecurity of a specific area, such as a neighborhood or a district, rose to intolerable levels, the residents of the area convened a meeting. The meetings were led and organized by recognized lineage elders and religious authorities. The religious authorities were in the majority products of "traditional" religious institutions of learning. In other words, they did not belong to reformist movements whose adherents are distinguished by their educational background and worldview.[16] A crucial fact in distinguishing the independent communal Shari'a courts from the UICs, as chapter six will explore in length. At the meeting residents lamented the level of insecurity and the lack of

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[14] A term, *mooryan*, was coined to describe these young men. For more on the *mooryan* see chapter four.
[15] A label that is sometimes used by more reformist-oriented Islamists to describe the courts. In calling them "clan courts" the implication is that their practice of Shari'a was diluted.
[16] See chapter six

justice in their lives. Led by the sheikhs and lineage heads a consensus would be reached that the only way out of the misery is to establish a just mechanism for resolving disputes and conflicts. Inevitably, finding a just mechanism for conflict resolution meant following the processes and norms of the Shari'a as understood by reliable local religious authorities. Before establishing a community center for the just resolution of conflicts, i.e. a Shari'a court, it was critical to get the consent of the people that lived in the area. Such consent was obtained through the lineage representatives – the lineage heads of each lineage that lived in the area. The unanimous consent of the people in the area was necessary for a number of reasons.

Foremost, the culprits of crime and insecurity and the victims of it were frequently fellow kinsmen because of the division of the city into lineage enclaves. Because of the breakdown of "traditional" and kin-based norms of criminal accountability,[17] isolated lineage heads and close relatives were no longer in positions to prevent their young men from committing crimes. By agreeing to the establishment of a Shari'a court each lineage representative was giving the court the authority to apprehend, prosecute, and punish, if necessary, any of their members. Obtaining the unanimous agreement of the various lineage representatives was also necessary because it was only after such an agreement that residents of the area provided the finances and security forces of the court. Once the consensus of the community was obtained, through lineage representatives, a Shari'a court was declared. A location, often a previously government-owned building, was chosen as the site of the court. The various Shari'a courts were almost always named after the site of their establishment. Once a court was declared and a location picked out, judges were selected by the lineage heads and religious authorities. In the selection of judges, their reputation for knowledge

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[17] For more on this breakdown and how the founding of a Shari'a court individualized criminal responsibility see chapter four.

of jurisprudence (*fiqh*)[18] and lineage affiliation were considered. The lineage consideration was important to avoid accusations of bias by litigants. The number of judges at a Shari'a court varied but nine was the most common. Once judges were selected, a chairman of the Shari'a court was chosen. A chairman was chosen for his overall reputation for religious knowledge, enthusiasm for the establishment of the court, and lineage affiliation. The security forces of a Shari'a court were made up of lineage members from the area. Whether the forces were compensated depended on the financial condition of the court. They often began work voluntarily, but got small stipends as the finances of the courts improved.

As regards the procedures and judicial reasoning of the Shari'a courts, they varied both within a specific court in the span of its life and across the different Shari'a courts. It's worth pointing out that the independent communal Shari'a courts that existed between 1992 and 2006 did not leave behind any records, and what little records they produced were destroyed in subsequent conflicts.[19] What I have to say about the judicial process of the communal Shari'a courts is based on what interlocutors remembered. Cases came to a court in one of three ways. Sometimes the litigants voluntarily presented their case to the courts to resolve a dispute between them. In such cases the litigants had already agreed between themselves to abide by the court's ruling. Cases of this nature predominated a court's docket when a court's ability to apprehend criminals and the accused were limited. Another way a case came to a court was when someone came to the court and complained about being wronged by another party that was absent. If the defendant was from the same area as the plaintiff, which often meant that the defendant belonged to a lineage that had consented to the founding of the court, the defendant would be apprehended

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[18] In Somalia an authoritative religious figure is frequently referred to as a *faqih*. See chapter two for more

[19] This is in contrast to the UICs which produced significant documents in the six months the UICs controlled Mogadishu. I was able to gain access to some of the documents left behind the UICs. See chapter six for more on the impact that writing, as the central feature of bureaucracy-making, had on Shari'a practice and authority.

either by her/his close relatives or by the court's security forces and brought to the court. If, however, the accused was from another part of Mogadishu and belonged to a lineage that wasn't party to the founding of the court to which the plaintiff complained to, then the court's ability to adjudicate the case was limited. If the accused was from an area that was under the jurisdiction of another court, the authorities at the court where the plaintiff opened the case would ask their counterparts at the court whose jurisdiction the accused resided under to apprehend the accused. Once the accused was apprehended, the two respective Shari'a courts would decide where and under what judges the case would be heard. This created a relationship between the various Shari'a courts of Mogadishu well before they unified under the UICs. The third way that a case came to a court was when the security forces of the court captured someone in the act of committing a crime. The most common of such arrests occurred at checkpoints or when drug dealers or users were caught in the act. These were the most common ways that cases came to the Shari'a courts.

Once a case came to a court the chairman of the court decided how many judges heard the case. Depending on the complexity and sensitivity of the case the chairman assigned one to five judges. Only judgments that were unanimous were considered valid. The overwhelming majority of Somalis and Somali sheikhs follow the *shafi'i* legal school of thought (*maddhab*). The Shari'a manuals that were used by the courts were therefore *shafi'i* manuals that contained the collected authoritative Shari'a opinions of well-known scholars of this *maddhab*. The manuals used by the courts included *Minhaj al-Talibin, Kitab al-Anwar,* and *Mughni al-Mukhtaj.* That only the *shafi'i maddhab* was to be used was often implicit, but some courts had it explicitly stated. In making their case in front of the judges both the plaintiff and the defendant could avail themselves of the services of a third party (*wakiil da'wa*) to make their case. The *wakiil da'wa* didn't need to have any special expertise in the Shari'a. They were chosen primarily for their eloquence and powers

of persuasion. Upon the start of the hearing, the plaintiff was asked to make his/her case and to introduce whatever evidence they had. The most important part of one's argument was whether one had witnesses to corporate one's case. The witness had to be a person of good moral character for the testimony to be accepted. This meant they had to be Muslim, perform daily prayers (*salad*), fast during Ramadan, a just person, mature, of sane mind, and must not be someone who is known to be a liar or drinks alcohol or commits other transgressions. The more the number of witnesses and the higher their reliability the more convincing one's case. After the plaintiff made her case, the defendant was asked for a rebuttal. The most crucial aspect of the defendant's case was also the production of witnesses. The defendant also had the right of oath (*al-Aqsaam*). That is to say, if the defendant swore on a copy of the Qur'an that he/she was innocent of the accusation, then the judges and the plaintiff were expected to accept the claim of innocence. The acceptance of the oath, despite its obvious susceptibility to abuse, underlines that the Shari'a courts existed in a socio-cultural context where the prevailing assumption was that there could be no finality to the justice of this world. The Shari'a is, after all, nothing but the human approximation of divine justice, and not divine justice itself. In the 14 years between 1992 and 2006 there were different waves of Shari'a courts which appeared and then vanished in different parts of Mogadishu. In what follows I sketch out a rough chronological narrative of several of the Shari'a courts of Mogadishu that have been more strongly etched into the historical memory.

I.   The Shari'a court of Madina

The first Shari'a court appeared in the district of Madina in 1992. A number of factors converged to make Madina the first instance of the establishment of a Shari'a court in Mogadishu. First, Madina lacked a strongman, in the form of a warlord, who could maintain a monopoly of violence. There is a definite negative correlation between the presence of strong faction leader or warlord

and the existence of a Shariʻa court. Militias in Mogadishu, and elsewhere in Somalia, were led by elites from the previous military regime. These elites were vehemently opposed to the creation of a Shariʻa court because they saw it as a base for an independent source of power and authority which would eventually challenge them. Additionally, the work of a Shariʻa court, such as the apprehension of militia men and the removal of checkpoints, was a direct threat to the manpower and economy of faction leaders. The existence of a powerful strongman also worked against the establishment of a Shariʻ court by controlling the undisciplined and armed youth that were initially recruited and armed through kinship networks, but who later on became common criminals locally known as *mooryan*. Powerful faction leaders maintained a modicum of discipline over the armed youth that made-up the militias, thereby preventing the proliferation of crime, which frequently led to the mobilization of the community in the form of a Shariʻa court. The presence of a powerful faction leaders or warlords, therefore, often prevented the formation of an independent Shariʻa court. The absence of such a figure in Madina resulted in the formation of the first Shariʻa court there.

Second, there was a well-respected and active sheikh, Sheikh Haamud Sheikh Hassan Ziyar,[20] in Madina. Sheikh Haamud's father, Sheikh Hassan, was also a well-known and respected religious figure in southern Somali. He established and led a religious center that attracted followers from throughout the Somali-speaking territories in the Horn in early and middle 20th century. Sheikh Haamud was an established religious authority in his own right. Like the majority of reformist activists, he was educated outside of Somalia, in Egypt. But he was, unlike many reformists, respectful and had cordial relations with Sufi *'Ulama* in Mogadishu. His actions in

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[20] Sheikh Haamud wrote a religious tract titled, *The Signs of the Wholesome Society*, where he explains that it was a religious duty on everyone, particularly on Islamic scholars (*'ulama*) to establish a Shariʻa cour as a way of saving society from complete annihilation. I came to the possession of this tract through the trust of the family of Sheikh Hamued. I am grateful for their trust. For more on Sheikh Haamud and the document see chapter 4.

leading the establishment of the first Shari'a court in Mogadishu are recorded in a local Sufi praise poetry. However, Sheikh Haamud only stayed with the court for six months because a local strongman emerged and brought the court under his authority. Sheikh Haamud ended up moving to another district for fear of his life. Despite this eventuality Sheikh Haamud began a discourse that would create the intellectual and social parameters and set an example for the Shari'a courts that followed it. The court of Madina is significant because it was the first instance in Mogadishu where a communal self-defense initiative led to the formation of a Shari'a court which managed to significantly reduce the level of crime in the neighborhood.

II.   The Shari'a courts of northern Mogadishu

Following the Shari'a Court of Madina, the next Shari'a court experiment emerged in northern Mogadishu. This court was established by the members of a large genealogical unit known as the Abgal. This genealogical unit predominated in northern Mogadishu. Thus the jurisdiction of these courts, which are sometimes referred to as the Abgal courts, was limited to where the Abgal lived. This court was established at the end of 1994. It was established with the blessing and indeed under the nominal authority of Ali Mahdi, the leading strongman of the Abgal. Though he was the recognized political leader of the Abgal, Ali Mahdi did not exercise any control over the vast majority of the armed youth and militia men that terrorized the population in northern Mogadishu. As a result, traditional elders and religious authorities from the communities in the area urged him to agree to the establishment of a Shari'a court that represented the Abgal. With his agreement a Shari'a court was declared and one Sheikh Ali Dheere was elected the chairman. This Shari'a court was first established in a district in northern Mogadishu, but it spread to all areas where the Abgal lived, including central Somalia. The way the court spread was any community, which shared the Abgal genealogical identity or political alliance, would, through its traditional elders and religious

authorities, establish a Shari'a court and pledge allegiance to the mother court in northern Mogadishu. All the various Shari'a courts were thus autonomous branches of the mother court. The mother court approved the judges of the branch courts and heard cases that proved too difficult for the branch courts to resolve. An independent oversight committee headed by three well-known Sufi Sheikhs was created. The finances of the court were collected from businesses as well as a collectively managed port, Eel Ma'aan. As the power of the court grew, the leader of the mother court, Sheikh Ali Dheere, who was also the overall chairman of the Abgal courts became prominent.

The secular politicians of the Abgal, led by Ali Mahdi, began to fear that the rise of the courts and the growing prominence of Ali Dheere was becoming a direct threat to them. They accused Sheik Ali Dheere of having "political" ambitions and wanting to undermine the interests of the Abgal. They used traditional elders and other religious figures to disband the court. Since the court's authority derived from a voluntary association of the various Abgal sub-lineages, the secular politicians used the representatives of the lineages to undermine the courts. Through traditional elders and religious authorities each lineage of the Abgal agreed to abide by the courts' rulings. Once these lineage representatives, under pressure from the secular politicians, sided with Ali Mahdi and refused to back the court, the court quickly ceased to operate. Sometime in late 1996 the Sharia court of northern Mogadishu was disbanded. The social memory of the court, however, and what it has accomplished in terms of security remained.

III.   The Shari'a courts of southern Mogadishu

The next batch of experimentation with Shari'a courts took place in the south of Mogadishu. The Shari'a courts began to emerge after the death of the powerful warlord Mohamed Farah Aideed in 1996. The various militias, which were precariously held together by the ambition of Aideed,

disintegrated as former subordinates of Aideed began to vie for power. This led to an internal struggle and the creation of small fiefdoms in southern Mogadishu dominated by different warlords belonging to different lineage groups. Predictably, this led to an increase in the number of armed men manning checkpoints and protecting their enclaves from opposing militias. Checkpoints began to appear all over. Insecurity and violence generally increased and movement of people and goods became very restricted within the southern part of the city. As the security situation deteriorated, neighborhood communities began to organize to protect themselves. Shari'a courts appeared as an expression of these communal organizing. Each Shari'a court represented a specific lineage. The earliest and most important of these Shari'a courts were the court of Ifka Halane representing the Ayr lineage, and the court of Shirkole representing the Saleban lineage group. They both emerged towards the end of 1996. Shortly thereafter, a few other courts were established representing other lineage groups. By the mid- and late-90s, the establishment of a Shari'a as an expression of communal self-defense and self-governance was popular throughout Mogadishu. Numerous Shari'a courts representing different lineages and extended families began to appear throughout the city. The formation of Shari'a courts throughout Mogadishu led to a change in the dynamics of the conflict in Mogadishu, and ultimately of all of Somalia.

Each Shari'a court's jurisdiction was limited to the area and the community that established it. This led to the problem of what to do when a suspect wanted by a particular court escaped to an area that was under the jurisdiction of another court. Or when one of the litigants in a case happened to reside in an area outside a court's jurisdiction. To resolve this the courts worked out an understanding among themselves based on the extradition and exchange of suspects as well as allowing their judges to sit together to hear a case when the litigants were from different areas. This led to the emergence of a networked court system and the beginning of a working relationship

between the various Shari'a courts. The courts also began to work together because they had a common enemy. Each Shari'a court's primary opponent and enemy were the militia and warlord that viewed the area under a Shari'a court's jurisdiction their own turf. As mentioned above, the warlords and militia groups viewed the courts as a threat to their economic and security interests. Whenever it was possible warlords attempted to completely dissolve or at least bring the courts under their sway. To meet the challenges posed by warlords and militia groups, the Shari'a courts in the late 90s and early 2000s reached an understanding where they would come to each other's aid when engaged in a conflict with a warlord. The courts also began to exchange judges, share experiences, and train each other's staff. To coordinate the relations, the courts created a standing committee made up of the chairmen of the then existing Shari'a courts in 2003. By removing checkpoints, doing nightly patrols, and arresting common criminals the courts began to dismantle the racketeeriing fiefdoms into which Mogadishu was divided. They made movement of people and goods easier and safer, winning for themselves the support of the majority of Mogadishu's residents, including the support of the local business class. Around 2003 and 2004 it was clear that a new power was in the ascendency in Mogadishu. It was at this point that the courts became entangled in the Global War on Terror (GWOT).

In the aftermath of the 9/11 attacks in the U.S., Somalia, a territory without a functioning central government, was viewed by Western security analysts as an ideal place for wanted international militant Islamists to hide, plan attacks, and spread their ideology. These concerns were first voiced after the 1998 bombings of U.S. embassies in East Africa. The U.S. government suspected that some of the suspects from the bombings were hiding in Mogadishu, possibly with

the help of sympathetic individuals and groups in Mogadishu.[21] This suspicion, as well as a general fear that the Shari'a courts were a vehicle for the spread of anti-Western sentiments, led to a clandestine CIA support for Mogadishu's hated warlords to capture wanted individuals and to check the growing power of the courts.[22] Taking advantage of the CIA support, the warlords targeted not only the few CIA-wanted suspects, but also their own internal enemies, primarily members of the Shari'a courts. To further legitimize themselves in the language of the GWOTthe warlords announced the creation of a new group called the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) in February 2006. The U.S. support for the warlords spectacularly backfired when it led to a popular uprising led by the leadership of the Shari'a courts against the warlords. Unexpectedly, and in a matter of months, the courts evicted the warlords out of Mogadishu, bringing the city under a single power for the first time since the collapse of the Barre regime. By July 2006 the forces of the courts were in complete control of Mogadishu. After defeating the warlords the courts and their allied groups created the Union of Islamic Courts (UICs).

The Union of Islamic Courts (UICs)

After their takeover of Mogadishu and unification under the UICs, the UICs began to spread. First, to towns and cities in the vicinity of Mogadishu, and then through most of south and central Somalia. The way the courts spread was very simple. Residents in villages and towns led by their lineage elders and religious authorities organized themselves and declared allegiance to the courts.[23] This all happened within a matter of months from early- to mid-2006, catapulting the

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[21] '*Somalia: Eliminating the Terrorist Threat*' Fact Sheet, African Affairs, US Department of State, 25 January 2007, www.state.gov/p/af/rls/fs/2007/79383.htm

[22] International Crisis Group, "Can the Somali Crisis be Contained?" *Africa Report* No 116, 10 August 2006, www.crisisgroup.org/library/documents/africa/horn_of_africa/116_can_the_somali_crisis_be_contained.pdf.

[23] There were also instances where the over-enthusiastic militia members of the UICs took over an area by force.

UICs into international headlines and policy circles. Western diplomats began to call the UICs the "African Taliban."[24] Regional states, particularly Ethiopia, a regional ally of the U.S which had a history of intervening in Somalia and conflict with Islamist groups there, also began to sound alarms about the danger the UICs posed to their own security and to regional stability. These fears and concerns of the UICs culminated in a U.S.-backed Ethiopian invasion of Mogadishu in December 2006.[25] The Ethiopian forces quickly overpowered the militias of the UICs and the UICs' 'administration' in Mogadishu crumbled with most of its leadership going underground or fleeing the country. Within months of the disbanding of the UICs and the Ethiopian occupation of Mogadishu, an underground insurgency, coalescing around a small group of militants known as *Harakaat al-Shabaab al-Mujahideen* (The Youth Movement of Holy Warriors) or simply *al-Shabaab* (the Youth) emerged. After getting bogged down in Somalia by al-Shabaab, Ethiopian forces left in early 2009. By then there was significant international intervention in Somalia, which followed up on the heels of the Ethiopian invasion. Through the offices of the UN, an African Union Mission in Somalia (AMISOM) force, paid and armed primarily by the U.S. and E.U., was created to take over from the Ethiopian forces and protect the weak federal government in Mogadishu. The main objective of the international intervention revolved around the creation and protection of the institutions of the state. Counter-terrorism in Somalia, as in other places, was and is a nation-state building project. A new government, which included many members of the so-called 'moderate' wing of the UICs, was created in 2009 to try to undercut the opposition to the government. Al-Shabaab, however, continued its opposition to the government. When I started my

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[24] Jeffrey Gettleman, "*Drinking Fanta with Islamists*," New York Times, May 13, 2017 (https://www.nytimes.com/2017/05/13/sunday-review/drinking-fanta-with-islamist-militants.html?smid=pl-share&ct=t(May_19_20175_19_2017)&mc_cid=8608f4495d&mc_eid=83bedeb97f&_r=0, (accessed July 20, 2017).

[25] For more on the Ethiopian invasion and US support for it, see Abdi I. Samatar "Ethiopian Invasion of Somalia, US Warlordism & AU Shame," *Review of African Political Economy*, 34 no. 11 (Mar. 2007): 155-165.

fieldwork in Mogadishu in early 2014 the situation remained more or less the same, as it does at the time of writing these lines.[26] Al-Shabaab, though significantly weakened as a military forces, continues to occupy large rural areas in southern Somalia and constantly carries out bombings and assassinations in Mogadishu and other urban areas. The UN continues to financially and militarily support the government in Mogadishu.

The rise of the UICs was as sudden as it was short; it lasted a mere six months. Yet despite the brevity of its duration, the emergence of the UICs is regarded as a watershed moment in recent Somali history (Barnes and Hassan 2007). The rise of the UICs dramatically altered the dynamics of the Somali conflict, changed the calculus of all the actors and brought new actors into the conflict, and effectively turned Somalia into a new front in the GWOT. The story of the rise of the UICs and what came after it has all the elements of what has become a common enough occurrence in Muslim world: an economic and political crises in a Muslim society, a local response framed in Islamic symbols and discourse, an ill-informed Western intervention that leads to a more radical and militant "Islamist" response on the ground. The focus on the UICs by the media, policy makers, and academics, I suggest, is misplaced and contributes to conceal what I consider the much more important phenomenon that preceded the UICs: the independent and communal Shari'a courts that existed in Mogadishu, in one form or another, since the disintegration of the Barre regime in 1991. It was these courts that came together in 2006 to form the UICs. The history of these communal Shari'a courts – the socio-historical roots of their formation, the practices, concepts, and discourses that informed the work of the courts, and the metamorphosis of the courts into the UICs – provide an opportunity to study the social forces, historical traditions, and cultural and religious practices and concepts that inform and undergird Islamic movements, not only in

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[26] June 21, 2017.

Somalia but in other parts of Sub-Saharan Africa. This dissertation is thus a historical ethnography of the Shariʻa courts of Mogadishu.

Organization of the chapters

In chapter one I argue that the Shariʻa courts should be seen as a movement of communal self-governance rooted in the historical experience and traditions of the communities that established the courts. Most commentators (Hagman and Hoehne 2009; Le Sage 2004; Menkhaus 2005, 2006/2007; Rotberg 2005; Waal 2004) on the Shariʻa courts hold that the disintegration of the central state in 1991 led to a vacuum, which created the conditions for conservative clerics to impose Shariʻa "law" on society. I, on the contrary, contend that the prolonged absence of the state and with that its modernizing project of cultural and religious reform since its disintegration meant that the attempt to separate communal practices, concepts, ethics, and norms informed by the Islamic tradition from politics came to an end. The Shariʻa courts were an expression of organic forms of governance that were grounded in the practices, concepts, and norms of the historically-rooted Islamic tradition of the community from which the courts emerged. Furthermore, I assert that it's necessary to question two dominant presuppositions in order to clear the ground for a socially and historically rooted analysis of the Shariʻa courts. First, it's essential to move away from a dichotomous approach to the study of Islam in Africa, which distinguishes between "Islam in Africa" and "African Islam" (Ware III 2014: 19). The former is considered as the proper form of Islam, a more austere and orthodox version of Islam viewed as an authentic expression of its Arabian roots, and therefore foreign to Sub-Saharan African societies and their cultures. African Islam or Islam Noir, on the other hand, is seen in both academic and nonacademic discourse as an Africanized version of Islam, which is essentially syncretistic and superstitious (Seesemann 2011: 11). Another problematic approach which needs to be questioned is the conceptualization of the

Shariʻa as "Islamic law." Most scholars (Asad 2003; Hallaq 2009a, 2009b, 2013; Messick 1993; Pierce 2003; Weiss 1992) contend that the Shariʻa as a historical phenomenon and lived tradition (Rosen 1989, 2000) is very distinct from "law" in the modern understanding of this term. Central to the modern understanding and practice of law is its separation from morality, a distinction that is wholly foreign and inconceivable in the Shariʻa tradition. Chapter one lays out the argument for why the Shariʻa courts of Mogadishu should be contextualized within the history and religio-cultural traditions of Somalia in order to appreciate the significance of this movement.

In chapters two and three, I provide a historical and religio-cultural context to the rise of the Shariʻa courts by examining the relationship between authority i.e. religious authority, and power i.e. political power, in pre-colonial Somalia. In chapter two I look at the role of religious authorities in relation to social organization and leadership. I argue that religious authorities, through their role of mediating and settling disputes, were integral to the activity of governing a society that in general lacked a centralized and a hierarchical political offices. In chapter three, I continue this line of analysis by demonstrating that on the few occasions when political power emerged in pre-colonial Somalia, it was founded upon and led by religious authorities. Together, the two chapters demonstrate the argument that religious authority has been integral to political power in precolonial Somalia. In making this argument these chapters accomplish two things. First, by providing a view of the *longue durée* in which the centrality of religious authority to political formations and political experience becomes evident, I show that the rise of the Shariʻa courts should not be viewed as a rupture with the region's religious and political traditions, but as an event with a more complex relationship to the past and the present. Second, by showing the close association between religious authority and political power in precolonial Somalia, I counter a general tendency in the literature on authority and power in pre-modern Muslim societies, which

contends that there has been a separation between authority and power in Muslims societies until the rise of the modern state brought the two together (Asad 2015; Hallaq 2003, 2009, 2013; Lapidus 2002; Messick 1993; Weiss 1992; Zubaida 2005).

Chapters four, five and six are all more ethnographic than the first two chapters. Chapter four describes the initial events that led to the formation of four of the Shari'a courts of Mogadishu based on the personal accounts of individuals who were deeply involved in the events and actions that culminated in the founding of the courts. The descriptions are drawn from interviews with key members of the Shari'a courts, biographical and historical manuscripts, as well as religious documents, all written in either Arabic or Somali by important players in the history of the Shari'a courts and/or the subsequent UICs.[27] A key theme that emerges out of the accounts of the four courts is the rise of religious authorities as politico-religious leaders was accompanied by the simultaneous decline of the political role of lineage- or "clan"-based faction leaders or warlords. I contend that the demise of the political role of lineage-based faction leaders was an expression of the fact that the "clan" as a political category was losing its coherence as the memory and experience of the postcolonial state faded. In other words, the "clan" as a political category only made sense in a world where the "clan" was depicted as a unit with authentic interests needing political representation at the level of the state vis-à-vis other clans. With the prolonged absence of the postcolonial state from the scene, the "clan" was no longer politically relevant. As both the "clan" and the political representative of the "clan," the faction leader or warlord, lost their political significance, the general attitude, remnants of the centralized state institutions, that the political role of religious authorities should be delimited no longer reflected people's lived reality.

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[27] This written material was collected and translated from Somali and Arabic by the author.

Consequently, religious authorities rose to political prominence. What we see here is essentially the de-privatization of religion as the experience of the postcolonial state faded from memory.

Chapter five examines a few of the concepts and ideas from the Islamic tradition that informed the reasoning, actions, and practices that undergirded the rise of religious authorities to politico-religious leadership. More specifically, I analyze how the practices, discourses, and modes of reasoning associated with the concepts of "collective duty" (*fard kifaya*), "the people of resolution and contract" *(Ahl al-Hal wa'l-'Aqd),* and "commanding right and forbidding wrong" (*wa-ya'muruna bi'l-ma'rufi wa-yanhawna 'ani 'l-munkar)* have informed the practices and reasoning of the actors whose actions culminated in the formation of communal Shari'a courts. These concepts informed the practices and modes of reasoning of not only religious scholars (*'ulama*), but also ordinary people whose actions were crucial to the formation of the courts. This shows that these Islamic traditional concepts formed part of the larger cultural background of the people. The rise of the Shari'a courts was, therefore, not a result of an imposition of the Shari'a, understood as "Islamic law," on the population by conservative clerics. Rather, the courts built on older ideas, concepts, and practices that were embedded in the culture of the people and formative of their orientation to the world.

Chapter six looks at the transition from independent communally established and run Shari'a courts to the unified and semi-bureaucratized structure of the UICs. Specifically, I analyze in this chapter the transformation of Shari'a practice and authority as part of the process of establishing a unified court system under the UICs. This process was led by a group of men educated in modern Islamic universities outside of Somalia who rose to power with the formation of the UICs. In their rise to power these new intellectuals displaced the authority of the local and "traditionally" educated religious authorities who founded the initial communal Shari'a courts.

The bureaucratization of Shariʻa practice, which accompanied the rise of the UICs, changed Shariʻa practice and shifted authority away from neighborhood sheikhs. This chapter examines the educational background of these new elites, the organizational structures they introduced, and their impact on Shariʻa practice and authority.

Concepts, practices, and modes of reasoning from the Islamic "tradition"[28] informed efforts and projects of communal and subject formation that eventually culminated in the rise of neighborhood/lineage Shariʻa courts. Before their unification into the UICs, the courts were independent from each other, non-hierarchical with no centralized authority. Consequently, they were much more open to pressures and influences by ordinary people. They were accountable to the neighborhood and district residents under their jurisdiction. The history of the Shariʻa courts of Mogadishu, therefore, give us a window into a type of governance informed by the Islamic tradition but not centered on the model of the modern territorial state, as many contemporary Islamic movements are. This is what is unique about the Shariʻa courts. The prolonged and complete absence of the state from the scene led people to engage in organic experiments of self-governance without such process being influenced by the demands and engagement with state institutions. It was an experiment that grounded the governance of social affairs, i.e. politics, in historically embedded religio-cultural notions of authority, of justice, and responsibility. The non-state centric concepts and practices of the communal Shariʻa courts ended with the formation of the UICs. The rise of the UICs, I submit, was a step in the direction of the logic and form of governance of the modern state.

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[28] For more on my use of the concept of "tradition" see chapters one and two

CHAPTER I

The Shariʻa Courts of Mogadishu: Beyond "African Islam" and "Islamic law"

As the introduction chapter demonstrated, the social upheavals, particularly the proliferation of crime and insecurity, following the disintegration of the postcolonial Somali state in 1991 created the conditions for the emergence of the Shariʻa courts of Mogadishu. It was, however, practices and concepts informed by a historically-grounded and culturally-embedded Islamic tradition that led to the actions and modes of reasoning that culminated in the formation of the courts, as chapters four and five will demonstrate. In this sense, the Shariʻa courts of Mogadishu were products of their users. They reflected the Shariʻa-informed ethical and moral outlook of the community, and weren't courts in the sense that courts are understood as an arena where "law" is executed by an authority that is distinct and above society. The Shariʻa courts were, therefore, an organic movement rather than a court in the normal sense. This understanding of the Shariʻa courts of Mogadishu as grounded in the Islamic tradition as a lived reality reflective of Somalia's history and culture is opposite to how many commentators have depicted the courts. For many commentators the Shariʻa courts were a local locomotive for the larger global phenomenon of "political Islam." In such a reading, the absence of the state from the Somali scene since its collapse in 1991 is viewed as significant not because it allowed organic and more communally controlled forms of governance arrangements to emerge, but because the "vacuum" that the absence of the state created is said to have allowed "conservative" and "radical" clerics to spread their agenda in Somalia. On the contrary, I argue that the prolonged absence of the state and with that its modernizing project of cultural and religious reform since its disintegration in 1991 meant that the attempt to separate Shariʻa-informed communal ethics and morality from politics came to an end. The Shariʻa courts were an expression of organic forms of governance that were grounded in the

practices, concepts, and norms of the historically-rooted Islamic tradition of the community from which the courts emerged.

As such, the notion of tradition will partly inform my approach. The notion of tradition as it was first conceptualized in the work of Alasdair MacIntyre[29] and further developed by Talal Asad.[30] In their formulation, tradition is no longer conceptualized as dichotomous to rational modernity and characterized by repetition of the same. Rather, tradition is an embodied and discursive formation that has its unique concepts, practices, and normative modes of reasoning and argumentation. Tradition understood as such can experience ruptures, recuperation, as well as continuities. In any living tradition, authority and what constitutes authoritative arguments or practices is constantly debated. In the case of the Islamic tradition, the foundational texts (Qur'an and *hadith*) constitute founding moments in an enduring conversation and argumentation. There is of course a separation between an authoritative tradition and its bearers. That separation is important for it's in that moment of separation when relations of power is afforded influence in the enactment of the tradition. Tradition in this sense can be seen as a series of potentialities that are actualized in the performance of authorized procedures. In this dissertation, I approach the Shari'a courts of Mogadishu as a historically and socially grounded movement that responded to the demands of the present through an engagement with the Islamic traditions as it has come to be articulated throughout the centuries in Somalia. I argue that concepts and practices from the Islamic tradition, in particular the Shari'a, which are deeply embedded in the cultural and history of the Somali people, were integral to informing the actions and modes of reasoning that led to the

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[29] Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind.: University of Notre Dame Press, 2007); idem, *A Short History of Ethics* (London: Routledge, 1998).

[30] Talal Asad, *The Idea of an Anthropology of Islam* (Washington, D.C,: Center for Contemporary Arab Studies, Georgetown University, 1986); idem, "Thinking About Tradition, Religion, and Politics in Egypt Today," *Critical Inquiry* 42 (Autumn 2015): 166-2014.

formation of the Shari'a courts of Mogadishu. In this chapter, I argue against reducing Shari'a to "law," in the narrow sense of that term – and differentiating it from Western epistemologies that draw a sharp distinction, at least in principle if not always in practice, between legality and morality – and for seeing its localized development as emergent from sociocultural contexts of practice.

To view the Shari'a courts of Mogadishu as a movement whose development was informed by the Islamic tradition as it has been historically articulated in Somalia, and provide a historically and socially grounded account of it, it's necessary to move away from a dichotomous approach that has become common in the study of Islam in Africa as well as the conventional conceptualization of the Shari'a as "Islamic law." The study of Sub-Saharan African Muslims has been framed by a narrative that distinguishes between "Islam in Africa" and "African Islam" (Ware III 2014: 19). The former is considered as the proper form of Islam, a more austere and orthodox version of Islam viewed as an authentic expression of its Arabian roots, and therefore foreign to Sub-Saharan African societies and their cultures. African Islam or *Islam Noir*, on the other hand, is seen in both academic and nonacademic discourse as an Africanized version of Islam, which is essentially syncretistic and superstitious (Seesemann 2011: 11). While there has been many academic critiques of this approach (Robinson 2004; Seesemann 2011; Ware III 2014), it continues to widely influence the study of African Muslim societies. In fact, this dichotomous approach has become even more influential in the current global fascination with security under "the war on terror" (Soares and Otayek 2007). Another problematic conventional approach is the conceptualization of the Shari'a as "Islamic law." Most scholars (Asad 2003; Hallaq 2009a, 2009b, 2013; Messick 1993; Pierce 2003;; Weiss 1992) contend that the Shari'a as a historical and lived culture (Rosen 1989, 2000) and legal tradition is very distinct from "law" in the modern understanding of this term. Central to the modern understanding and practice of law is its

separation from morality, a distinction that is wholly foreign and inconceivable in the Shariʻa tradition. In this chapter I demonstrate how the dichotomous approach to the study of Islam in Sub-Saharan Africa and the conceptualization of the Shariʻa as "Islamic law" has influenced the commentary on the Shariʻa courts of Mogadishu, and the shortcomings of these approaches. My overall argument in this chapter is that to appreciate the historicity and the religio-cultural roots of the Shariʻa courts of Mogadishu, one must go beyond the conventional distinction between "Islam in Africa" and "African Islam," as the common conceptualization of the Shariʻa as "Islamic law."

I.   Islam in Africa

The history of Islam in sub-Saharan Africa is long and complex going as far back as a millennium. For some countries, like Somalia and Mauritania, Islam is indistinguishable from the people's identity, their norms and practices, their history, and their understanding of their place and orientation to the world. Our understanding, however, of the sociology and history of Islam in Sub-Saharan Africa is limited. Research into Islam in Africa has often taken place within frameworks generated and informed by Western desires to cultivate malleable constituents, and to identify potential adversaries within Muslim societies. One consequence of that has been the conventional separation of Islam in Africa into two dichotomous entities: traditional "African Islam" and reformist Islam (Soares and Otayek 2007). "African Islam" is associated with *Sufi* orders (*tariqa*, plural *turuq*). The presence of *Sufi* orders in Africa goes back to the eighteenth and nineteenth centuries. They have played important roles in trade, scholarship, and resisted or collaborated with European colonial powers (Babou 2002; Robinson 2000). Intricate *Sufi* rituals, including saint veneration and tomb visitation, are approached by most commentators as organically related to African cultures. As such, *Sufi* orders and their associated practices are viewed in conventional wisdom as the epitome of "traditional" or "African Islam." Additionally, and importantly, this so

called "African Islam" is portrayed positively because it's assumed to be syncretic and thus tolerant of different practices in contrast to reformist Islam (Rosander 1997).

Reformist Islam, on the other hand, has been associated with pan-Islamic movements or influences from the Middle East and North Africa, and has often been portrayed as posing a threat and a challenge to "African Islam" and Western interests. Reformist Islam is associated with "Wahhabism," or interpretations and practices of Islam inspired by the eighteenth-century Arabian reformer Muhammad Abdul-Wahhab (d. 1792). Reformist Islam is also closely linked with *salafism*, a twentieth-century reform movement which invokes the practices of "the pious ancestors" as a model which today's Muslims should aspire to. Commentators often employ interchangeably the categories of *Wahhabi*, *Salafi*, and fundamentalist, and reduce African Muslims' efforts to change their own societies as emulation of Islam as practiced in the Arab world. African Muslim reform efforts are thus seen as anti "African Islam" (Cruise O'Brien 2003). This is of course a simplification of the complex and changing practices of Islam and Islamic reform movements in Africa.

North Africa and the Arab Middle East, as one of the centers of new developments in Islamic intellectual discourse and practice, has always influenced how Muslims in Sub-Saharan Africa understood and practiced Islam. The articulation of the local and the global in how Muslims societies understand and practice Islam is more complex and perhaps deeper today than in the past (Coulon 2002; Soares 2005; Loimeier and Seesemann 2006), but it was in no way absent in the past and cannot be captured by the distinction of Islam in Sub-Saharan Africa into "African Islam" and reformist Islam. For example, it's common knowledge among historians that *Sufi* orders have taken root and spread throughout Africa in the eighteenth and nineteenth centuries (Martin 1977; Vikor 2000). However, Islam has been present in many parts of Sub-Saharan Africa well before

that. Moreover, *Sufi* orders provided some of the fiercest resistance to European colonization in Africa (Levtzion and Pouwels 2000). So the conventional wisdom that *Sufi* orders are the epitome of "African Islam" and are, furthermore, characterized by tolerance and political quietism is historically inaccurate. Lastly, the practices associated with *Sufi* orders and are said to be organically connected to African cultures such as tomb visitation and saint veneration are practices that are common to *Sufi* orders throughout the Muslim world (Soares and Otayek 2007).

This dichotomous approach to Islam has become even more conventional and widespread since Islam emerged as the new "menace" of Western security concerns after the collapse of the Soviet Union. Beginning with the 1998 attacks on U.S. embassies in East Africa and then with the September 11, 2001 attacks in the U.S., many scholars and policy makers began to focus on Islam in Africa. Countless studies warned that the weaknesses of African states, and their non-existence in places like Somalia, would provide ideal spaces for the spread of radical Islam. The post-9/11 security concerns of the West has thus given a new impetus to the old and dichotomous approach to the study of Islam in Africa. This security oriented and dichotomous framing of Islam and Muslim societies in Africa has negatively impacted research on Islam in Sub-Saharan Africa, as Soares and Otayek point out:

> *Much of the commentary on Islam and Islamism in Africa produced since the late 1990s has been both superficial and alarmist, focusing almost exclusively on issues of international security. Many are now pointing to possible links between Islam/Islamism and terrorism in Africa, and commentators are looking everywhere in Africa for links to Muslim radicals, as well as for presumably nefarious Saudi and South Asian connections.* (2007: 6)

Such a dichotomous approach to the study of Islam is misleading for many reasons (Rosander 1997; Soares and Otayek 2007). It assumes that all Muslims in Africa can neatly be placed in these categories and that their ideas, motivations, and practices can be explained in reference to these two categories and their supposedly antagonistic relationship. This approach, therefore, overlooks the consequences of dynamics internal to African societies. These include economic and political transformation of the colonial and post-colonial periods, including the crisis of the state, failures of economic and political developments, massive urbanization, and collapse of revolutionary post-colonial ideals. These factors are the primary drivers of contemporary Islamic movements in Africa. In responding to these problems and attempting to reform their societies, African Muslim societies have engaged with and built on their historical experiences and religio-cultural practices. Foremost among the resources sub-Saharan Africa Muslim societies possess are the concepts, practices, modes of reasoning, notions of justice, and ethical responsibility that has been bequeathed to them by their heritage in the Islamic tradition. Rather than situating Islamic-oriented African social and political movements and organizations in the histories and religio-cultural norms and ideas of African societies, most commentators view them as "foreign" inspired and influenced. Once they are viewed as foreign-inspired it follows that there is little need to understand the specific history, culture, and religious traditions of the African societies from which they emerge. The analysis and commentary on the Shari'a courts of Mogadishu is no exception in this regard.

Commentary on the Shari'a Courts

In line with the general depiction of Islam in Africa, the Shari'a courts have been analyzed in terms of where they fit in the categories of "African Islam" and reformist or radical Islam. The courts are frequently depicted as a vehicle for the spread of reformist or radical Islam (Hagman and

Hoehne 2009; Le Sage 2004; Menkhaus 2005, 2006/2007; Rotberg 2005; Waal 2004). Reformist Islam in Sub-Saharan Africa, as mentioned above, is conventionally understood as representing a form of Islam that is foreign to African societies. The appeal of this supposedly foreign Islam is explained away through the utilization of such tropes as the post state collapse *vacuum* and the *vulnerable* society. The argument is that the Shari'a courts took root and emerged because fundamentalist clerics, influenced by foreign religious networks, took advantage of a vulnerable population that was willing to accept anything and anyone that promised relief from the terrible conditions into which Somalia, particularly Mogadishu, had fallen into after the collapse of the state. In this framing, every act the Shari'a courts or people associated with the courts took is seen as some type of conspiracy meant to win over the population and conscript them for a cause that is essentially alien to their daily concerns. A political scientist explains matters in the following:

> *The complete collapse of government social services, for instance, has provided Islamic charities with the opportunity to become the primary provider of education and health care services. The absence of a formal judiciary has enabled shari'a courts to step into the vacuum; they are now one of the most important forms of local rule of law. For hard-line Islamists, the continued collapse of the central government has provided a useful political environment – an opportunity to call for Islamic government as the cure for Somalia's crisis, an easily exploited cauldron of social frustration and resentment with which to rally radical anti-Western sentiment, and a safe haven from a state that, if revived, might be tempted to crack down on hard-line Islamist groups.* (Menkhaus 2005: 29)

My argument isn't that the formation of Islamic charities and "Islamic schools" weren't critical to the formation of the Shari'a courts, but I question why such charities and schools are portrayed as motivated by ulterior motives or serving as a conveyer belt for a religio-political ideology from the outside. The same author writes, "the rapid expansion of Islamic charities and schools, mostly funded from the Gulf, wins over hearts and minds and provides a convenient structure for recruitment of young Somali to the cause" (Menkhaus 2005: 23). Another commentator puts the relationship between the deteriorating security situation and the appeal of Islamic reform movements thus, "for instance, many young urban people took refuge in the mosques to avoid the fighting and thereby came into contact with more militant figures who were not part of what they describe as a clan-war among Muslims" (Marchal 2004: 123). One wonders, why is it so difficult for commentators to surmise that perhaps communities organized themselves, often in mosques, to rescue their communities from becoming victims or perpetrators of crime? Another writer says more or less the same thing, "the population – including wealthy and influential businessmen – was willing to accept shari'a rule in exchange for basic security administered by the courts" (Hagmann & Hoehne 2009: 50). This way of depicting the Shari'a courts is popular with many analysts because it's a direct consequence of that old and dichotomous approach to Islam in Africa, which has been rejuvenated by the "war on terror," as Soares and Otayek highlight, "these new attempts to identify good and bad Muslims are strikingly similar to colonial efforts to determine whether Muslims in Africa were loyal or potentially seditious" (2007: 7).

It's not that there are no partial truths in this narrative, but the problem is once this framing is used to explain the efforts of Muslims in Africa to change the conditions of their life, once they are depicted as simply *taking advantage* of a societal crisis and frustration, a number of more

complex considerations about the history and motivations of such efforts is rendered unnecessary. There is no attempt to understand the social practices and relations, experiences, motivations, and views of the people involved in the establishment of the courts, other than to point a finger at a "Wahhabi" influence achieved through foreign-funded Islamic charities and schools. Much is erased from consideration through the labeling of an individual or a movement as Wahhabi. Didn't these actors emerge from within the environment which they are said to be taking advantage of? Couldn't they be motivated by an earnest desire to ease their own suffering and that of the population in founding schools and charities? Why is their agency viewed only in terms of creating a warped anti-Western mentality and a mindless militant? How are the activities of this activists informed by a moral vision of the good life and an ethical duty to struggle towards its realization? How does the Islamic tradition inform their social vision and their activism? By assuming that "Islamists"[31] are only taking advantage of the situation, one avoids having to analyze a series of very compelling themes. Relatedly, this way of framing lends itself and is part of the counter-terrorism project. It argues that by alleviating the terrible conditions through the establishment of a security state one drains the swamp in the midst of which Islamic "radicalism" flourishes, thereby justifying the strengthening, and in the case of Somalia, the establishment of a neoliberal security state. It completely ignores the large historical complexities of which the active militant is only a minor expression.

A key concept in this portrayal of the relationship between the Shari'a courts and the society from which the courts emerged is the understanding of the Shari'a as "Islamic law." Such

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[31] For a critique of this concept see Hrischkind (1997).

understanding enables commentators to portray the Shariʻa court as an expression of an agenda by conservative clerics to impose Shariʻa or "Islamic law" on society:

> *Since the outbreak of the civil war and again with the withdrawal of UNOSOM[32] forces, a new system of policing and judging crime –the Islamic Courts – is emerging in Madina[33] and elsewhere. Empowered by well-armed and well-disciplined young men, fundamentalist[34] mosques have effectively maintained peace in some neighborhoods by imposing sharia law on offenders.* (Menkhaus & Prendergas 1995: 54).

These fundamentalist clerics are said to impose Shariʻa law on a vulnerable population, broken by years of pervasive violence and desperately desirous of law and order. Therefore, what the Shariʻa courts represent more than anything else is "law" which is being imposed on society. In being imposed on society, this "Shariʻa law" is serving as a Trojan horse for the advancement of political Islam, as this author makes clear, "Since the early 1990s, political Islam has been propagated in Somalia through the establishment of Shariʻa courts in a number of different cities and towns, but particularly in Mogadishu and Shabelle river valley" (Menkhaus 2006: 36). By equating the Shariʻa with "law," the Shariʻa courts inevitably become something foreign and imposed from above on society. In other words, the courts are not a manifestation of the self-defense and self-governance initiatives of the communities, and the people's response to the challenges of the present through an engagement with their historical experiences and the cultural and religious legacies of their history.

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[32] United Nations Operations in Somalia (UNOSOM) began in April 1992 and ended March 1995.

[33] Madina is a district in Mogadishu where the first Shariʻa court emerged in 1992 after the collapse of the state the year before (see chapter four).

[34] For a critique of the notion of Islamic fundamentalism see Euben (1999).

Unsurprisingly, and in line with the conventional distinction between "African Islam" and reformist Islam, it becomes necessary to differentiate between the Shari'a or "Islamic law" and local "customs" in order to view the Shari'a courts as an imposition. A report by a United Nations field mission describes the difference between custom and Shari'a law in how the Shari'a courts in Hiran region in southern Somalia functioned:

> *They (the courts) are multi-clan in composition and have had considerable popular support; they have exercised the right to collect taxes, allocating revenues to pay for the running of the courts, provide small stipends to manage disputes, operate the prison, and maintain and control a shari'a militia estimated at 500 men. The courts in Hiran base their deliberations on the Quran, but do not impose shari'a law – parties to a dispute are entitled to opt for traditional (blood money) compensation or shari'a.[35]*

A distinction is made between local, tradition-friendly, Shari'a and a more puritanical "Shari'a law." One is an expression of local i.e. authentic African culture, while the other is an imposition on the local population. Interestingly, if one were to ask local Shari'a scholars or sheikhs about the difference between Shari'a and traditional Somali custom (*heer*), they would deny that a difference exists between the two, as this researcher found out, "Shari'a judges assert that there is no conflict between Islamic law and traditional Somali clan law (known in Somalia as *heer*). They state that Somali culture was fully integrated into Islam and thus no conflict was possible" (Le sage 2004: 136). The symbiosis between the Shari'a and local customs throughout Islamic history is well known, "Islamic law depended, in both theory and practice, on the cooperation of customary (*ada*,

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[35] UNDOS, 'Hiran Regional LAS Study: Executive Summary,' Nairobi: UNDP-Somalia (January 1999). Quoted in Le Sage 135.

urf) and royal law (*siyasa shar'iyya*). Nowhere did Islamic law operate exclusively, and everywhere customary law was entwined with it in the realm of practice" (Hallaq 2009: 368). This is not a surprise given that the Shari'a throughout its history had to function in communities with extremely different customary practices, and did so without being backed by the legislative authority of a state. The Shari'a, therefore, incorporated *urf* or 'custom' as one of its sources, "the idea that customary practice was a necessary if not theoretically authorized source of law was an old notion in Islamic legal thinking" (Peirce 2003: 119). However, despite this Shari'a history and the assertions of his informants, the above commentator suggests the Somali sheikhs are lying because none of them were members of *Sufi* brotherhoods. Given the popular assumption that *Sufi* brotherhoods are the pre-eminent expression of Islam in Africa, the author concludes that since none of the judges at the Shari'a courts identified themselves as members of *Sufi* brotherhoods, it must mean the Shari'a they practice is non-traditional.[36]

II.   Law, Morality, and the State

A key notion in this way of explaining the formation of the Shari'a courts is the conceptualization of the Shari'a as "law" in the modern understanding of that term. This conceptualization of the Shari'a as "law," as mentioned above, allows for the Shari'a courts to be viewed as an imposition from without and not something that emerges from and is an expression of the practices, concepts, and discourses of the society in question as these have been bequeathed to them by the Islamic

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[36] It might be worth awhile to consider how colonizing European powers made a distinction between the Shari'a or "Islamic law" and the traditional customs of the colonized. Once this distinction was made Shari'a came to be viewed as more threatening by colonial officials. Speaking of Dutch colonization of South-East Asia, Hallaq addresses how Dutch legal experts and colonial officials viewed *adat* (what the Dutch considered local custom) in relation to Shari'a. It is very similar to how *heer* is viewed in relation to Shari'a. Speaking of one of these legal experts, Hallaq writes, "he also espoused the view that any attempt weakening adat was nothing less than an invitation to open the floodgates to Islam, a religion seen by van Vollenhoven and many of his compatriots not only as a native political tool of unification, but as the very religion that had threatened Christendom for centuries. Furthermore, to side with adat was to promote secularism, the new religion of Eruope" (Hallaq 2009: 393). For a discussion of how French colonial officials viewed Islam and the Shari'a in West Africa see Harrison (1988).

tradition.[37] This way of understanding the Shariʻa, and by extension the Shariʻa courts, forecloses our ability to ask certain questions about Somali society and Islamic-oriented socio-political movements within it. A central feature of the modern understanding of law, one that underlines the difference between "law" and Shariʻa, is in relation to the concept of "morality," a concept whose historical emergence partly lies in its separation from law in the modern West. Concomitant with the separation of law and morality, and perhaps a precondition for this separation, was the emergence of the autonomous self-legislating individual as well as the modern state for whom law is one of its sovereign characteristics. In the rest of this section I provide a brief account of the history of these concepts and their relations before moving on to a discussion of the Shariʻa as a historical phenomenon.[38]

As with all concepts, the modern concept of morality has a specific history that conditioned its formation and subsequent use, a history that is specific both temporally and spatially. The moral Philosopher Alasdair MacIntyre writes, "in Latin, as in ancient Greek, there is *no* word correctly translated by our word 'moral'; or rather there is no such word until our word 'moral' is translated back into Latin" (1984: 38). Most scholars trace the emergency of the modern notion of morality to the seventeenth and eighteenth centuries in northern Europe. Its emergence was a consequence

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[37] For the concept of tradition I employ here, see Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984); idem, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988); Talal Asad, *The Idea of an Anthropology of Islam* (Washington, D.C,: Center for Contemporary Arab Studies, Georgetown University, 1986); idem, "Thinking About Tradition, Religion, and Politics in Egypt Today," *Critical Inquiry* 42 (Autumn 2015): 166-2014. In *After Virtue* MacIntyre writes, "We are apt to be misled here by the ideological uses to which the concept of a tradition has been put by conservative political theorists. Characteristically such theorists have followed Burke in contrasting tradition with reason and the stability of tradition with conflict. Both contrasts obfuscate. For all reasoning takes place within the context of some traditional mode of thought, transcending through criticism and invention the limitation of what had hitherto been reasoned in that tradition; this is as true of modern physics as of medieval logic. Moreover when a tradition is in good order it is always partially constituted by an argument about the goods the pursuit of which gives to that tradition its particular point of purpose. . . . Indeed when a tradition becomes Burkean it is always dying or dead" 221-22.
[38] My brief account of "Western law" is a broad ideal type. For the purposes of analysis I ignore the complexity of that genus.

and an expression of the dramatic transformations taking place in Europe at that time. This is not to say that there didn't exist prior to the seventeenth and eighteenth centuries a concept of the good and the bad or right or wrong, but the emergent idea of morality operated in a new semantic field and was built on a new conception of the self. MacIntyre (1966, 1984) attributes the emergence of this modern notion of morality to the breakdown of traditional forms of life where the good and the bad were a function of specific forms of life and inseparable from the evaluative judgments specific to the carrying out of the various roles inherent in that social life. He contends that the appearance of the distinctive moral *ought* was conditioned by the disappearance of shared ideals and functions within a shared form of life. In these traditional forms of life *you ought to* statement was inseparable from the relevant reasons for the injunction in the form of *'you ought to do x or y if you want to be a knight or a saint*.' MacIntyre writes:

> *But as shared ideals and accepted functions drop away in the age of individualism, the injunctions have less and less backing. The end of the process is the appearance of a 'you ought . . .' unbacked by reason, announcing traditional moral rules in a vacuum so far as ends are concerned, and addressed to an unlimited class of persons. For this ought the title of the moral ought is claimed, and it has two properties. It tells us what to do as an imperative does, and it is addressed to anyone who happens to be in the relevant circumstances. When to this use of 'you ought' the response is, But why ought I? The only ultimate answer is 'you just ought'* (1966: 172-173).

The new world brought into being by the Reformation and Counter-reformation conditioned the emergence of the impersonal and unconditional moral *ought* thereby necessitating the search for its rational justification which became the project of moral philosophy. One of the central and

defining features of this new morality is how it's centered on and presupposes the autonomous and self-legislating individual.

The modern notion of morality is inescapably centered on the autonomous individual and as such presupposes such an individual. That the autonomous self-legislating individual is a necessary presupposition of modern morality is underlined by the fact that moral philosophers presume the autonomous individual in their philosophical musings about morality. Moral philosophy takes it for granted that as rational, autonomous, and self-legislating individuals we should be able to find convincing reasons for doing what is moral, whether the arguments are based on appeal to enlightened interest or some basic psychological motivation. For moral philosophy, moral duties can have no authority than the individual:

> *their authority, it is supposed, comes from us alone, since there can be no reasons to do one thing rather than another except insofar as we take them to be reasons: it is up to us to decide what import, if any, the facts as they are will have for our conducts. That the world itself is normatively mute except for the principles we impose upon it – this is the idea of autonomy, running through so much of the moral, political, and even scientific thought of modernity.* (Larmore 2008: 7)

It's thus not surprising that the philosopher most identified with modern moral philosophy, Immanuel Kant, has offered a robust and far reaching formulation of morality as autonomy "he alone was proposing a truly revolutionary rethinking of morality. He held that we are self-governing because we are autonomous. By this he meant that we ourselves legislate the moral law. It is only because of the legislative action of our own will that we are under moral law" (Schneewind 1998: 6). Hence the emergence of liberal individualism and the transformation of society into an aggregate of individuals each with her/his unique internal conscience and in pursuit

of personal interests is simultaneous with the emergence of the modern notion of morality as autonomy. This notion of morality is inseparable from the development of social life as an arena in which autonomous individuals each pursue their self-chosen conception of the good life. In such social life, government and its laws, in the form of the state, is viewed as normatively neutral in regards to rival individual-based conceptions of the good life. We thus see that another defining feature of modern morality is its distinction from "law," where law now becomes an instrument in the imposition of a bureaucratized unity on a society made up of individuals.

The modern notion of morality, which is centered on and presupposes the self-legislating autonomous moral agent, was being formulated as part of a conceptually meaningful discourse at a time when the modern state was emerging as the dominant entity in configuring the spaces and forms of social life. In such an environment morality is inevitably personal morality for its authority emanates from the autonomous individual. Conversely law becomes the domain of the state. With that a distinction emerges between law and morality in the West with the formation of the modern state, "the distinction between law and ethics is itself made in jurisprudential terms that are traceable in European thought at least as far back as Grotius, a distinction expressing the idea that law is the domain of the obedience to a civil sovereign and morality the domain of individual sovereignty in accordance with inner freedoms (conscience)" (Asad 2003: 238-39). The emergence of this distinction between law and morality informed various debates on what the relationship between law and morality is and should be. The most forceful, perhaps because it pointed to something fundamental about the nature of law under the state, was the legal positivism of John Austin who asserted that "a law in the most general and comprehensive acceptation in which the term, in its literal meaning, is employed, may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him" (Austin 1961:401).

In this Austinian/positivist[39] formulation, law is simply understood as an order backed by threats, and as Hallaq points out, such an understanding is based on "a denial of a logical entailment or any necessary connection between law as it is and law as it ought to be" (Hallaq 2009b: 252). Hence the essential element in law is the relationship between a law giving sovereign, regardless of the form of the sovereign – democracy or absolute monarchy – and subjects who must render obedience to the law.

When law is understood as such, that is, as an essential feature of the modern state's claim to sovereignty, morality emerges as its counterpart, that is, as a claim to an independent personal space of the sovereign moral agent. It is understandable then that the emergence of the sovereign moral agent is frequently celebrated as the rejection of authority – traditional, religious or political – and an affirmation of the capacity of the individual for self-regulation, "the conception of morality as self-governance provides a conceptual framework for a social space in which we may each rightly claim to direct our own actions without interference from the state, the church, the neighbors, or those claiming to be better or wiser than we" (Schneewind 1998: 4). However, a more nuanced take on this history might suggest that the rejection of authority that is inherent to the concept of the autonomous self-regulating moral subject isn't a rejection of all authority. The impersonal authority of the modern state isn't rejected or contradicted by the self-legislating autonomous subject. Rather, one might argue, such a subject is a necessary constituent for the functioning of the modern state. In fact, such an autonomous self-regulating citizen-subject emerges as a consequence of the new relations of power and authority that the modern state embodies. So it's not simply that the autonomous self-legislating moral agent emerges as a result

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[39] For more on legal positivism, see Justin Austin; Nicholas Unwin, "Morality, Law, and the Evaluation of Values," *Mind*, Vol.94. No.376 (Oct 1985); Harold J. Spaeth, ed., *The Predicament of Modern Politics* (Detriot: University of Detroit Press, 1969); Ronald Dworkin, *Law's Empire* (Cambridge, Mass: The Belknap Press, 1986).

of the progressive unfolding of freedom. Rather, this new subject emerges in new relations of power and the distinction between personal morality and state law is crucial in the cultivation of such a subject.

A good illustration of this relationship might be found in a colonial context, where, as part of the imposition of the colonial state and its forms of authority and relations of power, the state seeks to create spaces – legal, economic or otherwise – where a self-regulating autonomous subject might emerge in the form of the citizen. In an absorbing commentary of the transformation of the Shari'a in Egypt under European colonization, Asad writes "I argue that it is the power to make a strategic separation between law and morality that defines the colonial situation, because it is this separation that enables the legal work of educating subjects into a new public morality" (2003: 240). In this complicated argument, Asad contends that the separation of law and morality is necessary to the project of secularization, a process that entails the dismantling of the Shari'a tradition. The separation of law and morality, he argues, was necessary to create spaces for the law of the sovereign state and the moral autonomy of the sovereign subject. This separation of law and morality is strategically necessary since colonized subjects had to be trained to become and assume the responsibilities of sovereign moral subjects. Significantly, the law of the sovereign state could then be invested with this civilizing mission, "the distinction between law (which the state embodied, produced, and administered) and morality (which is the concern ideally of the responsible person generated and sustained by the family) were essential for creating the social spaces wherein secular modernity could take shape" (2003: 238). Particular kinds of law require corresponding subjects of that law, and the modern and state-centered notion of law entails the self-legislating sovereign subject and the idea of morality as autonomous.

My goal in this section was to highlight that the contemporary understandings of "law" is unique and part of that uniqueness lies in its separation from "morality." The historical formation of both terms is part of the emergence of the modern liberal secular Western state and the relations of power it expresses and the forms of life and subjectivities it made possible. My intention in drawing attention to the spatio-temporal historicity of these concepts is to point out that to equate the Shariʻa with "law," understood in this modern sense, is to misunderstand the Shariʻa and by extension the Shariʻa court movement. If not as "Islamic law," how then should the Shariʻa be understood? The answer to this question is the subject of the next section.

III.   Shariʻa, the Modern State, *Daʻwa or Piety* Movements

It is now a common position among scholars of Islam that the Shariʻa can't be equated with "law" in the modern understanding of this term (Asad 2003; Hallaq 2009a, 2009b, 2013; Messick 1993; Pierce 2003; Rosen 1989, 2000; Weiss 1992). The recent discussion of the distinction of the Shariʻa from law is different from an earlier discussion of the Shariʻa's *incapacity* to separate law from morality. Surprised by the relative paucity of legal commands in the Qur'an and the predominance of what they considered ethical prescriptions in Islam's Holy Scripture, early scholarship[40] on the Shariʻa concluded that both the Qur'an and the Shariʻa, in general, suffer from an inability to distinguish between law and morality. This, in their view, explained the "inefficiency" and "ineffectiveness" of the Shariʻa as a "legal" system. For these scholars "the moral dimension of Islamic law, in language and in its conceptual derivation, is thus dismissed as one of the causes which rendered that law inefficient and paralyzed" (Hallaq 2009: 2). The obvious limitation of this approach is that it treats a phenomenon that is relatively recent in human history

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[40] See, Joseph Schacht, *The Origin of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950); N. J. Coulson, *An Introduction to Islamic Law* (Edinburgh: Edinburgh University Press, 1964).

and specific to the modern history of the West, the distinction between law and morality, as a standard by which the practices and experiences of other cultures and societies ought to be judged. Under such an approach, the Shariʻa inevitably appears as *lacking* in not making a distinction between law and morality. It's telling that these earlier scholars would attribute ineffectiveness to the Shariʻa on account of the absence of a clear separation of law and morality.

The more recent discussions of the Shariʻa have also underlined the absence of our modern notions of law and morality from the Shariʻa as a tradition of jurisprudence, "it is not, strictly speaking, possible to speak in this manner in the classical Arabic of traditional Islam, for that language does not possess true equivalents of the words 'law' and 'morality'" (Weiss 1992: 6). However, unlike the previous orientalist generation, recent scholars haven't treated this as a sign of an incomplete process of evolution. Rather, they view it as an invitation to understand the uniqueness of the Shariʻa in its historical formation and the forms of life and ways of reasoning its practices reflected and produced, as well as its difference from modern state law. In this section I intent to do three things. First, I highlight a couple of the more significant features of the Shariʻa in its development and as it was practiced before the onset of the European colonialism. Second, I briefly touch on how the features described were transformed under colonialism and the modernizing state. And finally, I end with a description of how *daʻwa* or 'piety' movements as an aspect of the so-called *Islamic Revival,* are building on some of the practices and discourses of the Shariʻa described above.

Linguistically, Shariʻa means "way" or "path," and more specifically in early Arabic, Shariʻa meant "a path leading to a source of water" (Izutsu 1966; Rosen 2000). Hence, Shariʻa can be understood as a path laid down by God for the guidance of humanity, "a path that claimed to guarantee well-being in this world and in the hereafter" (Hallaq 2013: 85). This guidance for

humanity is provided in the revelations, the Qur'an and *hadiths* (Prophet's traditions). However, the number of legal commands in the Qur'an and *hadiths* are quite insignificant as to provide a guidance to a whole way of life. This led to the formation of Shari'a specialists, who in their readings and commentary of revealed texts, tried to approximate God's will. There is, therefore, a distinction between God's will in the revelations and the approximations of it by Shari'a specialists. The former is called Shari'a and the latter *fiqh* (understanding or jurisprudence). One scholar describes the distinction between the Shari'a and *fiqh* as follows, "Shari'a law is a sort of Platonic ideal that scholars try to realize, however imperfectly and fallibly, in their *fiqh*. *Fiqh* law accordingly derives its validity from its character as the closest appropriation of Shari'a law that scholars are capable of achieving" (Weiss 1992: 16). The person who possess the requisite scholarly qualifications required to undertake the task of elaborating the meaning of divine revelation is known as *mujtahid* or 'toiler' and the scholarly work the *mujtahid* undertakes is called *ijtihad* or 'toil.' The *mujtahid* is different from the *faqih*, that is, the person who simply bears or transmits *fiqh*. The body of carefully worked out methodological principles which must be followed in the search for divine law by a *mujtahid* is elaborated in a special science known as *usul al-fiqh* or 'the science of the principles underlying fiqh.' The authoritative Shari'a opinions of *mujtahids* have been collected throughout Islamic history into manuals that constitute *fiqh* or jurisprudence. We thus see that what has come to be referred to as Shari'a is the work of Shari'a specialists trying to tease out the will of God based on their hermeneutics of revealed texts and other scholarly opinion. The fact that the Shari'a was the product of the efforts of independent legal specialists gave the Shari'a it's unique and defining characteristics.

Among the most important consequences of the individual derivation of the Shari'a are the independence of the Shari'a from political power, and the staggering variety of different legal

opinions in *fiqh* texts called *ijtihad*. These two features are connected because the origin of the Shari'a in the effort of independent scholars insulated it from being coopted by political leaders, while at the same time this led to the proliferation of the incredible variety of legal opinions.[41] Speaking of *ijtihad,* Hallaq writes, "one of the most salient elements and defining features of Islamic law, is just that, an opinion. It does not claim monopoly on jural truth, nor does it instigate any powers of enforcement. It is precisely here where the 'law' of the Shari'a, the *ijtihadic* opinion, differs fundamentally from the law of the modern state. Islamic law, from at least this perspective, is not law, in the modern sense, at all" (2009a: 110). *Ijtihad* differs from *hakm* or legal judgment rendered by the *qadi* or judge. Though the *qadi* could and was often in the employ of political powers, he relied on the opinions of more specialized and authoritative legal scholars such as *mujtahids* or *muftis*, whose scholarly work were, for the most part, independent from political power.[42] The substance of the Shari'a, therefore, remained independent of political power, "the legal specialists and the popular religious movement that had emerged by the 130s/750s were too well entrenched for any political power to expunge or even replace them. Indeed, it was precisely this movement and its representatives that drove the wedge between religious authority and political power" (2009a: 131-32).[43] In fact, it was due to the moral authority and religious/legal

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[41] Explaining the staggering variety of opinion in the Shari'a, Hallaq writes "It is root cause was perhaps the absence of a central legislative agency – a role that could have been served by the state or the office of the caliphate but was not. The power to determine what the law was had lain instead, from the very beginning, in the hands of legal specialists, the *proto-fuqaha'* and later the fuqaha' themselves. It was these men who undertook the task of elaborating on the legal significance of the revealed texts, and it was they who finally established a legal epistemology that depended in its entirety on the premise of an individualistic interpretation of the law. This feature was to win for Islamic law, in modern scholarship, the epithet 'jurist's law'" (2009a: 27).

[42] My arguments in chapters two and three is that this wasn't always the case. I content that in most of the "Islamic periphery," places like Somalia where precolonial centralized political powers were rare, it's hard to argue that there was a separation of politics and Shari'a there.

[43] The separation of religious authority and political power in pre-colonial Muslim societies isn't true for all Muslim societies. I will argue in chapters two and three that in pre-colonial Somalia religious authority was not only not separate from political power, it was foundational to the formation of political power.

knowledge of these Shari'a specialists that the rulers of Muslim dynasties were compelled to accept the ethico-religious norms which emerged from the hermeneutics of Shari'a specialists.

Another consequence of the fact that the Shari'a was developed by independent Shari'a specialists was that the Shari'a had a different relationship to the Muslim communities than the idea of law captures.[44] The absence of an overarching legislative power meant that the court had to rely on the community both in the formulation of the law and its enforcement, as Leslie Peirce describes in her excellent study of a sixteenth century Ottoman provincial capital. Members of the community played a variety of significant roles such as participating in the interpretation of divine law, serving as sources of customary practices, functioning as court observers, mediating conflicts before the litigants appear before the formal courts, and taking responsibility for monitoring individual conduct and morality at the neighborhood level. Furthermore, the Shari'a was an essential element in the fabric of social life and wasn't just limited to the court:

> *For the inhabitants of Aintab, sharia was more than a legal discourse confined to the court. For one thing, it was a scholarly tradition taught and studies by local citizens. . . . Sharia was also a living tradition, 'the right path,' an ethical code as well as a body of law. Ordinary people did not have to apply to the court or the local colleges to obtain guidance along this path. Instruction was available at the neighborhood level from local muftis and imams. (Peirce 2003: 114)[45]*

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[44] This point is crucial for my argument about how the Shari'a courts of Mogadishu emerged and their relationship to the community. A relationship that can't be captured by the conventional understanding of a court and relatedly the modern notion of law.

[45] For more on the relationship between an Islamic court and the community in Muslim societies see, Leslie Peirce, 2003, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press); Ronald Jennings, "limitations of the Judicial Powers of the Kadi in Seventeenth Century Ottoman Kaseri," *Studio Islamica* 50 (1979); Nelly Hanna, ed., *The State and is Servants: Administration in Egypt from Ottoman Times to the Present* (Cairo: American University in Cairo Press, 1995); Hirsch, F. Susan. 1994. "Kadhi's courts as complex sites of Resistance: The State, Islam, and Gender in Postcolonial Kenya." In *Contested States: Law, Hegemony, and*

The communal embeddedness of the Shariʻa explains why the distinction between "law" and "morality" was never conceptualized within Muslim societies and why such a distinction was incomprehensible. The Shariʻa, as Messick explains, was a 'total' discourse[46] that included what we might today refer to as legal, moral, religious, economic and the political.[47] It pervaded every aspect of life since the modern distinction between public and private didn't exist in the world of the Shariʻa. The Shariʻa does distinguish between *muʻamalat* (rules governing the proper behavior between the faithful such as those dealing with commercial transactions) and *ʻibadat* (rules governing relations between God and the faithful such as those detailing the form and content of *salat* or 'canonical prayer'), but it would be wrong to equate *ʻibadat* with the modern idea of private religion, and make a clear separation between the rules of *ʻibadat* and rules of *muʻamalat*. As many scholars have pointed out, the relationship between the two is different than the secular idea of privatized religion would suggest (Asad 1993; Hallaq 2009a, 2013; Hirschkind 2006; Izutsu 1966; Lapidus 1984; Mahmood 2005). For many of these scholars *ʻibadat* (ritual worship) are not only significant to *muʻamalat* (social behavior) because some *ʻibadat* injunctions such as the duty to pay a certain percentage of one's property known as *zakat* or 'almsgiving' have a direct bearing on social conduct. But even more importantly, the rituals[48] of worship labelled *ʻibadat* are crucial in the cultivation of a Shariʻa-minded subject and that is how these rituals are seen in the Shariʻa discourse and by average Muslims, "in this view, the performance of the Shariʻa – spiritual cultivation of the self through *ʻibadat*, the entire range of embodiments that define worship,

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Resistance, edited by Mindie Lazarus-Black and Susan F. Hirsch (London: Routledge; Chapter 8 in Messick (1993); Chapter 4 in Hallaq (2009a);

[46] This is adopted from Marcel Mauss (1967: 1).

[47] Messick, *the calligraphic state*, 3.

[48] There is a difference between the anthropological literature on ritual and the way these scholars approach the significance of *ʻibadat* for Muslims and, one should add, the way Muslims see *ʻibadat* in relations to their general lives. For a discussion on the genealogy of the concept of ritual see Ch. 2 in Asad (1993). For a discussion of Islamic disciplinary practices including rituals of worship and the anthropological literature on ritual see Ch. 4 in Mahmood (2005).

together with supererogatory exercises as well as the norms of social behavior (called *mu'amalat*) – are all interdependent" (Asad 2003: 250-251). Consequently, the Shari'a is not only understood by its practitioners as a totalizing discourse that guides one on to the "right path," but it is also seen as providing the practices, or 'technologies of the self', in the form of '*ibadat,* which are viewed by ordinary Muslims as critical in the cultivation of a subject who embodies a "willing submission to the authority of the 'law'" (Hallaq 2013: 118). In this sense the Shari'a can be understood as a 'total discourse' as well as a process that teaches individuals and helps them teach themselves to become moral subjects "in a scheme that connects the obligation to act morally with the obligation to act legally in complicated ways" (Asad 2003: 241).

Given that the Shari'a was so intricately woven into the fabric of social life in Muslim communities it was bound to be altered by the imposition of a distinctly modern political and economic processes and an alien culture under European colonization. The colonial period entailed for many Muslim societies "a profound alteration in, and reorganization of, people's ethical and aesthetic sensibilities, life choices, and manner of public and personal conduct – not to mention a complete transformation of legal, educational, and political institutions" (Mahmood 2005: 74). Of the immense and various transformations that came with the process of colonialism I am interested in what became of the Shari'a or how the Shari'a was transformed under European colonialism. Speaking of what became of the Shari'a under colonialism in the Muslim world[49] Messick writes, "this total discourse was first modified and displaced, creating something approximating the form and separate status of Western law, as part of the larger process that brought about the rise of nationalism" (1993: 3). I have described above how "Western law" emerged in the same historical

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[49] Though much of the literature which I am relying on here is based on observations from few key countries, I agree with Hallaq that developments during the colonial and postcolonial periods have "deeply affected most other regions in the Muslim world" (Hallaq 2004: 22).

process that also produced the modern Western state, as well as the modern notion of morality and the sovereign moral subject. It is no surprise then that the Shari'a was "modified and displaced, creating something approximating the form and separate status of Western law" under European colonization, since colonialism was a project that imposed the form of the modern state. As such, the process of colonization had to create a space for state law and it was in the process of doing that that the Shari'a came to be redefined as something appropriate to, and exercising limited sovereignty over the realm of the family. Some have argued that the delimitation of the Shari'a to the family was concomitant with the reform and redefinition of the family itself (Asad 2003; Agrama 2012; Hallaq 2013). This was also a process of secularization in that the redefinition of the Shari'a as something appropriate to the sphere of the family entailed an introduction of the secular understanding of the religious as the private (Asad 2003). In the process of being limited to the private sphere the Shari'a was also codified, among other transformations, so that it could be deployed in a rational and efficient way as state law.

Essentially, European colonialism entailed the transformation of the form of life and the institutions that enabled the flourishing of the Shari'a. Among the institutions that were transformed under colonialism were the large inalienable religious endowments (*waqf*) that supported the independent Shari'a specialists and their discourse of *ijtihadic* hermeneutics that was "the very feature that distinguished Islamic law from modern codified legal system" (Hallaq 2009a: 381). By supporting madrasas or law colleges these institutions helped to shield Shari'a scholars from political pressures and thus maintain the independence of the substance of the Shari'a. However, with the onset of colonialism and the formation of modern states in the Muslim world, *waqf* institutions came under the political powers of the centralizing and modernizing state thereby putting an end to the tradition of independent Shari'a legal specialists and replacing them

with the agency of state law.[50] Colonialism so transformed the Shariʻa that in time both those arguing that it should be limited to the private sphere (secularists) and those arguing that it should become the law of the state, creating an *Islamic state* (Islamists), were in agreement that the Shariʻa was something resembling state law and that it could be legislated on society as the law of the state or put aside.

In a stimulating and timely recent book[51] Hallaq argues that the primary demand of contemporary Islamists that the state in the Muslim world should be made into an Islamic state by making the Shariʻa the law of the state are involved in an impossible contradiction. In this book Hallaq contends that the Shariʻa cannot be restored as it has been traditionally practiced in Muslim societies for centuries. Through such processes as codification, centralization and new hierarchical law schools and lawyers the modern state has irredeemably altered the world of the Shariʻa and its restoration is impossible in this new landscape dominated by the sovereignty of the state. The primary shortcoming of this desire and attempt to transform the modern state into an Islamic state is that the Islamists "assume the modern state to be a neutral form of governance, one that can be harnessed to perform functions according to the choices and dictates of its leaders" (Hallaq 2013: 155). They overlook that the imposition of the modern state is part of a processes that entailed unique consequences that are economic, political and psychological, among other things. Under the modern state not only must the Shariʻa resemble "Western law" so that it can be applied as state law and thus subject to state sovereignty but life under the modern state also involves the cultivation of individual and collective subjectivities such as the citizen subject and nationalist

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[50] In some parts of the Muslim world the translated and codified Shariʻa was applied by European judges. A good example of this is India under British colonialism, see Cohn (1989); Strawson (1995); Chapt. 14 in Hallaq (2009a).
[51] Hallaq, *The Impossible State*. For a shorter version of the same argument see Hallaq, "Can the Shariʻa be restored?" In *Islamic Law and the Challenge of Modernity,* edited by Yvonne Y. Haddad and Barbara F. Stowasser (Walnut, CA: Altamira Press, 2004), 21-53.

sentiments. The incompatibility between the Shariʻa and the modern state is, therefore, an incommensurability between the different forms of life and forms of governance and subjectivities inherent to them. This is a formidable critique of the discourse and political project of the movements that have taken much of the Muslim world by storm that refer to themselves as the Islamic Awakening or Islamic Revival *(al-Sahwa al-Islamiyya)*.

However, not all the movements that fall under that label are the same. They differ in their tactics and orientation. They are frequently differentiated into three groupings: Islamic political parties, militant Islamists, and socio-religious organizations that provide social services and work on proselytizing. The first two groups are involved primarily in state-oriented politics whereas the third group, often called '*daʻwa* movements' or 'piety movements', focus on providing charitable services through a network of non-profit and for-profit businesses.[52] More significantly, as part of their *call* to Islam, such movements are engaged in creating faithful Muslims by cultivating pious subjectivities that embody the religious ethos and sensibility that are considered appropriate to a Muslim life. As such, these movements are, on the one hand, apolitical, by our state-centered definition of the political, and on the other, they are building on an old Islamic tradition of cultivating the virtuous person through pious conduct both in public and in private. These movements have received considerable attention from scholars (Asad 1993; Mahmood 2005; Marsden 2005; Masquelier 2007; Schielke 2010; Soares 2006; Wickham 2013). *Daʻwa* or piety movements connect in complicated ways piety and ethical cultivation and consequently their projects often translate into ethico-political projects, as these scholars have demonstrated (Hirschkind 2006; Lambek 2000; Mahmood 2005). These scholars build on Foucault's work on

[52] Wickham (2013) refers to these networks as a "parallel Islamic sector," often working in middle and lower class neighborhoods and providing services such as running hospitals, schools, and charitable works.

ethics (Foucault 1997), where ethics is viewed "as the component of morality that concerns the self's relationship to itself" (Davidson 1994: 65). This approach to ethics, therefore, allows one to study the process and different forms of moral subjectification historically and in different cultures. By not focusing directly on the state or making claims in the language of state politics, these movements appear apolitical, but they are nevertheless involved in a political project due to their cultivation, through ethical practices, of subjectivities with specific sensibilities that inevitably influences their public conduct. In so doing, these movements seem to undermine the modern/liberal distinction between the private and the public which is one reason they seem to befuddle the state. In *Why I am not a secularist* (1999), William Connolly has demonstrated that the public of liberal politics is maintained not only by rational modes of argumentation, but also by affective modes of assessment, what he calls "guttural registers" (1999: 28), which problematize the simple separation between the private and the public sphere. An acknowledgement of the complicated relationship between affective and embodied sensibilities and political engagement makes an analysis of a movement whose central project is the cultivation of an ethico-political subject a worthwhile undertaking.[53] This is one reason why piety movements have attracted scholarly attention and engendered a debate about the efficacy of ethical self-cultivation.[54]

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[53] This is essentially what Saba Mahood is doing in *The Politics of Piety* (2005).

[54] There are some (Marsden 2005; Schielke 2010; Soares 2006) that critique the emphasis on ethical cultivation in the works of S. Mahmood and C. Hirschkind by arguing that their emphasis on ethical self-cultivation is all encompassing and leaves no room for the contradictions of everyday experience, "I argue that moral subjectivity is a very important issue indeed, but there is a risk – especially when morality and piety come together – of favoring the complete, the consistent, and the perfect in a way that does not do justice to the complex and often contradictory nature of everyday experience" (Schielke 2010: 25).

Another reason why piety movements are fascinating, as mentioned above, is on account of the fact that *da'wa* movements are a modern expression of an old Islamic tradition.[55] This is the old and well known Islamic traditional duty know as *al-amr bi'l-ma'ruf wa'l-nahy 'an al-munkar*,[56] roughly translated as "commanding right and forbidding wrong."[57] Based on various Qur'anic verses and *hadiths*[58] and commented and reflected on throughout the centuries by Shari'a scholars, the tradition makes it a duty upon every Muslim to try to correct another's conduct if it contravenes what the Shari'a considers an appropriate conduct for a Muslim person and a Muslim community. The correction can be done in a variety of forms such as advice or counsel, by force, or simply in one's heart. What action is appropriate for the individual believer and under what circumstances is what the discourse of the Shari'a of the various schools commented and debated on over the centuries and in various contexts. The principle *amr bil ma'ruf* is one specific expression of a general teaching that runs throughout the Shari'a discourse. This is underlined by the understanding of the Shari'a as a process through which one cultivates a self whose heart is attuned to the guidance of the Shari'a. In this sense all of life is worship. That is to say, it is a process of cultivating a Shari'a-minded subject. This is why *iman* or "faith" in Islam is so closely tied to action. Those that have *iman* are the "good-doers" (*muhsinun*) or, to say it in another way, *iman* is materialized through "good works" (*salihat*).[59] It is this idea of honing the appropriate

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[55] Part of the reason why this work on *da'wa* movements is interesting for my work on the Shari'a courts has to do with, a) this movements are building on a long-standing concepts and practices from the Islamic tradition; b) their emphasis on ethical cultivation of the self, while not political in the modern sense, has the potential to generate an ethico-political project.

[56] This tradition is treated in this excellent book, Michael cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Princeton: Princeton University Press, 2006).

[57] see chapter five for more on how this and other concepts from the Islamic tradition informed the practices and modes of reasoning of the Shari'a courts.

[58] Two of the more common ones are the verse, "Let there be one community of you, calling to good, and commanding right and forbidding wrong: those are the prosperers" (Q3: 104), and the hadith, "Whoever sees a wrong (munkar), and is able to put it right with his hand, let him do so; if he can't, then with his tongue; if he can't, then with [or in] his heart, which is the bare minimum of faith," quoted in Cook 2006: 33.

[59] Izutsu, (1966: 185).

sensibilities through daily activities, whether the activities are the rituals of worship ('*ibadat*) or social interactions (*mu'amalat*), which informs the principle of *amr bil ma'ruf*. Not only does practicing this principle help to shape social interactions in such a way that they are conducive to living a life in accord with the Shari'a, but exercising this principle is productive of the courage necessary of a Shari'a subject. The most popular contemporary expression of this traditional duty are the piety movements[60] that exist throughout the Muslim world thus showing the continued relevance of Islam as a tradition. This is not to say that the contemporary expression of this duty is unchanged from its manifestation in earlier times. As Michael Cook points out an important change in the current manifestation of this traditional principle is the organizational form it takes today, which the *da'wa* movements are the best expressions of, "the core of the old conception was a personal duty to right wrongs committed by fellow-believers as and when one encountered them; the core of the new conception is a systematic and organized propagation of Islamic values both within and outside the community. . . . On the assumption that the 'community' who are to perform the duty are a subgroup of the community at large" (2000: 515-16).

Conclusion

The Shari'a courts of Mogadishu were products of their users. The courts, therefore, reflect the ethical and moral outlook of the community. They built on historically sedimented and socially embodied practices and concepts that informed the ethical reasoning and notions of justice that undergirded the rise of the courts. I submit that the prolonged absence of the state and with that its modernizing project of cultural and religious reform since its disintegration in 1991 meant that the

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[60] For a transnational *da'wa* movement known throughout the Muslim world, *Jama'at Tabliqh*, see Metcalf (1994), "Tabliqh emphasis on the priority of action, and the dialectic between experience and doctrine in fact strongly recall Islamic theories of the effect of Islamic ritual like *salat* (the canonical prayer) in transforming human life" (1994: 718).

attempt to separate Shari'a-informed communal ethics and morality from politics came to an end. The Shari'a courts movement was an expression of a movement that was grounded in the practices, concepts, and norms of the historically-rooted Islamic tradition of the community from which the courts emerged. The courts weren't simply a result of the imposition of religious "law" by a group of conservative clerics taking advantage of the absence of an overarching state power to advance an Islamist political project. They were a manifestation of a complex engagement with the challenges of the present through history and tradition. They are an example of what an organic socio-political movement in Somalia looks like, and an indication that such a movement isn't adequately captured by labelling it political, economic, legal or religious. It was all of this and more. One place to begin to better understand the Shari'a courts is the Islamic tradition, particularly the Shari'a, in its historical formation and transformation as well as a lived reality in Somalia. I approach the Shari'a courts as something resembling a *da'wa* or piety movement in that they were, like *da'wa* movements, informed and conditioned by the practices and discourses of ethical cultivation of pious selves and social responsibility central to the Shari'a, and partly captured by the principle of *amr bil ma'ruf*.[61] As such the Shari'a courts testify to the vitality of an Islamic tradition where Islam's divine and authoritative texts "are one of the central elements in a discursive field of relations of power *through which* truth is established" (Mahmood 2005: 116). And, one might add, that this tradition informed a particular understanding/constitution of the past and engagement with the present.

My aim in this work is to provide a historically and socially grounded account of the emergence and evolution of the Shari'a courts of Mogadishu by looking at the discourses and

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[61] Speaking to the relationship between contemporary *da'wa* movements and this traditional principle, Mahmood writes, "in fact, one could argue that the modern doctrinal justification for da'wa has been established through the considerable moral scholarship conducted on the principle of amr bil ma'ruf" (2005: 58-59).

practices about justice and social responsibility that motivated the individuals and events that led to the formation of the Shariʻa courts. By telling this story I want to underline how Shariʻa-informed practices and forms of reasoning as well as the contingent circumstances of a crisis-ridden post state-collapse environment generated the movement of the Shariʻa courts. And, how the contradictions latent in such an ethico-political movement in the contemporary world were made evident in the web of a global conflict between international Islamic militants and the West's "war on terror." This project thus provides an opportunity to reflect upon the promise and peril of the emergent societies and social imaginaries latent in an African Islamic-oriented socio-political movement and the community that lives in this historical conjunction.

CHAPTER II

Governing through the Shari'a: religious authority in pre-colonial Somalia

Instead of seeing disjunctions based on historical periodization, a geographical orientation provides a view of the longue durée in which a multiplicity of travels, contacts, and exchanges take place within one geographical space over time. Within this space, new impulses, say toward orthodoxy, are not completely novel phenomena that signal absolute change. Rather they are ripples across a body of water that is already interconnected.[62]

While the outcome at the time of writing remains to be seen one thing seems clear; the social forces that brought the ICU to power were hardly new. They, in fact, seem a clear echo of the circumstances that saw the emergence of an influential Sufi movement little more than a hundred years before. In a time of trouble and confusion it was not solely to the comforts of clan that Somalis turned. They also sought out the wisdom and guidance of their religious leaders. It was the 'Ulama to whom they looked as the Renewers of the Age.[63]

The courts reflected a feeling that exists within the Muslim Somali community, just like the rest of the Muslim world they want to be ruled according to the Shari'a. They wanted it during colonialism, they wanted it after they became independent, they wanted it during the revolution (ka'aanka, as in the socialism

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[62] Engseng Ho, *The Graves of Tarim: Genealogy and Mobility across the Indian Ocean* (Berkeley, CA: University of California Press, 2006), p. 65.

[63] Scott Reee, *Renewers of the Age: Holy Men and Social Discourse in Colonial Banaadir* (Leiden, Netherlands: Koninklijke, 2008), p. 222.

military revolution of 1969), they wanted when it when the central government

and Mohamed Siyad Barre (the military socialist leader) left the scene, and they

still want it to this day. It's part of the Muslim person's belief that he practice the

Islamic religion, let it be at the personal, family, clan or national level. So, that

we should rule ourselves according to Islam isn't new to the Somalis.[64]

In this chapter, and the next (chapter three), I provide a historical context to the rise of the Shari'a courts by examining the relationship between authority i.e. religious authority, and power i.e. political power, in pre-colonial Somalia. In this chapter I specifically look at the role of religious authorities in relation to social organization and leadership. I argue that religious authorities, in their role of mediating and settling disputes, were integral to the activity of governing a society that in general lacked a centralized and a hierarchical political offices. In the next chapter, I continue this line of analysis by demonstrating that on the few occasions when political power emerged in pre-colonial Somalia it was founded upon and led by religious authorities. Together, the two chapters substantiate the argument that religious authority has been integral to political power in pre-colonial Somalia. In making this argument, these chapters accomplish two things. First, by providing a view of the *longue durée* in which the centrality of religious authority to political formations and political experience becomes evident, I show that the rise of the UICs should not be viewed as a rupture with the region's religious and political traditions, but as an event with a more complex relationship to the past and the present. Second, by showing the close association between religious authority and political power in pre-colonial Somalia, I demonstrate

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[64] Interview with a former UICs official in Mogadishu on August 13, 2014.

that authority and power were intertwined in the pre-colonial Islamic periphery contrary to the historical experience of the so-called "Islamic heartland," where the literature (Asad 2015; Hallaq 2003, 2009, 2013; Lapidus 2002; Messick 1993; Weiss 1992; Zubaida 2005) contends there has been a separation of authority and power prior to the rise of the modern state.

I must admit at the outset to be working with under-theorized concepts of the political and the religious. I hope, however, to approximate my understanding and usage of these concepts through a discussion of the concept of authority as articulated in Hannah Arendt's well-known essay, *what is authority*?[65] Arendt begins her essay with the assertion that there is a general difficulty in understanding the concept of authority in the modern world. This is reflected in the so-called crisis of authority, which speaks to the fact that the political experience which gave the concept its meaning has long ago ceased to exist. Consequently, the concept of authority has lost its validity. To try to understand what authority originally meant Arendt explains what authority is not. She writes that since authority always depends on obedience there is a wide-spread misconception which equates authority with power and violence. To the contrary, She notes that authority "precludes the use of external means of coercion; where force is used, authority itself has failed" (1961: 93). Similarly, authority doesn't involve persuasion because persuasion assumes equality between individuals and works through argumentation, "where arguments are used, authority is left in abeyance" (93). Authority therefore contains neither coercion nor consent. Authority, she writes "implies an obedience in which men retain their freedom" (106). Or to put it in other words, it implies coercion without the use of force. Different models of authority, she points out, do exist in different arenas of social life. She makes an important distinction between authority in the political arena and non-political authority such as child-rearing and education. To

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[65] Hannah Arendt, *Between Past and Future: Six Exercises in Political Thought* (New York: Viking, 1961)

be sure, pre-political models of authority such as that between children and parents have been used as metaphors and models for authority in politics, especially in contexts where experiences of authority in politics is lacking. She contends, for instance, that Greek political experience lacked authority, which explains why Greek political philosophy, particularly that of Plato, was concerned to find a transcendental source against which political conduct could be measured in the hope of saving the polis. Significantly, this distinction of authority in different realms allows Arendt to argue that the political realm can have or lack authority. There is authority in the political realm when there is a common foundation that transcends political power, and by which such power can be measured and contested.

Arendt asserts that in the history of the West authority in the political realm originated in the political experience of Rome. Central to Roman political experience was the sacredness of *foundation*. It's in the Roman emphasis on the sacredness and unrepeatability of the founding of the city that the concept of authority in politics first appeared. By politics Arend simply meant the management of public affairs. Political experience is, in her understanding, the experience of ruling and regulating derived from the realm of human affairs. When Romans sanctified the foundation of Rome and made it a tradition binding for all future generations they turned politics, or the management of public affairs, into the preservation of the founding of the city. Those in politics based their authority on their relationship to the sacred foundation, "the word *auctoritas* derives from the verb *augere*, 'augment,' and what authority and those in authority constantly augment is the foundation" (121-22). The founding fathers and ancestors whose superhuman efforts led to the foundation of the city were the authoritative models whose conducts provided the transcendental standards of measurement. There was thus a clear distinction between power, which was, theoretically, in the hands of the people, and authority, which was vested in the senate, in the

political experience of Rome. To be in authority was to be tied to the traditions that transmitted the lessons of the foundational event, and "as long as this tradition was uninterrupted authority was inviolate" (124). The binding force of this authority and tradition was closely related to the roman concept of "religion." The bonds which tied men back to the founding moment was what the Romans referred to as "religion" or *re-ligare.* It meant "to be tied back, obligated, to the enormous, almost superhuman and hence always legendary effort to lay the foundations" (121). The three concepts of religion, authority, and tradition constituted an inter-related trinity in Roman thought. According to Arendt, "the strength of this trinity lay in the binding force of an authoritative beginning to which 'religious' bonds tied men back through tradition" (125). The inter-connectedness of the trinity was, therefore, based on the fact that they were related to the same source, the foundation of the city. The loss of one inevitably meant the loss of the other two. Hence, Arendt argues that the so-called crisis of authority and the loss of religious traditions in the West are the same phenomenon.

What I find useful in Arendt's discussion of authority is her emphasis that authority is contrary to both coercion by force and persuasion through arguments. Authority obviously implies obedience but obedience that doesn't undermine freedom. This is only possible, according to Arendt, if the source of authority is beyond the sphere of power. In Roman political experience this source of authority was the foundation of the city. Notwithstanding the actual realities of power and the hierarchical relationship that accompanies authoritarian structures, the existence of a transcendent source allows for equality between individuals in a relationship of authority. An equality that puts limits on abuses of power, and provides the language for critiquing and opposing it. I find this discussion of authority to illuminate the nature of religious authority, especially when such authority becomes foundational to politics. Her distinction of political authority from non-

political authority is also important because it helps to distinguish between different kinds of authority. But more importantly, to appreciate that the political realm can have or lack authority. This allows me to analyze the difference in the political realm between pre-colonial and postcolonial Somalia. I submit that one of the differences in the political realm between the pre-colonial and postcolonial Somalia is the absence of authority in postcolonial politics. The political realm in Somalia has since the onset of European colonialism, when religion and tradition were alienated from the political realm, lost its transcendent foundation. In the absence of a transcendent foundation politics was reduced to the naked assertion of violent coercion or persuasion. When the ability to convince through argumentation or obtain obedience through coercion eroded with the end of the Cold War, which ended the patronage system that sustained the postcolonial state in Somalia, the political realm was in complete disarray. The contemporary Islamic movements in Somalia that are commonly referred to as "political Islam" is, in this regard, characterized by the re-emergence of authority in politics; the anchoring of the management of public affairs in a transcendent source. It is a political event of the first order. The essential question that the Shari'a courts of Mogadishu answered was, how was political authority to be established in an environment where neither external force nor persuasion could form the base for the management of public affairs or compel men to follow? In the case of Somalia, the re-emergence of religious authority in the political realm is conditioned by the fact that there is already a tradition of political experience and imagination that anchors politics in a transcendent source. This chapter and the next will underline that historical experience by historicizing authority and power in the political experience of pre-colonial Somalia. Additionally, Arendt's account of the concept of authority is intimately linked to the concepts of tradition, religion, and politics. I find the interconnectedness of these concepts useful to think through the argument I want to make in this chapter and the next.

This historicization of the relationship between authority, as in religious authority and power, as in political power, is necessary for two reasons that are central to the overall argument of the dissertation. First, one of the main goals of this dissertation is to historically contextualize the emergence of the Shari'a courts. This *longue durée* approach on the formation of the courts is a counterweight to a historical periodization that overlooks the historical continuities that inform the cultural and religious practices that undergirded the formation of the courts. This, however, is not to say that there weren't new intellectual, religious, and organizational currents originating outside of Somalia that came to exert a lot of influence on developments in Somalia, including the rise of the courts. But the tendency by many commentators (see chapter one) to simply attribute the rise of the courts to nefarious and conservative foreign i.e. Middle Eastern, influences that politicized and radicalized the supposedly 'traditional' and tolerant 'African Islam' is wrong in many fronts. This approach has a long history in the study of Islam in Africa, (Westerlund and Rosander 1997) and has recently gained more prominence in the proliferation of terrorist experts in response to the demands for more information on Islamic movements by Western policy makers. In the case of Somalia, it has led to studies and commentaries (Menkhaus 2005, 2007; Rotberg 2005) that purport to show how these foreign religious and intellectual currents "radicalize," the networks that introduced these currents into Somalia, the local conditions that made the population susceptible to stricter and more militant interpretation of the Shari'a, and the differences among the various Islamic movements in Somalia in terms of their "radical" and "moderate" tendencies. Rather than attributing the emergence of the courts to modern foreign-inspired intellectual and political currents associated with the so-called Islamic Awakening (*al-Sahwa al-Islamiyya*), the historicization of authority and power sheds light on some of the continuities in religious and political experience that informed the rise of the courts. I do this not to argue for a simple continuity

between the past and the present but to problematize the historical periodization that often informs much superficial analysis. Furthermore, I contend that a sensitivity to and understanding of the *longue durée* is necessary to better grasp the ruptures and novel elements that the transformation from independent communal Shari'a court to the UICs was an articulation of and advanced (see chapter 6 for more on this shift). To that end, the main goal of this chapter, and the following one, is to analyze the emergence of the Shari'a courts of Mogadishu in light the historical experience of religious authority in politics in precolonial Somalia.

The second objective in historicizing the relationship between power and authority is to contribute to the scholarship on the structural and epistemological bases of Shari'a authority, and its relationship to political power in pre-colonial and postcolonial Muslim societies**.** It's something of a consensus in the literature (Asad 2015; Hallaq 2003, 2009, 2013; Lapidus 2002; Messick 1993; Weiss 1992; Zubaida 2005) that in pre-colonial Muslim societies there was a separation between authority and power. Authority in medieval Muslim societies, it's argued, was vested in religious scholars ('*ulama),*[66] and the *amir* or ruler was expected to adjust his actions to the demands of the Shari'a, as articulated by the '*ulama*.[67] It was, therefore, specifically the authority the '*ulama* derived from the Shari'a that conditioned the separation of authority and power. The independence of the '*ulama* was made possible by the structural and epistemological bases of the Shari'a. The epistemology of the Shari'a, premised on the individual scholar's quest to approximate the intentions of God as revealed in the scriptures, authorized the '*ulama* to set the norms that regulated social conduct, including the conduct of political and military rulers. In essence the '*ulama,* as Shari'a experts, controlled the legislation and governance of Muslim

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[66] Ira Lapidus (2002) traces this separation to ninth-century Baghdad when the 'Ulama won against the amir's claim to theological authority. Also, see Patricia Crone and Martin Hinds (1986).
[67] Samy Ayoub (2016) challenges this position by arguing that during the seventeenth and eighteenth centuries the authoritative opinions of Hanafi jurists were directly influenced by the orders of the Ottoman state.

societies. The independence of this Shari'a-derived authority from political power was exemplified by the figure of jurisconsult (*mufti*), the preeminent character in Shari'a hermeneutics. Consequently, in pre-colonial Muslim societies, "it was the ruler who – from the beginning of Islam until the middle of the nineteenth century – consistently had to bow to the jural wishes of the Shari'a and its representatives in governing the populace. As a moral force, and without the coercive tools of the state, the law stood supreme for over a millennium" (Hallaq 2009: 125).

This separation of authority and power began to change in the nineteenth century with the onset of European colonialism of Muslim societies and the subsequent rise of the postcolonial state. Expectedly, it was through the transformation of the Shari'a that the independent authority of the *'ulama* was undermined. The Shari'a in the pre-colonial Islamic world was very distinct from what it had become over the past two centuries after the "reforms" of the colonial and postcolonial periods. In its drive to centralize the administration of justice and take over the power of legislation, the colonial and postcolonial state delimited and transformed the Shari'a such that it became something resembling "law," whose application could be limited to a specific sphere. In the words of Talal Asad, the pre-colonial Shari'a "is not 'law' in the modern understanding of that concept, not a system of legal doctrines backed by sovereign state power, but a tradition consisting of normative practice and commentary that includes (but is not exhausted) justiciable cases" (2015: 179). With the emergence of the nation-state in the Muslim world, the Shari'a was incorporated into the judicial system of the state and delimited to the sphere of the family. Through such processes as codification, centralization and new hierarchical law schools and lawyers the modern state has irredeemably altered the world of the Shari'a (Hallaq 2004; Messick 1993). In doing so the modern state has sought to undermine the Shari'a-derived independent authority of the *'ulama*.

By noting the place of religious authorities, specifically Shariʻa specialists, in the foundation of political power in pre-colonial polities, my dissertation contributes to this literature in two regards. First, I contend that the historical separation between authority i.e. religious authority and power i.e. political power in the pre-colonial Islamic world that most of this literature asserts is not necessarily true for the entirety of Muslim societies. In the case of pre-colonial Somalia, the relationship between authority and power was rather different than what is depicted in the literature. Religious authority was crucial to the formation and maintenance of political power in pre-colonial Somalia. In fact, it was religious authorities, particularly Shariʻa specialists, that often assumed the role of political leaders. I suspect the reason much of the above-cited literature emphasizes the separation of authority and power in pre-colonial Muslim societies is because this literature is based on the historical record from the so-called "Islamic heartland." It reflects the historical record of typical pre-colonial Sunni states led by a sultan or a king in the Islamic heartlands. Theories based on reflections of the historical processes in the center is thus taken to apply to the periphery. It's assumed that what is true for the lands of the Islamic center is true for its periphery. Could the historical record from the Islamic periphery provide us with a different vantage point in the analysis of Shariʻa authorities and their relationship to political power? I argue that this is indeed the case, and that the Islamic periphery might do for the Islamic heartland what theory from the global south does for the global north (Jean and John Comaroff, 2012). That is, analysis of the history of Islam in Somalia, part of the Islamic periphery, might shed light on processes at the center. A historical analysis of religious authority and political power in Somalia redefines our understanding of the Shariʻa in relation to political power in pre-colonial Muslim societies. It also provides a different vantage point from which to analyze contemporary Islamic movements.

This chapter is divided into three sections. The first section is a general introduction of the anthropological literature on authority in Islam. The second section covers the specific case of authority in Islam based on the structural and epistemological bases of the Shariʿa. This section will also cover the transformation of Shariʿa structures of authority during the colonial and postcolonial periods. To underline the difference between the general structures of authority in the Shariʿa and the specific manifestations of Shariʿa authority in the context of Somalia, the third section looks at the role of religious authorities in the government of social relations in pre-colonial Somalia.

I.   Religious authorities in Muslim societies

The anthropological literature on Islam and Muslim societies has viewed the analysis of authority as an important lenses through which to understand Islam and Muslim societies. Perhaps as an inevitable result of the anthropological impulse of trying to understand a world-historical religion in terms of its varied local manifestations, a dominant approach in the study of Islam has been a dichotomous method that analyzed Islamic beliefs and practices in terms of "textual" versus "everyday" or "urban" versus "rural" or "Indonesian" versus "Moroccan." Associated most famously with Ernest A. Gellner (1981) these studies have viewed religious authority in Muslim societies in relation to a distinction between rural Islam and urban Islam or in relation to the larger cultural complex of the society studied. Rural Islam exemplified one kind of authority associated with heterodox, ecstatic, charismatic, and Sufi Islam. The other Islam, viewed as prevalent in urban milieus, was associated with textual, puritanical, and reformist Islam. These different versions of Islam were said to have distinct forms of legitimating religious authority based on different religious practices and ways of knowing. Exemplified by Sufi orders (*tariqa*, plu., *turuq*, 'path'), traditional/popular Islam places emphasis on esoteric knowledges and practices that are only

accessible to a disciple who is initiated and introduced to these knowledges and practices by a master (Brenner 2001). In other words, in this form of Islam, popular among rural population, Islamic authority is hierarchical and based on master-disciple relations. Such a relationship is undergirded by the perception that Islamic knowledge is gained through secret (*sir*) or esoteric practices that cannot simply be learnt in the books (*Ibid*). This type of Islamic authority is hierarchical and other-worldly.

Opposite to this is what is generally referred to as reformist, Salafi, or Wahhabi (named after Muhammad ibn Abd al-Wahhab, the eighteenth-century Arabian reformer). Reformist Islam questions the validity of Sufi practices such as tomb visitation and veneration of saints, among others. Reformist Islam also rejects the hierarchical claims to authority that is an integral part of Sufi organizational structures. They promote a form of knowledge that has often been called rationalistic with a democratizing tendencies (Eickelman and Piscatori 1996). This is a consequence of the reformist position that every Muslim who has an understanding of the Arabic language should have direct access to religious knowledge without the need for an intermediary master. Such a stance potentially opens up religious discourse and argumentation to a larger audience. Another dichotomous approach to the study of Islam, somewhat parallel to this one, is the distinction between local and supra-local Islam. In this approach local Islam is associated with popular and traditional Islam, while supra-local Islam is scriptural. Scripturalist tendencies are often seen as the inspiration for contemporary reformist Islamic movements. Such a dichotomous approach has often been accompanied by a historical sociology of Islam and Muslim societies that reads developments in Islam against what are known of the historical developments in the West. In such a reading scriptural or reformist Islam is said to be on the march abetted by modern

developments such as mass media and mass education (Eickelman 1993; Starrett 1992). Recent scholarship on Islam has tended to move away from these dichotomous approaches.

Recent anthropological studies of Islam (Bowen 1993; Hirschkind 2006; Mahmood 2005; Soares 2005), influenced by Talal Asad's notion of Islam *discursive tradition*[68] (Asad 1986), have tended to move away from the dichotomous approach to studying the nature of authority in Islam. Asad's notion of discursive tradition is clearly indebted to the work of Alasdair MacIntyre on tradition (MacIntyre 1984, 1988) and Michel Foucault's notions of power and discourse (Foucault 1978, 1980). Under the notion of discursive tradition Islam is viewed as a *tradition* whose pedagogical practices aim at the cultivation of a Muslim subject with virtues deemed central to the tradition through an engagement with the foundational texts (the Quran and the hadith), commentaries on them, and the conduct of exemplary figures. In this concept of tradition, power is seen as essential in determining which practices and arguments become hegemonic. Power, however, is understood in a Foucaultian sense, and isn't prior or outside the subject, but works through subject formation and the production of specific forms of desires, relations, and

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[68] In approaching Islam as a *discursive tradition* (1986) Talal Asad identifies the centrality of the foundational texts, Qur'an and hadith, in Islamic discourse as the defining feature of this tradition. The implication being that the emphasis on the foundational texts isn't unique to modern times. Additionally, Asad points out that the argument of the need to return to the 'original' texts is a common technique of reformists throughout Islamic history in challenging the positions of conservatives, read 'traditional' 'ulama. When Islam is understood as a discursive tradition then dispute and even violent conflict can be approached as part of the tradition. Relatedly, Asad asserts that orthodox Islam shouldn't be understood as a set of doctrines, rather "it belongs to religious dispute between reformers (who invoke the authority of the text over that of the interpretive community) and conservatives (for whom authority is vested in the community of interpreters, the keepers of texts), because both of them are committed to doing certain things to what they regard as the essential tradition" (2003: 220). One need not, I think, assume that the emphasis on the foundational texts is a recent phenomenon in order to hold that such an emphasis under current conditions has had novel effects. Samir Hajj contends as much when she writes that it was particularly the easy availability and accessibility made possible by print technology and literacy that gave added poignancy to the old Islamic discursive trope of finding evidence in the foundational texts as the final arbiter of right and wrong (1999: 11). Along the same lines, Hefner and Zaman (2007) point out that the 'functionalization' of education has never been completely absent from Muslim societies since elite sponsorship of madrasas in early Islamic history was partly motivated to legitimize rule or promote one school of thought over another. What is new about modern educations, they contend, is that modern states began to "functionalize Islamic education for a new and distinctly modern ends: creating broadly shared public culture for the purpose of national building" (8).

discourses. And it's through such *subjectivation* that a particular discourse establishes its authority in a specific historical moment. Discursive tradition in this sense brings within its analytical purview both the local and the supra-local. It draws attention to the local and micro-practices of interpersonal pedagogy through which particular orthodoxies are established, and the larger and supra-local historical discourse that conditions what's doable and debatable in the present. This approach has the benefit of framing Islam in a single analytical framework which captures its unity, while making room for change and diversity by recognizing the role of power in determining the direction the tradition takes. It thus allows for an analysis of Islam and Muslim societies that isn't structured around the polarity of local versus supra-local or rural versus urban Islam. In terms of authority the notion of discursive tradition emphasizes the embodied nature of authority. That is to say, Islam as a discursive tradition creates sensibilities and embodied capacities, including the capacity to inscribe the teachings of the tradition in one's body, and the aptitude to recognize the authoritative in the tradition and be obedient to it. It's therefore within a tradition that authority is created as well as the subjects that embody the capacities for willing obedience to that authority. External authority isn't, as in the liberal context, an impediment to individual freedom and self-realization, but is part of the structure of necessary conditions for the formation of a subject in a tradition. One has to turn to minor traditions within Islam to get a better understanding of the structures of authority within Islam.

One of the most fascinating and consequential of the Islamic discursive tradition is the shari'a tradition, which as one of the world's most important tradition of jurisprudence, has its own tradition of extensive practices and commentary (Zaman 2002: 6). The Shari'a constitutes one of the most important branches of Islamic knowledge and a key source of religious authority. In fact knowledge of the Shari'a is an indispensable element of all religious knowledge. It's the Shari'a

that guides the believer's daily conduct, whether such conduct concerns relations between individual believers (*mu'amalat*) or relations between individuals and God (*'ibadat*). The ability to answer believers' basic inquiries regarding the Shari'a's position on everyday issues of life in a Muslim community is central to the realization of religious authority. The centrality of the Shari'a to Islamic knowledge and authority is such that it wouldn't be an exaggeration to say that religious authority in Islam is in many ways based on Shari'a-derived authority.

II.   Structures of authority in historical Shari'a

The claim that authority in pre-colonial Islamic societies was separate from power is premised on an understanding of the Shari'a's epistemological bases and structures of authority. The epistemological foundations of the Shari'a conditioned its separation from political power, while at the same time creating a hierarchy of authority within the Shari'a. I want to lay out in this section an extremely rough sketch of the epistemological bases and structures of authority of the Shari'a. Since the epistemological bases and structures of authority of the Shari'a conditioned the separation of authority and power in precolonial Muslim societies, it's important to understand them. Additionally, an understanding of these will afford a comparison to the pre-colonial situation in Somalia, and shed some light on why a separation of religious authority and political power didn't materialize in pre-colonial Somalia. We will see that the Shari'a as described in much of the literature, both in its textual and social landscape, didn't exist in Somalia.

The Shari'a, or the "right path," commonly and mistakenly understood as "Islamic law"[69] is one of the world's most important and unique traditions of jurisprudence. It begins with the basic assumption that God has revealed in the foundational scriptures, the Quran and Sunna (the

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[69] See Chapter 2 for a thorough discussion as to why this designation is problematic.

exemplary behavior of Prophet Muhammad as recorded in narrative reports, or *hadith*), a path and a guidance for humanity for a just and virtues life in this world and salvation in the hereafter. The explicit legal content of the scripture, however, are very limited and fall far short of the legal demands of an evolving, geographically spreading, and culturally diverse *umma* (Muslim community). This led to the emergence of Shari'a specialists whose task it was to elaborate and tease out God's intentions in the revealed texts. Consequently, there emerged at the core of Islamic legal thought and practice a gap between divinely revealed truth and the human interpretation and approximation of that truth. The search for the revealed "right path" or Shari'a took the form of individualistic quest for the meaning of revelation based on intense knowledge and engagement with the primary legal sources: Quran, hadith, reasoning by analogy (*qiyas)*, the authority of doctrinal consensus (*ijma'*), and custom (*'urf,* has been recognized since the sixteenth century). Based on engagement with these sources and through a devise known as *ijtihad* (independent legal opinion; the specialists who undertake *ijtihad* are known as *mujtahid*), Shari'a specialists began to elaborate on their interpretation of revelation. It was in the strivings of these legal specialists that led to the formation of *fiqh* (Islamic jurisprudence). This *ijtihadic* hermeneutics is therefore key to the epistemic foundations of the Islamic legal tradition. Through the process of *ijtihad*, Shari'a specialists "established a legal epistemology that depended on its entirety upon the premise of an individualistic interpretation of the law. This feature was to win for Islamic law, in modern scholarship, the epithet 'jurists' law'" (Hallaq 2009: 125).

The potentially endless *ijtihadic* possibility and plurality of Shari'a opinions that would inevitably result from the independent and individualistic legal interpretation was curtailed between the third/ninth and fourth/tenth centuries by the emergence of distinct schools of legal thought, or *madhhab* (literally, "a way or manner of conduct," but conventionally referred to as

school). The *madhhabs* were formed from the corpus of substantive law and the multiple levels of commentaries and summaries that have accumulated over the formative centuries of Islam. Within Sunni Islam there are four *madhhabs:* Hanbali, Hanafi, Maliki, and Shafi'i. They are named after the founding imams of Abu Hanafi (d. 767), Malik (d. 795), al-Shafi'i (d. 820), and Ibn Hanbal (d. 855). These schools of legal thought agreed upon the theory of the four sources of the Shari'a articulated by the science of legal method and theory, or *usul al-fiqh* (literally, 'roots of *fiqh*). They, however, differed on substantive principles, legal methodology, and what each considered authoritative opinions. Once the schools were established, the interpretive activities of the legal specialists (*fuqaha,* those specializing in *fiqh*) were from then on expected to be confined within the boundaries set by the particular school the legal specialist belonged to. Thus the independent and direct engagement with the sources, which was characterized by *ijtihad* pre-*madhhab* formation were replaced by a new mechanism known as *taqlid*. That is, a legal interpretation within the doctrines of a particular schools. Modern interpretations of *taqlid* have construed it as "blind imitation," but, as Hallaq argues, there is a difference between loyalty to a specific *maddhab*, which *taqlid* is, and blind imitation.[70] This is because diversity of opinion "within a given school was literally the name of the game. Each school possessed a vast corpus of opinions attributed to the founder, his immediate followers, and later authorities" (Hallaq 2009: 122). After the formation of the four *maddhabs* in Sunni Islam, the authority of Shari'a specialists were circumscribed within the boundaries of the doctrines, authoritative opinions, and methodology of a specific *madhhab*. Needless to say, this didn't end the authority to undertake legal interpretation by Shari'a specialists such as *muftis* (jurisconsult), albeit within the bounds of a specific *madhhab*.

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[70] Many scholars assume the creative process of *ijtihad* to have closed at the end of the third/ninth century leading to juristic stagnation. This position is known as "closing the gate of *ijtihad*." For more on this see, (Anderson 1976; Coulson 1964; Schacht 1964; Watt 1974). Hallaq (1984) counters this argument in an important essay.

Along with the formation of the various schools of law, there also emerged a hierarchy of authorities in relation to Shari'a interpretation. I want to focus on two agents and their roles in Islamic legal interpretation: the *mufti* (jurisconsult), and the *qadi* (judge). The roles and relationships between these agents are important to understanding the world of the Shari'a, and particularly how its structures of authority prevented it from political manipulation. As pointed out earlier, legal interpretation in Islam is an individual undertaking based on the epistemic authority of Shari'a specialists. Among individual interpreters the *mufti* was the preeminent and central agent in the elaboration of the Shari'a. This preeminence was expressed in that the mufti was the go-to agent in legal consultations (*futya*). It was in that capacity that the *mufti* provided *fatwas* (nonbinding legal opinions) at the behest of a questioner (*mustafti*). The *fatwa* was the *mufti'*s educated individual opinion in response to a question that was posed to him in writing or orally by an ordinary Muslim seeking guidance or a *qadi*. A *qadi* sought the *fatwa* of a *mufti* when the case before him had no precedence in Shari'a manuals before him. Important *fatwas* were written down and saved. Over the course of a career a *mufti* could give thousands of *fatwas*. The fatwas of famous *muftis* were collected in manuals and incorporated into the authoritative legal opinions of the school that the *mufti* belonged to. According to scholars it was in his capacity as *fatwa* giver that the mufti formed the key link between the ever-changing social reality and the Shari'a, "as the corpus of substantive law and jurisprudence grew, acquiring both multiple levels of commentary and authoritative summaries, the accumulation of fatwas issued by *muftis* in diverse social and historical settings served to stimulate the development of the Shari'a from below, in response to the specific needs of particular Muslim communities" (Masud, Messick, and Powers 1996: 4). In giving his educated opinion, fatwa, to daily inquires the mufti was inevitably having to reconcile the Shari'a with the daily realities of social life. The *fatwas* that materialized from such an

interaction between the Shariʿa and the daily conduct of life were incorporated into authoritative manuals that formed the substance of the Shariʿa and were continuously commented by the scholars of later generations. This completed the circle and institutionalized the office of the *mufti* as the central figure in Shariʿa hermeneutics and Shariʿa structures of authority.

The significance of the office of the *mufti* to the Shariʿa wasn't only due to his place in the hierarchy of Shariʿa authorities, but also owed to the mufti's independence from formal institutionalization. There were some official and salaried *muftis* recognized by political powers, but in the vast majority of cases the office of the *mufti* remained outside the bounds of centralized political control, "many muftis operated privately and unobtrusively without any ties to the political authorities" (Masud, Messick, and Powers 1996: 3). The individualistic structural hallmark of the Shariʿa as well as its epistemic and moral authority and independence from political power, therefore, rested on the office of the mufti, the preeminent jurist among Shariʿa specialists (*fuqaha*, those specializing in *fiqh* or jurisprudence). So when it's pointed out that in pre-colonial Muslim societies the power to determine the law had lain not with a central legislative authority but rather with independent Shariʿa specialists, it was particularly the office of the *mufti* who elaborated on the Shariʿa through the *fatwas* he gave. The *mufti's* centrality to Shariʿa interpretation and legal development as well as the mufti's independence are in contrast to the position of the *qadi*. Although a *mufti* could and did serve as a *qadi* at times, the expertise and the expectations from the office of the *qadi* were very different from that of the *mufti*. The qadi heard cases and rendered judgments based on the authoritative opinions in his school. The *qadi* wasn't expected to have the mastery of the Shariʿa to enable him to derive his own Shariʿa-based rulings like the mufti did in the form of *fatwas*. The *qadi* was expected to have mastered the authoritative *fiqh* manuals of the particular school he belonged to, to be able to match the cases that came before

him to similar cases in the manuals. Manuals that were collections of *fatwas* by well-regarded *muftis*. Thus when a *qadi* was confronted with a difficult case and he found no guidance in the manuals he would seek a *fatwa* from a mufti: "the *mufti* solved, or attempted to solve, new and difficult cases, while the *qadi* applied the solutions in his court" (Hallaq 2009: 76). The *qadi*, therefore, unlike the *mufti*, wasn't integral to the development and hermeneutics of the Shari'a. This difference between the *mufti* and the *qadi* regarding their place in the hierarchy of Shari'a structures of authority was significant for another reason. Whereas the *fatwa* of a *mufti* was a nonbinding legal opinion, the judgment (*hukm*) of a *qadi* was binding. This might imply that the position of *qadi* was vested with more authority, but it wasn't since the *qadi* could only base his judgments on the collections of authoritative *fatwas* in his school. This is the reason why *qadi* judgments were never collected or formed legal precedence. Additionally, the *qadi,* unlike the *mufti,* was a government appointed official. The *qadi's* role as a political appointee didn't drastically effect the independence of the Shari'a from political power since the position of the *qadi* played a very limited role in the development and interpretation of the Shari'a. It was thus the subverting of the position and authority of the *mufti* during the colonial and postcolonial periods that led to the transformation of the pre-colonial world of the Shari'a.

As many scholars have pointed out the world of the Shari'a started going through momentous transformations beginning in the nineteenth century. These transformations altered the structure of the Shari'a as a legal tradition. The changes began with the Shari'a-derived civil code (*majalla*) promulgated in 1876 by the Ottoman Empire in an attempt to centralize and rationalize the administration of justice as part of a project of modern reform. These processes of transformation continued with the onset of colonial apparatus over most Muslim societies and with the postcolonial states. In general, the most important factors in these transformations were the

codification of the Shari'a, the abolishing of *waqfs* (inalienable religious endowments), and the introduction of modern law schools and Western style court systems. All these factors altered the world of the Shari'a by displacing the position and authority of the *mufti* to interpret the Shari'a thereby undermining the individual-centered Shari'a hermeneutic tradition. In dislodging the authority the authority of the *mufti* to interpret the Shari'a the hermeneutic pluralism that was made possible by the position of the *mufti* was ended. This was a direct product of the modern state's derive to centralize the administration of justice. Also key to undercutting the plurality of Shari'a opinions was the process of codification. The codification of the Shari'a, as Messick writes, was an "important step towards silencing the open-ended argumentation of shari'a jurisprudence, once central to a vital intellectual culture, openness was now considered a drawback" (Messick 1993: 56). As noted earlier, the *mufti* was the Shari'a specialist who undertook the interpretation of the Shari'a in response to questions posed to him by judges and ordinary people. In making a codified Shari'a available to judges, state codification ended the open-ended argumentation process that was central to the authority of the *mufti*. The abolishing of *waqfs* was also important in undercutting the development of *muftis* since it was *waqfs* that supported that traditional madrasa education system where *muftis* were trained. Finally, the introduction of modern institutions of learning, particularly modern law schools, led to the emergence of new legal practitioners such as lawyers and judges who took up new the positions created in the new court system. As Masud et al. write:

> *Of the fundamental changes that have had a direct impact on muftis, perhaps*
>
> *none is more important than the transformation in the essential character of*
>
> *knowledge and its means of transmission. Curricular and organizational changes*
>
> *in educational institutions have meant that the shari'a, or fiqh, formerly the*

centerpiece of advanced instruction and of Muslim knowledge itself, has been largely displaced by a spectrum of 'secular' subjects, many derived from Western models. Typically, the study of fiqh has been moved to Islamic institutes or to specialized law schools, where it competes with offerings in Western-style law. Rather than muftis, lawyers and law professors are the legal professionals now produced by most mainstream educational systems. (Masud, Messick, and Powers 1996:26-27)

The centralization and bureaucratization of the Shariʻa, which curtailed the position and interpretive authority of Shariʻa specialists, particularly the *mufti*, was accompanied by the establishment of the office of the *mufti* as a state employee. The figure of the "Grand *mufti"* is now a well-established position in many Muslim countries. The office of the public *mufti* was created to provide governments authoritative interpretations of the Shariʻa that would support the reform agenda of modern states. The official *mufti* thus "represented the interests of the state" and their activities regulated by legislation (Skovgaard-Petersen, 1997: 29). Another development that is crucial to the formation of public muftiships in the modern Muslim world is the appearance of specialized committees that provide collective *fatwas*. Examples of such organizations include the Egyptian Dar al-Ifta, the World Muslim League in Mecca, and the Council of Islamic Ideology in Pakistan. The creation of the office of the "Grand *mufti*" as well as specialized committees in many Muslim countries is an illustration of the modern state's desire to control the interpretation of the Shariʻa, and to use that interpretation to underwrite the state's agenda and policies. It was also an admission on the part of the state of the authority of the Shariʻa, and by extension the authority of the *mufti,* and thus the need for the state to simultaneously curb the autonomous authority of the *mufti* and to use that authority to buttress the state's legitimacy. The establishment of public *muftis*,

however, didn't mean that the state has placed the entire *fatwa*-giving phenomenon within its purview. Private individuals with the aid of mass media and general literacy (Eickelman 1992) continue to provide *fatwas*. In recent times not only has *fatwa* been disseminated by private individuals outside the purview of the state-sanctioned offices and institutions, but such individuals often lack the religious training and qualification that was traditionally necessary to give a *fatwa*.

The above brief description of the epistemological foundation of the Shari'a, its structures of authority, and the transformations to this structure during the colonial and postcolonial period is generally regarded in the literature as representing the general historical record of Muslim societies. As we saw above, an important claim in this narrative is the separation of religious authority from political power in pre-colonial Muslim societies. A separation was made possible by the epistemological bases of the Shari'a, which allowed independent Shari'a specialists the authoritative voice in Shari'a hermeneutics. The highest authority in the hierarchy of Shari'a authorities whose independent legal opinions formed the normative Shari'a positions was the *mufti*. The *mufti's* authority was acquired through individual-based and life-long endeavor of Shari'a education and scholarship which was ultimately acknowledged by one's peers. The position of the *mufti* could not, therefore, be easily brought under political control. As such the figure of the *mufti*, more than any other Shari'a specialist, was responsible for the separation of religious authority from political power in pre-colonial Muslim societies. In Somalia, however, the Shari'a in its structures of authority and social landscape as described above didn't exist. Religious authority in pre-colonial Somalia was separate from political power.

There are two main interrelated factors that account for the difference. First, there didn't exist among Shari'a specialists in pre-colonial Somalis the unique position of the *mufti*. In other words, there were no Shari'a specialists, whose knowledge of the Shari'a were so authoritative

that their legal opinions were incorporated and became part of the legacy of the Shariʿa. This isn't surprising given that Somalia was primarily rural society on the Islamic periphery, where there didn't exist the sophisticated textual and institutional structures or the economic means that could support such an undertaking. This didn't mean that Shariʿa learning and authority weren't key features of religious life and authority. To the contrary, like the rest of Muslim societies, knowledge of Islamic jurisprudence was the most important element in all religious education. But Somali sheikhs' religious training was limited by the scarcity of religious texts available and the inadequacy of the learning institutions.[71] Schooling in Islamic jurisprudence in Somalia was limited to the texts of the *Shafiʿi madhhab*. The mainstay Shafiʿi texts studied in Somalia include *Minhaj al-Talibin, Kitab al-Anwar, Mughni al-Mukhtaj, and Ishadul Qaawi*. These are Shariʿa manuals that contain the authoritative opinions of the *Shafiʿi* madhhab. The learning of Somali sheikhs and Shariʿa specialists were thus limited to the mastery of *Shafiʿi* authoritative opinions. The best among them mastered the sources from which the authoritative opinions were derived to be able to select which among the various opinions within a particular school was strongest. I have not yet heard of a Somali sheikh who had mastered the Arabic language, the various sources of the Shariʿa, and the methodological preference of a particular school, to be able to originate his own Shariʿa interpretation becoming an independent *mufti*. The second reason why there wasn't a separation between religious authority and political power in pre-colonial Somalia is there didn't exist centers of political power in pre-colonial Somali history. Absent such centers of political power and leadership, religious authorities, particularly Shariʿa judges, emerged as political leaders, who because of their Shariʿa-derived authority, found themselves governing society through dispute settlement. As a peripheral territory to the Muslim world system, pre-colonial

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[71] See chapters 6 for "traditional" religious education in Somalia and its transformation.

Somalia neither had the educational structures that led to the development of the multifaceted Shari'a discourse and its structures of authority nor the powerful political centers with their complex administrative structures. The separation of authority and power in the lands of the Islamic heartland made possible by the social and political developments there didn't apply to pre-colonial Somalia. This doesn't mean, however, that Islam is any less significant in understanding the history and experience of authority and power in pre-colonial Somalia. The next section is an exploration of the social and cultural landscape of pre-colonial Somalia and the place of religious authorities within that landscape.

III.   Religious authority and political power in pre-colonial Somalia

The previous section was a discussion of the claim that there was a separation of authority and power in pre-colonial Muslim societies. We saw how the separation of authority and power was made possible by the epistemological bases and structures of authority of the Shari'a, particularly the position of the *mufti* as the preeminent Shari'a authority. We pointed out that contrary to this literature, there was no separation of religious authority from political power in pre-colonial Somalia. This was partly because there were no centralized political centers of power in pre-colonial Somalia that were structurally separate from society. In other words, there were no *sultans* or *amirs* and their administrative structures and armies in pre-colonial Somalia as was the case in the typical Sunni state in the lands of the Islamic heartland. There were thus no political centers of power from which religious authorities would establish their independence from. In fact, in the few instances where there emerged regional and localized centers of political power, it was often religious authorities, particularly Shari'a specialists, that laid the foundation for the emergence of political power through their practice of conflict mediation and arbitration. The formation of pre-

colonial polities will be further analyzed in the next chapter. In the rest of this chapter, we look at the social and cultural landscape of pre-colonial Somalia.
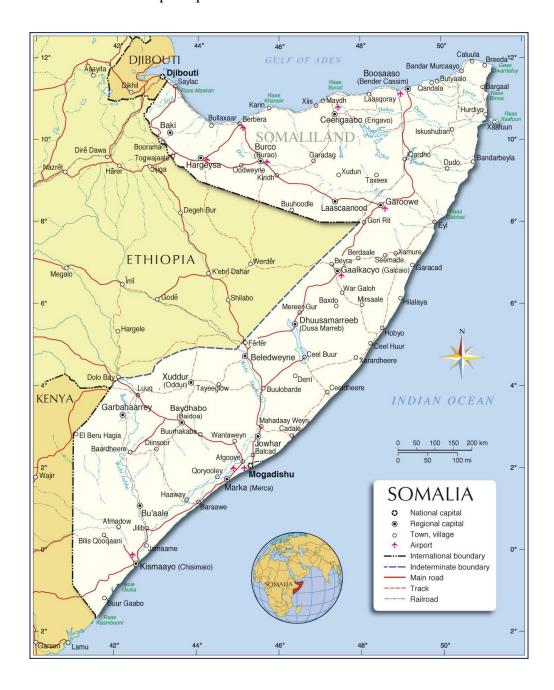

Figure 1 Map of Somalia. Source: United Nations Cartographic section, Map No. 3690 Rev. 10, December 2011.

Though the Somali people constitute a relatively homogenous cultural and linguistic group in the Horn of Africa, they can be divided into three distinct regional sub-cultures: the pastoral nomads in the arid plains of the interior and the northern and central regions, the sedentary agro-pastoralists between the rivers of Shabeelle and Juba in the south, and residents of the Indian Ocean coastal towns in the south known collectively as the Benaadir.[72] Influenced by different ecologies, modes of economic life, and histories, these regions have developed slightly different socio-political organizations and cultural norms. Given their economic interdependence, a shared language, and common religion, movement of people between these different regions was very common in the pre-colonial era and has become even more so since the beginning of European colonization towards the end of the nineteenth century. With the subsumption of most of these territories and peoples in the postcolonial state of Somalia their histories have more or less merged. For our purposes, however, it's important to understand their different histories, modes of livelihoods, and social and cultural characteristics to appreciate the role of religious authorities in their respective social organizations. We analyze the pre-colonial pre-colonial roles of religious authority of these three different sub-regions separately, beginning with pastoral nomadic society.

A. Pastoral nomadic society

Except for the area between the two rivers of Shabeelle and Juba in south of the country and the coastal areas, most of the Somali inhabited regions in the Horn of Africa is semi-arid. These regions include the Ogaden plateau in eastern Ethiopia and the central and northern regions of Somalia. Primarily, as a result of this ecological reality pastoral nomadism has been the prevailing mode of life in these regions, particularly so in pre-colonial times. This resulted in the

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[72] The name Benaadir is derived from the Persian word for ports. The major cities on the Benaadir coast are Mogadishu, Marka, and Barawe.

development among the pastoral nomads of specific social organizations and cultural norms that distinguished the nomads from people in the coastal towns of the Benaadir and the inter-riverine areas. And because of this difference the place of religious authorities in relations to society was different among the pastoral nomads than it was in the other sub-regions.

Pastoral nomadism has been the prevailing mode of life among the majority of the Somali people for most of their history. It's only in the last few decades that many pastoralists have urbanized in response to restrictions to their movement caused by securitized political borders and the increasing frequency and severity of draughts. This isn't, however, to deny the existence of significant sedentary and agricultural populations in coastal cities and in the inter-riverine area.[73] There are few Western eye-witnesses documenting the life and history of Somali nomadic groups prior to the pioneering work of British social anthropologist, I. M. Lewis,[74] in mid-twentieth century. Our best approximation of what pre-colonial pastoral nomadic life was like, therefore, comes from Lewis's work and those after him. Influenced by the work of Lewis, many scholars (Cassanelli 1982; Helander 2000; Hohne 2006; Lulling 2006) have viewed kinship as key to understanding pastoral Somali nomads, and Somali society in general, since many view pastoral nomadic culture to be the defining feature of Somali society. Lewis unyieldingly held on to his interpretation that *the* key to understanding politics and social organization in pastoral Somali

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[73] Influenced by the work of anthropologist I. M. Lewis, who did his work among pastoral nomads in northern Somalia and the adoption and promotion of the postcolonial state of the specific dialect and cultural expressions of pastoral nomads, many have viewed Somali society primarily as pastoral nomadic in character. Such an approach, however, overlooks the existence of regions, the inter-riverine area and the coastal towns of southern Somalia, with different historical and cultural characteristics as will be described later in this chapter. For works on the history and socio-political structures of southern Somalia, see Catherine Besteman (1999), Besteman and Cassanelli (1996), Menkhaus (1989). For the coastal towns, particularly the Benaadir coastal towns of southern Somalia, see Alpers (2009), (Jama (1996), Reese (2008).

[74] For examples of Lewis's work, see, I. M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (London, Oxford University Press, 1961); *A Modern History of the Somali: Nation and State in the Horn of Africa* (Athens, OH: Ohio University Press, 2002).

society even after the British structural functionalist school[75] that inspired his work was critiqued and generally discredited.[76] Lewis's work has been amply and rightly critiqued by scholars within the small field of Somali studies as well.[77] Despite Lewis's ahistorical[78] and rigid description of the kinship system among the pastoral groups, his work on the socio-political organizations of Somali pastoral nomads groups is an important place to begin to understand various aspects of pastoral society. Influenced by British social anthropological theory of the socio-political organizations of non-state African i.e. acephalous tribal/clan societies,[79] Lewis viewed pastoral Somali social organization through their kinship system. As in Evans-Pritchard's *The Nuer* (1940), Lewis describes Somali kinship system as a segmentery lineage system. That is, a kinship system which maintains an equilibrium between segments of a clan/tribe based on the two contradictory, and yet complementary, tendencies of fission and fusion (E. E. Pritchard 1940: 148). The Somali kinship system is based on agnatic descent i.e. descent traced through males to a common ancestor. Members of the clan, however, are not an undifferentiated group of persons who recognize their common agnatic kinship. Rather, each member of a clan belongs to a specific lineage within the clan, which is established genealogically. A lineage is thus an agnatic group of kinsmen between

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[75] Lewis's understand of Somali kinship and lineage system was an application on the Somali peninsula of the segmentary lineage theory advanced by E. E. Evans-Pritchard and M. Fortes. See, M. Fortes, *The Dynamics of Clanship among the Tallensi* (London, Oxford University Press, 1945); E. E. Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (London, Oxford University Press, 1940).

[76] See Talal Asad, "political Inequality in the Kababish Tribe," in *Essays in Sudan Ethnography, Presented to Sir Edward Evans-Pritchard*, edited by Ian Cunnison and Wendy James (London: Hurst, 1972); Cate Crehan, *The Fractured Community: Landscapes of Power and Gender in Rural Zambia* (Berkeley, CA: University of California Press, 1997).

[77] There was an important exchange between C. Besteman (1996, 1998) and Lewis (1998) in the journal *Cultural Anthropology*. For other critiques of Lewis's emphasis on kinship, see Abdi I. Samatar (1992, 2010) and Kapteijns (1994).

[78] Lewis viewed the outbreak of a civil war in 1991 as a vindication of his theory that clan is the key to understanding Somali social and political organizations. See Lewis, *Blood and Bone: The Call of Kinship in Somali Society* (Lawrenceville, NJ: The Red sea Press, Inc., 1994).

[79] As mentioned in footnote 2 in the introduction, I prefer to use the terms lineage, descent, or genealogical unit/group rather than "clan" to refer to kinship-based identities or political alliances because I find these terms to be less saddled by controversy mentioned above.

whom kinship can be traced genealogically to a common ancestor. A "clan" is therefore segmented into different lineages, which are diverging branches of descent from a common clan ancestor.

What is unique about the segmentary lineage system is that the point at which the line of descent is reckoned is never fixed. Rather, the male ancestor, fiction or otherwise, that is the point of reference for genealogies (*abtirsiinyo*) is constantly shifting depending on the context, "like the classical lineage systems of the Nuer and to a lesser extent of the Tallensi what is most characteristic of the Somali system is its relativity and flexibility" (Lewis 1961: 133). Because there is no territorial identity or a hierarchy of political offices, the individual's socio-political identity is determined by the ever-shifting genealogies, argued Lewis. The environment and nomadic lifestyle of pastoral nomads prevented the formation of large stable corporate groups. The security and property of the individual was therefore guarded by a small association of agnatic equals held together by the duty to receive and pay compensation and seek revenge in case of conflict. These small units are considered by Lewis to have been the most stable social units among pastoral nomads. Such groups, referred to as *jilib* or *diya*-paying group (*diya* means blood-money), were "the most fundamental and stable social unit and consisted of a number of families whose alliances were essentially based on the security need of member families" (Samatar 1989: 25). They were held together by an unwritten contract (*heer*) of mutual support and defense. Foremost among the duties such groups shared was the responsibility to receive and pay blood compensation collectively. Lewis identifies the following units in the lineage system as points of signification for individual and group identity and socio-political organization: "clan-families," "clans," "sub-clans," "primary lineages," and "*diya*-paying groups." The fixity and ahistorical emphasis of Lewis's approach to Somali lineage has, as mentioned earlier, been rightly criticized. What is

important for our purposes is the traditional lineage system's relationship to patterns of social organization and the place of religion and the influence of religious men.

In terms of settlement patterns Somali pastoral nomads moved across an expansive territory in the Horn of Africa in search of pasturage and water for their livestock, which include herds of camels and flocks of cattle, sheep, and goats. There was no corresponding territorial identity overlapping with kinship identity. Access to land and water among the pastoral nomads is flexible, only becoming an issue and a potential source of conflict during dry seasons. Settlement patterns usually consist of small hamlets made up of the families of small parties of kinsmen (*reer*). These small parties of kinsmen disperse widely during the rainy season, when water and pasture in plentiful, and congregate around cluster of wells during the dry season.[80] The "clans" and lineage groups among Somali nomads thus have no clear territorial boundaries that separates them from each other, and despite Lewis's emphasis on rigidity neither was the boundary between lineage groups fixed. Significantly, there are no traditional political offices among pastoral nomadic groups, and "as a whole northern Somali society is characterized by a lack of chiefs and absence of any hierarchical system of politico-administrative offices" (Lewis 1962: 37). Consequently, pastoral nomadic society was horizontal in the extreme. Decisions effecting a group of related kinsmen living together in a hamlet were made at councils (*shir*) that were open to all adult males, though influence was not equal, and presided over by elders. Among some lineage groups there was a figurehead whose position was entirely symbolic with no real power.[81] In terms of subsistence pastoral nomads primarily lived off the products of their herd: milk and meat. To obtain additional necessary products for consumption, pastoralists exchanged pastoral and wild products

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[80] Lewis, "Modern Political Movements in Somaliland I." *Africa: Journal of the International African International*, 28, no. 3 (1958): 244-261, p. 47

[81] These figures were transformed into salaried clan representatives during the European colonization of Somali territories.

such as ghee, skins, gum, incense, livestock, and ivory for grain, sugar, and clothing in the markets

of coastal towns, Zeila and Berbara in the north[82] and the Benaadir towns in the south, or in small

trading villages in the interior (Samatar 1989). There did emerge among pastoral nomads small

sedentary agricultural communities, but farming remained relatively insignificant and limited to

religious communities (Lewis 1961; Samatar 1989).

It's in this socio-cultural landscape that Islam spread among the Somali pastoral nomads.

Somalis are one of the most thoroughly Islamacized peoples in Sub-Saharan Africa (Hersi 1977;

Lewis 2003), with well over 90 percent of the people claiming adherence to the Islamic faith. Islam

came to the Horn of Africa by crossing the Red Sea and the Guld of Aden into Abyssinia and

northern Somalia, and the Indian Ocean into the Swahili coast of East Africa. There is evidence to

suggest that Islam was present in the Horn as early as the first century of Islam's advent or seventh

century A.D.[83] It appears, however, that the first few centuries Islam[84] was confined to the coastal

towns, the Asiatic and mixed populations that lived there, and the neighboring Somalis. It wasn't

until after the thirteenth and fourteenth centuries that the majority of Somalis in the interior were

Islamized.[85] The itinerant Arab preachers,[86] who led the conversion of the Somali nomads in the

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[82] The historical coastal towns located on the Gulf of Aden in northern Somalia were important and old cosmopolitan centers of Islam since at least the thirteenth century (Lewis 1961; Trimingham 1952). Zeila, for example, was the base of the medieval Islamic principality of Adal. Despite the importance of the towns on the Red Sea coast in the spread of Islam throughout the Horn of Africa, and particularly among Somali pastoral nomadic groups, they didn't develop a unique social organizations and cultural characteristics like the Benaadir towns on the Indian Ocean coast did. It appears that their significance waned after the defeat of the Islamic principalities in the interior by Abyssinia in the sixteenth century. The biggest difference between the Red Sea coastal towns in the north and the Indian Ocean coastal towns in the south is that the latter was part of the larger trading world of the Indian Ocean that linked the Swahili coast of East Africa to other shores of the Indian Ocean. That smallness of the trade in the north compared to the south is made evident by the fact that no interior town market towns of any significance developed in the north prior to the twentieth century (Samatar 1989: 27).
[83] Ali Hersi, *The Arab Factor in Somali History: The Origins and the Development of Arab Enterprise and Cultural Influences in the Somali Peninsula*. Ph.D. dissertation UCLA, 1977, p. 113
[84] Islam on the coastal towns of Somalia in the few centuries after the advent of Islam was Shi'a Islam due to Zaidi domination across the Red Sea in Yemen (Sheikh-Abdi 1993; Pouwels 1987; Hersi 1977).
[85] Hersi, *The Arab Factor in Somali History*, p. 116
[86] They were mostly from Hadhramaut and Yemen.

interior, have in time become revered and venerated progenitors of the major lineages among the pastoral nomads where their tombs are sites of visitations (*siyaaro*).[87] The Islamic identity of Somalis was expressed and cemented in their active participation in the medieval struggles between the Christian kingdom of Abyssinia, whose base was the highlands of today's Ethiopia, and the string of Islamic principalities to the southeast of Abyssinia.[88] The complete Islamization of the Somali pastoral nomads and the spread of Islamic learning, however, was only completed in the latter half of the nineteenth century with the spread of organized and popular Sufi orders (*tariq*, pl. *turuq*).[89]

After the nearly complete Islamization of the Somali pastoral nomads, Islamic authorities became integrated into their social structure in specific ways. Because of their status as outsiders to the lineage structure, Islamic authorities were simultaneously lacking any bases for wielding influence within lineage politics, but at the same uniquely positioned to translate their religious and outsider status as a basis for a politico-religious leadership transcending lineage allegiances. As mentioned earlier, the social organization of Somali pastoral nomads lacked a hierarchical structure and political offices (Lewis 1963). Lineage group decisions were made in consultations (*shir*) open to all adult males and overseen by lineage elders. In cases of disputes between members of a particular lineage or between individuals belonging to different lineages, a panel of arbitrators (*guddi*) made up of elders known for their wisdom was appointed on an ad hoc bases. Such panels often included religious men (*wadaad*) who were consulted to assist the elders in reaching

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[87] I. M. Lewis, *Saints and Somalis: Popular Islam in a Clan-Based Society* (Lawrence, NJ: New Sea Press, Inc. 1998).

[88] See, Trimingham, *Islam in Ethiopia*; Hersi, *The Arab Factor in Somali History*.

[89] The impetus for the growth and popularity of Sufi organization was, similar to other parts of Islamic Africa, a response to the social upheavals at the outset of European colonization (Peterson 2011; Soares 2005; Ware III 2014). Organized and popular Sufi orders emerged in Somalia in the latter half of the nineteenth century with the appearance of charismatic saints (Reese 2008). There were and are (though much less popular today) three Sufi orders in Somalia: the Ahmadiyya, the Salihiyya, and the Qadiriyya.

decisions that were in accord with the Shari'a. Within specific lineage groups religious men's authority and competence over matrimonial affairs, inheritance of property, contract, etc., was recognized. In terms of disputes between lineages groups, the role of religious authorities was to bless the proceedings and to assess compensation for injury based on their knowledge of the Shari'a. They thus served as unofficial and consensus-based mediators within the social structure of the nomads. An authority founded on their status as "the champions of the Shari'a" (Lewis 1958: 249). It's under these conditions and influence of religious authorities that a Somali customary law (*heer*) developed that is deeply influenced by Shari'a norms. The Shari'a authorities i.e. the sheikhs and *wadaads*, however, didn't have power to enforce their judgments upon anyone. The final decisions on all matters both within the lineage group and between lineages lay with the elders.

Based on religious men's lack of effective authority over lineage politics, scholars have described religious authorities among Somali nomads as apolitical (Lewis 1998; Cassanelli 1982). Cassenelli writes that "spiritual authority did not of itself constitute a basis for the exercise of secular leadership" (1982: 86), while Lewis asserts that the application of the Shari'a is constrained by the lineage structure of the nomads (Lewis 1958). Lewis claimed, and many others have since followed suit, that Somali pastoral nomads have a clear separation of secular and religious power based on the distinction between "men of the spear" (*waranleh*) and "men of God (*wadaad*) (Lewis 1963: 112). Based on this distinction religious authorities are said to be confined to an intermediary role between lineage groups in times of conflict, and intercession with God on behalf of human beings based on the authority of their religious learning, piety, and possession of divine blessings (*baraka*). This religious authority, however, doesn't translate to political power in terms of lineage politics. Thus the supposed separation of religious authority and secular power among the nomads.

This supposed separation between religious authority and secular power doesn't tell the entire story of the relationship between religious authority and political power among Somali pastoral nomads. To begin with, as stated earlier, traditionally there were no political offices among the nomads save for the symbolic lineage head who had no real political power. On this point, Lewis himself writes, that pastoral Somali society is characterized by the lack of "chiefs properly called, and almost complete lack of instituted government. Society indeed is egalitarian in the extreme" (1963: 110). Lineage figureheads gained more prominence as they were made into the local representatives of colonial administrations beginning in the late nineteenth century. What is meant then when scholars argue that religious authorities in Somalia were apolitical is that they remained aloof and that their authority had no influence in the conflicts between the various descent groups within Somali society. In other words, they could neither thwart nor lead a particular lineage group's decision over whether or not to go to war with another lineage, except when consulted by elders[90]. I argue, however, that their detachment from lineage politics should be seen as a function of their station as Shari'a authorities, which required that they remain impartial to conflicts between lineage groups. Conflict that were in the eyes of religious authorities unjustifiable wars between fellow Muslims. To have participated in these conflicts in any way would have been to undermine their position as impartial Shari'a authorities. As a sheikh from the Ogaden region in the interior told me, "there are two types of *wadaads* (men of religion). There are the good *wadaads* who fear God and are honest. They are the only ones that can intervene directly when there are conflicts between different groups. There are also bad *wadaads* who side

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[90] It's questionable whether lineage elders had in fact the power over the group as the literature suggests. A European visitor of northern Somalia in the late nineteenth century writes that the elders told them "that they could not promise that raiding should entirely cease, as a raid was often got up by a few young men of a tribe, anxious to distinguish themselves, and acting against the advice of their elders. We were aware of this, and knew that the nominal headsmen, or Akals s they are called, have little real authority in their tribes" (Nurse 1891: 661). See Charles G. Nurse, "A Journey Through Part of Somali-Land between Zaila and Bulhar." *Proceedings of the Royal Geographical Society and Monthly Record of Geography* 13, no. 11 (Nov. 1891): 657-663.

with one group when there is a dispute. Everyone knows who the bad *wadaads* are *and no one listens to them* (emphasis added)."[91]

Additionally, I submit, that rather than seeing religious authorities' position as impartial Shari'a authorities as a mark of their apolitical nature, one should see it as the foundation of their politico-religious authority. A number of studies (Messick 1993; Saad 1983; Stewart 1973) have shown that in contexts where there are no prevailing political powers, Islamic judges (*qadi*) essentially governed society through their role as mediators and arbitrators. Stewart (1973), for instance, demonstrates in his study of nineteenth-century Mauritania, a segmentary society like pastoral Somalia, that Shari'a authorities governed social relations through the Shari'a. Similarly, Shari'a specialists governed social relations among pastoral Somali nomads. A role which was made possible by their relative distance from lineage politics. That same distance from lineage politics rendered religious authorities well positioned for political leadership when circumstances permitted. As Abdi I. Samatar writes, the religious authorities "partial freedom from clan politics and their supralineage position made them likely potential alternatives to lineage leaders as a leadership group" (Samatar 1989: 27). Many scholars (Lewis 1998; Cassanelli 1982; Hersi 1977; Sheik-Abdi 1993) have noted that one of the ways religious authorities assumed political power was through their rise to politico-religious leadership in moments when the domination of a non-Muslim foreign power became a threat to pastoral livelihoods. There are many examples of such politico-religious leadership from throughout Somali history, but the most well-known examples are the sixteenth-century struggles (1529-42) with Christian Abyssinia led by Ahmad ibn Ibrahim al-Ghazi (Hersi 1977; Trimingham 1952), and the early twentieth-century anti-colonial struggle (1899-1920) led by Mohamed Abdillah Hassan (Hess 1964; Jardine 1923; Sheik-Abdi 1993). Such

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[91] Interview in Mogadishu July 2015.

struggles unified the various pastoral clans and lineage groups in the face of a common threat. In other words, pan-Somali political leadership that unified the various lineages in the name of Islam was only possible under religious authority.[92] Such political unity would have been impossible without the sanctioning of religion and leadership of religious men. The leadership provided by religious authorities was conditioned by the standing of religious men as impartial Shari'a authorities. They could not have unified the various lineages if they were the bad *wadaads*. In the same way that the source of the Shari'a was transcendental, the earthly representatives of the Shari'a could only exercise political authority if they were seen to transcend the mundane power and politics of lineage groups. In addition to their politico-religious leadership in times of crises, religious authorities also exercised politico-religious leadership over religious communities (*jama'a*). Such communities were established by itinerant sheikhs belonging to various Sufi brotherhoods. They were often established as agricultural communities. These sheikhs exercised religious and political authority not only over the member of the *jama'a*, but adjacent communities who were not necessarily members of the religious communities (Reese 2008: 133).

It's possible that scholars have overlooked the politico-religious leadership of religious authorities because they viewed such leadership as "religious" in nature. This position, I suggest, is flawed on two fronts. First, such an approach, would be to anachronistically apply the modern and distinct categories of the "political" and the "religious" into a pre-colonial social landscape where such categories don't exist. Furthermore, as will become clear later in the next chapter, the Shari'a-sanctioned role of religious authorities as mediators between different lineages was the

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[92] Given the utilization of E. E. Evans-Pritchard's *The Nuer* by commentators on Somali pastoral nomads, it's interesting to note Evans-Pritchard's description of the rise of prophets among the Nuer. He interpreted the rise of prophets as the first sign of the emergence of a political leadership that unified the various tribes. Nuer prophets "achieved greater sanctity and wider influence than any other person in Nuer society" (1940: 185). Among other things Nuer prophets were, he writes, "pivots of federation between adjacent tribes and personified the standard principle of opposition in its widest expression, the unity and homogeneity of Nuer against foreigners" (1940: 189).

basic foundation upon which pre-colonial political formations was built. But first, we will do for the other two sub-regions, the coastal towns of the Benaadir and the inter-riverine region, what we did for pastoral Somali society in describing the social landscape and cultural norms.

B. Benaadir Coast

The East Coast of Africa, including the Benaadir Coast of Somalia, has been shaped by the Indian Ocean World, which connected East Africa to the ports of India, Arabia, and the Persian Gulf.[93] A movement of people and goods made possible by the Indian Ocean has shaped an East African civilization based on the growth of towns along the coast. As early as 1000 A.D. important commercial entrepôts developed into interconnected but autonomous and self-governing towns and city-states that traded with each other and with other ports of the Indian Ocean.[94] Among the factors that led people to migrate to the East African coast included commercial interests, fleeing from sectarian-based religious persecution, and missionary work. Regardless of the reasons for migration to the East African coast, the entrepôts on the coast developed as intermediaries that linked the East African coast to other ports in the vast shores of the Indian Ocean. Taking advantage of the cyclical monsoon winds, dhows[95] traversed the Indian Ocean carrying goods and people from and to the various ports on the shores of the Indian Ocean, the Red Sea, and the Persian Gulf. The connections of the East African coast to ports in India, Arabia, and the Persian Gulf existed prior to the emergence of Islam, but by the time of the development of the East African

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[93] The first account of external trade in East African, including Somalia, come from *Periplus of the Erythrean Sea* written around the second half of the first century AD in Greek by a trader likely living in Egypt.
[94] See, Elkis, H. Terry, "Kilwa Kiswani: The Rise of an East African City-state." *African Studies Review* 16, no. 1 (1973): 119-130; Mark Horton and John Middleton, *The Swahili: The Social Landscape of a Mercantile Society* (Blackwell Publishers: Oxford, 2000).
[95] Abdul Sherif, *Dhow Cultures and the Indian Ocean: Cosmopolitanism, Commerce and Islam* (London: Hurst & Company, 2010).

commercial entrepôts into towns and city-states, Islam was crucial in the identity and social organization of the people in these areas (Pouwels 1987; Trimingham 1964).[96]

The Benaadir coast, which includes the southern Somali coastal towns of Mogadishu, Marka, Brawe, and Kismayu, were part of the commerce and migration networks that intertwined the Indian Ocean world with East Africa. The port towns of the Benaadir coast constitute the most northern part of the East African trading coast. My description of the history of the Benaadir coast and its social organizations is primarily based on Mogadishu because it was the biggest and most important town on the coast, and most of the available material is from there.[97] Most of the information on the East African coast, including the Benaadir region, up to the fourteenth century is from Arab geographers.[98] The information provided by these geographers indicate that Mogadishu was founded around the ninth century by Arab and Persian immigrants (Hersi 1977; Lewis 1955; Puzo 1972; Reese 2008). These sources clearly show the importance of the Benaadir ports in general, and Mogadishu specifically, to the Indian Ocean commerce. Until the fifteenth century Mogadishu, along with Kilwa, further down south on the Swahili coast, was one of the largest and most important commercial towns on the East African coast (Elkis 1973; Puzo 1977). The traditional export goods from Somalia through the Benaadir ports included ghee, ivory,

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[96] Most significant archeological evidence of trade contact between the Swahili corridor and other parts of the Islamic world comes from several sites, but mostly from Kilwa (Coupland 1938; Horton 1987). The archeological evidence suggests the presence of Islam on the East African coast by the eighth century. For links between trade, slavery, and Islamic conversation see, Mark Horton, "The Islamic Conversion of the Swahili Coast, 750-1500," In *Islam in East Africa: New sources: archives, manuscripts and written historical sources, oral history, archeology: International colloquium, Rome, 2-4 December 1999, edited by Biancamaria S. Amoretti, (*Rome: Herder, 2001).

[97] See Edward A. Alpers, Mogadishu in the Nineteenth Century: A Regional Perspective" in *East Africa and the Indian Ocean* (Princeton, NJ: Markus Wiener Publishers, 2009); Ahmed D. Jama, The Origin and Development of Mogadishu AD 1000 to 1850: A study of urban growth along the Benadir coast of southern Somalia (Upsala, Sweden: Repro HSC, 1996); Scott Reese, *Patricians of the Benaadir: Islamic Learning, Commerce and Somali Urban Identity in the Nineteenth Century*, Ph.D. dissertation University of Pennsylvania, 1996; Ali Hirsi, *The Arab Factor in Somali History*; Neville Chittick, "Medieval Mogadishu" *Paideuma* 28 (1982): 45-62.

[98] For Arab geographers on the East African coast, see J.S. Trimingham "The Arab Geographers and the East African Coast," in *East Africa and the Orient: Cultural Synthesis in Pre-Colonial Times* (Holmes and Meier Publishers, Inc.: New York, 1975), 115-146. For the specific case of Somalia, see, Ali Hirsi, *The Arab Factor in Somali History*.

animals, hides, frankincense and myrhh (Puzo 1972; Reese 2008). In the eighteenth century agricultural products and cotton would be added to the list of exports from Somalia. Beginning around the end of the fifteenth century the Benaadir coastal towns began to experience a decline.

This decline was a result of Portuguese intrusion into the Indian Ocean and an expansion of Somali pastoral nomadic groups into the coastal towns (Alpers 2009; Reese 2008). Whether it was due to lack of interest (Alpers 2009) or to the resistance put up by Benaadir towns, the Benaadir towns, unlike the rest of the East African coast, never submitted to the Portuguese.[99] In all likelihood, given their interest in capturing the gold trade, dominating the trading networks, and displacing Swahili traders, the Portuguese had no interest in controlling the Benaadir towns. Nevertheless, the Benaadir towns suffered during the Portuguese dominance of the commerce of the Indian Ocean. Perhaps simply as a demonstration of their power, the Portuguese bombarded Mogadishu in 1499 and completely destroyed Brava in 1507. The economic decline of the Benaadir towns between the fifteenth and eighteenth centuries was also the result of the arrival of large Somali pastoral nomadic groups on the coast. The presence of pastoral nomadic groups disrupted the caravan routes to the interior and led to the emergence of internal discord in Mogadishu. One scholar suggests that the Somali invasion of the city "contributed to the commercial decline of Mogadishu largely because of the end of Arab administrative and commercial skills in the city" (Puzo 1972: 36). A new quarter dominated by Somalis was added to the city. This led to the city's division into two quarters[100], one dominated by Somalis and the other by the old Arab-Persian residents of the city. The two quarters competed for control over the city.

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[99] For more on the Portuguese presence on the Swahili coast, see Jestus Strandes, J.S. Kirkman, and Jean F. Wallwork, *The Portuguese Period in East Africa* (Nairobi: East Africa Literature Bureau, 1968).

[100] The two quarters of Mogadishu were Hamar Weyn (old city) and Shingani (on the sand). The first was dominated by newly arrived Somalis from the interior, while the latter was the Arab-Persian section. The local names of the quarters reflected their ethnic make-up; the name Hamar Weyn comes from the Somali language, whereas Shingani is Swahili, one of the dominant languages in the city prior to its Somalization.

By the first half of the seventeenth century, a Somali lineage group from the interior established control over a section of the city and eventually over the entire city.[101] Benaadir coastal towns' fortunes revived again in the nineteenth century after their integration into the "economic orbit of Omani Zanzibar" and after coming under the nominal sovereignty of the sultan of Zanzibar in 1840 (Alpers 2009: 65). Zanzibari suzerainty over the Benaadir coast was limited to the collection of export duties. The economic revival of the Benaadir coast was also a consequence of the rise of what one scholar refers to as "pastoral polities" in the near-hinterland of the Benaadir coast (Cassanelli 1982). These Somali political formations were both the result and consequence of the expansion of agriculture in the inter-riverine area and the opening of caravan routes to the interior (Alpers 2009; Reese 2008). As a result, the coastal towns became important outlets once again for trade from the interior (Hess 1966: 7). At the end of the nineteenth century European colonization brought the Somali coast under the control of different European power. The Banaadir coast was leased to Italy in 1890 by the Sultan of Zanzibar, becoming part of the colonial territory of Italian Somaliland.[102] Italian rule lasted until 1941 when they were expelled by British forces during WWII. Later chapters will address the impact colonial rule, particularly as it relates to Islamic leadership and Shari'a practice of the Benaadir towns, but for now let's turn to the pre-colonial relationship between religious authority and political leadership in the Benaadir towns.

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[101] Alpers argues that the early date of Somali settlement gave the city of "Mogadishu a resolutely Somali cultural tradition that marks it off from the major towns of the Swahili coast" (2009: 78). Whether the Swahili towns of East Africa were African or Arab/foreigner in their cultural characteristics and orientation was one line of research and debate among scholars of East Africa (Allen 1981; Pouwels 1977). It's evident, however, as Alpers points out, that the settlements on the Somali coast were intimately linked to the interior and Somalized early one. The reasons for this could be, among others, that unlike the other major Swahili towns like Kilwa, Lamu, and Mombasa, the coastal towns in Somalia weren't located on islands removed from the mainland. Also, unlike the other East African towns, the towns on the Somali coast weren't separated from the people of the mainland by the fact of being Muslims. The Islamization of the interior of Somalia was complete perhaps as early as the fourteenth century (Hersi 1977), and Islam spread not only from the southern Benaadir towns on the Indian Ocean, but also from the port towns on the Gulf of Aden such as Zayla, which is a short distance from Yemen.

[102] For the first 15 years the Benaadir was administered by two Italian chartered companies. The colony came under direct Italian administration in 1905.

Even more so than among the pastoral nomads, Islam and Islamic authorities were central to every aspect of life of the coastal towns, including political leadership. Until around the fifteenth or sixteenth centuries, when the process of Somali settlement began, the Benaadir coastal towns very much shared the characteristics of the East African towns. Pouwels (1979, 1987) describes the central place of Islam in the life of the population of coastal towns. Islam was key to everything from the spatial organization, trade, and political power. As Pouwels points out, the residents of the Swahili coastal towns were made up of mixed ethnic and descent groups who claimed Arab or Persian origin. The spatial setting, commercial life, and leadership of the towns were organized around descent groups. Spatially "descent groups were associated with particular *mitaa*.[103] Indeed, each district or *mtaa* had a shared genealogical core" (Pouwels 1987: 79). Life in the various districts centered around the mosque where people exchanged news and information and received blessings for future undertakings from the sheikhs at the mosques. The sheikhs were thus not only religious leaders but community care-takers known of their knowledge of town history. Each *mtaa* had its own elders who were responsible for judicial and civic duties within the district and represented it in town politics. Sitting atop the council of elders representing the various descent groups were the town's political leaders styled as sheikhs or sultans. These often came from specific lineages known for producing religious men who were especially influential in town politics. These religious lineages were tasked with administering "the laws of the town in most situations where disputes arose among the clans of the town" (Pouwels 1987: 83). Knowledge of *Fiqh* (jurisprudence) was particularly valued in the towns' religious learning. This is no surprise given that mediation between the various lineages was one of the crucial roles of religious authorities and the basis of their political power, "political advantage started with the power to

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[103] *Mitaa* or *mtaa* is district in Swahili.

arbitrate" (Pouwels 1987: 96). Thus the political leaders who "controlled the religious and military offices" of the towns often came from religious lineages who specialized in Islamic jurisprudence (Elkis 1973: 125), and were renowned for their religious knowledge and piety. In relation to town politics Islamic discourse and institutions were "an egalitarian, unifying religious force" that was "more easily associated with more community-wide institutions" (Pouwels 1979: XIX). The Shari'a-sanctified and legitimated leaders of these community-wide institutions were thought to assure the prosperity and well-being of the coastal towns.

Like the rest of the East African coast, Islam in the Benaadir coastal towns was critical to town life, "town and clan origins, social and political structure were all viewed through a Muslim lens and deemed thoroughly Islamic in their roots" (Reese 2008: 33). Although it appears that settlement along the coast preceded the arrival of Islam, and that Islam was limited to the ranks of the elite in society until the thirteenth century, in the eyes of the local people "the city's very roots are viewed as Muslim ones (Reese 2008: 38). As in the other Swahili towns in East Africa, one of the ways Islamic history became one with Mogadishu's history was through the way many descent groups conceptualized their origins. Many groups in the Benaadir region claim Arab or Persian lineages. As Reese writes, "Bida and Hatimi of Barawe both considered themselves of Arab stock while the Banu Qahtan, Gudmane and Shanshiyya clans of Mogadishu lay claim to Arab as well as Persian (in the case of the Shanshiyya) beginnings" (2008: 44). Other urban lineages known collectively as Ashraf claimed Arab descent through Prophet Muhammad via his two grandsons, Hassan and Hussein. Over time many of these lineages would be Somalized by linking their origin traditions to Somali pastoral nomadic lineages. Even this, however, doesn't negate the centrality of Islam to people's understanding of history since the majority of Somali lineages also claim foreign Muslim progenitors in their origin traditions. Mogadishu, like the other East African

coastal towns, was governed by a council of elders representing the various descent groups (Alpers 2009; Reese 2008). At the top of these council of elders sat a leader who was referred to as a sultan or a sheikh. Similar to what we saw in other coastal towns, religious authorities formed the leadership of the Benaadir coastal towns. Furthermore, their role as conflict arbitrators and mediators, a role sanctioned by their expertise of the Shari'a, buttressed their claims to town leadership, "the ulama by operating both the legal and educational systems and by their involvement in trade, exercised political power in these city-states" (Kassim, 1995: 37).

The earliest and most complete description of the Somali coast, and particularly of Mogadishu, comes from the famous North African scholar and traveler ibn Battuta who visited Mogadishu in 1331. From Ibn Battuta's description of Mogadishu we get a sense of the centrality of religious authorities to the political leadership of the town, and a brief description of the figure of the *qadi*. Ib Battuta described Mogadishu as an "exceedingly large city" where he was made the guest of the *qadi*:

> *When it was heard that I was there, the Kazi[104] came with his students to the beach: and I took up my abode with him. He then took me to the Sultan, whom they style Sheikh. Their custom is that a noble or theologian, must be presented to the Sultan, before he takes his abode in the city. When, therefore, the Kazi came to the palace, one of the king's servants met him. The Kazi was then Burham Oddin El Misri (of Egypt), and to him he mentioned my having come.[105]*

Ibn Battuta continues and explains how he was invited to dine with the Sultan, and sitting with him and the Sultan was the *qadi*, who, besides his position as the chief judge, we are told, was also

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[104] *qadi*

[105] H. A. R. Gibb, *Travels of Ibn Battuta A.D. 1325-1354* (Cambridge: University Press, 1958), p. 54.

a key court advisor. Ibn Battuta describes the *qadi* as an important religious educator who instructed many students who were housed in hostels. Religious learning it seems was thoroughly established in Mogadishu by the fourteenth century. From ibn Battuta's description we get a sense of the *qadi's* proximity to the town's political leadership. This is also noted by Hersi who writes, "none other than the *qadi*, not even ministers of state or military commanders, could boast the honor of sitting next to the Sheikh on the royal platform, and it was only the *fuqaha* (jurisconsults) and the *'ulama* (the learned) who sat with the Sheikh (Hersi 1977: 187). The centrality of religious authority to political power is further shown by ibn Battuta's description of the town' political leader. Ibn Battuta tells us that the town's political leader was also a leader in religious matters. He describes that the town's leader, a certain Abu Bakr, carried the title of '*Sheikh*,' and led the communal Friday prayers (Reese, 2008: 38). An early nineteenth century visitor to Mogadishu also underlines the religious character of the town's political leaders. He explains that upon reaching Mogadishu he sent his guide "to inform the Sheikh I would wait on him," and when the Sheikh arrived he "procured letters of introduction from the Sheikhs of the Merkah[106] tribes" (Christopher 1844: 87). Christopher points out that the coastal towns he visited were led by "heads of the Somali tribes" led by a principal chief styled a sultan (1844: 88). From the information that can be pieced together from these descriptions, it's apparent that religious authority was essential to the making of political power in pre-colonial East African coastal towns, including the Benaadir towns. We now turn to the third sub-region of Somalia to complete our survey of the social and religious landscape of pre-colonial Somalia.

C. The inter-riverine region

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[106] Marka is another of the Benaadir coastal towns and to the south of Mogadishu.

Our survey of the history, socio-cultural landscape, and the place of religious authority therein of pre-colonial Somalia concludes with the most fertile region in Somalia, often referred to as the breadbasket of Somalia. This arable region is formed by the two rivers of *Shabeelle* (leopard) and Juba. The area between the two rivers in the south of the country constitutes the country's most watered and arable zone. The Shabeelle river begins in the Ethiopian highlands crosses the Ogaden plains and gets very close to the Indian Ocean before turning in an eastward direction and runs along the coast for about 180 miles before drying up close to Jilib. Parallel and to the South of the Shabelle is the Juba River which also descends from the Ethiopian highlands towards the Indian Ocean entering it near the port of Kismayu. The area between the two rivers forms a fertile near-hinterland of the Indian Ocean. Because of its fertility and proximity to the Indian Ocean ports this inter-riverine region has attracted throughout its history different population groups developing unique economic and political formations. It has also developed its own social and cultural characteristics as well as a distinct Somali dialect called *maay*, which is not necessarily understood by the speakers of the main Somali dialect *mahaa*. As we will see in the next chapter, this region has seen the development of the most important indigenous Somali political formations led by religious authorities in pre-colonial Somalia. Owing to its distinct ecology, the existence of regional trade networks linking this region to the Benaadir coast and the larger East African coast, the formation of plantation economy based on slave labor in the nineteenth century,[107] the emergence of numerous independent and large religious communities (*jama'a*), and the rise of pre-colonial polities, have all led to the formation of a region that is culturally and socially distinct from the rest of pre-colonial Somalia.

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[107] For more on the slave trade in Somalia, see Esmond B. Martin and T.C.I. Ryan, "The Slave Trade of the Bajun and Benaadir Coasts," *Transafrican Journal of History* 9, no. 1/2(1980): 103-132; Lee V. Cassanelli, "The Ending of Slavery in Italian Somalia: Liberty and the Control of Labor, 1890-1935," in The End of Slavery in Africa, edited by Suzanne Meirs and Richard Roberts, (Madison: University of Wisconsin Press, 1988).

The inter-riverine population formed from the mixture of various population groups that moved into the area at different points in history. Most of these migration waves were Somali pastoral nomadic groups who moved into the area attracted by the expansive pastureland of the area. Upon reaching the region the pastoralists encountered small sedentary Bantu-speaking[108] cultivators living in small villages along the rivers. These cultivators assimilated or become clients of the pastoral groups. In the nineteenth century many Bantu cultivators became slaves on plantation farms owned by a previously pastoral group. In the process of their settlement, the pastoral nomads created fixed villages and each village claimed the pastureland in its immediate vicinity and access to a source of water. The affairs of each village were "organized by the elders of the various lineage fractions living together, and collective work in cultivation, water-management, hunting, recreation, and ceremonials" assigned to young men (Lewis 1969: 73). In many cases a number of villages in close proximity developed their own common lineage.[109] In such formations, a specific lineage within the larger confederation became recognized as 'urad (literally "the first born"). The 'urad lineage was seen as the first occupant of the land and traditions developed where the 'urad lineages were invested with right of granting and distribution of land to subsequent arrivals. Overtime, a patron-client relationship also developed in the region (Cassanelli 2015). New arrivals became clients (*Sheegad)* and received the protection as well as land (for farming or pasture) in exchange for allegiance to the patron group. Such client groups often assimilated to the patron group overtime. Through this process a new "clan"/tribal" confederations were formed in the inter-riverine regions based on territorial belonging and, often,

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[108] This is different from the Somali language which belongs to the family of languages spoken in the Horn of Africa known as Cushitic.

[109] Most of the populations that moved into the inter-riverine region overtime formed a clan called Digil and Rahanweyn. Of this clan Lewis writes "The present Digil and Rahanweyn populations are in large measure the outcome of a long, disjointed series of migrations and expansionary movements by Somali nomads from the north and north-west, their conflicts and agreements with earlier Galla and Bantu communities, and the blending of these elements in a variety of patterns of mutual accommodation" (Lewis 1969: 60).

a fictitious lineage. Such "tribal" confederations, though they held a nominal claim over a specific territory, didn't have a unified leader. Actual life and everyday solidarity was maintained at the village level.

Due to the varied environment which supported both agriculture and pastoralism and close proximity to the ports on the Indian Ocean, the livelihoods and economic activities in the inter-river region was diverse. It included agriculture, pastoralism, and trade. There were two forms of traditional cultivation: dry farming on the upland soils of the hinterland (*adableh*), and wet-farming on the rich alluvial soils (*doobay*). The traditional crops grown in the inter-river region included maize, sorghum, beans, sesame, various fruits, and cotton in the nineteenth century. Agriculture was produced for local consumption as well as for export. Farmers exchanged their products for commercial products in the port towns of the Benaadir. Prior to the nineteenth century agriculture didn't involve the use of slave labor, though the pastoral groups who came to dominate agriculture relied on client cultivators. The exponential growth of agriculture in the nineteenth century was partly a result of Somali pastoral entrepreneurs using slave labor, "client cultivators and imported slave labor from southern Ethiopia and elsewhere in East Africa, were producing large amounts of grain, sesame and later, cotton for commercial markets" (Reese 2008: 50). During this period the farming plantations in the inter-riverine area was said to be producing so much grain for export that a visitor in the 1840s described the Benaadir coast as "the grain coast for the supply of southern Arabia" (Christopher 1844: 87).

Besides producing for local and external markets farmers in the inter-riverine region coexisted in a symbiotic relationship with pastoralists. Often the same families and lineage groups were both cultivators and pastoralists. Communities that practiced cultivation alone exchanged their products for livestock milk, and meat with the pastoral nomads, who came to the region in

dry seasons to use the pastureland and watering sites in the region. They, in exchange, provided milk, ghee, and a few heads of livestock to the sedentary groups that claimed the territory (Cassanelli 1974; Lewis 1969). Another economic activity in the region involved the caravan trade that linked the Indian Ocean port towns of the Benaadir to the interior, all the way to Ethiopia. This trade involved products from the interior destined for export to other parts of the world, such as ivory, rhinoceros horn, aromatic woods, gum, myrhh, and cotton after mid-nineteenth century. They were exchanged for imported goods such as dates and sugar. Merchants from the coastal towns met with people from the interior in the towns of the inter-riverine region turning the towns of the region into important nodes of a regional trade. Some of these towns grew and became centers of "clan" confederations that attempted to control this regional trade. The town of Afghoye located on the Shabeelle River is a good example of such a town. It became the center of the politico-religious head of a territorial "clan" confederation known as the Geledi that dominated the region and all of southern Somalia in the nineteenth century.[110] Now let's turn to the place of religious authorities in the social and cultural landscape of the inter-riverine region.

Like the other two sub-regions religious authorities in the inter-riverine region governed communal and individual relations on the basis of their Shari'a-derived authority. When the place and role of religious authorities in the inter-riverine was dissimilar, it was as a result of the distinct environment and social organization of the region. As we noted earlier, for example, there were small independent farming religious communities (*jama'a*) among the pastoral nomads in the semi-arid regions of the country. Independent, that is, from the lineage loyalties and settlement patterns that characterized pastoral Somali nomads. But because of the barren nature of the land such communities could not engage extensive farming to support a larger community. This wasn't

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[110] See Chapter three for more on the Geledi

a problem in the inter-riverine region. Consequently, there emerged innumerable farming religious communities in this region throughout its history (Lewis 1998; Cassanelli 1982). Such communities founded by itinerant individual sheikhs, sometimes affiliated to a particular *Sufi* order, were "regarded as places of refuge for those seeking a life of quiet prayer and contemplation as well as individuals seeking social protection" (Reese 2008: 52). Because of the relatively easy availability of fertile land, the religious communities in the inter-riverine region could attract many members and grow to a significant size. The leading sheikh of the *jama'a* exercised economic and political leadership over the members of the community. The sheikh accepted new members into the group, parceled out land, and decided on political matters. Besides distributing land, the sheikh didn't exercise any further economic control over community members, as the members cultivated their lands individually and pursued independent economic activities (Cassanelli 1982). As they grew, such communities could rely on the loyalties of many community members, as well as the loyalties of surrounding communities. The leading sheikhs of such communities could wield significant powers to influence, or attempt to influence, regional economies and politics. One such community was the Baardheere *Jama'a*. Founded in 1819, this community had at its height in 1840 around 20,000 members (Cassanelli 1982; Reese 2008: 53). The leaders of the community undertook a reformist campaign in the region where they attempted to enforce a prohibition against selling of ivory as well as "the consumption of tobacco, public dancing, intermingling of the sexes and saint veneration" (Reese 2008: 53). Their campaign threated the regional trade and led to the mobilization of various other groups led by the politico-religious leader, Sheikh Yuusuf, of the Geledi.[111] A British visitor to the region described the mobilization, "the whole country is about

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[111] For more on the Geledi see Virginia Lulling, *Somali Sultanate: The Geledi City-State over 150 years* (UK: Haa, 2000).

to follow at the heels of Sheikh Yusuf in order to annihilate the fanatical tribe of Barderh,[112] and burn their villages to the ground" (Christopher 1844: 90). This is one example of the place of religious authorities in the inter-riverine region. That is, as leaders of large and, sometimes politically significant, religious communities.

Another important role of religious authorities was in relation to the formation of "clan" confederations. In terms of their social organization, the most important distinction between the pastoral Somali nomads and the inter-riverine population is the formation of a hierarchical and more formalized political structures in the inter-riverine region. There is in the inter-riverine region "a wider range of ranked offices, of specialized functionaries, and tribal sultans, at any rate before the arrival of colonial powers than among the northern nomads" (Lewis 1958: 250). As mentioned earlier, a large segment of the inter-riverine population were originally cattle- or camel-breeding nomads who arrived in the area in different waves of migration. Naturally, there were conflicts, negotiations, and accommodations between the different immigrant groups and the sedentary populations before they merged into more stable territorial "clan" confederations. The cohesiveness of many of these "clan" confederations were built around traditions of saints who led the mediation and reconciliation process that led to the original acts of alliance (*balan*, promise), and their continued loyalty to the politico-religious leadership role of the saint's descendants. Religious lineages formed by the descendants of the saint comes to stand at the "clan" confederation's political center.

When scholars mention the existence of a more hierarchical structure and political offices in the inter-riverine region in opposition to the horizontal social organizations of the north, they

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[112] Baardheere

are referring to these "clan" confederations, whose political center often stood a religious lineage. The same processes that led to the rise of religious lineages as politico-religious leaders also led to the formation of more coherent pre-colonial polities in the inter-riverine region and on the Benaadir coast. The next chapter will explore the role of religious authorities in the few instances when indigenous political formations emerged in pre-colonial Somalia.

CHAPTER III

Religious authority and political power in pre-colonial Somalia

In the previous chapter, chapter two, I divided pre-colonial Somali inhabited regions in the Horn of Africa into three sub-regions with distinct ecologies, histories, and social organizations. I did this to better understand the place of religious authorities in pre-colonial Somali society. We saw that in all three sub-regions, religious authorities, because of their Shari'a-derived authority to arbitrate conflicts, were instrumental in governing social relations and maintaining societal cohesion. Dispute settlement, the turf of religious authorities, was the most important arena in the governance on individual and groups relations. This was especially important given the general absence in pre-colonial Somalia of structured and hierarchical political authority. We saw that among the extremely horizontal society of pastoral nomads, where corporate existence was limited to small groups of agnatic kinsmen, the role of "men of religion" (*wadaads*) was to mediate conflicts between lineage groups, and to determine the amount of compensation in case of injuries or death in accordance with the Shari'a. Religious authorities also oversaw matters of divorce, marriage, inheritance, and religious celebrations. In terms of running the daily affairs of the lineage groups, it was the lineage elders in general, rather than religious authorities specifically, that decided matters. This has led many commentators (Cassanelli 1982; Lewis 2002; Lulling 2002) to conclude that religious authorities among Somali pastoral nomads were apolitical. On the contrary, I argued that it was precisely because religious authorities were outside lineage politics that they were well-positioned to assumed politico-religious leadership transcending lineage loyalties. This was often realized in periods of external threat when religious authorities and religious discourse became the central nodes around which resistance was framed and organized.

In the other two sub-regions, the port towns of the Indian Ocean coast or the Benaadir coast and the fertile region between the rivers of Shabeelle and Jubba, where sedentary life had led people of diverse genealogical and ethnic origins to interact more intimately, religious authorities were even more important in governing their interactions.[113] More so than among the pastoral nomads religious authorities in these two sub-regions governed the social framework and ethical language which made cohabitation possible. Among the inter-riverine populations religious authorities were integral to resolving conflicts between the various nomadic groups that moved into the region and the established populations in the area. We saw that in mediating and resolving conflicts between various groups, individual saints and sheikhs became the eponymous ancestors of clan confederations. By resolving conflicts between the different groups and bringing them together, religious authorities became vehicles for integrating people of diverse genealogical origins. Similarly, we saw that in the Benaadir coastal cities, where people of diverse genealogical origins and ethnicities lived together, religious authorities, in the form of lineage representatives, governed the affairs of the town. Each lineage was represented in the town council by a representative whose authority was sanctioned by the reputation for religious knowledge and piety.

In this chapter, I take the exploration of the relationship between religious authorities and society in pre-colonial Somalia further by arguing that not only were religious authorities governing social relations in the absence of political power, they were the foundations upon which political power arose the few occasions it did. In making this argument, I refute a general position in the literature on pre-colonial Muslim societies (Asad 2015; Hallaq 2003, 2009, 2013; Lapidus 2002; Messick 1993; Weiss 1992; Zubaida 2005), which posits that there was a separation of

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[113] The relative populations of each region is hard to know given the absence of population statistics in Somalia. It's commonly understood, however, that the vast majority of the population in Somalia has pastoral nomadic origins.

religious authority and political power in these societies. This literature has identified the Shariʿa as the reason for the separation of authority and politics in pre-colonial and precolonial Muslim societies. The argument is that the epistemological bases and structures of authority of the Shariʿa authorizes an individualistic undertaking of Shariʿa interpretation, thereby preventing pre-colonial Muslim states from controlling the powers of legislation. Since the Shariʿa provides the blueprint for the life of the Muslim individual and society, in de-linking the interpretation of the Shariʿa from political power, authority in pre-colonial Muslim societies was vested in the *ʿulama* and separated from the centers of political power.[114] In this chapter, I argue that in pre-colonial Somalia religious authority, rather than being separate from political power, was the very foundation upon which pre-colonial political power was formed. Through a study of three political formations in pre-colonial Somalia, I show that religious authority was the foundational to the formation of political and military power. In contradistinction to the literature above, it was specifically the authority of the Shariʿa that allowed religious authorities to become the axis around which processes of political centralization formed. There are two main reasons why religious authorities became the centers of and led pre-colonial polities.

First, as we saw in the last chapter, religious authorities, based on their role in conflict mediation and dispute settlement, were integral to governing social relations in contexts where there were no political centers of power. It was their role as mediators that led to the formation of political societies that coalesced around them. Saints and sheikhs[115] were ideal mediators in

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[114] See chapter two for a discussion of how Shariʿa authority and structures of epistemology separate the Shariʿa from centers of political power.

[115] In using the terms saints and Shariʿa specialists interchangeably, I am following Vincent J. Cornell's argument in *The Realm of the Saint: Power and Authority in Moroccan Sufism* (2008). In this work Cornell argues against a dominant approach in the literature on Sufi Islam that distinguishes between the eighteenth and nineteenth century Sufi organizations and movements from previous Sufi traditions that are associated with mysticism and esoteric practices aimed at spiritual cultivation. The more organized Sufi movements of the eighteenth and nineteenth centuries referred to as neo Sufism are characterized in the literature as emphasizing the scriptural and legalism of

conflicts which made them appropriate vehicles for integrating people of diverse ethnic and genealogical origins (Cassanelli 1974). Over time such saints and sheikhs became the founders of religious lineages who continued to stand at the political center of territorial lineage confederations. In many cases it was the traditions of mediation by saints and Shari'a specialists that held various lineage groups together and symbolized their unity. It was thus the practice of the Shari'a and the authority derived from therein that facilitated the formation of political power by turning Shari'a practitioners into vessels of political loyalties. Specific religious lineages known for their expertise in jurisprudence (*fiqh*) formed and monopolized the authority to mediate and arbitrate conflicts between individuals and groups. These religious lineage groups often became the politico-religious leaders of new political formations. Shari'a was, therefore, not only not independent of political power, it was one of the most important foundations of political power. This is the opposite of the claim in much of the literature regarding how it was the Shari'a tradition of individual hermeneutics that maintained the separation of religious authority from political power in pre-colonial Muslim societies. In the case of Somalia, a country in the Islamic periphery with very limited experience in centralized in political power, Shari'a practice and authority enabled the emergence of political power thereby linking religious authority and political power.

Second, religious authorities became political leaders because religion provided the administrative and ideological framing that made possible the rudimentary mechanisms of rule that characterized the emergence of pre-colonial polities. Religious language and discourse, for example, produced the ideological justification for the collection of revenues thereby making the

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the Shari'a rather than the esoteric practices aimed at spiritual cultivation. Contrary to this distinction, Cornell argues that Sufi saints throughout Islamic history have been the foremost promoters of the Shari'a among the common and rural classes, "apart from holy warriors and tribal eponyms, the most important saints of early Moroccan Sufism were legal specialists" (1998: 7). Since the saints, like all Muslims, held that to be morally upstanding and socially constructive individual the believer had to be trained in and abide by the ethics represented in the Shari'a, they saw the teaching of the Shari'a as the central element of their social activities.

exercise of power possible. The third of the five pillars of Islam (*zakat*) obliges Muslims to give annually a small percentage of their wealth to the needy, the poor, and travelers, among others. Another category of individuals who are legitimate recipients of *zakat* are those who mediate disputes or attend to social affairs i.e. religious authorities. Even when they are not the intended beneficiaries of *zakat*, religious authorities often receive *zakat* because they are considered best placed to judge who the appropriate recipients should be. In fact, since the ordinary Muslim only knows that he or she should pay *zakat*, and not the amount or the appropriate recipients of it, it falls on the *'ulama* to assess the amount to be paid, collect it, and redistribute it. Through *zakat*, the *'ulama* often became the centers of annual income redistribution. In a context where religious authority is institutionalized and identified with the governing authority, *zakat* is turned into an important and religiously sanctioned source of revenue. One of the foundational pillars of Islam, therefore, made possible the collection of revenues for pre-colonial polities. Additionally, the only literate segment in pre-colonial Somali society were religious practitioners. They were therefore able to establish and run the rudimentary administrative structures of pre-colonial polities. For these reasons religious practice and discourse enabled the formation of political power led by religious authorities.

I will demonstrate this argument by providing a brief sketch of the history of three political formations in pre-colonial Somalia. These are, the first political dynasty of Mogadishu[116] from the early sixteenth century to the middle of the seventeenth century, the Ajuran dynasty[117] of late

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[116] For a description of political leadership in Mogadishu before the onset of colonialism see Scott Reee, *Renewers of the Age: Holy Men and Social Discourse in Colonial Banaadir* (Leiden, Netherlands: Koninklijke, 2008); *Patricians of the Benaadir: Islamic Learning, Commerce and Somali Urban Identity in the Nineteenth Century*, Ph.D. dissertation University of Pennsylvania, 1996.

[117] For the Ajuraan dynasty see Lee V. Cassanelli *The Shaping of Somali Society: Reconstructing the History of a Pastoral People, 1600-1900* (Philadelphia: University of Philadelphia Press, 1982); Ali Hersi, *The Arab Factor in Somali History: The Origins and the Development of Arab Enterprise and Cultural Influences in the Somali Peninsula*. Ph.D. dissertation UCLA, 1977.

fifteenth to mid-seventeenth century, and the Geledi Sultanate[118] of the nineteenth century. The case of Mogadishu helps us to understand political leadership from the coastal area, specifically the Benaadir towns, while the Ajuraan and the Geledi sultanates are, in the words of Cassanelli, "pastoral polities"[119] that emerged in the arable near-hinterland of the Benaadir coast between the two rivers. These three cases of pre-colonial polities are from the more sedentary areas of southern Somalia. In our division of pre-colonial Somalia into three sub-regions in the previous chapter, the pre-colonial polities discussed in this chapter developed in the Benaadir towns of the Indian Ocean coast and the inter-riverine region near the Benaadir.[120] Given that religious practice and religious authorities were present in these regions as well as in the more arid regions inhabited by pastoral nomads what explains the absence of pre-colonial polities among the pastoral nomads?

As explained in the last chapter the Somali inhabited regions in the Horn of Africa can be divided into three sub-regions. The largest of these sub-regions is the semi-arid region inhabited by pastoral nomads, who live in small groups of kinsmen and move across the vast plains in search of water and pasture. Rarely has centralized political power emerged among the pastoral nomads. One of the ways a centralized power could have been established might have been through the control of essential pastoral resources such as pasture land and the cluster of wells during dry

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[118] For the Geledi sultanate see Virginia Lulling, *Somali Sultanate: The Geledi City-State over 150 years* (UK: Haa, 2000); Ali Hersi, *The Arab Factor in Somali History: The Origins and the Development of Arab Enterprise and Cultural Influences in the Somali Peninsula*. Ph.D. dissertation UCLA, 1977.

[119] Cassanelli, *The Shaping of Somali Society.*

[120] I am excluding from consideration the string of medieval sultanates including Ifat, Dawaro, Bale, and Hadiya on the eastern fringes of the Abyssinian Kingdom or Western fringes of Somali territory (Cassanelli 1982; Trimmingham 1952) or in the northern Somali coast and along the border region between the post-colonial states of Ethiopia and Somalia. These sultanates were established either on the Red Sea coast or along the trade routes that connected the coast to Abyssinia. The populations of these medieval Islamic principalities were a mix of various ethnicities including Arabs, Somalis, and Afars. Somalis figure prominently in the sixteenth century conflict (1529-43) between the unified Islamic principalities led by Imam Ahmad Ibrahim al-Ghazi or *Gran* (*Gurey* in Somali) and the Kingdom of Abyssinia. Interestingly, one of the first mentions of the name *Somali* on record is from songs by a fifteenth century Abyssinian ruler celebrating victories over the Muslims. In the snippets of material on these principalities provided by Arab geographers and travelers, the Somalis, though a major component of the fighting force, weren't in political leadership of these principalities. On that account and because of the scarce material on these principalities I won't consider them in these short descriptions of pre-colonial polities on the Somali peninsula.

season by a strong lineage group. This would have allowed the controlling lineage to exert influence by demanding political allegiance and tribute in exchange for access to these resources. This is in fact Cassanelli's argument in his explanation of the rise of "pastoral polities" in pre-colonial Somali history (Cassanelli 1982: 72). Revealingly, however, all of the historical examples that Cassanelli takes up in his study are from the inter-riverine region and not from the pastoral regions. This is not surprising because, outside of the medieval Islamic sultanates in the Horn of Africa, where Somalis constituted a segment of the component population groups (see footnote seven), no centralized political entity arose among pastoral Somali nomads.[121] The only example of a pastoral polity emerging among the pastoral nomads in the semi-arid regions of central and northern Somalia is the Majerteen sultanate, which came to control the coast of the north-east Somalia around the sixteenth and seventeenth centuries and lasted, however feeble, until the beginning of European colonization.[122] Even here it appears that the so-called sultan was simply a titular head of a "clan" confederation with very little actual powers, as the Italian ethnologist, Enrico Cerulli, who visited the sultanate in the early twentieth century writes,

> *In official acts, the Europeans give to the Migiurtini[123] state the name of sultanate and to its sovereign the title of sultan. Actually a sultanate in the usual sense that is given this word does not exist among the Migiurtini; the sultan is only the chief (capo, head, chief, leader) of the tribe of the Migiurtini and does not have powers different from those of any other chief of a Somali tribe.* (Cerulli, 1959: 55)

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[121] Speaking of the precolonial history of centralized governance among the Somalia people, Lewis writes "with the exception for a time of Adal in the north and of states such as those of the Ajuraan and the Geledi in the south, it was only on the coast that any degree of centralized government was established and maintained, however irregularly, over long periods of time" (Lewis 2002: 33).

[122] Lewis, *Modern History of the Somali,* p. 26

[123] Majerteen is the name for one of the major lineage groups in northeast Somalia.

Additionally, what actual benefits the Majerteen sultan derived from his position appears to have been obtained through religious legitimation. The sultan, for instance, received taxes or "sekko," which in reality were the annual alms given as a religious duty (Cerulli 1959: 58). It was practically impossible among Somali pastoral nomads for a titular head of a specific lineage to exercise control over the politics of a lineage group, and by extension, to exert enough control over pasture land and wells to force other lineage groups to recognize his authority and pay tribute. Titular lineage heads couldn't acquire the necessary means to establish control over pastoral resources. This might have become the case later when foreign powers with modern arms came to the Somali shore. Robert Hess, for example, points out that one reason why the Majerteen sultan was eager to sign a protectorate treaty with Italy in early twentieth century was to obtain arms (1964: 416). Additionally, the territorial and group boundaries between pastoral Somali nomads were very fluid, and the constant movement of pastoral nomads in small groups made control over people virtually impossible.

The other two regions, the Indian Ocean coastal towns and the inter-river region, are territorially smaller than the pastoral inhabited semi-arid regions but more densely populated by sedentary populations whose economic activities are more diverse. As mentioned above, pre-colonial political formations more often emerged in these two latter regions than in the former. A primary factor in this difference is that these two regions in the south of the country were historically part of the Swahili coast, meaning they were part of the larger trading network of the Indian Ocean. This means that the same economic and socio-cultural processes that led to the rise of city-states on the Swahili coast also conditioned the emergence of pre-colonial polities in southern Somalia. Economically, the Indian Ocean coastal towns like Mogadishu, linked the Indian Ocean-based maritime trade to the Somali interior. The towns were essentially market places where goods and

commodities were exchanged. There also developed small local industries in some of these coastal towns. Mogadishu, for instance, had a well-developed small textile industry.[124] The inter-riverine region was also connected to the world of the Indian Ocean trade because as the near-hinterland of the Benaadir coast, most of the products from this arable agricultural zone were destined for local consumption in these towns or exported overseas to other shores of the Indian Ocean. Furthermore, the inter-riverine region formed an important node for the trade routes that connected the Benaadir coast and the interior as far as southern Ethiopia. The commercial and cultural connections to the Benaadir coast and by extension to the larger Indian Ocean world "helped create in the hinterland the conditions conducive to the rise of political formations different from, and superseding, the traditional Somali tribal forms of political association" (Hersi 1979: 198). This confluence of economic and environmental factors brought people of diverse ethnic and genealogical origins to live in the same area. The subsequent intensification in social interactions were governed by religious authorities, making them the ideal candidates to assume politico-religious leadership.

My aim in this chapter is to point out that when centers of political power arose in pre-colonial Somalia, they were founded by religious authorities, and to point out some of the reasons that made religious authorities the axes around which political centralization manifested. I now take a closer look at the three pre-colonial political formations starting with the first political dynasty in Mogadishu.

I. **The rise of a political dynasty in Mogadishu**[125]

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[124] See, Edward Alpers, "Futa Benaadir: Continuity and Change in the Traditional Cotton Textile Industry of Southern Somalia c. 1840-1980." In *East Africa and the Indian Ocean Trade* (Princeton, NJ: Markus Wiener Publishers, 2009).

[125] There are almost no firsthand accounts of Mogadishu from the time of the first dynasty except for the brief account from ibn Battuta in the fourteenth century. One of the first accounts of the rise and history of Mogadishu's

From the time of it's founding, sometime in the ninth century, to the thirteenth[126] century, Mogadishu was ruled by a council of elders representing the founding Arab and Persian lineages of the town. These lineage representatives were headed by a council of four known as *arba'a rukn* (four pillars). Each lineage representative was responsible for the internal affairs of the specific lineage group he represented in the town council. The lineage representatives stood out and were selected for their religious knowledge, piety, and wisdom in dispute resolution. The four members that headed the town council were particularly distinguished for their knowledge of the Shari'a, which gave them an aura and reputation for incorruptibility. They settled disagreements and conflicts between lineages and oversaw the town's general affairs in consultation with the lineage representatives. It's likely that the four members either hailed from or their selection was influenced by a religious lineage that specialized in and monopolized the study of *fiqh*. Historically, *fiqh* learning was the prerogative of families that provided the town's *qadis* (judges). Over time, there developed a religious lineage specializing in *fiqh*, which became known as *Banu Qahtani* or *nisbah al-Qahtani*, or more popularly, "*reer faqi*" (*house of fiqh* in Somali).[127] The Banu Qahtani specialized in the study of *fiqh* and overtime came to exclusively produce the town's

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first dynasty was collected by the Italian ethnologist, Enrico Cerulli, who got a hold of "an anonymous manuscript fragment" given to him by the Banu Qahtan when he visited Mogadishu after the First World War (Reese 2008: 42).

[126] The exact period of the rise and fall of the various dynasties that ruled Mogadishu from the thirteenth century to the seventeenth century or their ethnic identity isn't very well established.

[127] Most scholars (Cassanelli 1982; Reese 2008) attribute the lineage's name, *reef faqi*, to its monopoly over the study and practice of *fiqh*, as opposed to religion in general. I suggest that this emphasis on and association of this lineage with *fiqh* in particular, rather religious learning and knowledge in general, might be inaccurate. I say this because there are numerous religious lineages in Somali society that are known as *Reer faqi*. Almost every region in the country or among a confederation of clans there is a lineage or family known as *Reer Faqi*. They are so named so because of their reputation for religious learning and piety, and not because of their specific monopoly over religion. This can be deceptive, however, because all religious learning is geared towards a mastery over the Shari'a because Islam itself is identified with the Shari'a. Almost all religious instructions, beginning with the memorization of the Qur'an, its translation (*tafsir*), Arabic grammar (*nahwa*), the science of prophetic traditions (*hadith*), and the methods of jurisprudence (*usul al-fiqh*) are all viewed as necessary pre-conditions in one's qualification as a recognized specialist of the Shari'a. That is why frequently the most respected religious authorities are referred to as *faqi* so-and-so, and the descendants of such persons might form a lineage called Reef Faqi. That is, a lineage renowned for its religious knowledge and piety, and by extension of the Shari'a.

qadis. It was common in the history of the towns of the Swahili coast, including Mogadishu, for different lineages to specialize in different commercial and religious activities (Pouwells 1979). Hence the monopoly of *reer faqi* over the learning and practice of the Shari'a in Mogadishu wasn't unusual, but I am interested in the role of this lineage in the formation of the city's first political dynasty.

It was in the thirteenth century that the city's rule by council was ended and there emerged a sultanate with offices, functions, titles, and distinctions of clearly titled hierarchy (Hersi 1979: 189). In short, a political transformation that turned the port town in to the Sultanate of Mogadishu, a city-state where power was centralized by a hereditary political dynasty. The power of Mogadishu's rulers was at times extended beyond the confines of the city. The Sultanate of Mogadishu came to exercise control over some of the other towns of the Benaadir coast, where the rulers of Mogadishu were represented by chief officers. During the rule by the Muzzafar Sultans,[128] Mogadishu had a close commercial and political relationship with the Ajuraan Sultanate, located in the near-hinterland of the Benaadir coast. We will see more of the Ajuraan in the next section. Mogadishu's transformation from a lineage confederacy to a political dynasty was established with the help of religious authority. This is evidenced by the fact that the city's dynastic rulers assumed the title *Sheikh* rather than the title of *sultan* or *amir* (Hersi 1979: 187). We saw in the last chapter that religious authority was essential to the governance of Mogadishu.

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[128] The Muzzafar political dynasty is the most well-known of the political dynasties in Mogadishu. Scott Reese (2008) following the Italian Ethnologist Enrico Cerulli places the beginning of the Muzzafar dynasty in the thirteenth century (2008: 42) thereby viewing the Muzzafar dynasty as the first political rulers of Mogadishu. Lee V. Cassanelli (1982) considers the Muzzafar to have been of mixed Persian-Somali ancestry and places their history in the early sixteenth century to the mid-seventeenth centuries (82: 26, 91-93). Abdirahman Hersi (1977), on the other hand, places their beginning in the closing of the fifteenth century or the beginning of the sixteenth century and their fall sometime in the seventeenth century. Similarly, I. M. Lewis (2002) places the fall of the Muzzafar in the seventeenth century (2002: 28). All these authors attribute the fall of the Muzzafar to the invasion of Mogadishu by Somali nomadic groups in the seventeenth century.

When ibn Battuta visited Mogadishu in the fourteenth century the ruler was styled a sheikh and he led the Friday sermon, indicating that religious authority was instrumental to his political power. The town's chief *qadi* was the ruler's closest confident, according to ibn Battuta, and an important source of power and prestige. The story of the founding of the first political dynasty in Mogadishu and the oral traditions that narrate this founding moment provide an even more illustrative example of the sway of religious authority in political power.

There are oral traditions[129] and accounts in Arabic sources[130] that tell the story of the rise of the first political dynasty of Mogadishu. According to these traditions the rise of this political dynasty occurred as follows.[131] Prior to the thirteenth century Mogadishu was governed by a council of lineage heads, 39 in total, representing the founding lineages of the town, and led by four notables known as *arba'a rukn* (the four pillars). The town's lineages had different tribal, political, and cultural backgrounds, but were mostly of Arab and Persian origin.[132] Even though the town's elders realized that they needed to organize themselves politically and militarily to defend "against nomadic encroachments upon their community, as well as against piratical naval attacks on their cities and their overseas commerce" (Hersi 1979: 180), they couldn't agree upon a leader amongst themselves. So despite the need for a more centralized political power, the town remained governed collectively from the ninth century to the thirteenth century by the lineage council.

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[129] For the oral traditions see Enrico Cerulli, *Somalia Scritti vari Editi ed Inediti,* 3 vols. (Rome: A Cura dell'Amministrazione Fiduciaria Italiana della Somalia, 1957, 1959; 1964); Scott Reese, *Renewers of the Age*, p. 42

[130] For the Arabic source accounts see, Ali Hersi, *The Arab Factor in Somali History.*

[131] I paraphrase the traditions as narrated by Cassanelli, *The Shaping of Somali Society*; Reese, *Renewers of the Age,* p. 42-50; Hersi, *The Arab Factor in Somali History*, p. 179-198.

[132] Hersi, *The Arab Factor in Somali History*, p. 177; Reese, *The Renewers of the Age*, p. 45.

All this changed in the thirteenth century when the lineage council were ousted by the arrival in Mogadishu of a poor stranger named Abu Bakr Farkh al-Din.[133] To his good fortune, Abu Bakr married a wealthy woman and the daughter of one of the town's notables. One day while Abu Bakr was at the Friday Mosque, an impoverished man stood after prayer and asked for help. No-one responded to the poor man's pleas. Two sheikhs then stood up and pleaded with those present to show kindness and give the poor man something. Still no-one replied. The sheikhs were very saddened by the stinginess of the congregation. Dismayed by what he witnessed and moved by an overwhelming desire to do good, Abu Bakr promised the two sheikhs that he would give the destitute man one hundred dirhams. The sheikhs blessed him and everyone went home. He made this promise despite knowing that he had very little property to his name. Abu Bakr left the mosque distraught because he didn't know where he would get the money, and he didn't want to ask his wife because it would mean his humiliation. When he got home his wife saw the sadness on his face and asked him what was troubling him. He told her what had happened at the mosque. His wife graciously gave him the money. At the same that night, while walking along the shore of the Indian Ocean, he found a block of ambergris thrown out by the sea. It appeared that God was pleased with Abu Bakr. He was all of the sudden one of the riches persons of the city, and everyone viewed his new found wealth as evidence of God's pleasure with him. Abu Bakr's reputation grew.

At one of their usual meetings, the town's governing *arba'a rukn* decided to make Abu Bakr the town's ruler. The majority of the lineage representatives, however, disagreed with this decision. They argued that Abu Bakr was a stranger to the city, and if anyone should be made the

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[133] Trimmingham holds that it was in fact the religious lineage of Banu Qahtan, which he calls the Muqri al-Qahtan, which monopolized the position of qadis (judges) in the city and "formed a ruling class of 'ulama (Trimmingham 1952: 68).

town's sultan it should be the Banu Qahtan,[134] the religious lineage that monopolized the position

of the town's *qadis* and whose integrity, everyone held, to be above reproach, "If we are to invest

one [as sultan) it should be the Banu Qahtan, who are more worthy of it as they are our *qadis* and

khatibs" (quoted in Reese 2008: 43). The Banu Qahtan declined the offer to become the town's

rulers. And after a short stalemate, the Banu Qahtan came up with a solution. They said they would

support Abu Bakr's selection to be the town's ruler but under one condition. He had to agree that

they should receive "a monopoly over the positions of *qadi* and *khatib* (Friday sermon preacher)

in perpetuity" (Reese 2008: 43). Abu Bakr agreed and with that the town's first political dynasty

was established. The Banu Qahtan for their part were secured in their monopoly over the office of

qadi and *khatib*. Abu Bakr also promised to appoint them as his administrative lieutenants. Over

the next four centuries Mogadishu was a city state governed by a series of short-lived political

dynasties. The most well-known and the longest lasting of these dynasties is the Muzzafar dynasty,

which the majority of opinion holds ruled Mogadishu from the end of the fifteenth century to the

mid-seventeenth century. The dynasty was ended sometime in the mid-seventeenth century in the

hands of Somali nomadic groups[135] who cut off the trading routes that connected the port city to

the interior, and proceeded to settle in the city leading to the division of Mogadishu into two

quarters that jostled for power (Cassanelli 1974: 36). The economic attraction in ruling the city

was the control over the trade with the interior and the customs duties levied on imported goods.

The city's political rulers also obtained profits from all commercial transactions as protectors

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[134] Hersi (1979: 180) mentions traditions that claim the *Banu Qahtan* religious lineage were the first to settle in the town and invited other lineages to join them.

[135] Hersi traces the presence of significant Somali nomadic groups in the city to an earlier period. He asserts that when Ibn Battuta visited the town in the thirteenth century the ruler was a Somali, "it seems reasonable to suggest, then, that sometime during the fifty years separating Fakr u-Din's accession from Ibn Battuta's visit the town must have been overrun by nomadic Somalis and political power rested from the colonists" (1979: 186).

(*abans*) of foreign merchants. There are no descriptions of the administrative structure of Mogadishu around the time of this small political dynasties.

Weather the above story of the emergence of Mogadishu's first political dynasty is historically accurate or not is not necessarily significant to my point here: that religious authority was integral to formations of pre-colonial political power in Somalia. Even if the story is apocryphal, it still highlights the importance of religious authority to local traditions of political legitimation, and suggests that a historical experience of such political authority. There are three important elements that individually and collectively emphasize that Abu Bakr's rise to political power was made possible entirely by religion: his status as a stranger, his selfless giving which wins him God's favor, and the intervention of the religious lineage of Banu Qahtan. Abu Bakr's first and most important identity is that he is a stranger. The tradition of the auspicious appearance of a wise and pious stranger, who mediates between disputing lineage groups and eventually rises to a leadership position and spawns his own lineage, is very common in Somali traditions of origin. What defines many Somali lineage groups is their claim to have descended from an Arab stranger, often one of the noble tribes of seventh century Arabia mentioned in the Qur'an, who appeared mysteriously and married a local woman.[136] The tradition of the pious *Muslim* stranger is no doubt common because it strengthens the people's Islamic identity by linking them directly with personalities and Arabian tribes from the time of the Prophet. Evidently, these stories also legitimate the religious authority and political supremacy of a particular group. These traditions are also common because a close association with the lands and personalities of Islam, or anything Islamic for that matter, is viewed as possessing the qualities of piousness, knowledgeable,

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[136] See Virginia Lulling, "Men in the Tree," *Proceeding of the third Annual Somali Studies Congress*, (1989), pp. 330-334.

integrity, and righteousness among others. In being associated with Islam the stranger comes to embody these qualities. Qualities that are also seen as essential to governance and leadership. This is why many of the primary acts associated with the pious stranger, as well as religious authorities in general, is conflict mediation and settlement. The stranger is always assumed to be pious, righteous, and knowledgeable, i.e. a good Muslim, who can bring peace and prosperity through honest mediation and righteous leadership. In this sense, the figure of the stranger occupies the same space in the social imaginary as the Shari'a expert, the righteous and knowledgeable Muslim, the religious man per excellence. Thus when the *arba' rukn* nominate Abu Bakr to be the town's sultan it's on the bases of his demonstrated piousness and kind-heartedness which won him God's favor making him prosperous. It's assumed such a man can make the town peaceful and prosperous as well. The lineage elders that opposed Abu Bakr's nomination could only counter by nominating a group made distinct by their assumed or actual religiosity and expertise over the Shari'a as *qadis,* the Banu Qahtan. The story of the rise of Mogadishu's first political dynasty therefore demonstrates that religion in general, and the Shari'a in particular, and those associated with its knowledge and practice, were essential to the formation of political power.

The next example of a pre-colonial political formation also underscores the significance of religious authority to the rise of a political power. It does so, similar to the first one, through the figure of the stranger who spawns a lineage that then founds a polity and becomes its politico-religious leadership.

II.   The Ajuraan Sultanate

The historical veracity of the Ajuraan Sultanate is even less certain than that of Mogadishu's first political dynasty. What we know of the Ajuraan is based entirely on oral traditions, oral traditions that are themselves very fragmented. In his book, *The Shaping of Somali Society: Reconstructing*

the History of a Pastoral People, 1600 to 1900 (1982), as well as in the PhD which this book is based,[137] Lee V. Cassanelli brings together the oral fragments and provides the best attempt at constructing the historical processes and events that might have informed the oral narrative. In the various traditions Cassanelli collected, the Ajuraan are said to have dominated southern Somalia from the late fifteenth to mid-seventeenth century, around the same time as the Muzzafar dynasty of Mogadishu which they were allied with. The seat of Ajuraan power was in the Lower Shabeelle River valley in the inter-riverine region, but their influence extended over a large area in southern Somalia encompassing the territories of numerous lineage groups. Given its close proximity to the Benaadir port towns, the Ajuraan Sultanate either controlled or was closely allied with the rulers of the Benaadir coastal towns. According to Cassanelli (1974: 22), the emergence of the Ajuraan Sultanate coincided with the movement of two population groups into the inter-riverine region and the Benaadir coast: pastoral Somali nomads from the interior and Hadhrami and Yemeni Arabs. The inter-riverine region has at different points in history attracted waves of pastoral nomads attracted by the region's water and pastureland. One half of the ancestors of the Ajuraan, oral tradition asserts, were one such group of pastoral nomads who recently arrived the area. The other were Hadhrami migrants from Yemen. Hadhrami migration into the Horn of Africa was at its peak during the late fifteenth and early sixteenth centuries. They often crossed the Gulf of Aden and migrated to what was then Islamic principalities to the southeast of Abyssinia. They came as merchants, preachers, and to take part in the conflicts between the unified Islamic principalities and the Christian Abyssinian kingdom. When the Muslims were defeated in 1543, many of the Hadhramis moved towards the Benaadir coast and "settled, among other places, in small communities on the Benaadir coast and along the lower Shabelle valley" (Cassanelli 1974: 22).

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[137] Cassanelli, *The Benaadir Past: Essays in Southern Somali History*, Ph.D. Dissertation, University of Wisconsin, 1974.

This reading of the origin of the Ajuraan is Cassanelli's attempt to reconcile the oral tradition with what the historical record reveals of population movements in southern Somalia.

The oral tradition simply asserts that the Ajuraan descended from the union of an Arab immigrant and the daughter of a local Somali. The full account of this origin story, collected by the Italian ethnologist Enrico Cerulli and translated by Cassanelli, is as follows:

There once lived in the country six men born of two different women, three of one mother and three of another; and all of a single father. Their father was Hawiyya.[138] Jamelle Hawiyya, Gurgaate Hawiyya, and Guggundabe Hawiyya are sons of a single mother. Haskulla Hawiyya, Rarane Hawiyya, and Karanle Hawiyya are sons of a single mother. Jambelle begat Faaduma Jambelle. She herded goats, pursuing them through the bush. While wondering through the bush, she spied a man perched up in a tall tree, like a sycamore. She said, "come down." "No," he replied, "let your brother and the brothers of your father, those of your tribe, call me." Then she summoned them. They came to the place and said to the man, "come down." He said, "I will descend if you will give me three things." "What are the three?" they asked. "For the first, Faadumo Jambelle; then a hundred camels with black humps; finally, a slave." Then he added, "if you accept these three, I add another: I must descend onto the back of a man." The six Hawiyya thought. The people of ancient time were few. What they desired was help. If the stranger should have sons while he remained among them, they could seek his help. Then they said to him, "We accept, come down."

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[138] Hawiyya is the eponymous ancestor of numerous lineage groups who live primarily in central and southern Somalia.

Guggundabe said, "let him descend upon my back." Gurgaate said, "No, we who have given Faaduma and a hundred camels – should he now also descend upon our backs. No!" he said, and refused. Then the man descended upon the back of Rarane,[139] the man. He married Faaduma Jambelle and begat Ajuraan. This man, who knows who he was? He was seen up in a tree.[140]

Such, according to tradition, is the origin of the Ajuraan. The rise of the Ajuraan to political leadership is based on their inheriting the religious prestige of their father, the Arab stranger. The legitimating role of their religious pedigree is further underlined by the selection of a particular religious lineage as the imams of the Ajuraan state. The blessedness (*baraka*) of the Arab stranger is said to have been passed on to one specific family among his descendants, the Gareen. The religious lineage of the Gareen thus monopolized the office of the *imam* (leader) of the Ajuraan Sultanate. The elders of the Ajuraan as a whole selected the wisest and most pious from among the Gareen lineage to be the leader of the Ajuraan polity. The religious authority of the Ajuraan imam is further confirmed by accounts such as the following one which relates that "the suldan (sic) of the Ajuran was in the mosque, preaching as *khatib* (Friday sermon preacher) when the war began. As the people finished the *qodba* (sermon) and were leaving the mosque the fighting began" (Cassanelli 1874: 24). Having risen to positions of political power based on their religious authority and pedigree, the Gareen lineage maintained their position through marriage alliances. Through their religious authority and marriage alliances, the Gareen linage established "a series of administrative centers in and around the well sites and irrigated river banks of southern Somalia" (Cassanelli 1982: 104). It appears that the Ajuraan polity "was not a cohesive territorial entity;

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[139] Rarane means the burdened in Somali.
[140] Cassanelli, *The Shaping of Somali Society*, 88-89.

rather it consisted of several clan territories joined together by the kin, marriage, and patron/client ties of the inhabitants" (Cassanelli 1982: 102). What the Gareen accomplished was to unify under their religious authority various pastoral groups who recently arrived in the inter-riverine area into a "clan" confederation. It's rather common in the history of pre-colonial Somalia for religious authorities or religious lineages to stand at the political center of a cluster of lineages, and in doing so help form a system of alliances and agreements between the collections of lineages.[141] It appears that the Gareen stood at this political center of the Ajuraan "clan" confederation based on their religious authority and marriage alliances, which reinforced the kinship loyalty of the leading families of the region.

The oral traditions about the Ajuraan sultanate also reveal something of the structure of the polity, and religion was significant here as well. As Cassanelli points out "what gave the polity its overall cohesiveness and longevity were the rudimentary administrative procedures and the theocratic ideology introduced by the Gareen" (1982: 104). The rudimentary administrative structure of the polity was made possible and run by the religiously educated among the population, "literate in Arabic, versed in the imperatives of the Shari'a, these holy men appear to have helped institutionalize Islam in the Shabeelle Valley" (Cassanelli 1982: 104). Around the fifteenth century

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[141] In many cases the various lineages brought together by the agreements made possible by a religious figure become a collective social unit. After generations the religious figure might be remembered as a saint. A good example of a lineage founded by the actions of a sheikh is that of a Mogadishu lineage called Reer Sheikh Mumin as recounted by Scott Reese, "according to the lineage's oral traditions, 'in the ancient time the clans living in Mogadishu were few, but even these continually fought amongst themselves.' The smallest lineages suffered the most as a result of the constant strife and were on the verge of extinction. At the height of the crisis *Shaykh* Mumn 'Abdullahi, a wondering holy man, suddenly appeared in the town from somewhere in the interior and began preaching against the internecine conflicts. As a symbol of his disapproval of clan based rivalries the shaykh consistently refused to reveal his own origin saying, 'whoever wishes to know my origins, should ask God.' In a more pragmatic vein he set about uniting sis of the town's smallest lineages (Reers Munyow, Hatimi, Aydarus, Drukhbow, Shams al-Din and the *Shaykh* Mumin) in an effort to protect them from the excesses of clan violence. These six collectively became known as the Skashatow (literally 'the cooperative') and began to act as a social unit" (Reese 2008: 45).

when the Ajuraan Sultanate is said to have arisen, the religious men who had such an education often came from the Asian communities on the Benaadir coast and Hadhrami itinerant preachers. These communities who lived, and still live, primarily on the coastal towns are locally known as *gibil'ad* (white-skin). This might explain why the Ajuraan are said to have descended from a union of an Arab stranger and a local woman. With the aid of these holy men, the Ajuraan polity developed a rudimentary administrative structure. Two elements defined the administrative structure of the Ajuraan polity: juridical matters and tax/tribute collection. As regards the law of the Ajuraan, oral tradition tells us nothing more the simple fact that they practiced the Shari'a, "the Ajuraan were very religious and their law was that of the Shari'a" (Cassanelli 1982: 92). Tradition, however, has much more to say regarding the collection of tribute by the Ajuraan.

In fact, the Ajuraan are identified with the collection of tribute to such an extent that some oral traditions claim the name Ajuraan came from the Arabic root *ajara* (to tax) (Cassanelli 1982: 92). It's said that the Ajuraan collected tribute both from the cultivators as well as the pastoral nomads. From the cultivators in the fertile inter-riverine region, the Ajuraan collected "tribute in the form of durra and *bun* (coffee beans roasted in butter)," whereas the pastoral nomads they "demanded cattle, camels, and goats" (Cassanelli 1982: 92). It appears that the Ajuraan forced the pastoral nomads to pay tribute by controlling access to water. This might explain why the places identified in the tradition as centers of Ajuraan power "are without exception sites of important clusters of wells," which suggests that control over important pastoral resources such as water and grazing was one way the Ajuraan enforced the collection of tribute (Cassanelli 1982: 101). To collect tribute the polity posted agents known as *emirs* or *naa'ibs* to the various districts of the polity. These agents were most likely the religiously educated literate clerics who were the only ones capable of book-keeping. Religious authorities were thus in all likelihood the tribute/tax

collectors of the polity. This is perfectly normal since tribute collection was probably justified as a form of worship. That is, as the duty on Muslims to give a share of their wealth annually as *zakat* (alms-giving). In the collection of tribute the agents were aided by "slave soldiers." The Ajuraan also relied on the conscription of labor who "dug wells for the imam's livestock and built fortifications for the imam's soldiers" (Cassanelli 1982: 92). In short, the Ajuraan polity's administrative structure was based on titles and practices of Islamic hierarchy and process of legitimation.

The polity's reliance on Islam is also demonstrated by the tradition of its fall. According to tradition, the Ajuraan declined because they "abandoned the law of Islam" and became tyrants (Cassanelli 1982: 94). This led people to rebel against them. Though they fought hard to maintain their polity, the Ajuraan were eventually undone, according to Cassanelli's historical reconstruction, by the emergence of new politico-religious leaders who challenged the authority of the Gareen imams, "these frontier sheikhs might wittingly or unwittingly become the focus of religious loyalties which stopped with them. These local loyalties quite obviously impaired the authority of the imams" (Cassanelli 1974: 46). Since the politico-religious leaders of the polity owed their political power to their religious authority, and since the rudimentary administrative structure of the polity was also based on religious authority and run by religious authorities, it was no surprise that the downfall of the Ajuraan polity was rooted in the loss of that religious authority. Even though Cassanelli says "a cautious yes" regarding the historical possibility of there being a polity like the Ajuraan in sixteenth-century southern Somalia, such historical accuracy is not necessary to my argument in this chapter. Similar to the accounts regarding the rise of Mogadishu's first political dynasty, it's not necessary for the purposes of this chapter's contention whether the oral traditions regarding the Ajuraan Sultanate reflect an actual historical event. It's enough that

these traditions reflect a historical memory and a social imaginary that centers religious authority to the Somali people's pre-colonial political experience. The next political power to emerge in southern Somalia is a nineteenth century sultanate whose existence is corroborated by written historical record. It's interesting that the history and the nature of this polity, particularly the centrality of religion and religious authority to its formation, is similar to and touches on some of the same dynamics we saw in the first two cases of pre-colonial polities.

III.   The Geledi Sultanate

The Geledi Sultanate was a "clan" confederation which dominated southern Somali politics at the beginning of the nineteenth century. The Sultanate was at its peak in the 1840s under the leadership of Sultan Yussuf Ali. Oral tradition suggests that the Sultanate probably emerged sometime between mid-seventeenth century and early eighteenth century (Cassanelli 1982: 100). Similar to the Ajuraan polity, the Geledi Sultanate was located in the arable inter-riverine region in the near-hinterland of the Benaadir coast. The center of Ajuran power and the seat of the sultan was in Afghoye, a market town on the bank of the Shabeelle River, and located on one of the trading routes that terminated in the Benaadir coastal towns. The Geledi was a genealogical unit consisting of nine lineages at the center of which stands a religious lineage known as the Gobron. Despite claims of common descent, Geledi identity probably formed out of different lineages and families who moved into the inter-riverine region around the same historical moment. The Geledi "clan" consisted of pastoral cattle herders, small communities of Arab and Persian origin, and sedentary cultivators. At the center of these various lineages, collectively known as the Geledi, stood the Gobron religious lineage. Even though there are eye-witness accounts of the Geledi Sultanate

during the reign of Sultan Yussuf in the 1840s,[142] there are no written historical accounts of its origin. What we know of the origin of the Geledi Sultanate, therefore, comes from the oral tradition. The following oral accounts collected by Virginian Lulling (2002) and Lee Cassanelli (1982) tell us something of the formation of the Geledi "clan" confederation and the rise of the Gobron lineage to politico-religious dominance:

> *After wandering through the country for many generations, the ancestors of the Geledi settled in the vicinity of the Shabeelle. As the story goes, a member of the Handab lineage discovered the river by following a white camel which always appeared to be well-watered even when the rest of the herd was suffering from drought. At the point where the camel reached the river, the settlement of Elqode was founded. Then Sheikh Mohamed Haji Yussuf of the Handab distributed the land to those lineages known as the Tolweyne. The Handab were henceforth known as the 'urad (literally, "the first-born") of the Geledi. A second group of lineages called the Yebdaale, settled downriver at a place called Balguri.*[143]

In this fragment from the oral tradition we are told that the ancestors of the Geledi came to the inter-riverine area after many years of wondering. They came to the area in search of water. The oral tradition suggests that the ancestors of the Geledi were pastoral nomads who migrated to the region attracted by its readily available water and pasturage. This confirms the historical pattern of pastoral nomadic groups moving into the region in different waves, especially during times of draught. These movements of populations into the area occasionally led to the establishment of alliances and the amalgamation of the different groupings to create what Cassanelli refers to as

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[142] The best eye-witness account is from Christopher
[143] Cassanelli, *The Benaadir Past*, 84.

"pastoral polities." The Ajuraan and the Geledi were such polities. We saw that both the oral tradition and Cassanelli's reconstruction of the historical record suggest that the Ajuraan polity also arose out of the unification around a religious lineage of different migrant groups. Similar to the Ajuran, the Geledi sultanate also emerged out of the migration of different groups into the area between the two rivers. In both cases it was the authority of a religious lineage that symbolized and stood at the political center of the "clan" confederations. According to the above oral fragment the lineages that together formed the Geledi consisted of two clusters of lineages: the Tolweyne and the Yebdaale. The next fragment explains how these clusters of lineages were merged together to form the Geledi by the authority of a religious lineage known as the Gobron:

> *The Gobron originally traveled and lived with the Yebdaale. At this time, the villages of the Yebdaale enjoyed sunlight as they do today, but those of the Tolweyne lived in constant twilight or mist. A member of the Adawiin (a gibil'aad lineage) saw how to remedy this. By reading his Koran, he perceived that the Gobron would have a great future. If the Tolweyne could get the Gobron to stand with them, they too would have the sun. One day the young men of the two groups were playing in an open field near their villages. Among them was 'Aalin Warre of the Gobron. A member of the Abikerow lineage sent two of his slaves to capture the young 'Aalin. They carried him off to the Tolweyne village. Then the sun rose over the Tolweyne group. The Tolweyne made an offering of peace to the Yebdaale. The two groups then accepted the situation, and to this day, the Gobron stand with the Tolweyne.*[144]

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[144] Cassanelli, *The Benaadir Past*, 55.

In this version of the oral story, the Gorbron religious lineage are presented as blessed with celestial favor. Their cohabitation, first with the Yebdaale then with the Tolweyne, brings light. Light here is a metaphor and symbolizes the presence of divine knowledge and grace, of truth, and by extension, of peace and prosperity. It's common in the many traditions commenting on religion to associate religious authority with supernatural and mysterious powers, which is often interpreted as prove of divine favor. Miracles are attributed to saints as a mark of their spiritual prowess. The Gobron lineage were particularly renowned for their mysterious powers. For instance, the nineteenth-century sultan of the Geledi is said to have possessed mystical authority, which "was seen to improve his ability to act as a mediator, as a diviner, and as a protector of his followers" (Cassanelli 1982: 133). In other accounts, the Gobron's rise to political prominence is portrayed as a byproduct of their capacity for mediation. It's said that they rose to prominence at a time of political ferment between the various lineages that would eventually form the Geledi. They "rose to power because of their ability to unite the continuously squabbling sub-clans of the Geledi through their role as mediators" (Reese 2008: 57). Their competence in dispute settlement was contingent upon their Shari'a-derived authority, which lent credibility to their rulings. That the Gobron were viewed as bearers of mysterious powers based on their possession of *baraka* only added to the force of their verdicts. In settling disputes, the Gobron became essential to the governing of relations between the lineage groups thereby helping to incorporate the Geledi "clan" confederation. Because of their authority to mediate they became identified with the settlements and alliances that they helped to reach between the various lineage groups. When the Gobron became the acknowledged religious authorities in the region, they simultaneously became integral to the establishment and governance of relations between the various groups in the area. And in doing so, they were well on their way to becoming the undisputed politico-religious leaders of the

region. Two process are therefore interlinked; the rise of the Gobron to politico-religious leadership and the formation of the Geledi "clan," "in any case the rise of the Gobroon to political dominance is bound up with the rise of the Geledi as a whole to power in the river area" (Lulling 2002: 176). The Shari'a-derived capacity to govern through dispute settlement was the foundation upon which the politico-religious leadership of the Gobron was founded. It is no surprise then that "before the colonial period the sultan is said to have acted as supreme judge" (Lulling 2002: 178).The politico-religious leadership position which the Gobron occupied exemplified the agreements and alliances between various groups, agreements and alliances that became essential to the region's economy.

After their settlement in the inter-riverine region, the ancestors of the Geledi, who were pastoral nomads, took up a mixed economic activity based on agriculture, pastoralism, and commerce. It's unknown the extent to which the Geledi clan confederation, led and held together by the Gobron, used the labor of their client cultivators who lived in the region prior to their arrival or imported slaves. In general, however, during the nineteenth century, pastoral groups who migrated in to the inter-riverine region used "client cultivators and imported slave labor from southern Ethiopia and elsewhere in East Africa" to produce large amounts of grain, sesame, cotton for local markets as well as for export (Reese 2008: 50). As the predominant power in the region during the nineteenth century, it's likely that the Geledi and their allies were immersed in this regional economy. As politico-religious leaders of the Geledi, the Gobron lineage, was instrumental in maintaining this regional economic system by, for example, protecting the trade routes. In fact, evidence suggests that Gobron sultans "consciously sought to extend Gobron authority along the axes of trade and commercial activity" (Cassanelli 1982: 104). The best demonstration of the Gobron as protectors of the regional trade came in the 1840s, when the most

famous Geledi sultan, Sultan Yusuf Ali, led the Geledi and their allies in a war against the reformist and militant religious community (*jama'a*) of Baardheere, named after the location of the settlement (see chapter 2 for more on the Baardheere Jama'a).

In its drive to reform religious life, the J*ama'a* forbade a number of practices such as chewing of tobacco and mixing of the sexes. Economically, their most significant act was to forbid the trade in ivory, an important product in the regional trade. The *Jama'a* also began to impede regional trade by harassing caravans or cutting off trade routes. This disruption of the regional economy no doubt allowed Sultan Yussuf to put together a formidable force that completely defeated the Baardheere *Jama'a*, burning the group's settlement to the ground. It is no surprise that "immediately following his victory at Bardera, Sultan Yusuf took measures to revitalize the ivory trade. He encouraged his allies to patrol the routes with bands of warriors, and by 1847 has succeeded in routing most of the caravan trade to Mogadishu via Geledi territory" (Cassanelli 1974: 105). The challenge of the Baardheere *Jama'a* wasn't of course only about economics. The *Jama'a* posed a direct threat to the religious authority of the Gobron. This perhaps explains why Sultan Yussuf was insistent upon destroying them.[145] At its height in the 1840s, this pastoral polity exercised enormous influence throughout southern Somalia, including over the coastal towns of the Benaadir. The Gobron sultans derived economic advantages from this regional economy, which their rule helped to maintain, but the economic advantages accrued to them more as a manifestation of their religious authority, and not as a result of violent coercion or administrative efficiency.

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[145] Cassanelli reports that Sultan Yussuf refused the peace offering of the leaders of the Baardheere *Jama'a*.

There was little administrative structure or territorial integrity to the Geledi Sultanate. The power of the Gobron sultans, therefore, didn't rest upon a hierarchical administrative structure. The sultan didn't have officials, "who attended to the day-to-day affairs of the various clans. Rather, he influenced them as a religious leader and as a guarantor of economic prosperity. When alien threat occurred in these spheres of activity, the sultan was a natural rallying point (Cassanelli 1974: 123). The sultans might have had a representative at important locations, but these weren't part of administrative structure that encompassed Geledi territory. The sultanate was a loosely structured and territorially dispersed confederation of lineage groups, who through their allegiance to the Gobron sultans, formed a web of alliances at the center of which stood the sultans (Cassanelli 1982: 104). It was thus the religious authority attributed to the Gobron that defined the coherence and power of the Geledi sultanate. Lacking administrative structure, the Gobron sultans also don't appear to have had the capacity to violently coerce the various lineage groups to pay tribute. The collective "clan" confederation of the Geledi, led by the Gobron sultans, was militarily capable of meeting challenges to their power. The Gobron sultans were able to rally around their leadership the various lineages in times when there was a common threat, as in the case of Baardheere *Jama'a*. This show of force, however, was often on ad hoc basis and temporary in nature, with the warriors gathering briefly for campaigns and dispersing afterwards. Even on the few occasions when they were gathered for a campaign the warriors weren't provided provisions, but instead relied on the spoils of war to sustain themselves (Christopher 1843: 94). The constant stream of economic advantages, which the Gobron sultans derived from their position was, therefore, not due to their ability to maintain permanent coercive threat, nor on the efficiency of their administrative techniques.

Despite their lack of coercive power and efficient administration, the Gobron sultans, nevertheless, derived revenues from various sources. They included presents from merchants or strangers passing through the country, tolls from caravans, and customs duties collected at the port of Brava (Christopher 1843; Lulling 2002). The most important source of revenue for the Gobron sultans, however, were the tribute which they annually received from the various lineage groups that recognized their authority. This tribute wasn't paid to the sultan because of the threat of his coercive powers. Rather, the tribute was considered *zakat*. The Gobron sultans of the Geledi sultanate received *zakat* in the form of annual tribute from the heads of the various lineages who had collected it from their respective constituents. The Gobron weren't alone in this. In fact, almost all pre-colonial politico-religious leaders relied on the institution of *zakat* as an important source of income. In many ways these pre-colonial polities were centers of income redistribution as the religious authorities who receive *zakat* were expected to reallocate it to the poor, the needy, the traveler, allies, and as largesse at festival times.

Though the historical evidence is scarce and much of what is said above about pre-colonial political formations in Somalia is based on oral traditions, it is clear that religious authority was foundational to the rise of pre-colonial politico-religious leaders in Somalia. More specifically, it was the Shari'a-derived authority of the *'ulama* to govern individual and social relations through dispute settlement that turned the *'ulama* into the central axes around which agreements and alliances were reached and maintained. This centrality of Shari'a authority to the formation of pre-colonial political power contradicts the contention in much of the literature on pre-colonial Muslim societies, which holds that there was a separation of authority and power in pre-colonial Muslims societies. It also shows that rise of Shari'a courts in Mogadishu after the disintegration of the postcolonial state in 1991, and their evolution into a political formation under the Union of Islamic

Courts (UICs) in 2006, should not be analyzed as marking a break with people's religious and political traditions. To the contrary, the emergence of religious authorities as political leaders in the UICs is continues with the precolonial political experience of the region.

Conclusion

The aim of this chapter, and the previous one, has been to contextualize the rise of the Shari'a courts within the history of the Horn of Africa region, particularly the history of the Somali people. More specifically, the two chapters intended to show that authority, as in religious authority, has been integral to the formation of political power in pre-colonial Somalia. In making this argument the chapters contributed to the literature on contemporary Islamic movements in two respects. First contribution dealing more with the literature on Islam in Somalia, and by extension sub-Saharan Africa, and the other engaging with the literature on contemporary Islamic movements in general as a world-wide phenomenon. As regards the firs contribution, the majority of the commentators (Hagman and Hoehne 2009; Le Sage 2004; Menkhaus 2005, 2006/2007; Rotberg 2005; Waal 2004) on Islamic organizations and movements in recent Somali history analyze and understand these movements through a framework of historical periodization that attributes a number of characteristics to contemporary Islamic movements. The attribution of these characteristics allows for a particular kind of analysis and explanations. One of the most defining characteristic of contemporary Islamic movements in Somalia, we are told, is their political nature. Recent Islamic movements, it's argued, have politicized "traditional" religious practices and beliefs by turning religion into an instrument for mobilizing the population to achieve a profoundly political goal, the capture of the state. To account for the newness and emergence of these movements foreign i.e. Middle Eastern influences are emphasized. Thus the movements, who may or may not view themselves as part of the larger global phenomenon known as Islamic Awakening (*al-Sahwa al-*

Islamiyya), are said to be motivated by ideas and practices that are modern and essentially foreign to "traditional" Somali religious practices and beliefs. The mixing of politics and religion, captured in the term *political Islam,* and viewed as the defining feature of contemporary Islamic movements in Somalia, underlines a historical periodization that explains current Islamic movement in terms of their distinction from "traditional" Somali religious practices. By stressing that religious authority has been fundamental to the formation of political authority in pre-colonial Somalia, chapters two and three destabilize this argument and the historical periodization which it articulates.

In stressing the centrality of religious authority to political power in pre-colonial precolonial Somalia, these two chapters also problematize a different facet of the literature on contemporary Islamic movements. An important argument, one that has assumed added significance recently, in the literature on Islamic societies addresses the relationship between authority, i.e. religious authority, and power, as in political and military power. This argument posits that in pre-colonial Muslim societies, authority was separate from power (Asad 2015; Hallaq 2003, 2009, 2013; Lapidus 2002; Messick 1993; Weiss 1992; Zubaida 2005). Authority was vested in religious authorities who were almost always distinct and independent from the political and military rulers of pre-colonial Muslim societies. The independence of religious authorities was made possible by the structural and epistemological bases of the Shariʻa. The epistemology of the Shariʻa, premised on the individual scholar's quest to approximate the intentions of God as revealed in the scriptures, authorized Muslim scholars (*ʻulama*) to set the norms that regulated social conduct, including the conduct of political and military rulers. In essence, the *ʻulama,* as Shariʻa experts, controlled the legislation and governance of Muslim societies. The independence of this Shariʻa-derived authority from political power was exemplified by the figure of the *mufti,*

the preeminent character in Shariʿa hermeneutics. It was, therefore, the Shariʿa that made the separation of religious authority from political power possible. With the emergence of the modern state over the past two centuries, however, the Shariʿa was transformed and delimited making it part of the legal structure of the modern state. Predictably, this development ended the historical separation between authority and power which has characterized pre-colonial Muslim societies. This narrative further informs the contention that the demand by present-day Islamic movements for the adoption of the Shariʿa by the state overlooks the reality that the Shariʿa as a historical phenomenon was never in the hands of state authorities. In this sense, the rise of these movements is itself a modern development reflecting the dramatic transformations of the past two centuries. In this chapter, we saw the integral role of religion and religious authorities in the formation of pre-colonial polities in Somalia. The brief oral and historical record of pre-colonial political formations in Somalia make it clear that religious authority, particularly Shariʿa-derived authority, rather than being separate from power, was the very foundation upon which political power was founded in pre-colonial Somalia.

The two facets of the literature, which I problematized above, have something in common. They both understate the importance of the history of Islam in places like Somalia, which is in the Islamic periphery, in the analysis and understanding of contemporary Islamic movements. They assume that the central dramas and the historically important developments of Islam occur in the lands of the "Islamic heartland." From there, it's assumed, they reverberate to other regions of the Muslim world. What if one takes a different approach? One which assumes that the so-called Islamic periphery teaches us about Islam at least as much as in the so-called Islamic heartland. In the analysis of certain topics, it might be said that the Islamic periphery provides better analytical insight because it hasn't been subjected to the dramatic transformations of modernity (Ware III

2014). In this sense, the Islamic periphery might do for the Islamic heartland, what theory from

the global south does for the global north (Jean and John Comaroff 2012).

CHAPTER IV

The founding of a community through the Shari'a

In this chapter I provide descriptions of the initial events that led to the formation of four of the Shari'a courts of Mogadishu based on the personal accounts of individuals who were deeply involved in the events and actions that culminated in the founding of the courts. The descriptions are drawn from interviews with key members of the Shari'a courts, biographical[146] and historical manuscripts,[147] as well as a religious document[148], all written in either Arabic or Somali by important players in the history of the Shari'a courts and/or the subsequent Union of Islamic Courts (UICs).[149] The selection of the four courts, described below, is determined by the completeness and coherence of the story of their formation that emerged from the interviews and the written manuscripts. The completeness of the picture we have of their rise helps to clearly bring to light various important themes that I found to have been shared in general by the different Shari'a courts. It goes without saying that the way the stories of the courts are remembered and narrated, as with any narrative, reflects the conflicts and positions that the individual narrators found themselves in at the moment of narration. This is all the more so given the history of the Shari'a courts has become entangled in what has followed the courts. Mainly, the Global War on Terror (GWOT) in

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[146] I got a hold of a biography of Sheikh Hassan Daahir Aweys. A man who has played a key role in much of the recent history of Islamic movements in Somalia. He is often referred to, by commentators, as the 'God father' of the Islamic Awakening (al-*Sahwa al-Islamiyya*) in Somalia. The biography is grandiosely titled, *The Leader of the Mujahidiin in the African Continent* (*Amiir al-Mujahidin fi qarni al-afriq*).

[147] There are two historical manuscripts, one in Arabic and the other in English. The Arabic language manuscript is written by a man named Dr. Omar Iman abu Bakar, who was one of the chief architects of the Union of Islamic Courts (UICs), though not very involved in the communal Shari'a courts that preceded the UICs. The book's title is: *The Trails of the Islamic Courts in Somalia: The Success and Limitations* (*tajriyat al-mahakim al-Islamiyya fi Somali*). The Somali language book, *The Rise of the Somali Islamists, 1952-2002 (Kobicii Islaamiyiinta Somaaliya, 1952-2002)*, is written by an amateur local historian named Abdulqadir Mire Adam.

[148] The religious tract is written by Sheikh Haamud Sheikh Ahmed Ziyar. The chairman of one of the first courts to be established in Mogadishu, the Islamic Court of Madina. In the pamphlet titled, *The Signs of the Wholesome Society*, Sheikh Xaamud discusses the reasoning behind the formation of the court. I came to the possession of this tract through the trust of the family of Sheikh Hamued, who is now deceased. I am grateful for their trust.

[149] This written material was collected and translated by the author.

the form of a U.S.-backed Ethiopian invasion of Mogadishu in 2006 and the rise of the militant Islamist group, *al-Shabaab*. I thus do not hold that the versions given here to be the absolutely "correct" accounts of how the courts formed and worked. Moreover, it's the general and reoccurring themes and modes of reasoning that emerges from these narratives which is of more interest. In my descriptions of the following four courts, I use the exact accounts of my interlocutors' answers to my questions without reproducing my questions. I provide brief contextualizations of the stories of the different courts, but in order to fully appreciate the context of the accounts below the reader should remember the general history of the Shari'a courts from the introductory chapter.

A key theme that emerges out of the accounts given below is the rise of religious authorities as politico-religious leaders and the simultaneous decline of the political role of "clan"-based faction leaders. I contend that the demise of the political role of lineage- or "clan"-based faction leaders was an expression of the fact that the "clan" as a political category was losing its coherence as the memory and experience of the postcolonial state faded. In other words, the "clan" as a political category only made sense in a world where genealogical units were depicted as a unit with authentic interests needing political representation at the state level vis-à-vis other clans. With the prolonged absence of the postcolonial state from the scene, the "clan" was no longer politically relevant. As both the "clan" and the political representative of the "clan," the faction leader, lost their political significance, the general attitude that the political role of religious authorities should be delimited no longer reflected people's lived reality. Consequently, religious authorities rose to political prominence. What we see here is essentially the de-privatization of religion as the experience of the postcolonial state faded from memory. The rise of religious authorities to political power climaxed when the previously independent communal Shari'a courts unified under

the UICs and took complete control of Mogadishu. In the accounts below of the initial formation of the communal Shari'a courts we see the beginning of this process. Some of the concepts and practices from the Islamic tradition that inform the actions and reasoning of the actors that founded the courts will be analyzed in the following chapter.[150]

I.   The Shari'a Court of Madina

The court of Madina was one of the first Shari'a courts established in Mogadishu after the disintegration of the institutions of the central state in 1991. There was a previous attempt by some religious scholars (*'ulama*) to establish a court in as early as February 1991, a few weeks after the defeat and flight of the regime of long-time dictator Mohamed Siyad Barre from the city. This attempt, however, didn't materialize into anything meaningful. It was undone by two faction leaders, who at the time were beginning to jostle for power. The Court of Madina was established in the district of Madina in the south of Mogadishu in mid-July 1992. It set an example for the other Shari'a courts that followed it. The themes and events that feature in the story of this court would regularly feature in the accounts of the other Shari'a courts that followed it. The following account of the court comes from two interlocutors who were intimately involved in its creation.[151]

> *After the start of the civil war the district of Madina became a place where every*
>
> *crime imaginable was occurring. There were so many mooryan[152] in the district.*

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[150] Documenting the accounts of the emergence of these Shari'a courts in the perspective and voice, as much as possible, of some of the key players serves another purpose besides the agenda of this chapter or dissertation. It's an attempt to provide and preserve for historical purposes an account of the memory of these events at this particular historical juncture. One often hears of Islamic movements, rarely does one get an intimate account of their genesis.
[151] The identities of my two interlocutors, as are most of my interlocutors, and their role within the court is concealed as much as possible, as per their wish.
[152] *Mooryan* is a term that became popular after the eruption of the civil war. It refers to the young armed men who roamed the streets manning checkpoints and preying upon the population to sustain themselves. For more on the *mooryan* see Roland Marchal, "Forms of Violence And Ways To Control It In An Urban War Zone: The Mooryan in Mogadishu," in *Mending Rips in the Sky: Options for Somali Communities in the 21ˢᵗ Century*, edited by Hussein M. Adam and Richard Ford (The Red Sea Press, Inc.: Lawrence, NJ, 1997), 193-208.

At first, the mooryan only preyed upon the minority[153] clans (qabil)[154] who were small and unarmed. The mooryan belonged to the Dauud clan who dominated the area. Members of the Dauud clan weren't targeted because the mooryan knew that they wouldn't get away if they committed a crime against a member of the Dauud clan. Eventually, there were less and less minority clans to prey upon because they all fled the district, so the mooryan began to target members of their own clan, the Dauud. So now everyone felt the pain of the mooryan's crimes. The mooryan lived in buildings whose owners had fled, and they drank alcohol and chewed qat[155] there. They would take whichever woman they wanted and rape her there. That is when a group of us young men decided that we couldn't tolerate that our neighbors were killed and raped right in front of us. We could not just watch this reprehensible acts (munkar) happen. We organized people in our neighborhoods. We hid these meetings. There was a small shop, and that's where the young men met. Each young man who could get a weapon had one. We called ourselves 'opponents of evil' (humaan diid). And people also began to put their money at the shop as well, so it could be safe.

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[153] By minority clans, the interviewee is referring to members of communities who have historically lived, and still live, in the coastal towns of southern Somalia, including Mogadishu, for centuries and who often trace their heritage to Arab or Persian origin, or to Bantu language-speaking agricultural communities who primarily live in the inter-riverine region. He is also using it in reference to members of lineage groups whose "home" region is considered to be elsewhere in the country

[154] My interlocutors use the term *qabil*, a term from the Arabic language which is best translated as "clan" or "tribe," to refer to kinship-based identities. As mentioned previously, I prefer to use the terms lineage, descent, or genealogical unit/group to avoid the landmine of controversy that surrounds these terms in Somali studies, and in anthropology in general. For more on this see the exchange between Besteman (1996, 1998) and Lewis (1998) in the journal *Cultural Anthropology*. As will be clear from the accounts of the courts, the conflict after the disintegration of the previous regime played out along lineage identities and exasperated them. As a result, most of my interlocutors' descriptions and understanding of the conflict is through lineage politics.

[155] *Qat* or *chat* is a mildly stimulant leaf that is chewed in social gatherings or just to pass time throughout the Horn of Africa and Yemen.

One day we were praying in a mosque and I noticed that a man who used to pray

with us at the mosque wasn't there. He always used to pray but he wasn't there

that day. After the prayer, I asked the people where he was, and everyone said, 'I

don't know.' The man was jareer,[156] he wasn't our lineage (reer). It was after

'Isha (late evening) prayer. I suggested we go to his house and see. One sheikh

came with me. We went to the man's house and found the whole housed

ransacked. He lived by himself. His family had moved to another part of the city

to escape the mooryan in Madina. He probably stayed behind to look after the

house. We concluded he must have been kidnapped. Since he used to work in the

bank and he didn't come from an armed clan he was an easy target. After we

came back from his house the sheikh went to his house and I went to the shop

where we used to meet. There I saw some of the guys. I told them what had

happened. We talked and we asked ourselves, why are we here? Aren't we here to

protect ourselves, to help each other and our neighbors? Isn't this man our

neighbor? Isn't he a Muslim? Isn't it our duty to protect him? We decided we

would go look for him and when we find him, depending on what lineage the

holders were, people in our group from that same lineage would take

responsibility for dealing with the kidnappers. We looked for him all night, we

went to the houses and places where we knew the mooryan stayed. We looked for

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[156] *Jareer* or hard-haired is a term used to refer to what used to be a Bantu-speaking cultivating populations who have historically lived in the inter-riverine region (see chapters two and three for more on the populations in the inter-riverine region). For more on the Bantu see Catherine Besteman, *Unravelling Somalia: Race, Violence, and the Legacy of Slavery* (University of Pennsylvania Press: Philadelphia, 1999); Ken Menkhaus, "The Question of Ethnicity in Somali Studies: The Case of Somali Bantu Identity," in *Peace and Milk, Drought and War: Somali Culture, Society and Politics*, edited by Markus V. Hoehne and Virginia Luling (Columbia University Press: NY), 87-104; Omar A. Eno, "The Untold Apartheid Imposed on the Bantu/Jarer People in Somalia," in *Mending Rips in the Sky: Options for Somali Communities in the 21st Century*, edited by Hussein M. Adam and Richard Ford (The Red Sea Press, Inc.: Lawrence, NJ, 1997), 209-220.

him all night and in the morning we prayed in a street in front of a house we suspected. The house belonged to a well-known leader of a group of mooryan. As we stood in front of the house thinking about what to do a man emerged with a gun. The man was the same lineage as one of the leaders of our group. So he took the initiative of capturing him and took responsibility for holding him. We took him to an empty house that had a big tree in front of it; we choose the house because of the tree. We could sit under the tree and meet people there.

When the mooryan heard what we did they attacked us, but we defended ourselves. The mooryan began to be less visible in our neighborhood because they realized that there were armed people who would confront them. They went to other neighborhoods within the district. We then began to help young men in those other neighborhoods to organize themselves. That is when we started to face many challenges. People would call us when there was a robbery by the mooryan, we would go there and confront them. In those confrontations some people would be wounded, some killed, and sometimes they would put down their guns and run away or we would capture them. When we captured one of them, we couldn't just release him back to the public because he would continue with robbing and killing people, and we didn't have a prison or food to keep him. And we couldn't just kill him because that would make us just another Mooryan. So what do you do? Everyone we captured also belonged to a specific lineage within the Dauud, and sometimes it so happened that the person we captured was a close relative of one of us. And that someone would say 'this is my cousin, let him go.' So we had many problems. If we captured someone who was injured we had no

way of treating them. We decided to gather the traditional elders, who were

absolutely powerless to do anything about what was happening. They were having

many problems themselves because of the mooryan. The elders had to resolve

conflicts and pay money and property in compensation because of the problems

caused by their relatives who were mooryan. People who were wronged by the

mooryan came to the elders and held them responsible. And the elder couldn't do

anything about his own son or nephew who was a mooryan. If they tried they

themselves would be shot. Their own daughters were being raped. We told the

elders, 'we want to fight the mooryan, and we want to do so in accordance with

the Shari'a.' We asked them, 'do you see the actions of the mooryan as something

acceptable?' And they all said 'you are right, they are evil and they have troubled

us to no end.' We then said, 'if we are of the same opinion, then we should do

something. Since each of these young boys who are causing all this evil comes

from a lineage represented by one of the nabad doons[157] (peace makers) and kaba

qabiil[158] (clan chief) who are here, and other community leaders like business

people. We want you to sign that when these mooryan are captured they can be

treated in accordance with the Shari'a.' We also called the 'ulama. There were

big 'ulama at the district, like Sheikh Hamud Sheikh Ahmed Ziyar.[159] We told

them, 'if we don't do something about their evil actions, there will fall fitna

(affliction, destruction) upon both us and them. You know the religion of Allah.

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[157] The term was coined during the Siyad Barre regime in an attempt to transform and undercut the traditional role of lineage elders.

[158] *Kaba qabil* or clan chief came into usage during Italian colonialism of southern Somalia.

[159] Sheikh Haamud was the chairman of this court and the author of the important religious tract mentioned in a footnote above, where he argued, among other things, that in the absence of a government a people had a duty to organize and govern their affairs in accordance with the Shari'a. For more on Sheikh Hamud's argument in this document see the next chapter.

Everyone we capture is going to be brought before you, you will be informed of their transgressions, and we want you to judge these people brought before you in accordance with the Shari'a. The execution of the judgment (hukm) will not be your responsibility.' The 'ulama agreed and organized amongst themselves a committee called the Council of the Court. The elders also organized themselves and created a committee called the Council of the Signatories. That is how the court started. The opening celebration of the court happened on July 19, 1992. By signing the elders agreed that anyone from their respective lineages who is caught doing something bad should be judged in accordance with the Shari'a. The 'ulama got together and selected some 'ulama from amongst themselves, as well as the chairman and the deputy, and the general secretary of the court. They were all volunteers (mutadhawi'in) just like us. This is how the court got the backing of the public. We found a big house in the neighborhood and we asked the owners and they allowed us to use the house, and that is where the court was based. After a few amputations and executions most of the mooryan either run away or they put down their weapons and became good. The leadership of the court was divided into three parts: the council of elders, the security force, and the judges. This is how the courts started and it was great success.

Most of the people that worked for the court worked as volunteers initially. People took turns doing the work of the court when they weren't busy with their own affairs. The general public used to help with different things. Some people brought food, others helped with transportation, some turned their guns over to the courts. That is how things were at the beginning. Then the business

community organized themselves and established what was called 'Aid for the Workers of the Court' (Taakulaynta Hawl Wadeenada mahkamadda), which was collected from shops and public transportation mini-buses. Later on we collected money from sales of houses, land, and cars. We didn't call the money we collected tax because tax is totally against Islam. A group of young men were made responsible for collecting the money. After the collection of funds some of the people who weren't busy with their own businesses began to receive small salaries.

The actual procedures of the Court of Madina aren't very clear from the interviews. This is partly because the independence of the court was undermined by the emergence of a militia leader who took control of the district and placed the court under his "administration" within months of its creation. That is when, according to a history of the Shari'a courts written by Omar Iman, one of the chief architects of the UICs, "the *'ulama* who stood up to establish this court left, since it was no longer doing the good for which it was established. The leader of the district became party to the competition between the warlords of the area. And the court changed from a court of Shari'a, and it became a district court under one of the warlords" (Iman 2008: 39). For instance, Sheikh Hamud Sheikh Ahmed Ziyar, who was a well-known sheikh in the district and the chairman of the court when it was first established, was forced to leave the court and flee the district after his life was threatened by the new faction leader whose control the district came under. According to one of my interlocutors, Sheikh Hamud, who is now deceased, wanted to make it public that the court was no longer a Shari'a court because it yielded to the dictates of a known militia leader. He was prevented, however, from doing that when the people in the district told him that having a court, even if its rulings were circumscribed, was better than not having one at all. The Madina

Court thus continued under the "administration" of the militia leader until 2001, when it was completely disbanded by the same militia leader. Conflicts with militia leaders and warlords is a constant feature of the history of the Shariʿa courts of Mogadishu as will be better demonstrated by the next account. The account of the next Shariʿa court also better reveals some of the procedures of the Shariʿa courts of Mogadishu.

II. The Court of Karaan[160]

The next experiment with a Shariʿa court in Mogadishu took place in the district of Karaan in the northeast of Mogadishu. The court's establishment came as a result of some of the same factors of insecurity that led to the emergence of the previous Shariʿa court in the district of Madina. The Shariʿa court of Karaan was established in August 1994 in the district of Karaan. Going back to as early as 1992 the city was divided into two zones separated by a green line. On the southern side of the city was under the control of the powerful warlord Mohamed Farah Aideed,[161] while the northern side of the city was under Ali Mahdi. The two strongmen belonged to the respective lineages of Habar Gidir and Abgal. The two lineages are branches of the larger genealogical unit known as Hawiya, which lives primarily in central and southern Somalia. The two men had previously been members of the United Somali Congress (USC), an armed opposition rebel movement whose members predominantly belonged to the Hawiya. The conflict between them arose after they disagreed over who should assume power after the USC captured the capital. As a result, the city was divided into two zones after a bitter conflict between them ended in a stalemate in 1992. As the conflict between the two strongmen stalemated, crime increased exponentially and

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[160] This court went by a number of different names including, the Court of the Abgal and the Court of northern Mogadishu.

[161] Aideed is the warlord that American marines attempted to capture in 1993, but failed to do so losing the lives of 18 marines and countless Somalis in the process. This battle has been dramatized in the move *Black Hawk Down* (2001).

freelance militias increased checkpoints and divided the city into racketeering fiefdoms. It's in this environment that the Court of Karaan is formed.

> *The establishment of the court was really motivated by insecurity. To give you an example there were two markets in the area. Between these two markets money had to be transferred because it was just too dangerous to carry money and walk. For example, if there was a money transfer shop in one of the markets you would hand in your money there and the shop keeper would call another money exchanger at the other market and you would pick your money there, for a small fee. Insecurity got worse after the conflict between Aideed and Ali Mahdi ended. Remember the war was a "clan" war.[162] The forces weren't encamped. Everyone just picked up their gun and went to the battle. The forces that were led into battle, they all had their own arms. They were paid nothing. No-one was taking orders from anyone. So when the conflict between Aideed and Ali Mahdi ended, everyman who had a gun set-up a checkpoint.*
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> *On May 19, 1994, there was an incident where some Habar Gidir elders complained that a group of Mudulood[163] gunmen had robbed them. A meeting was held by the Abgal. During this meeting it was decided by the Mudulood that Shari'a courts should be set-up. Three Sheikhs representing the three branches of the Abgal were sent out. After these sheikhs failed to move the issue forward, I*

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[162] As mentioned in footnote 5 in the intro, most of my interlocutors understood and explained the Somali conflict through lineage politics. In this regard local people's everyday explanation of the conflict reflected the "expert" analysis of many commentators who saw the Somali conflict as a modern manifestation of age-old "clan" fueds.

[163] Mudulood is often used interchangeably with Abgal, but there is a slight difference. The category of Mudulood encompasses a number of lineages that are assumed to have descended from a common ancestor. These are: Abgal, Issa, Mobaleen, Illawa, Wa'daan, and Hilib. Since the Abgal is by far the most numerous of these "brothers," the name Abgal is sometimes used in place of Mudulood.

and three other sheikhs decided to get involved in setting up the Shari'a court. We were aided in our efforts because there was already a document that had all the signatures of the Ahl al-Hal Wa'l-'Aqd[164] of the Abgal. Imam Abdi Iman,[165] may Allah reward him, had got all the Mudulood 'ulama and the elders of all the different families (reer)[166] to sign this document. By signing this document each family agreed to have their sons judged in accordance with the Shari'a, even if that meant their hands might be amputated or they might be executed. All we needed now was the signature of the politicians of the Abgal. And who was the political leader of the Abgal? Ali Mahdi. So we decided to go to Ali Mahdi. After we told him that we wanted to create a Shari'a court, he said bring me a document showing that this is the decision of all the Mudulood. We showed him the document. As we were sitting a sheikh came in and said he was just robbed on his way. Mahdi said 'this is the last time this will happen to you' and he drafted a decree and signed it. We then consulted with 11 sheikhs and decided to name 15 sheikhs as the judges of the court. We selected Sheikh Ali Mahamud aka Sheikh Ali Dheere as the chairman of the court, after our first selection turned it down. We selected Sheikh Ali because he was an 'Alim (scholar), he was a man who worked for peace, and he wanted to establish and lead the court. When the names of the judges we selected reached other big 'ulama, such as Sheikh Sharif Sheikh

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[164] In Medieval Islamic political practice, the term refers to those whose task it was to select the leader of the Muslim community (*umma*). In this case it's used to refer to lineage elders and the 'ulama. For more on this and other terms see the next chapter.

[165] Imam Abdi Iman is the nominal head of the Abgal. He is supposedly a direct descendent of the "imam" of the first Somali nomadic group to have settled in Mogadishu in the seventeenth century.

[166] Reer can refer to a family of a husband and wife. It can also refer to a subset of a larger lineage. When used in the latter sense, it's interchangeable with *juffo* or *jilib* or *beel*.

Muhiyadiin,[167] they refused to accept them saying the majority were "long-beards" (gar-dheerayaal)[168]. In those days people considered anyone who went to a modern school a long-beard. After the refusal of the judges we selected we held a big meeting at Sheikh Sharif Sheikh Muhiyidiin's house where 63 sheikhs attended. We selected a committee of 9 members and gave them 2 lists of 15. From the lists given to them they named 15 judges, and the 63 sheikhs in attendance confirmed the list. I was one of the chosen judges. After all this was decided, someone stood up and said we needed someone above us to oversee our actions. Three Sheikhs were chosen representing the three main branches of Abgal: Sheikh Sharif Sheikh Muhiyadiin (wa'budhan), Sheikh Hassan 'Adde (Harti Abgal), Sheikh Osman Hiddig[169] (wa'esle). The name of this three-man oversight committee was The Supreme Organization of the Islamic Courts (Hay at al-Mahakamat al-Islaamiyya). They were like the Ministry of Justice. After all this, we said 'okay we have judges and an oversight committee, but we have nothing else: no money, no compound, no security.'

A small group of us met and we decided to meet with the business people. There were four markets in the Abgal districts. The business people came from these markets. The business people created a committee of 21 from amongst themselves. The court was in the interest of the business people because with security their property wouldn't be robbed and people could come to the markets and safely shop. Later on in 1995 the port of 'El Ma'an was opened. Remember the big port

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[167] Sheikh Muhiyadiin is a well-known Sufi sheikh from the Qadiriyya brotherhood who has a big center in Mogadishu.

[168] Gar-dheere or long-beard is a pejorative term for members of the new wave of Islamic reform movements.

[169] Sheikh Osman is also another well-known Sufi sheikh from the Salihiyya brotherhood.

of Mogadishu was closed after the warlords couldn't come to an agreement over how to share it. Before the Islamic court, the port of 'El Ma'an was a small place with no facilities. The Islamic courts expanded the port and handed its operations to the business people. The business people used the port to bring in products from other places in the world and they were responsible for collecting money at the port for the courts. The port was owned collectively by the people of the area and we managed it. The money collected went to the central account (qasnad), which was called the Account for the Implementation of Islamic Shari'a. The money collected for the courts was called 'Aid for the Islamic Court' (Taakulaynta Mahkamada Islaamka). After the Islamic courts were destroyed, the port fell into the hands of a group of businessmen with each using it according to his power, and they invested in the port and whoever among them was the most powerful managed the port.

After we created the business committee to support the finances of the court, we then put together the committee for security. We began with 72 security forces. Later they were increased up to 300. They were volunteers. The only condition was that they be Mudulood or other clans that live with them. They were given food and a small salary. We then put together a group called Rijaalu Salihiin (the good men) which brought together all the traditional elders from this area. This committee was needed to link the various clans and the Islamic courts and to resolve cases that the courts couldn't resolve. You know there are issues where a judgment can't lead to a resolution. For instance, if a man who belongs to clan x has his property illegally taken from him by another man who belongs to clan y,

and the first man responds by taking, in return, the property of another man, who had nothing to do with the original crime, simply because he belongs to the clan of the first perpetrator. How do you solve such a case? This is where the Rijaalu Salihiin come in. They dealt with such issues. Such issues had to involve clan negotiations, settlements, and forgiveness. Rijaalu Salihiin involved clan elders in resolving such issues. There was also another good reason for the court to employ men like the Rijaalu Salihiin because it gave employment opportunities to many people, so more people accepted the courts. All the committees: the business committee, the security committee, the Rijaalu Salihiin, and the judges at the court, were all under the 3-men oversight committee.

On August 11, 1994 the court was opened at Badar neighborhood in Abdul'aziz district. We called the court at Badar the High Court and it was headed by Sheikh Ali Dheere. Of the 15 judges selected only 5 showed up. The others wanted to wait and see if the court would actually take off. Some of them joined us later. I remember one day after this decision, I was in a car with a loud microphone. We were going around and announcing to the people the opening of a court. A group of mooryan held me at gun point and said 'hey, you want to get rid of us right?' they told me to shut up and leave now. I left and got some of our security forces and came back with my loud microphone. When they saw I was back with forces they run away.

Eventually we established 11 district courts. When we were setting up a court in a district we would ask the big sheikhs in that district to select judges for the court from the 'ulama of the district and pass their choices to the 3-men oversight

committee, which was later renamed 'the Council for the Implementation of the Shari'a' (Golaha Hergelinta Sharee'ada) for confirmation. We were very fair; no-one could accuse us of favoring one lineage over another. I remember one time when Sheikh Osman Hiddig and Sheikh Sharif Sheikh Muhiyadiin sent me to revisit a case that was decided by the High Court of Sheikh Ali. After I revisited the case, I told Sheikh Hiddig and Sheikh Sharif that it wasn't reasonable for us to call the court the High Court and for me to revisit its cases. So we created an appeals court in Boondheere district.

When a case came to the court it would go to the chairman. He then would assign one judge or multiple judges depending on the severity of the case. If the case was civil, one judge was enough. If the case was criminal ('iqaab), it required multiple judges because the ruling could be capital punishment. The agreed upon madhhab (a school of thought in Islamic jurisprudence or fiqh) was Shafi'i (one of the four Sunni schools) to decrease room for disagreements, and because the people know this madhhab the most. Cases came before the court in one of two ways: some cases were brought before the court by the plaintiff. If the case was civil we asked the defendant to come to the court, if it was a criminal we apprehended the perpetrator. The other way cases came to the court was if the court apprehended criminals in the act. When a case came to the court, the accused had two options: a) confess; b) deny. If the accused denied, the plaintiff had to bring witnesses. The witness has to be Muslim, performs salad (daily prayers), a just person, mature, of sane mind, must not be someone who is known to be a liar or drinks alcohol or commits other transgressions, or doesn't fast. If a

witness lies on purpose and the court finds out, the ruling that was carried out on account of the witness's testimony will also be carried out on the witness. If the accused isn't happy with the witnesses' testimonies he would have to explain. If there is no confession and no witnesses than the question is who has the right of swearing on the Quran (dhaarta ya iska leh). The right of swearing belongs to the accused. If the accused swears on the Holy Quran that he is innocent of what he is been accused of than the plaintiff has to be satisfied with this 'this is the Shari'a'. If, however, the accused is afraid or hesitant to swear on the Quran then the plaintiff will be given the chance to swear on the Quran that his accusation is correct.

There was a case when five men robbed a girl of her jewelry. The case was brought to the court. She claimed that one man held her at gunpoint, another took her jewelry, and the other three helped in other ways. When the man she claimed held her at gun point was asked, he denied it. Sheikh Ali Dheere (the chairman of the court) hit the man with his cane and told him, 'stop telling lies to the court.' Sheikh Ali didn't weigh the consequences of his actions. One of the other judges got up and left the court. The remaining judges continued with the case and convicted all five robbers. Of course, they couldn't carry out this ruling without the signature of the sheikh who left. All the presiding judges needed to agree. So the court sent respected elders and sheikhs from the same lineage as the sheikh who left to try to convince him to come back to the court and sign the case. They told him his actions were destroying the court. He replied he couldn't sign a judgment for which he wasn't present. He also told them he would only go back to

the court on two conditions: a) the case had to be retried; b) Sheikh Ali had to be removed from the case because he became the enemy of the defender when he hit him. They agreed and the case was retried. During the retrial he asked the man whom the girl was accusing of holding her at gunpoint to swear on the Quran on his innocence. The man declined to swear on the Quran and confessed to the crime. 'This is why this case amazed me. This boy's faith was so strong that he preferred to have his limps amputated rather swear on the Quran on a lie. People don't lie to an Islamic court.' After he confessed and the other three also confessed, only the guy who took the girl's property with his own hands had his hands amputated, the other ones were spared. 'The religion is very kind.'

In cases where someone killed another and confessed, the first question was intentionality. If it was unintentional then there can be no capital punishment, there can only be blood compensation. If it was intentional then it goes back to the victim's closest kin. Three things are open to them: forgive; take compensation; or have the court execute the murderer. If the relatives agree upon the killing and if none of them are crazy, and none of them are absent, and none of them is a minor, then it will be carried out. If one of the relatives is crazy or a minor or absent the case has to be delayed until the necessary conditions are met because it could be that they later on say I want compensation. If the present and mentally sound relatives agree upon compensation and/or forgiveness then the absent or the mentally unsound doesn't have to be waited because they can benefit from the compensation and their share will be set aside, but if the person is killed they benefit nothing. In cases of disagreement: if some chose

compensation and others death, the person cannot be killed. The ruling belongs to those who want compensation. If some chose to forgive and others chose compensation, then those who chose to forgive can only forgive their portion of the compensation.[170] In the case of theft or robbery, if the parties to the case come to an agreement before the court hears the case then it's over, but once the case comes to the court the court's decision is independent of the people involved in the case. This includes murder committed in the act of robbery or theft.[171]

The court worked from 1994 to the beginning of 1998, but only the first 9 months were perfect. There were many conflicts and disagreements the rest of the time. The court extended from Harar Yaalle to Harar Dheere.[172] The court became powerful because the people accepted it. After the court was first established we hang the first hand we amputated on a tree for everyone to notice.[173] Crime reduced dramatically and the part of Mogadishu under the court's power became very peaceful. The increasing popularity and power of the court caused a

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[170] As the sheikh explained this point, a man who was sitting with us said "it's unbelievable how fair and just the Shari'a is." This was a very common refrain from my interlocutors. Even Shari'a judgments in such seemingly harsh punishments as an amputation is conveyed as kindness to both the individual and society. People often cite a Qur'anic verse whose rough translation is 'a life for a life is a kindness to you all, if only you knew.' As one sheikh explained to me, the thought is that, for instance, the thief whose limp is amputated or the murderer who is executed are thereby saved from a far worse punishment in the afterlife, while society is also saved from the corruption which the continuous commission of their crimes would have entailed. Punishment is thus not seen as revenge, but as a cleansing of both the individual and society.

[171] As my interlocutor was explaining these Shari'a procedural norms and authoritative opinions he would leap out of the mat he was sitting on and pick out a Shafi'i manual from his personal library and point to the exact page where there was support for what he was saying.

[172] Harar Yaalle is a neighborhood in Mogadishu and Harar Dheere is a town in central Somalia. This is an area where the Abgal predominates.

[173] This court is remembered to this day for its severity in regards to *hudud* (crimes for which the Qur'an spells out punishment). Omar Iman writes that "this court was different from other Islamic courts in its severity. It carried out hududs of the Shari'a impartially without showing kindness to anyone" (2008: 46). The severity of this court's judgments is worthy of note because the majority of its leadership were *Sufi* sheikhs. This goes to show the general perception that the strict and harsh interpretation of the Shari'a is a hallmark of reformist, particularly Wahhabi-inspired, Islamic movements isn't always true.

problem. The 'ulama at the court, especially the chairman of the court, Sheikh Ali Dheere, thought that the court could work independently of the political leaders of the Abgal. Who was the political leader of the Abgal? Ali Mahdi. Sheikh Ali Dheere thought, why should an Islamic court be under a faction leader? People began to call him 'the commander of the faithful' (Amiir al-Mu'miniin). I think what happened is that some 'ulama from the other side of the city came to Sheikh Ali and told him they wanted to unite with the court, so that the court could work for all the people in Mogadishu. But the court couldn't work for all the people of Mogadishu if it was under the control of the leader of one clan, Ali Mahdi. They created problems for us. All they had to do was create a court of their own on their side, and then we could have united when we were both strong.[174] The politicians responded by saying, 'how can a small court that they created yesterday threaten them today?' The politicians used traditional elders and the 3-men oversight committee. Sheikh Ali Dheere and some of the other men at the court were relieved of their positions at the court and given other responsibilities. Another man was made the chair of the court. Sheikh Ali Dheere refused and he was told you cannot amputate a single person's hand without our authority and you aren't a judge. One of the elders said to Sheikh Ali 'it's us who are holding at the elbow the limbs which you are cutting at the wrist. If we let go you won't be able to cut.' The guards at the court were ordered not to allow Sheikh Ali Dheere into the premises of the court. Sheikh Ali Dheere came to the court with his

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[174] This comment reflects the memory of how the Shari'a courts eventually overcame the warlords. Each district and/or lineage group created their own court thereby undermining the militia/faction leaders' claims to lineage representation. The courts then unified and run the warlords out of the city.

guards and fired at the court. What do you think is going to happen if he fired at

the very court he was at yesterday? The court was destroyed and Sheikh Ali

sought shelter in his clan. After the court was destroyed the people went back to

their clans, and the problems and insecurity came back.

There is much to unpack in this account of the formation, structure, and demise of the Court of Karaan. More will be said of this account, and of the other ones, in the next chapter. It's important, however, to underline a couple of issues at this point. As is readily evident from the account, the complicated relationship between religious authorities or the Shari'a and political leadership is more stark in the experience of this court. There is an idea of a political space, personified in Ali Mahdi, whose sphere of operation is assumed to be distinct from the sphere of religious authorities or the Shari'a. The sheikhs needed the permission of the overall political leader of the "clan," Ali Mahdi, in order for them to institute Shari'a rule within the clan. I believe this idea of a political sphere distinct from the sphere of the Shari'a is a product of the experience and memory of the colonial and post-colonial periods. It's worth noting that the "clan" political leadership's relationship to *Sufi* religious authorities is amiable and free of suspicion, while their relationship to the "long-beards" (*gar-dheerayaal*) is characterized by suspicion and fear. This isn't surprising because many of the political leaders of the "clan" were former members of the previous regime. The "long-beards" are those associated with contemporary Islamic reform movements. Ali Mahdi viewed the partisans of the so-called Islamic Awakening (*al-Sahwa al-Islamiyya*) as a threat to his political position. This is characteristic of the post-colonial state's relationship to partisans of reformist movements. Many of those I spoke to about this court mentioned a specific event that clarified for them the conflict between Ali Mahdi and Sheikh Ali Dheere, and led to the court's demise. In the midst of the conflict between the court's leadership

and the politicians, Sheikh Ali Dheere, the chairman of the court was interviewed on the BBC Somali language service. He was asked about the nature of the conflict between him and Ali Mahdi. The interviewer asked him, was it political? To everyone's surprise, Sheikh Ali said "yes, of course it's political. He doesn't want me to be visible in the public arena." Everyone thought this was a terrible blunder on Sheikh Ali's part because he basically admitted that he was attempting to operate in a sphere, the political, where, as a religious man (*wadaad*), he shouldn't have been. Clearly, he overstepped the bounds of his field, most people thought.

The concept and practice of politics that is articulated in this account underlines an understanding of the political as an autonomous sphere with its own logic and apparatus of managing and directing the affairs of society. The "clan" in this account is understood as a political society. This understanding and experience of the "clan" as a political category with authentic interests is a product of the colonial and postcolonial periods. We will see in the following account that as the civil war continued and the experience and memory of the postcolonial state dissipated, the clan lost its significance as a political category. Without the sovereign territorial state the concept and practice of politics as an autonomous sphere lost all coherence. Concomitantly, the "clan" as a political category ceased to reflect people's daily experience, and clan politicians simply became "*qab-qablayaal*," individuals who said and did whatever was to their selfish gain. In short, they became and began to be viewed as warlords rather than legitimate political representatives of a "clan." And with those two developments, the attitude that the sphere of the Shari'a, and by extension Shari'a authorities, should be delimited by the political was no longer socially meaningful. Consequently, a notion of authority embedded in the Islamic tradition became operative in politics.

Another important issue is the fact that the work of the Shari'a courts, was as much about mending broken relationships and finding equitable solutions as applying the strict legal positions of the Shari'a. One aspect of this work is captured by the creation and work of "the good men" (*Rijaalu Salihiin*), who were tasked with finding solutions to complex problems. The "good men" were mostly traditional elders and not necessarily Shari'a experts. They were chosen for their wisdom, good reputation, and knowledge of Somali custom (*heer*). Somali custom recognizes a distinction between what is justice (*haq*) and a solution (*hal*).[175] When resolving a dispute, Somali elders ask themselves whether the best way forward is to find a solution, irrespective of whether it meets the standards of justice, or whether they should be guided by what's just. They frequently say that the best way forward is to find a solution to a dispute rather than justice. Moreover, a Shari'a court was frequently a site for advice, warnings, and moral exhortations. Advice, warning, and moral exhortation was an integral part of hearings. For instance, before asking litigants to swear on the Qur'an or before the testimony of a witness, the judges would go on lengthy lectures about the dangers of false testimony or swearing on the Qur'an on a lie. As a judge in one of the courts explained to me, "we always gave good lessons to the people before and during the hearing of a case to help them understand the evils of doing wrong, of transgressing, of lying, and robbing people. By the time the actual hearing of the case began they would be ripe, ready, and satisfied. This was even more important than the case. Sometimes a person simply confessed to a crime and asked to be forgiven after such a lesson."[176] When I pushed the sheikh that it was still possible for someone to swear on a lie on the Qur'an or give false testimony. He responded by citing a hadith and saying that in Islam a court's decision is viewed as helping to bring to a close a dispute but

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[175] The fact that these terms are Arabic and not Somali indicates that they developed in a social milieu that was saturated by the language and concepts of the Shari'a. This is a reflection of the complex intertwinement of Somali custom with the Shari'a.

[176] Interview, May 2015.

not as a final say on justice. Justice, he said, can only be had on the Day of Judgment. Evident here is an idea of worldly justice that is neither final nor infallible. For Shari'a justice to have worked in a context like Mogadishu, where there was no overarching power whose threat of force would ensure that a court's decision was adhered to, the idea that the justice of the courts was neither final nor infallible, and that a day of final reckoning was coming, was absolutely necessary.

III.   The Court of Sissii

Like with the accounts of the other courts before it, insecurity is underlined as the primary reason for why the Court of Sissii was established. The neighborhood of Sissii in the north of Mogadishu, where the court was established around 2003, was said to have been a "predator's den" (*bahalla galeen*). Sissii by the early 2000s had become a center for criminal networks throughout Mogadishu and beyond. Hostages and stolen or robbed property, particularly cars, were brought to three garages in Sissii and sold to the highest bidder. The Militia there were so heavily armed that it was difficult for the relatives of the victims to attack the criminals and try to rescue the hostages. Criminals in other parts of the city, who could not keep hostages in their location for fear of reprisals from the victims' family and friends, used to make deals with the criminal bosses in Sissii and bring their hostages or stolen property there. For this reason the criminals called Sissii the "house of safety" (*Bayt al-Ammaan*). By the time the court of Sissii was founded, there were Shari'a courts in various neighborhoods and districts throughout Mogadishu that were established by different families/lineages. These lineage-based Shari'a courts were able to establish a modicum of security in their neighborhoods, but the dismal insecurity in Sissii directly impacted their neighborhoods. The security forces of these courts couldn't attack the criminal centers in Sissii because in the course of the civil war districts and neighborhood throughout Mogadishu had become the "home" areas of different lineages. The criminal centers in Sissii were run by members

of the lineage that lived in that same neighborhood. Thus an attack on these criminals by a Shari'a court from a different neighborhood and thus a different lineage might have provoked a lineage conflict, which the Shari'a courts were keen to avoid.

This meant that the only people who could have done anything against the flourishing criminality in Sissii, which was affecting the entire city, were the people who lived in the neighborhood. It had to be the relatives of the criminals. It's against this background of insecurity in Sissii, and the presence of Shari'a courts in other neighborhoods, that the Court of Sissii emerges. The account of the formation of this court reveals two things. It shows, more profoundly than other accounts how the criminality of the *mooryan* had so outraged one's very being that inaction was no longer a choice. This reveals an idea of an embodied virtue that compelled one to recognize injustice and to act. This idea of being forced to act in the face of evil is present in the accounts of the other courts, but not as stark as the account of the Court of Sissii. Another issue that becomes noticeable in the account of the creation of the Court of Sissii is the beginning of a process of collaboration between different Shari'a courts. This process would eventually lead to the eviction of the warlords from Mogadishu and the formation of the UICs. In this account of the Court of Sissii, we see some of the initial reasons for the collaboration, as well as the fact that from the very beginning the creation of a Shari'a court was motivated by a need to undercut warlords and clan militias. The following accounts are two reactions to the same event, reactions that culminated in the formation of the Court of Sissii.

> *It all began as a result of the crimes that were taking place in Sissii. There were*
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> *three garages in the area. Hostages and stolen cars were kept there. All the*
>
> *criminals in Mogadishu used to come there. The mooryan called the garages bayt*
>
> *al-Ammaan (the house of safety) because no-one could come and attack them in*

this place. Every Friday night all the criminals came from all over the city, and they bought and sold the hostages and stolen property between themselves. It was an auction. The hostages were forced to auction themselves. They were forced to describe their wealth and their health. The hostage would say 'my health is fine, my family can pay this much, we have such and such property. I have a daughter and a son in the diaspora. I will talk to them, they will send money.' He auctions himself like that. Kidnapping was a big business. There was internal kidnapping and external kidnapping.[177] There was one incident which really made us angry. The criminal kidnapped a gibil'ad (light skin) man.[178] He had diabetes. He died in captivity. This made me and a lot of other people sad and angry. There were seven of us who were friends. We decided to do something about this. We visited a local sheikh. We put the matter before him. He took the decision to advise us that it was unacceptable that people should be sold at these garages. We shouldn't watch this and go to our mosques every Friday and not talk about or do something about these reprehensible acts (munkar). It was unacceptable. He said a jihad was compulsory upon us. The seven of us were just friends in the same neighborhoods. We weren't wadaads (religious men). We just refused to accept the evil that was happening in our neighborhood.

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[177] Around the early 2000s there were a group of Mogadishu warlords who were in the CIA payroll. They were tasked to capture individuals the CIA suspected of involvement in the 1998 East Africa bombings. The warlords of course viewed this as a business opportunity and began to kidnap people who had nothing to do with the bombings and not wanted by the CIA. This is what is being referred to as external kidnapping. Internal kidnapping was kidnapping by common criminals in the city.

[178] *gibil'ad* or light-skin refers to members of communities who live primarily on the coastal towns of the Indian Ocean in southern Somalia, including Mogadishu. They trace their origins to Arab or Persian descent. The term *gibil'ad* refers to their lighter complexion compared to Somali nomadic groups.

The 7 of us managed to convince a guy in the neighborhood to join us. This guy had weapons and a security force because he had business with Western aid organizations. He used to protect them when they were doing projects in Somalia. He hated the garages and the criminals because he wanted to be the top guy in the district. He agreed to work with us. One day we decided to block the road that the hostage takers used to come to the garages in Sisii from other parts of the city. They took this one road because all the other roads had checkpoints manned by the militiamen of other warlords. It rained heavily that night, but we told ourselves that Allah was testing our resolve and we should bear it. Finally a van came and we stopped it at gunpoint. The gunmen on the bus told us that they were the men of one of the garage owners. We told them to hand over their guns and they did. They probably thought we were just another mooryan and we would just let them go. We found six tied and blindfolded men in the minivan. We untied them and, instead, we tied and blindfolded the gunmen. We handed their guns over to the hostages and told them to keep guard as we transported the criminals to the center of the neighborhood strongman who agreed to work with us. We held the kidnappers there. The next morning we were attacked by other mooryan, but we managed to defend ourselves. That same day we were joined by 24 other men with their guns. We were also joined by Sheikh Sharif Sheikh Ahmed,[179] who told us he wanted to become part of this civilian security force. We wanted to judge the kidnappers in accordance with the Shari'a and maybe kill them. But we

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[179] Sheikh Sharif would go on to become the chairman of the unified Shari'a courts and the UICs. He then defected from the UICs after they were defeated and joined the UN-funded and protected government and became the president of the Transitional Federal Government (TFG) in 2009.

released the mooryan after Sheikh Sharif convinced us that it would do more harm to judge them in accordance with the Shari'a now since we are weak and we don't have a Shari'a court. He also suggested that we should create a Shari'a court. We brought together all the Ahl al-Hal Wa'l-'Aqd (see footnote 17 and the next chapter for more on this term) of the area. They all agreed to establish the Court of Sissii, and they made Sh. Sharif the chairman of the court. Sh. Sharif was chosen for three reasons: 1) he was an 'alim (scholar) who knew about religion and also about the world. Both his father and grandfather are well-known Sufi sheikhs; 2) He was someone from the area. He belonged to the lineage whose mooryan were causing all the problems; 3) he was ready to do the job and had shown his readiness.

After the creation of the court, one of the first things we did was to go on radio stations and broadcast the court's formation and request money. Up to 500 people called in and donated money as small as $5 and as much as $1000. People called in from all over Somalia, even Somaliland.[180] From this broadcasting we got a lot of money. We did this twice with the same response. We used some of this money to recruit and pay former militia gunmen to become the court's security. We recruited enough gunmen to be able overrun the garages and release many of the detainees. We didn't really put these gunmen through re-orientation. We wanted to use them first, and then as we recruited more good people to slowly weed them out. After taking out the three garages there emerged, a conflict between the neighborhood strongman who initially agreed to work with us and

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[180] Somaliland is the secessionist region in the north.

the Shari'a court. He wanted to collect taxation from a market in the area. Sheikh

Sharif refused because the people were helping us with money and there was no

need to extort money from them. When we refused he kicked the Shari'a court out

of the area. We were now weak and without much support, but we decided to not

give up. We came up with this idea to encourage ourselves. The idea was if you

are engaged in a game of pull-a-robe and you are losing, you let go of some of the

robe and concentrate on getting a better grip and holding on to the parts you can

hold on to. This meant that even though we were defeated we weren't completely

defeated, and we should still strive to do what we can. We also didn't want the

population to think that the Shari'a court was done for and become disillusioned.

So we began making rounds during nights after 10 pm. We couldn't come to the

main streets because that is where the armed militias were. We patrolled the

small streets and alleyways for tuug na'as (petty criminals). If we captured one

we would beat him up. If the thief had any property we would force him to tell us

whom he had stolen it from. Then we would return the property and release the

thief. No families came to defend the thieves. Who would want to claim and

defend a thief? After doing this for a while Sh. Sharif decided to go back to the

University Graduates,[181] and the Graduates decided a union of the existing courts

at the time should be made. They met at the court of Harar Yaalle, which was

called the mother of the courts (hooyada mahkamadaha), and then at Hotel

Daameeye. They decided to form a union of the then existing courts. It was at this

meeting that Sh. Sharif was elected the chairman of the courts. This was done in

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[181] See chapter six for the story of the university graduates from Sudan and their influence on the unification of the courts and the rise of the UICs.

order to support the Court of Sissi because everyone wanted to solve the criminality in Sissi. The entire city was suffering because of Sissii.

The following is an account from a different interlocutor who was also moved to act by the reprehensible act (*munkar*) that led to the old man's death.

It was sometime in 2003 maybe 2002, I am not sure. You know Mogadishu was divided between the Abgal and Habar Gidir. Each area had its own terrible place where there was a lot of crime, but the worst was here in Sissii. I used to live in Madina (a district on the other side of the city) but I fled here after two militias began to fight over Madina. Sissi wasn't so bad then, but it became really bad later on. For example, there was a girl who came back from Sweden. She came to visit her family but soon as she back her father was kidnapped. Hostages were burnt with plastic. This woman was pregnant. Her father died while they were torturing him. This incident really bothered me. There were traditional elders but some of them were bad. They are 'pirates of tradition' (bur'ad dhaqameed). They worked with the criminals. When a person was kidnapped or property taken, they would broker a deal (dilal) between the criminals and the victim. For example, if your relative was kidnapped, they would come to you and tell you, 'this is how much the kidnappers are asking for,' and you would tell them, 'this is how much I can pay,' and so forth. I know some of these elders, but I don't want to name names. In Islam when you see evil being done you must do something. So one day, it was Friday, after Friday prayers I stood up and said 'I have something to say. Anyone who leaves now is a thief.' I told them that the people who are doing all these reprehensible things (munkar) are our boys. In fact, some of them may be

praying here with us. How can we be in the mosque everyday praying when Muslims were being burnt and killed in front of us? What happened to us? Our family (reer) used to be known all over Somalia for its goodness, for its religiosity. I told them in Islam when there is evil taking place where you live you have two options: either you move away and go live elsewhere (hajir) or you must do something about it. I said these are the only options, so what are we going to do? I didn't plan to give a speech. I was just moved, my body was shaking. I couldn't stop my tears from flowing. I saw other people were also crying. There was a sheikh there and he stood up and said I was right. I am not a sheikh, I am Tabliqh.[182] I joined the Tabliqh in 1995. But I know the religion and I always worked so that people would understand the religion. I have always worked to protect those who were suffering injustice and tell people they are equal in religion. Also, my family is respected, we are listened to. After I finished my talk a young boy stood up and said, has anyone gone to the garage where the criminals keep their stolen property and hostages and told them how evil and anti-Islam their actions are? After the young boy said that, I said let's go to the garage now and tell them. So we all left and went to the garage. We were about 100. When we got closer to the garage they started shooting at us. Everyone run away except three of us. We kept going straight. They yelled at us 'we will kill you.' We said 'only Allah can kill, and we will tell you what we need to tell you.' They stopped shooting at us. We told them what they were doing was wrong and all the people

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[182] Jama'at al-Tabliqh is a transnational Islamic piety (*da'wa*) movement, which originates from India. For more on this movement see Barbara D. Metcalf "'Remaking Ourselves:' Islamic Self-Fashioning in a Global Movement of Spiritual Renewal." In *Accounting for Fundamentalism*, ed. Martin E. Marty and R. Scott Appleby (Chicago: University of Chicago Press, 1994).

wanted them to stop. We asked them 'will you stop what you are doing or not?' They told us 'we won't stop, do whatever it is you think you can do.' We left and we stopped on the road and we prayed. A few days later we heard what the madani[183] did. Then Sheikh Sharif Sheikh Ahmed joined the madani and a Shari'a court was declared. I think Allah answered our prayer. I, of course, joined the people who were working with the court. After the court was established, the bad guys came to us and said they wanted to join the court. They heard the court was giving food and some money to its security force. We allowed them to join. We didn't say you were a thief, so you can't join. We allowed them to join, but we opened a madrassa where they learned religion, and a center where they trained on how to use weapons. I worked in both places.[184]

Viewed in relation to the Court of Karaan, which was about a decade before the Court of Sissii, there is no mention in the account of the Court of Sissii of a need to get the permission of the "clan's" political leader. There was a local strongman of course that those wanting to establish a Shari'a court had to contend with, but by no means was he seen to occupy a legitimate political space encompassing the entire lineage group. A political space that would have given him the right to have a say about whether or not a Shari'a court was established. The "clan" as a political category was no longer relevant and thus there was no need for a clan political leader. The clan as a political category existed in a world where there was competition for political power at the state level. After the conflict stalemated in the early 1990s, the anti-regime rebels that were previously organized along kinship lines fractured and the number of militia leaders and *mooryan* increased

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[183] A self-organized and all voluntary neighborhood watch group.
[184] This account is the same vignette from the introduction.

tremendously, and began preying upon the very communities whose interests they were supposedly organized to protect. Consequently, communities at the neighborhood level began experimenting with ways of addressing insecurity and governing relations between and amongst themselves outside of these militia groups and their leaders. The Shari'a courts emerge as one of the most effective of these local self-governance initiatives.[185] By the time the Court of Sissii is being established, around early 2003, there are at least 4 other Shari'a courts in Mogadishu. The various Shari'a courts helped one another as each court engaged in a conflict with the militia leaders and *mooryan* in its specific area of operation. The Shari'a courts from this time are often called "clan courts," and rightfully so, because they were formed for and by specific lineages and extended families. The courts weren't, however, advancing clan interests. To the contrary, the formation of the Shari'a courts were part of developments that were undermining the very idea of the "clan." The "clan" had lost its significance as a political category and had become a category that was used by militia leaders and *mooryan* to justify their wars and criminality. That is, their very existence.

One of the motivations for undermining the significance of the "clan" was to personalize and individualize criminal responsibility so as to curtail the criminality of the *mooryan*. To accomplish this the attitude that the lineage should bear collective responsibility for the harm inflicted by of one of its members had to be broken. In Somali society, particularly among the pastoral nomads, there was, and still is, a practice that kinsmen collectively receive blood-compensation (*diya*) or seek revenge if one of their members is harmed by a member(s) of another lineage group. In fact, one of the defining characteristics of the kinship system in Somalia is this

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[185] For more on the none-state-centered local governance initiatives of this period see Ken Menkhaus, "Governance without Government in Somalia: Spoilers, State Building, and the Politics of Coping," *International Security* 31, no. 3 (Winter 2006/2007): 74-106.

collective responsibility and duty. This feature of Somali kinship relations has led British social anthropologist I. M. Lewis to coin the term *diya*-paying group to categorize what he viewed was the most stable of Somali kinship units.[186] The traditional practice of collective responsibility led to abysmal outcomes in the context of the conflict in Mogadishu. The various militias and armed young men started using the idea of collective responsibility both to justify their crimes and to seek shelter from criminal responsibility. For instance, a *mooryan* or a group of *mooryan* who belonged to a specific lineage would rob, harm, or kill a person who belonged to another lineage. In response, a *mooryan* belonging to the victim's lineage would target any member of the lineage whose *mooryan* had perpetrated the first act. The *mooryan* targeted notable or wealthy members of the target lineage for vengeance. The *mooryan* were of course doing this for their own financial ends. But it was justified in the name of lineage politics. It was as though the people had become hostage to the category of the "clan." Establishing a Shari'a court was an effective way to undercut the logic of this cycle of crime, on the basis of which the *mooryan* justified their criminality. I was frequently told that a Shari'a court was established to "save ourselves and other people from *our mooryan*." One way this was achieved was when, for instance, a *mooryan* committed a crime, his closest relatives would capture him and bring him to the nearest Shari'a court. This was done to pre-empt any rationale for revenge by the family of the victim. Since the offender was captured and brought before a Shari'a court, the family of the victim could go to the court to seek redress. Through the Shari'a court the perpetrator's crime was his alone. The rehabilitation centers of the Shari'a courts also allowed families with young delinquent men, who were on the streets and likely to commit crimes, to pre-empt such eventuality by bringing the young man to the court for

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[186] See I. M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics among the Northern Somali of the Horn of Africa* (London: Oxford University Press, 1961).

rehabilitation. In doing so, they avoided having to be held responsible for future crimes he might have committed.

By establishing clan-based Shari'a courts, the people were repossessing and taking ownership of the clan as a category, and at the same undermining it. It was often said that when a lineage established its own Shari'a court, the *mooryan* could no longer find shelter in their "clan." By establishing a Shari'a court a community was defending itself from becoming a direct target of the *mooryan* as well as being responsible for the crimes which their own members might commit. It wasn't just armed and dominant lineages that were creating Shari'a courts. Our last case is a brief account of a Shari'a court established by one of the so-called minority clans to protect themselves from being constantly victimized by the *mooryan*.

IV.   The Court of Buula Tignico

The Court of Buula Tignico was, unlike the other Shari'a courts whose accounts we saw above, a court established and run by one of the so-called "minority" clans in Somalia. There is no Somali language equivalent of the term minority; it has come into use recently. It refers to members of lineages outside of the 4 major "clan-families:" Dir, Darood, Hawiya, Digil and Mirifle.[187] There are countless small lineages that belong to this category. In southern Somalia, the *gibil'ad* (light-skin) communities on the coast and the cultivating communities in the inter-riverine region, who have recently formed a collective identity as "bantu,"[188] constitute the most visible minorities. These groups have borne the brunt of the civil war as they were most vulnerable to militias from

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[187] Digil and Mirifle is one name

[188] For more on the emergence as a collective identity See Ken Menkhaus, "The Question of Ethnicity in Somali Studies: The Case of Somali Bantu Identity," in *Peace and Milk, Drought and War: Somali Culture, Society and Politics*, edited by Markus V. Hoehne and Virginia Lulling (Columbia University Press: New York, 2010).

the major "clan."[189] As agriculturalists, the Bantu have historically resided in the most fertile region of Somalia, the inter-riverine area. Their land was thus highly sought after throughout Somali history. During the civil war, militias belonging to pastoral nomadic groups from central Somalia occupied the arable land of the inter-riverine region dispossessing the cultivating populations in the area of their land. That dispossession combined with draughts have led many of them to move to major urban centers on the Indian Ocean coast, like Mogadishu. The majority of the internally displaced populations that live on the outskirts of Mogadishu or in the abandoned and dilapidated government buildings belong to this population. The founders of the court of Buula Tignico were members of one such community. They lived in an area that was previously a vocational school. The *mooryan* in Mogadishu used to terrorize the entire population of the city, but the so-called minorities were without any protection and completely vulnerable to their depredations. The *mooryan* had no fear of retaliations for any attacks on these groups. They were frequently targeted as an easy prey. The following account provides an illustration of how one of these minority communities organized their self-defense against the *mooryan* in the form of a Shari'a court.

> *There were a lot of problems in our area; there were kidnappings, robberies, rapes, and murders. People were like wild animals. They were committing every crime imaginable. All the people in the area were jareer. A group of mooryan from one of the big and armed clans accused a local man that he stole something from them. The Mooryan were thieves who controlled that area and did whatever they pleased. People belong to Allah, but after that the people in Buula Tignico*

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[189] See Lee Cassanelli, "Victims and Vulnerable Groups in Southern Somalia," *Immigration and Refugee Board*, Ottawa, 1995; de Waal, Alex, "The UN and Somalia's Invisible Minorities." *Cultural Survival Quarterly* 18/1 (1994). (http://www. culturalsurvival.org/ourpublications/csq/article/ the-un-and-somalias-invisible-minorities

there were owned by the Mooryan. They raped whom they pleased, took what they wanted, and killed whom they wanted. The area and the people were theirs. They blindfolded the man and ordered him to run through a fence, while they were shooting at his feet. They shouted at him to tell them where he took the money. He screamed for help but no-one came to his aid. Anyone who dared to say 'why are you doing this to this man' would have been shot. They shot him 11 times and placed the corpse right in front of my house. That same place became the location of the court later on. When they killed him, they said no-one could move the corpse. I wasn't there when this was happening; I came back in the evening. I told the people to move the corpse and bury it. I used to be a sheikh in the area. People respected me and listened to me. I had close to 60 followers (hir) there. Even the mooryan knew me and respected me a little because I was a Sheikh. I wasn't abused like the rest of the people. After this incident, we held a meeting among the jareer people, and we asked ourselves, what can we do? 'This happened today and it will happen tomorrow.' At that time preparations were ongoing for a Hawiya conference in Jowhar.[190] I think it was 2003. We asked ourselves, 'should we go join the Hawiya?[191] Should we go and say we want to be part of you. And if we decide to do so, since the Abgal and Habar Gidir are in conflict, which of the two families should we join? We can't just be alone.'

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[190] A small town about 90 km to the northwest of Mogadishu

[191] The idea of joining the Hawiya probably refers to a tradition of clientship (*sheegad*) in Somalia, where a smaller and/or weaker lineage receives the protection of a larger one in exchange for pledging political allegiance to it. For more on this tradition in southern Somalia, see Lee Cassanelli, "Hosts and Guests: A Historical Interpretation of Land Conflicts in Southern and Central Somalia," *Rift Valley Institute Research Paper 2* (2015): 1-39.

There were also the courts. There was the court of Ifka Halane and the court of

Shirkoole. Or, should we establish a court and join the courts? So that our people

are safe from each other and from the other clans. We decided that we shouldn't

join any clan. They couldn't handle us because we were our own clan and more

numerous than many other clans. For us Jareer to join Habar Gidir or any other

clan is an insult, we thought to ourselves. The people that were behind this were

reer shabeelle.[192] *But once we stood up to establish this court, all the other jareer*

came to us and the court became the court of jareer. The Court of Sissii was only

six days ahead of us. The other courts in existence were Ifka Halane, Shirkoole,

Harar Yaale, Sissii, Towfiiq. They were all clan courts. I went to the men of the

courts, and I told them that we as jareer want to build our own court. They

welcomed us very nicely. I went to them individually. While I was visiting with

them, there was also a jareer meeting that went on for 14 days. We had nothing.

We had no guns, no money, all we had was the Qur'an. We decided we had to join

the courts. The people meeting were Ahl al-Hal W'al-'Aqd. They were the elders

and the 'ulama. They said to me, I had to be the one to lead the court. They said

they had no-one else. They said, it had to be me since I was one of the family, and

I had some knowledge ('ilm), and I knew many of the 'ulama in the other courts.

They asked me to establish the Shura council and the Executive Council. The

Shura is a committee from the clan made up of 'ulama and elders that can reach a

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[192] Reer Shabeelle means the people of the Shabeelle in reference to the Shabeelle River. These are people that have traditionally live on the banks of the Shabeelle River.

decision on behalf of the clan and say that's the clan's position. When we created

the court it meant the jareer were saying 'we have accepted the Book of Allah.'

After establishing the court the community proceeded to expel the *mooryan* that have terrorized them out of the neighborhood. They did this by organizing themselves, collecting a small amount of money from each family in the area, purchasing weapons from the market, and putting together a small security force. This security force managed to attack all the houses where the *mooryan* were known to stay. After ousting the *mooryan* from their neighborhood the court notified everyone, including the *mooryan*, that only individuals who had the court's permission could carry weapons in their neighborhood. Throughout all of this, the court was aided by the other already existing Shariʻa courts. They assisted them with moral support and with some weapons. They also promised to come to their aid should they be attacked by a large and well-armed militia. By 2003, when this court was being established, the practice of coming to each other's aid had become a habit between the various lineage-based Shariʻa courts. The *ʻulama,* through the institutions of the Shariʻa courts, were well on their way to creating a networked leadership group capable of dislodging the *mooryan* and militias from the city.

The rise of the *ʻulama* to positions of leadership wasn't simply a consequence of insecurity and violence, which drove the people into the clutches of conservative clerics, as many commentators contend (Ahmad 2015; Menkhaus 2006; Rotberg 2005; Waal 2004). True, the insecurity and the social upheavals following the collapse of the previous regime constituted the background that conditioned and motivated the actors and the actions that led to the rise of the courts. There were, however, specific concepts and practices in the Islamic tradition that undergirded the reasoning and actions that resulted in the formation of the Shariʻa courts and the

politico-religious role of the '*ulama* within them. We take a look at some of these concepts in the

following chapter.

CHAPTER V

The Islamic tradition and the Shari'a courts of Mogadishu

The two historical chapters, chapters two and three, posited the argument that religious authority has been foundational to the formation of political power in pre-colonial Somalia. The analysis in chapter three advanced this argument by asserting that it was particularly the concepts and practices of the Shari'a tradition upon which precolonial political authority formed. In the brief accounts of three pre-colonial political formations, we saw that Shari'a authorities rose to positions of politico-religious leadership because their Shari'a-derived authority to mediate conflicts led them to be associated with the agreements and alliances they helped to broker. As a result, they came to stand at the political center of the lineage confederations that their mediation efforts helped to form. In making this argument I hoped to question two common approaches in the literature on contemporary Islamic movements. First, the literature on Islamic movements in recent Somali history holds that these movements represent a rupture of the "traditional" religious practices of the Somali people because they have politicized religion. I argue that, though there are many discontinuities between the recent phenomena of Islamic activism and the historical experience, the simple statement that pre-colonial religion was apolitical doesn't capture the complexities of the transformations. In fact, religion and religious authorities were integral to the political in pre-colonial Somalia. Second, by demonstrating that religious authority has historically been central to emergence of political power, I diverge from a broader literature which asserts that authority and power have been historically separate in precolonial Muslim societies. On the contrary, I contend that authority established through religious traditions were formative of political power in precolonial Somalia. The separation of religious authority from political power can be traced to the colonial and postcolonial periods.

It must be remembered here that my understanding of authority is based on the well-known essay by Hannah Arendt, *what is authority*?[193] (See chapter two for a brief discussion of Hannah Arendt's essay). In the Arendtian understanding, authority is characterized by a hierarchical relationship anchored in a tradition whose foundation is transcendent to the actual manifestation of the concrete authoritarian relationship. The hierarchy of such a relationship, however, doesn't translate into unquestioned obedience since those in positions of authority only *augment* the authority of the tradition. In this understanding of authority, any relationship that involves violent coercion or persuasion lacks authority. The concept of tradition is integral to Arendt's understanding of authority for its only in tradition that authority can exist. The notion of tradition implicit in Arendt's essay is closer to the way tradition is conceptualized in the work of Alasdair MacIntyre[194] and further developed by Talal Asad[195] (see chapters two and three for more on tradition as theorized by these scholars). Based on such understanding of authority and tradition, I contend that when the religious tradition that formed authority in pre-colonial Somalia was separated from the political realm during the colonial and postcolonial periods, the political realm ceased to operate on authority. Instead, the postcolonial state's monopoly over the political was based primarily on the state's capacity for persuasion and/or violent coercion. When the socialist and developmentalist language of the postcolonial state ceased to be coherent and the state's capacity for violence dissipated at the end of the Cold War, the state's monopoly over the political realm disintegrated. In this reading, the emergence of politico-religious leadership in the rise of the Shari'a courts of Mogadishu after the collapse of the central state, was a reconstitution of

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[193] Hannah Arendt, *Between Past and Future: Six Exercises in Political Thought* (New York: Viking, 1961)

[194] Alasdair MacIntyre, After Virtue: A Study in Moral Theory (Notre Dame, Ind.: University of Notre Dame Press, 2007); *A Short History of Ethics* (London: Routledge, 1998).

[195] Talal Asad, "The Idea of an Anthropology of Islam," *Qui Parle* 17, no. 2 (spring/summer 2009): 1-30; "Thinking About Tradition, Religion, and Politics in Egypt Today," *Critical Inquiry* 42 (Autumn 2015): 166-2014.

authority in the political realm. The emergence of the Shariʻa courts was a reconstitution of authority in the political realm because it anchored the governance of social affairs in a transcendental foundation as articulated in the Islamic tradition, particularly the tradition of the Shariʻa.

In this chapter, I look at a few of the concepts and ideas from the Islamic tradition that informed the reasoning, actions, and practices that undergirded the rise of religious authorities to politico-religious leadership. More specifically, I analyze how the practices, discourses, and modes of reasoning associated with the concepts of "collective duty" (*fard kifaya*), "the people of resolution and contract" *(Ahl al-Hal wa'l-ʻAqd),* and "commanding right and forbidding wrong" (*wa-ya'muruna bi'l-maʻrufi wa-yanhawna ʻani 'l-munkar)* have informed the practices and reasoning of the actors whose actions culminated in the formation of communal Shariʻa courts. These concepts informed the practices and modes of reasoning of not only religious scholars (*ʻulama*), but also ordinary people whose actions were crucial to the formation of the courts. The concepts were thus not limited to the specifically religious among the population. This shows that these Islamic traditional concepts formed part of the larger cultural background of the people. The rise of the Shariʻa courts was, therefore, not a result of an imposition of the Shariʻa, understood as "Islamic law," on the population by conservative clerics. Rather, the courts built on older ideas, concepts, and practices that were embedded in the culture of the people and formative of their orientation to the world. That these traditional Islamic concepts were the resources most readily available and informative of people's attempts at self-governance in the absence of the state suggests that though the concepts might have been pushed out of the political arena by the post-colonial state, they remained integral to the cultural logic and worldly orientation of the people.

The material for my analysis of these concepts comes from the accounts of the Shari'a courts in the previous chapter and a religious tract I acquired during my fieldwork.

I.   "Collective Duty" (*Fard Kifaya*)

I noted in the preceding chapter that the formation of the Shari'a courts was accompanied by a process that de-emphasized lineage belonging and lineage hierarchies. Instead, the courts stressed the egalitarian ideal of Islam. The idea of belonging to the *umma* (the Muslim community) was particularly appealing in a context where lineage differences were viewed as the primary cause of the divisiveness and violence that had engulfed Mogadishu since the fall of the central state. The only way to overcome this divisiveness was to embrace the egalitarian ethos of Islam, so went the argument. This line of reasoning became particularly popular as the discourse of the *'ulama* saturated the public sphere. In many ways, religious discourse was the only meaningful discourse in the public sphere attempting to articulate explanations of the conflict and ways of ameliorating the situation. This wasn't just because religious discourse entered spaces that were previously closed to it. Rather, religious spaces and religious-based associations became the most important spaces where social issues were discussed and addressed. The mosque was a prime example of this. After the fall of the regime and the city's division into endless fiefdoms by militias, the mosque became one of the few public spaces where people could gather in relative peace. Mosques became the central locus of social life. People gathered there not only to worship, but to also exchange the latest news, discuss recent events, express their outrage, and plan what to do. This is why many of the initial events leading to the creation of a Shari'a court, as we saw in the preceding chapter, revolved around discussions and actions originating at a mosque. Religious discourse also became a mainstay on local radio stations, newspapers, and books written either in Arabic or in Somali.

During my fieldwork I acquired a small religious document written by one of the most important individuals in the Shari'a courts of Mogadishu, Sheikh Hamud Sheikh Ahmed Ziyar. Sheikh Hamud, it might be remembered, was the chairman of the Court of Madina, established in 1992 in the district of Madina. The Sheikh's fame today is partly a result of his being credited with the establishment and work this court. A praise poem was even penned by a *Sufi* sheikh memorializing him and this event. Sheikh Hamud's reputation is also due to his family's religious background. His father was a celebrated *Sufi* sheikh who established a religious community (*jama'a*) somewhere near Jowhar, a small town about 90 kilometers northwest of Mogadishu. Unlike his father, Sheikh Hamud's sympathies in terms of the different trends in Islamic thinking and discourses is difficult to place. He wasn't considered a follower of any of the *Sufi* brotherhood groups. He was also not an active member of any of the contemporary Islamic reform movements. His religious education included a stint in Egypt's famed Islamic university al-Azhar. A fact which might explain his familiarity with the lingua and discourse of more modernist Islamic trends. On the other hand, the fact that a praise poem about him was penned by a Sufi Sheikh tells us that he at least enjoyed amicable relations with the Sufi *'ulama* of Mogadishu. The difficulty in firmly establishing Sheikh Hamud's place in contemporary religious trends speaks to the fluidity, for many, of the boundaries between the *Sufi* and *Wahhabi* identities. Sheikh Hamud tells us that he finished writing the document, titled *The Signs of the Wholesome/Blessed Society,* on August 1993. In general, the document describes what, according to the Sheikh, are the characteristics of a wholesome society, and the ways of establishing such a society. In the course of describing the characteristic of the good society, he also provides an example of how the religious discourse explained the conflict in Somalia and the way out of it.

Predictably, Sheikh Hamud explains that the violence and suffering that had befallen the Somali people was because they abandoned their religion, Islam. The abandonment of the teachings of Islam, according to Sheikh Hamud, is most evidenced by the acceptance of lineage differences as the basis for differentiated treatment. In embracing descent as a basis for discrimination, the Somali people, hey claims, have brought about their own ruin, "the closest road to failure and weakness is disunity."[196] In embracing the disunity of lineage politics, the Somali people have reverted to the practices of *Jahiliyya*,[197] when Arab society was weakened by their separation into constantly warring tribes before they became unified and strong under Islam. It appears, he says, "as though the Somali people haven't heard of the prophet's word, 'he who helps his relatives when they are in the wrong is the same as a male camel who falls into a well and is being pulled by the tail."[198] In the same way that trying to pull a heavy camel out of a well by its tail isn't going to help the camel and is going to end in failure, will helping your relatives when they are in the wrong also end in failure for both you and them. The Somali people, he says, "have a diseased soul" because they have taken to despising and transgressing each other on account of descent (*nasab*).[199] This is what has brought the Somali people to their current lowly and miserable position. This, despite the fact that the Qur'an "teaches us of the equality of human beings because they all come from one father and mother. Race doesn't divide them, descent (*nasab*) doesn't divide them. Only the fear of Allah and good deeds is what distinguishes them. Our prophet, peace be upon him, fought against discrimination and racism which separates two siblings."[200] In contrast to the divisiveness of descent and race, Islam unifies people. And it's on the basis of embracing

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[196] My translation of Sheikh Hamud's text, *The Wholesome society*, 14.
[197] Pre-Islamic period defined as the time of "ignorance" (*jahil*).
[198] My translation of Sheikh Hamud's text, *The Wholesome society*, 14.
[199] *Ibid*., 14
[200] *Ibid*., 13

unity under Islam that the people can hope to come out of their miserable situation, "as you know brotherhood and being united and helping each other is the only way to attain power."[201] We see in Sheikh Hamud's text a typical example of how the religious discourse dealt with and addressed the social crises. Central to this discourse was a diagnosis that viewed politicized lineage-based differences as the primary reason for the disunity, strife, and conflict, and argued that the only way out of it was to embrace the egalitarian ethos of Islam.

This Islamic egalitarian ideal, however, belies a differentiation and a hierarchy that is inherent to the Shari'a image of society. This differentiation within the Shari'a image of society underwrote the authority of the *'ulama* to assume leadership roles and political power. In his important book, *The Calligraphic State* (1993), anthropologist Brinkley Messick describes the tension between the egalitarian ideal of Islam and the differences and hierarchies that are part and parcel of the Shari'a image of society. He points out that the Shari'a and Shari'a texts, "lived in human relations, in human embodiers and interpretive articulations" (Messick 1993: 152). The centrality of the Shari'a in the daily lives of Muslims meant that knowledge of the Shari'a was integral to the formation of privileges. In a society where such knowledge (*'ilm*) was inaccessible to the vast majority of the people, as is the case in Somalia, knowledge of the Shari'a inevitably creates a differentiation between the few who possess such knowledge and the vast majority without it. The distinction between "the scholarly people" (*ahl al-'ilm*) and "the ordinary people" (*al-'awamm*) is therefore one of the central images of a Shari'a society, "from the scholarly perspective society was divisible into two separate general categories of individuals, the *'alim* (pl.

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[201] *Ibid.*, 13

'ulama), and the *jahil* (pl. *juhhal*), the individual without knowledge, an ignorant person" (Messick 93: 153).

Messick points out that at the base of this distinction is an understanding of human nature that views the untutored human essentially as an ignorant being (*jahil*). The instructions and devotional disciplines that is at the core of the Islamic understanding of knowledge is meant to form and discipline the individual, who is otherwise seen as lacking the capacity for recognizing right from wrong. The two categories, "the scholarly people" and "the ordinary people," have different duties and responsibilities. The duty of the scholarly people is to impart their knowledge and guide ordinary people onto the Shari'a, the "right path." Whereas ordinary people are expected to seek answers from those with knowledge and follow their guidance and their example. Messick notes that one of the common traditions through which the distinction between the people of knowledge and ordinary people is articulated is the principle of "collective duty" (*fard kifaya*). F*ard kifaya* says that "the Muslim community as a whole is kept on a legitimate and observant bases so long as a sufficient number of individuals perform the necessary collective duties imposed on the community by God" (Messick 1993: 154). In cases where the collective duty imposed on the community can only be performed by some, it follows that the burden of that collective duty falls on those capable of performing it. Since the *'ulama* are the only ones with knowledge of the Shari'a, it falls on their shoulders to keep society on the path of the Shari'a. Notwithstanding its egalitarian ethos, this image of society in the Shari'a tradition, therefore, creates clear differentiations and associated duties and responsibilities, which give the *'ulama* the authority to assume leadership positions. They are, after all, "the heirs of the Prophet."[202]

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[202] A popular *hadith* (prophetic tradition).

In the history of the Shari'a courts, we can see how this Shari'a image of society manifested itself on the ground. We find this image both in Sheikh Hamud's document and on the various accounts of the specific stories of the establishment and workings of the different Shari'a courts from the preceding chapter. In the image of society that emerges from Sheikh Hamud's document, however, society isn't just divided into the two distinct categories of the people of knowledge and the ordinary people. There is the third category of the *mujrimin* (sing. *mujram*), those who transgress on the Shari'a and the rights of people, the transgressors and evil doers. And who are the *mujrimin*? The *mujrimin* are "wild animals with human bodies," who the war has given birth to.[203] Their "hearts aren't moved by the screams of women when they are killing their husbands and sons unjustly. . . . and the cry of orphans."[204] The sheikh points to two groups of people who make up the *mujrimin*: they are the people who were let out of the prisons after the regime fell and who picked up guns; and the "ignorant who came from the countryside (*baadiya*). The latter were pastoral nomads who didn't know the religion and proper behavior (*adab*) of Islam."[205] These nomads took the *mujrimin* before them to be "their teachers," and they "became just like them and even worse."[206] The people whom Sheikh Hamud is referring to as the *mujrimin* are the same people who are also called the *mooryan* (see a description of the *mooryan* in chapter four). These are the young armed men who roamed the streets of Mogadishu, manning checkpoints, and committing every mischief imaginable. There is a society-wide perception that the young men who constituted the *mooryan* were former prisoners and/or pastoral nomads who were recruited by armed opposition groups before the regime fell and fled the capital city. They poured into urban centers, particularly Mogadishu, with nothing to do and no way to survive. These were the people

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[203] Sheikh Hamud, *The Wholesome society*, 14.
[204] *Ibid.*, 1
[205] *Ibid.*, 1
[206] *Ibid.*, 1

who were committing unimaginable crimes and corrupting society through their evil and sinful ways, argues Sheikh Hamud.

Ordinary people, and society in general, was under a grave threat if things didn't change, "if this situation continues as it's, it's a warning to us that this people (the Somali people) will be eradicated from the face of the earth."[207] It was thus up to society itself to stop the *mujrimin* and change its fate. Foremost among those who should have stopped the *mujrimin* are the *'ulama,* "it's the duty of the *'ulama* and the knowledgeable to catch the hand of the evil doer (*zalim*)".[208] For it's the *'ulama's* duty and burden to guide the people. Sheikh Hamud says he "came to believe that this people's *'ulama* will be asked and made to account" for the behavior of the *mujrimin* before Allah "if they don't defend the people against these killers and transgressors and teach them Islamic conduct."[209] It's thus a divinely imposed duty (*fard min Allah*) on the *'ulama* to guide society out of the miserable status into which it has fallen. The failure of which they will be held to account for before God on the Day of Judgment (*Yawm al-Qiyama*). As for this world, the failure of the *'ulama* to perform this duty will lead to the corruption of society to such extent that life itself will become utterly unbearable. This is how the principle of *fard kifaya* manifested itself in the discourse of the *'ulama* and informed their political and religious activism in the Shari'a courts.

II.   "The People of Resolution and Contract" (*Ahl al-Hal W'al-'Aqd*)

The rise of the *'ulama* to politico-religious leadership was also captured in a term that was commonly used in describing the beginnings of the Shari'a courts. When asked about how a particular court came into being most of my interlocutors noted that the decision to found a court

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[207] *Ibid.,* 2
[208] *Ibid.,* 2
[209] *Ibid.,* 1

was taken at a gathering of a particular lineage's *Ahl al-Hal W'al-'Aqd* (literally, "the people of resolution and contract"). We saw the term used in three of the four brief accounts of Shari'a courts in chapter 4:

> *After these sheikhs failed to move the issue forward, I and three other sheikhs decided to get involved in setting up the Shari'a court. We were aided in our efforts because there was already a document that had all the signatures of the Ahl al-Hal Wa'l-'Aqd of the Abgal. Imam Abdi Iman, may Allah reward him, had got all the Mudulood 'ulama and the elders of all the different families (reer) to sign this document. By signing this document each family agreed to have their sons judged in accordance with the Shari'a, even if that meant their hands might be amputated or they might be executed.[210]*

> *He also suggested that we should create a Shari'a court. We brought together all the Ahl al-Hal Wa'l-'Aqd of the area. They all agreed to establish the Court of Sissii, and they made Sh. Sharif the chairman of the court.[211]*

> *We decided we had to join the courts. The people meeting were Ahl al-Hal W'al-'Aqd. They were the elders and the 'ulama. They said to me, I had to be the one to lead the court.[212]*

Ahl al-Hal W'al-'Aqd is not a term that is found in the foundational texts of Islam (*Qur'an* and hadith) or the strictly religious hermeneutics of the *'ulama*. It's more commonly found in Sunni medieval political theory. It refers to those qualified notables among the Muslim community

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[210] See chapter four, 9-10.
[211] See chapter four, 21.
[212] See chapter four, 29.

whose task it is to select the leader (*imam*) of the community. The origins of *Ahl al-Hal W'al-'Aqd* can be traced back to the second caliph of Islam, Umar ibn al-Khattab, who is said to have designated six scholars to convene and select his successor after his death. It wasn't necessarily a central element in the political practice of medieval Muslim polities since in the overwhelming majority of cases the inheritors of political dynasties were known well in advance. The term nevertheless remained relevant in political theory. In the context of the Shari'a courts of Mogadishu, the term referred to the notables of the lineage group that gathered and took the decision to form a Shari'a court. These notables were primarily made up of two groups: lineage elders and *'ulama*. Together they were taken to be the legitimate representatives of the lineage, and were thought to possess the wisdom and knowledge to lead the community. Their decisions were, therefore, seen as having the consent of the entire lineage. I submit, however, that it was specifically the *'ulama,* more so than traditional elders, that the term designated.

This was the case because the office of the traditional elder seems to have lost much of the respect and authority which it might have enjoyed previously. Traditionally, lineage elders and religious authorities have worked together and complimented each other in conflict resolutions and governance of communal relations. This is what explains the thorough infusion of Somali custom (*heer*) with Shari'a norms. A number of developments during the civil war, however, have led to the diminution in the authority of traditional elders and the rise of the *'ulama*. The role of the traditional elder was already altered as a result of urbanization and the "reforms" of the postcolonial state. Urbanization led to the emergence of new forms of associations and public life that were beyond the purview of the traditional elder, as well as the emergence of new set of problems which the traditional elder was ill-equipped to attend to. For its part, the post-colonial state, in its derive to undermine lineage identity and politics, transformed the office of the

traditional elder to a state functionary with little independent source of authority and power. Traditional elders were made into peacemakers (*nabad doon*) who were responsible, as government representatives, for keeping the peace among villagers and community members. After the regime's disintegration the position of traditional elders further deteriorated. Their economic vulnerability in urban settings led many traditional elders to use their office as an instrument of economic gain. We saw them referred to as "pirates of tradition" (*bur'ad dhaqameed*) in one of the accounts from chapter four. By this, it was meant that just like pirates of the sea, the elders were driven by monetary gain and were using tradition to achieve that goal, "if you see a traditional elder they are controlled by a businessman or a politician," as another interlocutor put it. The view that the office of the traditional elder had been corrupted was widely spread in Mogadishu. The corruption of the office was also reflected in the emergence of multiple claimants to the position of each lineage's traditional elder. As the legitimacy and honesty of lineage elders waned, the authority and politico-religious activism of the *'ulama* was on the rise. Thus, though in popular usage the term referred to both traditional elders and religious scholars, it more specifically expressed the emerging politico-religious activism of religious scholars. The *'ulama* would eventually rise to positions of political preeminence after the Shari'a courts unified and wrested control of the city from the warlords.

The use of the term *Ahl al-Hal W'al-'Aqd* as well as the principle of *fard kifaya* capture, in a discourse informed by the Islamic tradition, the emerging politico-religious activism and leadership of the *'ulama*. These concepts and their associated practices, as noted above, are articulations of a Shari'a-informed image of society which differentiates society into two categories, the scholars and the ordinary people, and entitles or obliges the scholars to lead and regulate social life. There is, however, another term which also comes out of the Islamic tradition,

and which empowers ordinary people, rather than just the scholars, to be active in regulating the conduct of their fellow community members. This term was vital in motivating the practices of the ordinary people which culminated in the formation of the Shariʻa courts. As we will see, however, there has always been a tension in the practice of this tradition, a tension that is exasperated by some modern developments.

III.   "Commanding Right and Forbidding Wrong/Reprehensible" (w*a-ya'muruna bi'l-maʻrufi wa-yanhawna 'ani 'l-munkar*)

There is a famous tradition in Islam known, in its shortened version, as the obligation to "command right and forbid wrong/reprehensible." The origins of this tradition, its different interpretations throughout Islamic history, and its modern articulations are well chronicled in Michael Cook's excellent book, *Commanding Right and Forbidding Wrong in Islamic Thought* (2000). "Taken together," these two obligations – to command right and forbid wrong – says Cook, "make up Islam" (2000: 38). The duty to command right and forbid wrong (hereafter, *the duty to command right*) is expressed in a number of Qur'anic verses and prophetic traditions (*hadiths)*. In the most frequently cited Qur'anic verse, God addresses the believers, "let there be one community of you (*wa-l-takun minkum ummatun*), calling to good, and commanding right and forbidding wrong (*wa-ya'muruna bi'l-maʻrufi wa-yanhawna 'ani 'l-munkar*); those are the prosperers."[213] The same duty is also communicated in a famous *hadith*, "whoever sees wrong (*munkar*), and is able to put it right with his hand (*an yughayyirahu bi-yadihi*), let him do so; if he can't, then with his tongue (*bi-lisanihi*); if he can't, then with [or in] his heart (*bi-qalbihi*), which is the bare minimum of faith."[214] There are many other verses and hadiths as well as the exegesis of the *ʻulama* that taken together

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[213] Quoted on page 13, Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought,* (Princeton: Princeton University Press, 2006).
[214] *Ibid*., 33.

firmly establish the obligation to command right and forbid wrong as a religious duty on ordinary people. The principle essentially means "that an executive power of the law of God is vested in each and every Muslim" (Cook 2000: 9). The practical effect of this principle, as might be imagined, entailed the emergence of a tension between rulers, caliphs and governors, on the one hand, and ordinary people, on the other. Examples abound in Islamic history of ordinary people confronting a caliph and justifying that confrontation on account of the duty to command right and forbid wrong. Such individuals would argue that they felt compelled by this principle because the caliph had either neglected his religious duty, as "commander of the faithful" (*Amir al-Mu'miniin*), to command right, or was himself engaged in committing wrongs (*munkar*). There are also many examples of ordinary individuals haranguing well-known scholars and demanding that the scholar either urge people to rebel or lead a rebellion against what they perceived were corrupt rulers.[215]

Understandably, there was a legitimate concern that the principle of commanding right was empowering uneducated zealots to abuse people's rights and harm the peace of the community. This legitimate concern, as well as the less admirable desire among many of the *'ulama* who wanted to maintain a political quietist position, led to various interpretation that attempted to lessen the force of this traditional duty. One such attempt resulted in what's referred to as the "three modes tradition" (Cook 2000: 518). In this interpretation of the duty, the use of force to command right and forbid wrong is viewed as solely the ruler's prerogative. While the use of the pen was reserved for the scholars, and only the mind for ordinary people. This was just one among many

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[215] One of the most famous of such stories is that of the goldsmith of Marw, one Abu Ishaq ibn Maymun. Abu Ishaq felt very strongly that he was obliged to confront the leader of an army, Abu Muslim (d. 137/755), if he were to live up to the duty to command right and forbid wrong. He sought the counsel of, while also hoping to convince, Abu Hanifa (d. 150/767), the founder of the Sunni Hanafi school of *fiqh* (jurisprudence), to join him in condemning Abu Muslim and perhaps lead an armed rebellion. When Abu Hanifa counseled prudence, Abu Ishaq went and confronted Abu Muslim on his own and was killed for his troubles. See Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 3-10.

attempts in the history of Islam to try to defang the traditional duty of commanding right. Despite these efforts, the mainstream understanding of the duty informed a general social perception and practice that saw the individual as having the duty and the right to command right and forbid wrong in accordance with one's ability. Two modern developments, however, have somewhat altered the practice of this traditional duty, according to Cook. He points out that the modern state's sway over most aspects of social life, including education, the economy, politics, and intellectual life, has meant that much of the recent writings on this traditional duty has been aimed at taking it out of the hands of individuals and making it into a state prerogative. Thus a certain political quietism has characterized the modern interpretations of this traditional duty, particularly among the traditional *'ulama*. This modern tendency, writes Cook, "is both a flagrant diversion from the mainstream of traditional Islamic doctrine and an unmistakable assertion of political quietism" (2000 525). The principle is, nevertheless, often invoked by armed contemporary Islamic activists in their confrontation with the state. Another modern development is an emphasis on organization in carrying out this duty, "the core of the old conception was a personal duty to right wrongs committed by fellow-believers as and when one encountered them; the core of the new conception is a systematic and organized propagation of Islamic values both within and outside the community" (Cook 2000:515). This organizational emphasis is reflected is the emergence of *da'wa* or piety movements. The most famous example of which is *Jama'at al-tabligh*,[216] a transnational Islamic piety movement focusing on correcting the conduct of fellow Muslims. These movements don't usually concern themselves with engaging politics at the state level. Instead, they focus on the spiritual renewal of the individual and the cultivation, through devotional disciplines,

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[216] For more on this movement, see Barbara D. Metcalf "'Remaking Ourselves:' Islamic Self-Fashioning in a Global Movement of Spiritual Renewal." In *Accounting for Fundamentalism*, ed. Martin E. Marty and R. Scott Appleby (Chicago: University of Chicago Press, 1994).

of what they consider to be the necessary virtues for a life in accordance with Islamic teachings. In this regard, they constitute a continuation of the traditional emphasis on embodiment in Islamic education and religious practice. *Da'wa* movements are political, despite their not engaging with the state, because they help individuals to acquire virtues relevant for politics.[217] How did the traditional duty of commanding right inform the concepts and practices that culminated in the formation of the Shari'a courts?

In the history of the Shari'a courts of Mogadishu we see the traditional duty of commanding right invoked in people's explanations of their understanding and reasoning regarding what motivated them to undertake the actions that culminated in the formation of the courts. Both in the accounts of ordinary people and the discourse of the *'ulama,* the tradition of commanding right is summoned to explain the duty, the urge, and the necessity for undertaking actions against rampant criminality. In his document, Sheikh Hamud time and again refers to this tradition to explain that it was a duty upon everyone to do something to correct all the sinful deeds that were happening in their presence. He cites the well-known Qur'anic verse and hadith mentioned earlier to make his argument. He also repeatedly cites a well-known prophetic tradition where a society in which no-one commands right and forbids wrong is compared to a group of people in a boat, who do not stop someone in their midst who makes a whole in the boat.[218] The point of the analogy is, just as the boat will sink and take everyone down with it because no-one in the boat thought to stop the ones making the hole, so will society be completely destroyed if no-one stops wrong doers. Here is how Sheikh Hamud puts the matter:

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[217] For works that explore *da'wa* or piety movements, their emphasis on embodiment and the cultivation of ethical virtues see Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, NJ: Princeton University Press, 2005); Charles Hirschkind, *The Ethical Soundscape: Cassette Sermons and Islamic Counterpublics* (New York: Columbia University Press, 2006).

[218] Sheikh Hamud, *The Wholesome Society*, 14.

It's a duty upon every believer to cleanse society of these crimes. . . . Every person is responsible for forbidding what he sees of all the different crimes. It's not enough that one is a good person, while these crimes are destroying all those around him. If a fire starts somewhere and it's not put out immediately, it effects everything. Our prophet has ordered us to forbid wrongs with action or with words.[219]

Sheikh Hamud claims that his writing of this document was itself an act of *nasiha* or "advice," which is one way the duty to command right and forbid wrong is understood. Sheikh Hamud's appeal to everyone to do something against the rampant criminality seems to contradict his other position, which we saw earlier, where he singles the *'ulama* as the group particularly responsible for saving society from the corruption of the *mujrimin*, the *mooryan*. I suggest that this contradiction is a reflection of the tension, mentioned earlier, between the egalitarian ethos of Islam and the Shari'a image of society that divides society into scholars and ordinary people. In the egalitarian ideal of the *umma,* there are no privileged groups and every Muslim has a duty to struggle daily towards the realization of a society where life can be lived in accordance with Islam. Whereas in the bifurcated Shari'a image of society, the *'ulama* alone are entitled or burdened with the responsibility of guiding society on the path of the Shari'a.

Among the ordinary people who were active in the emergence of the Shari'a courts, there was no doubt in their minds that they, and not just the *'ulama*, had a religious duty to command right and forbid wrong. These ordinary people explained their socially relevant actions by invoking the tradition of commanding right. In the various accounts of the formation of the different Shari'a

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[219] *Ibid.*, 21.

courts, the religious duty to command right and forbid wrong was underlined as the reason why individuals were moved to undertake actions that ultimately culminated in the formation of community centers that came to be called Shari'a courts. We saw the invocation of the traditional duty to command right in the accounts of the emergence of the four Shari'a court noted in chapter four. In the first story, the story of the Court of Madina, we saw that it was a group of young men who initiated the series of actions that eventually led to the establishment of the court. The *'ulama*, including Sheikh Hamud, got involved, only after the group of young men who called themselves a civil security force (*madani*) asked them to do their religious duty and judge those brought before them in accordance with the Shari'a. In the account of this court provided by one of these young men, he describes what motivated their actions by saying they couldn't just sit and do nothing with all the reprehensible (*munkar)* acts occurring all around them. They felt that it was a religious duty to protect those that couldn't protect themselves, "we talked and we asked ourselves, why are we here? Aren't we here to protect ourselves, to help each other and our neighbors? Isn't this man our neighbor? Isn't he a Muslim? Isn't it our duty to protect him?" In many of these stories there is a sense that their very claim to being Muslims is in serious jeopardy if they stand by and do not live up to the obligation to command right and forbid wrong. In the account of the emergence of the Court of Karaan, the man who organized the group of young men who took it upon themselves to do something about the criminality in their neighborhood, explained their reasoning, "we shouldn't watch this (the crimes in the neighborhood) and go to our mosque every Friday, and not talk about or do something about these reprehensible acts." Similar to the formation of the Court of Madina, it was these ordinary men whose actions were decisive in the creation of the court. Many more examples could be given of ordinary people whose actions led to the emergence of a court, and who explained their actions and reasoning by referencing this traditional Islamic duty.

The influence of this traditional duty in the formation of the Shari'a courts of Mogadishu manifested itself in a different aspect of the work of the Shari'a courts. Besides the mediation and arbitration of disputes and conflicts, the other major activity which the creation of the courts was an expression of was rehabilitation. When addressing the history of the courts most commentators remember the courts simply as courts of "Islamic law," but just as significant in the history of the courts was their function as rehabilitation centers. There were some courts, particularly the Court of Harar Yaalle, which were known primarily for their work on rehabilitation. I was told that at one point the Court of Harar Yaalle held over 300 individuals who were all being rehabilitated. The rehabilitation program of the courts was impressive for its simplicity as for its effectiveness. The rehabilitation work of the courts began when the person to be rehabilitated was brought to the court by a relative. The persons brought to the courts for rehabilitation were usually young men, who were using drugs, on the streets, or simply neglecting their duties and not listening to parental guidance. The parents or relatives of such a person would bring that person, by force or by persuasion, to the court. Most of the courts were established in areas that were previously government buildings such as police stations. They, therefore, had accommodations that enabled the courts to keep people there for a long time. During their stay in the court the relatives who brought the person to the court would be responsible for their food and room. The court also collected small fees for its work. In situations where the person was brought to the court against their wishes, the court's small security force would keep watch over the person to make sure they didn't escape. If, in the course of their stay, the person were to harm themselves or someone else it would be the responsibility of the relatives. I was told of a case of a young man who was brought to a court for rehabilitation. The young man, in his 20s, was brought to the court by his father because he was addicted to *qat*, the mildly stimulant leaf that is popularly chewed throughout

Somalia. After a few days of being forcibly kept at the court, the young man went on hunger strike. The sheikhs at the court called the father because they didn't want to be held responsible should something happen to him as a result of the hunger strike. The father wrote and signed a letter absolving the court of any responsibility. Moreover, he instructed the court to keep the young man there despite the hunger strike. Realizing that his hunger strike was winning him no reprieve the young man started eating again.

It wasn't just young men that were brought to the courts for rehabilitation. I was told of the fascinating story of an old man, in his 60s, from the diaspora who was brought to one of the Shari'a courts through deception by his relatives. The man, I was told, lived in a European country for most of his life. During his time in the diaspora he had become alcoholic and never managed to start or keep a family. This was a scandal in the eyes of his relatives. He had a sister who lived somewhere in the Middle East. During one of their calls, this sister told her brother that their family houses in Mogadishu were going to be sold. She urged that since he was the eldest brother he should go to Mogadishu and oversee the sale of the houses. Enticed, perhaps, by the potential money from the sale of the houses, the brother agreed to come back to Mogadishu. Little did he know it was all a ruse to get him to come to Mogadishu. The sister had already spoken with relatives in Mogadishu, and they agreed to apprehend him upon his arrival and take him to one of the courts for rehabilitation. Once he arrived in Mogadishu, the relatives, as agreed upon, grabbed the man by force and took him to one of the Shari'a courts. There, he was deprived of his alcohol and subjected to religious education and discipline. The man, it's said, got so ill that he almost died during the first week. Eventually, he fully recovered from alcoholism, agreed to marry a local girl, and became a good, i.e. religious, man. When he was released from the rehabilitation center he was full of gratitude for his sister and the relatives that "saved" his life. At the time when I

heard this story I was informed that the man lived in a small town near Mogadishu and had three children. This man's story is exceptional and demonstrates how popular the rehabilitation work of the courts was. Ordinarily, the rehabilitation work of the courts was focused on the young armed men on streets of Mogadishu, the so-called *mujrimin* or *mooryan*.

What is significant about the rehabilitation work of the courts is that it's a manifestation of the traditional duty to command right and forbid wrong through an emphasis on embodiment, and the need to mold the human sensorium in order for the person to be receptive to the message of Islam. Sheikh Hamud in his document discusses the need to have receptive ears even as he rebukes the *'ulama* for not doing enough to prevent the criminal behavior of the *mujrimin*, "I testify that many among the *'ulama* haven't put forth enough effort to put out this blaze that is devastating our country, which has caused hundreds of thousands of lives to perish. But when they did put forth effort, they didn't find ears to hear their good advice."[220] In order for the efforts of the *'ulama* to produce any results, Sheikh Hamud suggests, it was essential that they were addressed to ears that were tuned to the message of Islam. The idea that in order for the message of Islam to be effective, the human sensorium, particularly the ear and the heart, have to be attuned to its message isn't limited to scholars. It's a widely-held socio-cultural notion captured in the everyday usage of the term *adab* or proper behavior.[221] The term *adab* is widely used in Somalia, as it's in many other Muslim societies. It connotes the idea that there is a religiously sanctioned proper behavior

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[220] Sheikh Hamud, *The Wholesome Society*, p. 7
[221] Ira Lapidus (1984) writes on this concept "Adab was used throughout the classical era of Islam to imply learning and knowledge for the sake of right living. [It meant] in its most general sense: correct knowledge and behavior in the total process by which a person is educated, guided, and formed into a good Muslim. In this larger . . . sense, adab is part of a system of Muslim ideas, part of interrelated set of concepts that constitutes the basic vocabulary of Islamic belief and makes up a Muslim anthropology of man." See Barbara D. Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam* (Berkeley: University of California Press, 1984). Another related concept is *tarbiya* (education, pedagogic, training) which is viewed as an integral part of any Islamic education. See Anne S. Roald, *Tarbiyya: Education and Politics in Islamic Movements in Jordan and Malaysia* (Lund: Lunds Universitet, 1994).

in every sphere of life, and that it's only through religious discipline that the proper behavior is learnt. A person who lacks the appropriate behavior or misbehaves is said to lack *adab*. One of the major reasons why children are taken to Qur'anic schools (*dugsi*) is for them to be disciplined, so that they might embody the *adab* necessary to lead the life of a good Muslim. The rehabilitation work that the courts performed was an expression of this religious and cultural idea. It was not enough to just prevent people from doing wrong. It was viewed that the only way to make the wrong doers (*zalim*) see the wrongness of their actions and correct their conduct was to discipline them in the proper behavior of a Muslim subject through authorized procedures. When individuals were brought to the courts for rehabilitation they were instructed in the daily rituals (*'ibadat*) of Islam.[222] Foremost among them, the five daily prayers. In between these prayers individuals were given basic lessons in Qur'anic exegesis (*tafsir*), hadith, and stories of the Prophet and his companions. The general expectation was that these devotional practices would inculcate in individuals the virtues and the ethical and moral judgments necessary to prevent them from engaging in the type of offences that were considered detrimental to proper Muslim life. The rehabilitation work of the courts was political because it aimed at, if not always achieving, helping individuals to acquire virtues necessary for social action. This aspect of the work of the courts was also political in a more immediate sense; they helped to remove many of the armed young men who constituted the core of Mogadishu's militias from the streets. This directly impacted the manpower available to the city's faction leaders and warlords. This was one of the reasons why the warlords felt so threatened by the rise of the Shari'a courts.

Conclusion

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[222] For a discussion on the role of Islamic rituals in the formation of a Shari'a-minded subject, see chapter 5, "The Political Subject and Moral Technologies of the Self," in Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013).

The immediate background and context that created the conditions of possibility for the emergence of the Shari'a courts of Mogadishu was the appalling conditions of insecurity and violence that followed the fall of the Mohamed Siyad Barre regime in 1991. Most academic commentary on the courts go no further than to attribute the formation of the Shari'a courts to the insecurity of the environment (Ahmad 2015; Menkhaus 2006; Rotberg 2005; Waal 2004). The fact of insecurity alone, however, can't account for the emergence of a city-wide mass-based reform movement that aimed at transforming society. There were, after all, many countries in Sub-Saharan Africa in the 1990s that were experiencing similar societal crises resulting from economic and political failures following the end of the Cold War. In very few cases did such societal upheavals lead to mass-bases reform or revolutionary social movement. The political scientist William Reno reflects on this issue in a number of articles (Reno 2002, 2003). Reno contends that part of the reason why the societal crises of 1990s Sub-Saharan Africa did not generate mass-based social movements is due to the consequences of pre-conflict regime patronage politics. He explains that the existence of networks of control over economic opportunities left behind by the patronage politics of the pre-conflict regime and controlled by former regime elites enabled these elites to buy influence and coopt the character of anti-regime mobilization, thus undermining the social base and control over the rebellion. Led by these former regime elites, Reno concludes, the anti-regime rebellions of the 1990s often led to the formation of predatory armed groups and the emergence of war economies. Regardless of whether or not one agrees with his answer Reno poses a relevant question. The Shari'a courts of Mogadishu, I contend, were precisely the type of mass-based social movement that Reno finds lacking.

In this chapter, I attempted to go beyond formulations that simply posit insecurity as an explanation for the emergence of the Shari'a courts of Mogadishu. I focused on the religio-cultural

concepts and practices that informed and motivated the actors whose actions culminated in the formation of the community centers that became known as the Shari'a courts. We found that concepts and practices that have been developed in the Islamic tradition and deeply embedded in the religious and cultural life and norms of the Somali people laid the foundations for the emergence of the Shari'a courts. The courts built on these older ideas and practices, which have been pushed out of the political space during the colonial and postcolonial periods. They remained dormant but nevertheless present in the social and religious discourse. Foremost among the concepts and practices that were essential to the formation of the courts were the notions of "collective duty" (*fard kifaya*), "the people of resolution and contract" *(Ahl al-Hal wa'l-'Aqd),* and "commanding right and forbidding wrong" (*wa-ya'muruna bi'l-ma'rufi wa-yanhawna 'ani 'l-munkar*). These traditional Islamic concepts and their associated practices undergirded the compulsion to recognize a wrong and be outraged and moved to correct it and change the social environment that made such actions possible.

These concepts from the Islamic tradition and the practices that accompanied them were not without tensions. As noted above, one such tension is evident in the discrepancy between the emphasis on the egalitarian ideal of Islam and the Shari'a image of society, which divides society into two groups: the scholars and the ordinary people, giving the former the task of guiding society to the righteous path. Another tension was present in ordinary people's practice of the duty to command right and forbid wrong, and the ruling authorities' desire to regulate the possible abuse of this principle, and, more importantly, the threat, which it's practiced posed to their authority. These tensions are in many ways inherent to the very logic of the practices these traditions encourage. But the way these tensions manifested themselves in the Shari'a courts of Mogadishu reveal something about the contradictions imminent to their practice in the modern world. Let's

take the traditional duty of commanding right. It's without doubt that the ideas and practices encompassed by this concept were indispensable to the discourses and practices of ordinary people that informed the formation of the courts. It's safe to say that the courts could not have arisen absent the social force of this traditional Islamic duty. As the Shari'a courts unified under the Union of Islamic Courts (UICs) and began a process of centralizing authority, the unregulated practice of this traditional duty began to pose a problem for the courts.

The independent and community based Shari'a courts metamorphed into the UICs and took over Mogadishu in mid-2006. All of the sudden the world's attention was on the UICs and their conduct. News reports and Western diplomats depicted them as the African version of the Taliban.[223] They showed images of the courts' security forces lashing people and enforcing specific dress codes, hair styles, and shutting down cinemas. For much of the international media and Western policy makers this behavior only confirmed their worst fears; that a "radical" Islamic movement was taking root in the "vacuum" left behind by the disintegration of the postcolonial state. For many among the Somali population, both at home and in the diaspora, who were pleased to see the people of Mogadishu organize and liberate themselves from the warlords, these turn of events were difficult to understand. Many, including myself, wondered, what were the courts' leadership thinking? Why would they concern themselves with such trivial matters as hairstyles and dress codes? Couldn't they see the monumental task they were facing? Why give an already suspicious world the reason to undermine them? I put these questions to Sheikh Hassan Daahir Aweys, one of the leaders of the UICs, and a man often referred to as the godfather of contemporary politico-religious activism in Somalia. The following is our exchange:

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[223] Jeffrey Gettleman, "Drinking Fanta with Islamist Militants," *New York Times*, May 13, 2017.

Me: Many people were pleased and hopeful when the Shari'a courts defeated the warlords and took over Mogadishu. But then people saw images of young men whipping people on the streets, forcing them to cut their hair, and they thought these people don't know what they are doing.

Hassan: Let me tell you a story. I was once in Qoryoley.[224] I went there to meet with some elders and to explain the Islamic courts to them. We met inside a house. When the meeting finished and I came out, I found my bodyguards roughing up the neighborhood kids, cutting off their hair and shortening their baggy pants because they thought these things were un-Islamic. I got upset and scolded them. But I couldn't scold them too much.

Me: Why couldn't you scold them too much?

Hassan: It wasn't easy to stop them even if you wanted to. Every person thinks they have the *daliil* (evidence).[225] Have you ever heard of the Somali saying, 'only he who doesn't know the nature of a lion touches its nose?' Also, the same fervor that motivated these young people to take on insurmountable odds was also making them do these things. It wasn't an easy thing to solve.[226]

This exchange demonstrates that Hassan was perceptive to the problems arising out of the unregulated practice of the traditional duty to command right and forbid wrong, as were many others. Another interlocutor, someone critical of the Shari'a courts, put the problem in the

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[224] A small town to the south of Mogadishu

[225] There is a long-held tradition in Islam that the final arbiter of any argument is the Qur'an and hadith. If one can find direct evidence from these sources for one's position the matter is considered settled. Some scholars contend that the spread of a form of religious argumentation based on the search for evidence (*istidlal*) in the foundational texts (Qur'an and hadith), rather than relying on the authority and model of the traditional 'ulama, is a recent phenomenon that has spread as a result of developments in mass literacy and mass media. See chapter six for more on the effects of modern techniques of schooling and mass literacy on authority and modes of argumentation in Islam. For the difference between this evidence based argumentation and the kind of religious discourse grounded on 'esoteric' or secret (*sir*) conception of knowledge see Salomon (2013). Salomon argues, in contrast to Brenner (2001), that the assumed decline of the secret-based epistemology of Sufi Islam and the dominance of evidentiary or rationalistic theory of knowledge associated with reformist Islam is overstated. He argues for a "comingling of epistemes" (821).

[226] Interview in Mogadishu on March 2015.

following, "everyone dislikes some particular behavior. Some dislike smokers, others dislike sagging pants, and others loathe people who chew *qat*. After the Shari'a courts, everyone who disliked some behavior was in a position to do something about it. What the courts did was to give power to each of these individuals to outlaw and enforce a punishment for the specific behavior they didn't like."[227] There is a clear articulation by both interlocutors that with the emergence of the courts there developed everyday practices of the *duty to command right and forbid wrong*, and that this was a nuisance for many people, but a major problem for the leadership of the courts. What is worthy of note in my brief exchange with Hassan is his clear understanding of the problem, and his contention that there was nothing that could be done about it. Hassan goes further than many of my interlocutors in realizing that one could not easily regulate or limit the practice of the tradition without undermining a key feature of what made the courts successful. He is, nevertheless, mindful that the unregulated practice of the tradition poses a threat to the coherence of the project of the courts. He points out that there was little one could do about it, when the people practicing the tradition are armed with what they see as evidence from the foundational texts of Islam. This is a clear evidence of the emergence of the tension this tradition creates between governing authorities and its practice by everyday people. This tension, as pointed out earlier, has been present throughout Islamic history, but with the rise of the modern state this tension has become much more exasperated.

Another influential leader of the UICs comments on this issue in a book[228] he wrote after the UICs were evicted from Mogadishu by an Ethiopian invasion in 2006. In a section where he critiques the UICs for some of its failures, he complains that the abuse of the duty to command

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[227] Interview in Mogadishu on June 2015.
[228] Dr. Omar Iman abu Bakar, *The Trails of the Islamic Courts in Somalia: The Success and Limitations* (*tajriyat al-mahakim al-Islamiyya fi Somali*). The book is translated from Arabic by the author.

right had turned many people against the courts. Revealingly, when he tries to offer suggestions as to what should have been done, he had no more than to say "one should not command people on what's right without first doing what is necessary such as the proves and clarifications, which would enable one to get people to accept the right thing. One should also soften one's tongue and behavior towards people."[229] These two men, Sheikh Hassan and Oman Iman, were two of the men that rose to positions of power after the communal Shari'a courts transformed into the UICs. They were in fact the chairman and the deputy chairman of the Shura Council of the UICs, respectively. It's thus quite revealing that though both men experienced the unregulated practice of the tradition to command right as a problem in their time with the courts, neither man has a realistic suggestion on how to overcome this problem. The experience of the courts showed the profound importance of this traditional Islamic duty in communal mobilization and self-governance. But as soon as the courts transformed into a political formation with a modicum of centralized administration and authority in the form of the UICs, this traditional duty began to pose serious problems for the coherence and direction of the project of the UICs.

I contend that this tension and the inability of the leadership of the Shari'a courts and the UICs to address reveals something about tradition that is rarely discussed by the theories of tradition of Alasdair MacIntyre and Talal Asad. Tradition frames a particular approach and orientation to the world, but in so doing tradition entraps its practitioners and allows them no "acceptable authoritative exterior"[230] vantage point from which to judge the very serious tensions and contradictions that arise between the principles of a tradition and the constantly shifting realities of the world. It's perhaps the case that when the severity of a tradition's contradictions

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[229] Omar Iman, *The Trails of the Islamic Courts*, 37.
[230] I am thankful to Professor Vincent Crapanzano for drawing my attention to this aspect of tradition.

are so transparent and the tradition's practitioners are unable to find a workable solution for it, the continuity of the tradition is in serious jeopardy. Despite the "entrapment of tradition" that they were caught in, the experience of the Shari'a courts of Mogadishu gave us a window into a type of governance informed by the Islamic tradition but not centered on the model of the modern territorial state, as many contemporary Islamic movements are. Before their unification into the political formation of the UICs, the courts were independent from each other though somewhat interlinked, non-hierarchical with no centralized authority. Consequently, they were much more open to pressures and influences by ordinary people. They were accountable to the neighborhood and district residents of its milieu. This is what is really unique about the Shari'a courts. The prolonged and complete absence of the state from the scene led people to engage in organic experiments of self-governance without such process being influence by the overbearing demands and engagement with state institutions. It was an experiment that grounded the governance of social affairs, i.e. politics, in historically embedded religio-cultural notions of authority, of justice, and responsibility. The non-state centric concepts and practices of the communal Shari'a courts ended with the formation of the UICs. The rise of the UICs I submit was a step in the direction of the logic and form of governance of the modern state. The next chapter will explore how the metamorphosis of the previously communal Shari'a courts into the UICs entailed forms of governance such as a centralized bureaucracy that is more the hallmark of the modern state.

CHAPTER VI

The rise of "modern"-educated elites and the bureaucratization of Shari'a practice in the formation of the UICs

When the previously independent communal courts came together in 2006 to create the Union of Islamic Courts (UICs), the UICs undertook a process of unifying the previously independent neighborhood/lineage courts to create a unified municipal legal system. This entailed the centralization and bureaucratization of the practice and authority of the Shari'a. With the adoption of centralized bureaucracy the authority to interpret and speak for the Shari'a was no longer vested in the "traditionally" trained religious scholars, but in the impersonal workings of rules, procedural norms, and most importantly documentation. The process of bureaucratization was led by a group of men educated in modern Islamic universities outside of Somalia, primarily Sudan. These men weren't involved in the establishment or running of the communal Shari'a courts that preceded the UICs. They rose to positions of power with the formation of the UICs. The bureaucratization process which they led displaced the authority of the local and 'traditionally' educated religious authorities who founded the initial communal Shari'a courts. The bureaucratization of Shari'a practice shifted authority away from neighborhood sheikhs, placing them in the lowest rung of the new governing structure of the UICs. In this chapter, I analyze the bureaucratization process and the change of Shari'a authority which it entailed, through a focus on the educational background and the rise to power of this "modern"[231] educated cosmopolitan university graduates. I do this through a narrative of the educational biography and role within the

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[231] I am using the term modern in this chapter to specify post-nineteenth century developments in the institutions of learning in Muslim societies.

UICs of a single individual whose life story and influence on the courts reveals the educational socialization and impact on the Shariʻa courts of this group.

The chapter thus examines the link between the rise of new politico-religious elites defined by their modern education, the bureaucratization process that the UICs undertook, and the shift in Shariʻa authority and practice in Mogadishu, Somalia. In examining the link between these three, this paper engages with the literature on how some of the major developments of the modern world have altered the way the Shariʻa is conceptualized and understood. It's now a well-established position among scholars that the rise of the modern and modernizing state in the Muslim world over the past two centuries has been accompanied by the transformation of Shariʻa from an uncodified, judge-centered, and decentralized set of norms and institutions to a codified and state-centered 'law' whose jurisdiction was limited to the sphere of the family (Agrama 2012; Asad 2003; Hallaq 2001, 2009a, 2013; Hussin 2016; Messick 1993; Pierce 2003; Rosen 1989, 2000; Weiss 1992). This transformation of the Shariʻa, beginning at different times in various parts of the Muslim world, qualitatively altered the structures of authority and epistemological basis of the Shariʻa. Some of the important factors that led to the transformation of the Shariʼa included state codification, the abolishing of *waqfs* (inalienable religious endowments), Western style court systems, and the introduction of modern schools. The essential aim and achievement of these reforms was to centralize, that is bureaucratize, the administration of justice so as to enable the emerging nation-states to exert judicial sovereignty. To centralize the administration of justice the nation-state had to undermine the heterogeneity of authoritative Shariʻa opinions the was occasioned by the individualistic interpretation which has historically characterized the world of the Shariʻa. Throughout much of Islamic history the structural and epistemic authority to interpret the Shariʻa had lain with individual Shariʻa specialists. As Wael Hallaq explains "it was these men

who undertook the task of elaborating on the legal significance of the revealed texts, and it was they who finally established a legal epistemology that depended on its entirety upon the premise of an individualistic interpretation of the law. This feature was to win for Islamic law, in modern scholarship, the epithet 'jurists' law'" (2001: 125).

As the quote above makes clear, the development and interpretation of the Shari'a throughout Islamic history was an individual undertaking based on the epistemic authority of Shari'a specialists. This individual derivation of the Shari'a was made possible by the independence of Shari'a specialists from formal institutionalization, particularly their distance from centers of political power. The Shari'a specialists' authority to interpret the Shari'a was acquired through individual-based and life-long endeavor of education and scholarship which was ultimately acknowledged by one's peers. In general, traditional Islamic education began with Qur'anic schools where students memorize the Qur'an and might have learn to read and write Arabic primarily to aid the process of memorization. After the completion of the Qur'anic school, the ambitious and capable young person would then pursue instructions in the various Islamic disciplines, such as *fiqh* (jurisprudence), Qur'anic exegesis (*tafsir*), the science of hadith, and grammar (*nahwa*) among other disciplines, by joining mosque circles or madrasas (Eickelman 1984, 2007; Hallaq 2009a; Heffner and Zaman 2007; Makdisi 1981).[232] Historically, Madrasa was "a kind of seminary or 'college' for Islamic sciences" (Hefner and Zaman: 8). Madrasas and

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[232] In areas outside of the Islamic heartland what is referred to as madrasas are a recent phenomenon. For example as Hefner and Zaman (2007, introduction) point out in many parts of Africa and in Indonesia modern schools that combine secular and religious subjects in their curricula are known as madrasas. In Somalia madrasas are known as the relatively new Islamic institutions often run by reformist oriented clerics and teach only religious subjects. For more on madrasas and mosque circles, see George Makdisi, *The rise of colleges: institutions of learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981); Wael Hallaq, *Shari'a: theory, practice, transformations* (Cambridge: Cambridge University Press, 2009); Dale Eickelman, *Knowledge and Power in Morocco: The Education of a Twentieth-Century Notable*(Princeton, New Jersey: Princeton University Press, 1985); idem, "Madrasas in Morocco: Their Vanishing Public Role," *in* Hefner and Zaman (2007).

mosque circles were quite different from modern institutions of higher learning in very important ways. The sources of funding for madrasas and mosque circles were community-based or obtained through waqf.[233] Such support was crucial for the traditional scholars' relative autonomy from centers of political power. Madrasas and mosque circles were also different from modern universities in their methods of instruction. Prior to the nineteenth-century, for example, madrasas "operated without the benefit of examinations, formal curricula, or college governance. In fact, until well into the modern period, the pursuit of religious knowledge in Muslim societies was an individual or, more precisely, networked undertaking, in which students sought master scholars for personalized instruction" (Hefner and Zaman 2007: 9).

Traditional Islamic institutions of learning were therefore crucial to the formation of Shariʿa specialists such as *muftis*, and the individual-based hermeneutic discourse of the Shariʿa. Thus a change in the character and means of transmission of Islamic knowledge directly impacted Shariʿa authority and practice (Masud, Messick, and Powers 1996: 26-27). The curricular and organizational changes in the institutions of learning led to the formations of new subjectivities (Brenner 2001; Ware 2014), changes in the religious imagination (Eickelman 1992; Starrett 1998), and struggles over authority and legitimacy between different intellectuals (Eickelman and Piscatori 1996, 37-79; Soares 2005; Zaman 2002, 2005, 2007) throughout the Islamic world. Most important for the purposes of this chapter is how changes in the institutions of learning led to the emergence of new religious authorities with different subjectivities and worldviews who challenged the authority of the traditional *ʿulama.* These new intellectual in the Muslim world,

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[233] For more on how religious endowments helped to maintain the relative independence of Islamic institutions of learning, see chapter 3, Hallaq (2009). Asad (2003) contends that though *waqf* (plural *awqaf*) is normally translated as religious endowment its purposes went beyond the 'religious' since the institutions of *waqf* helped to fund such 'non-religious' projects as hospitals and schools (2003: 207).

frequently referred to as modernists or Islamists (Zaman 2002), and who spearhead contemporary Islamic reformist movements, are distinguished from the traditional *'ulama* by their educational background, among other things. Rather than the traditional Islamic education they are schooled in modern institutions of learning that combine religious education and secular subject. These modern institutions of learning are exemplified best by my modern Islamic universities, such as the Islamic universities in Saudi Arabia. These universities are often state-funded and embody a new vision of the role and responsibility of the *'ulama*. Speaking of these universities Muhammad Zaman writes that the vision which informs these institutions is novel and important "for conceiving of a new kind of 'ulama – products not of traditional madrasas but of modern, albeit Islamic universities – who alone would be able to challenge and reverse processes of Westernization" (Zaman 2007: 256). Part of the vision that informs the establishment of these modern Islamic universities, which is inculcated in their graduates, is a critique of the pedagogy of the traditional Islamic institutions of learning and the discourse of the traditional *'ulama*. They argue that traditional Islamic pedagogy and the discourse of the traditional *'ulama* are to blame for the "backwardness" of Muslim societies. It's therefore necessary, they contend, to reform and revitalize the institutions of learning in order to produce intellectual elites capable of leading Muslim societies in the modern world.

Over the past few decades several of these modern Islamic universities have been established in sub-Saharan Africa.[234] There has been, however, little academic analysis of the impact of these modern universities in the transmission of Islamic knowledge and the nature of religious authority in Muslim societies in sub-Saharan Africa. This chapter examines the impact on politico-religious

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[234] See Mbaye Lo and Muhammed Haron, eds., *Muslim Institutions of Higher Education in Postcolonial Africa* (UK: Palgrave Macmillan, 2016).

leadership and Shari'a practice in Mogadishu by graduates from a modern Islamic university – the International University of Africa in Khartoum, Sudan.[235] More specifically, I look at the rise to positions of power of graduates from the IUA and their role in the unification of the previously independent communal/lineage Shari'a courts of Mogadishu in the rise of the UICs. These graduates led the bureaucratization of Shari'a practice which took place under the UICs. I conclude that though the bureaucratization of Shari'a practice which these graduates spearheaded displaced the authority of the traditional *'ulama*, it didn't thereby mean that Shari'a authority was now vested in the university educated new elites. Rather, Shari'a practice and authority was vested in the impersonal workings of the bureaucratic system which the graduates were establishing. In summary, I examine changes to the way religious knowledge was obtained and transmitted and how that change impacted the transformation of the Shari'a courts into the UICs. The next section is a brief description of "traditional"[236] Islamic education in Somalia and the changes that education system underwent.

The transformation of "Traditional" Islamic education: The De-centering of the *Jama'a* as an Islamic institution of learning

In "traditional" Somali society the literate or educated person was the same as the local religious authority, the sheikh or *wadaad*[237] (man of religion). Learning to write and read Arabic as part of one's religious education constituted the chief achievement of the literate person. This education

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[235] For a discussion of Islamic universities in East Africa, including IUA, see Ahmed Chanfi, "Muslim Universities in East Africa: Negotiating Cultural Identity and Political Challenges," in Muslim Institutions of Higher Education in Postcolonial Africa, edited by Mbaye Lo and Muhammed Haron (UK: Palgrave Macmillan, 2016), 195-210.

[236] What I am labelling here as 'traditional' refers to the situation from the eighteenth century onwards when religious orders or Sufi *turuq* (sing. *tariqa*) were developing in Somalia as dynamic social movements.

[237] In the old days the term wadaad referred to any man of God, but today *wadaad* is frequently used to refer to a man of religion whose religious schooling took place in "traditional" settings and not in "modern" schools. Even religious intellectuals trained in modern institutions of learning use the term *wadaad* to refer to traditionally-trained religious scholars, as we will see later in the chapter.

began with a Qur'anic school (*dugsi*) and continued with higher stages of learning at mosque circles and religious communities (*jama'a*). The first stage in this education usually begins at the age of 5 or 6 at a Qur'anic school where children, principally male in the past but now includes girls, are sent to memorize some or the whole of the Qur'an. To this day, the basic model of the Qur'anic school remains the same. They are communally founded and run. The Qur'anic teacher is often a member of the community and is compensated for his services by the parents of the children in the form of livestock or cash, depending on the context. The students at Qur'anic schools use a wooden slate (*looh*) and ink made from charcoal and resin. With the increasing level of urbanization, remuneration now takes the form of cash, and notebooks are replacing the wooden slates in some Qur'anic schools. Upon completion of the Qur'anic school, the motivated and capable student would seek higher religious instruction at mosque circles or join a *jama'a*. *Jama'as* were found by Sufi masters/sheikhs and were established in agricultural areas or around water wells in pastoral nomadic communities.[238] In some cases a *jama'a* grew large enough to become self-supporting and eventually turn into a village or town. In cases where a *jama'a* grew large enough it could challenge the socio-political relations in its vicinity.[239] When a *jama'a* wasn't self-sufficient the students were supported by the center's host community. Each student would share meals with a specific family or rotate between different families. Students studied jurisprudence (particularly the *Shafi'i madhab*), Quranic interpretation (tafsir), hadith (prophetic traditions), grammar (*nahwa*), among other subjects. A student could enter and leave at any stage and during

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[238] For more on *Jama'as* and their role in the spread of Islam in Somalia see chapter two.

[239] For an example of a *jama'a*, the *Bardheere jama'a*, which grew large enough to challenge militarily the economic and political relations in its vicinity, see Lee Cassanelli (1982); Virginia Lulling (2002); Trimingham (1965). Also see chapter two

the course of a student's career he may study under many different sheikhs. The system thus produced scholars of all levels.

In terms of traditional religious education and literacy these centers were absolutely central. They "produced a considerable Arab-Somali religious literature written mainly in Arabic (but in some cases in Somali transcribed in an adoption of Arabic script" (Lewis 1998: 14). The itinerant sheikhs or *wadaads* who provided rudimentary religious instruction in the villages in rural areas and among the pastoral nomads obtained their religious education at these centers. These itinerant sheikhs provided instruction at Qur'anic schools and sometimes formed followers (*hir*) that moved with them in rural areas and among pastoral nomads. Some graduates from this education system with the necessary connections were able to pursue further education in the other Islamic centers of learning such as Harar (now in Ethiopia), Yemen, Egypt, and Saudi Arabia. Yemen and Harar were particularly popular destination in the pre-colonial period, while connections to Egypt and Saudi Arabia strengthened in the second half of the twentieth-century (Reese 2008).[240]

The change in the destination of Somali seekers of religious education is reflective of transformations in higher religious learning. As mentioned earlier the Qur'anic school, for the most part, remains the same except in the widespread use of cash as payment and the introduction of notebooks in place of the wooden slate (*looh)*. What has changed more significantly is the place of the *jama'a* in higher religious instruction. *Jama'as,* as pointed out earlier, were integral institutions in higher religious learning in Somalia. They were also the central institution in the organization and identity of *Sufi* orders. With the spread of urbanization mosque circles have taken

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[240] Scott Reese (2008) notes "prior to the end of the nineteenth century, Somali religious practitioners looked almost exclusively to Arabia as the primary source of religious learning. . . . with the start of the twentieth century, however, a noticeable change occurred as Somalis – as well as other East Africa Muslims – began to shift their intellectual attention northward towards the Mediterranean" (6-7).

center stage in higher religious instruction. *Jama'as* still exist, even in urban centers, but their significance has decreased. Given that *jama'as* were the central institutions of *Sufi* brotherhoods, their diminished role in higher religious education is testament to the decrease in *Sufi* membership as an institutional by-product of the quest for religious education. From the turn of the twentieth century onwards the increased prominence of religious scholars unconnected to specific *Sufi* orders, and who were in fact very critical of some *Sufi* practices, led to the marginalization of the *jama'a* in the acquisition of religious education. Mosques in major urban centers like Mogadishu served as a platform for the spread of the ideas and influence of the new *'ulama*. Because of their more robust connections to the outside world, these new *'ulama* became the carriers of new currents of Islamic thought and debate thus introducing into Somalia the literature and debates of the *Islamic Awakening* (*Al-Sahwa al-Islamiyya*). In pre-colonial Somalia, journeys to centers of Islamic education outside of Somalia were made possible through *Sufi* networks that connected Muslims in the Horn of Africa to those in other parts of the world. It was, therefore, scholars identifying with specific *Sufi* orders that introduced the latest currents of Islamic thought in Somalia through their networked connections to Islamic centers of learning outside of Somalia. The onset of colonialism multiplied the connections to the outside world, "from scholars seeking knowledge and enlightenment to businessmen and laborers looking for economic opportunity, imperial infrastructure seems to have laid the groundwork for expanding the horizons of East African Muslims" (Reese 2008: 8). The formation of such networks were more responsible for transforming traditional Islamic institutions of learning than any large scale educational reforms carried out in the colonial or postcolonial periods.

It was the formations of new connections to the outside world, formed particularly in the second half of the twentieth century, which altered the symbiosis between *Sufi* orders and the

acquisition of higher religious education by diminishing the role of the *jama'a* in religious education. The modern and state-centered Islamic educational reforms in influential Muslim countries like Egypt and Saudi Arabia are significant to the story of Islamic education in Somalia, in so far as these reforms made Islamic education part of these states' calculus in cultivating relations and influencing debate in other Muslim countries. This partly explains why connections to institutions of learning in Egypt and Saudi Arabia became widespread and influential beginning in the latter half of the twentieth-century in the process of the emergence of the postcolonial Somali state. Education was one of the arenas where competition for influence by foreign countries over the newly emerging Somali state was exerted. Former colonial powers such as Britain and Italy and newly emerging global powers like the United States and the Soviet Union began to offer Somali students opportunities for study through scholarships to universities in the host countries. Muslim states such as Egypt and Saudi Arabia also began to try to exert influence in Somalia through education. Egypt, for example, began to send education missions either through al-Azhar[241] or through the department of education beginning in the 1950s (Abdullahi 2015). Such efforts led to the establishment of Arabic language institutions and schools that were funded and taught by Egyptian teachers. These efforts increased the opportunities and the number of Somalis seeking higher religious instruction in these countries. The opportunities for such study was made even more available with the increased labor migration to the oil producing Arab Gulf States beginning in the 1970s. The educational networks made possible by these connections allowed many Somalis to attend state-backed and newly founded religious institutions embodying the vision of the 'new' Muslim intellectuals, such as the Islamic universities of Saudi Arabia.

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[241] The oldest and most famous institution of higher learning in the Sunni Muslim world.

Many of the Somalis who spent time in these universities did in fact form a new *'ulama* unconnected to the preeminent local institution of higher Islamic learning, the *jama'a*, and critical of *Sufi*-oriented religious authorities produced in that institution. These new *'ulama* provided religious lessons in mosques and introduced the literature and debates of thinkers associated with the new intellectuals, such as the writings of Sayyid Qutb. They influenced many young people in urban centers who began to comport themselves in the fashion of contemporary Islamist activists and who viewed themselves as part of the wider phenomenon of the *Islamic Awakening*. These influences led to the formation of Islamic associations and movements in the 1980s, the most important of which are al-Ittihad al-Islam (Islamic_Union) and al-Islah (Reform).[242] As the "socialist"[243] military regime of Barre began to face mounting economic, political, and social upheavals beginning in the late 1970s Islamic associations provided a platform and discourse from which to critique the state.[244] The networks and personal links to institutions in the Arab world also made it possible to find employment and escape the regime's crackdown. In the ensuing chaos following the collapse of the state in early 1991 the Islamic associations became more organized. Their networks were essential in accessing charities and various other opportunities. One such opportunity was education.

With the total collapse of public education the Islamic educational networks linking Somalia with other Islamic countries provided the only opportunity for many young people to continue their education and escape the deteriorating violence in Somalia. These networks weren't

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[242] For a well-researched account of al-Islah, see Abdullahi (2015).

[243] For an analysis and critique of the socialism of the Barre regime, see Ahmed Samatar (1988).

[244] The most important event in the Islamic opposition to the socialist regime's policies took place in 1975, when the regime promulgated new and controversial family laws. From the perspective of the *'ulama* the regime's intervention in the family, the sphere of the Shari'a, was an unacceptable intervention in the practice of the Shari'a. The resulting confrontation between the state and the *'ulama* led to the execution of ten religious scholars. For more on this even, see Abdullahi (2015).

limited to Middle Eastern Arab countries, such as Saudi Arabia and Egypt. In fact, in the course of the civil war in the 1990s connections to sub-Saharan Africa Muslim countries became as important, if not more important. In the rest of the chapter I take a closer look at an Islamic education network connecting Somalia and Sudan and the role this network played in the formation of the new intellectuals that led the transformation of the previously independent neighborhood/lineage Shari'a courts into a municipal legal system. As mentioned earlier, I do this through a case study of one man, Geed, who was a member of the graduates from IUA and who led the creation of a unified court system under the UICs.

An Education Network Connecting Somalia and Sudan

    A. The case history of Geed

The rest of the chapter is about the formation of the Islamic education network which made it possible for Somali students to go to Sudan and obtain postgraduate degrees, the students' socialization and experience in Sudan, and the role these graduates played in the rise of the UICs once they returned to Somalia. I do this by focusing on the case history of one man who was a member of the graduates. We will call this man Geed.[245] The use of case history or life history, like other literary genres, shapes "a particular preselected range of data into a meaningful totality" (Crapanzano 1980: 8). As such, the case history of Geed which I present here is doubly edited: first by Geed in the interview encounter and then by me as I arranged his answers into a meaningful totality. I, therefore, have not chosen the case history for reasons of 'objectivity.' I also do not

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[245] Due to the sensitivity around my topic, I struggled with how to stay true to the narrative of my informant while avoiding the revelation of my informant's identity in the retelling of his story. Understandably, many of the people I interviewed who were involved with the UICs were quite reluctant about sharing their stories. They feared that such revelation would only bring them more scrutiny under the current environment of the 'war on terror.' Consequently, I had to take extreme care with the way I presented Geed's narrative such that it would be impossible to identify him. I omitted or altered much information for that reason, but the overall narrative is faithful to the key theme of the chapter.

claim that Geed's case history is the exact representative of the experiences, views, and role of all the other members of the graduates. Rather, I chose the case history because such presentation allows me to cover the issues in all their complexities and contradictions ethnographically.

I was introduced to Geed by a friend who knew us both. Geed, the friend told me, was one of the officials of the UICs and, just as importantly, Geed was an 'academic.' People in Mogadishu use that label to describe someone who has a post-secondary degree from a secular institution or someone whose religious training took place in one of the modern Islamic universities. The connotation is that such a person is knowledgeable about worldly matters. In telling me that Geed was an 'academic' my friend meant to suggest that Geed would understand that my research on the Shari'a court movement wasn't connected to any government intelligence organization and that it was just 'academic.' The comment was meant to alleviate my fear that Geed, like many other people I tried to interview, would find my research topic suspicious and possibly refuse to talk to me. That was my friend's thinking. Appreciative, I welcomed the opportunity and a few days later I was taken to meet Geed. We visited Geed, a pleasant man in his 40s, in his office located in a building near one of the city's main thoroughfares. Over the course of my fieldwork Geed and I would become good friends. I became his English tutor and he turned out to be one of my best sources for information on the UICs. In particular, the process of transforming the communal and independent Shari'a courts into a unified and bureaucratized judiciary after the Shari'a courts took over Mogadishu. Geed wasn't involved in establishing any of the communal Shari'a courts, but he played a key role in establishing a court system once the UICs were in control of the city. It was through him that I found out about the Organization of University Graduates (hereafter, I refer to the members of this organization and those that fit their profile as 'the graduates' or 'new' intellectuals).

This organization was founded around 2000 by university graduates who returned to Mogadishu after postsecondary education from various Muslim countries. The vast majority of the members, numbering 150-200, graduated from universities in Sudan. Over 90% came back from Sudan, I was told. The graduates had specialized in various fields, including both secular and religious subjects. The organization was established because of the need the returning graduates felt for a space to socialize, discuss developments in the city, and strategize about how to make a difference. One interviewee said, "We just wanted a place to meet and have tea, and we also wanted to inform residents of the city, particularly the youth, that they could and should do something about the violence and terrible conditions of the city." In a city divided into racketeering fiefdoms by warlords and criminal gangs such a space was hard to come by. The politicization of kinship relations and religious polarization also limited the availability of neutral social spaces. The establishing of the organization was therefore a clear demonstration of the graduates' sense of unity and the role they felt they could play in society. Geed was a member of this organization. I managed to interview some of the members of the organization. My presentation and commentary of Geed's narrative is, therefore, informed by the information gathered from these other interviews. Members of the graduates remain close friends today and are very active in different spheres of life in Mogadishu, including education, politics, and business. Their influence is, therefore, not limited to the role they played in the rise of the UICs.[246] The following is a summary of Geed's story and by extension the story of the intellectual formation of the graduates and their role in the UICs.

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[246] One day, I was interviewing an old man who had played a key role in establishing one of the earliest Shari'a courts, but who was at the time of my interview an employee at the Ministry of *Awqaf and Religious Affairs*. A group of men in their 30s and 40s walked by us and he commented how "these Sudanese men" were taking over all the jobs at the ministry. Though there is a degree of exaggeration in his comment, it nevertheless, goes to show the influence these Sudan educated men continue to have to this day.

B. Reformist Movements in Somalia and Educational Opportunities Outside of Somalia

Geed was born in 1971 in a small town in one of the regions, but he always tells people he was born in Mogadishu because "I don't want to be associated with a specific lineage group, which people might do if they know what region my family originally came from." It's harder to make such an association in a big city like Mogadishu where the population is more mixed. At a very young age his family moved to Mogadishu where Geed did all of his early schooling. At the age of six, Geed began attending a Qur'anic school and a few years later he was enrolled in a government school. Geed never completely memorized the Qur'an nor did he acquire more religious education in mosque circles. He left the Qur'anic school when he was thirteen, but continued attending public schools until his parents decided in 1986 to enroll him in one of the Egyptian funded high schools of Mogadishu. The medium of instruction in these schools was Arabic. In those days, Geed said, a lot of parents preferred these schools over government schools where Somali was the language of instruction. People were beginning to lose interest in public schools because employment in government bureaucracy after graduating from such schools was no longer guaranteed. Moreover, there was a general perception that, as with the rest of state institutions, there was widespread corruption and indiscipline in these schools. The Egyptian funded Arabic language schools were preferred because of the possibility of getting a scholarship to pursue further study in the Arab Middle East, or finding employment in the Arab Gulf States. These schools were also viewed by many parents as disciplining students in Islamic ethics, "they viewed them just like the Qur'anic schools," in terms of cultivating an Islamic subject, said Geed. This was the opposite of the perception many people held of government schools which were seeing as teaching immoral and un-Islamic practices.

The civil war erupted at the beginning of 1991 when Geed was in the middle of his last year of high school. After the collapse of the Somali Republic, the public school system completely disintegrated. About a year after the onset of the civil war, few schools were reopened, some with funding from Islamic charities. Geed became a teacher at one of these schools. He also joined one of the Islamic associations at that time. He joined this Islamic association because a friend of his who was already a member advised him to join. Islamic associations/organizations saw increase in their number in the early phase of the Somali civil war. Abdullahi (2015) describes how *Islah Islamic Society*[247] (commonly known as *al-Islah,* or reform), the Somali chapter of the international association of Muslim Brotherhood groups, saw a large increase in their membership after the eruption of the civil war. In the early phase of the civil war, when communal violence became widespread in Mogadishu, the organization prioritized the security of its members by moving them to relatively safe districts or to their home villages, when the capital became too unsafe. The organization also utilized its international connections to provide aid to its members. In the words of a prominent leader of al-Islah "we made every effort possible to seek humanitarian assistance for our brothers inside Somalia and their families which was our priority. We also activated *Islah* charity to mobilize resources for the people of Somalia" (quoted in Abdullahi 2015: 325).

Geed was moved to join an Islamic movement because of these reasons, but also because he found, in the space provided by the Islamic association, like-minded people he could engage and share information with. With the ethnicization or clanization of the Somali civil war, Islamic associations provided one of the few arenas where one could form relations that transcended

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[247] This movement was launched in 1978 in Sudan. At the time it was called *Islah Islamic Society*, but changed its name in 1989 to Islamic Movement in Somalia. To this day, however, it's widely known as *al-Islah*. See Abdullahi (2015).

lineage members. After joining the organization, Geed got to know the history of the organization's leaders. It was commonly known that the leaders travelled widely and had obtained postgraduate degrees, on religious or secular subjects, in foreign countries. Such stories were popular and gave the members of the organization the image of being educated and modern. This made Geed think of going overseas for further education. He also began to entertain going abroad because he met Somalis who left the country in the 80s for the Arab world, and who were coming back to Mogadishu as employees of Islamic aid agencies. This made Geed realize that for him to get a better paying job, maybe with one of the Islamic charity organizations in Mogadishu, he needed more than just a high school education. Geed was of course not the only young man who wanted to pursue further education overseas. Since there were no universities open in Somalia at the time the only thing to do was to leave the country. This was, however, not easy to do. Since the breakdown of the Somali central state most countries no longer recognized educational certificates from Somalia. The disintegration of the state also meant that one couldn't travel abroad with a Somali passport. These factors severely restricted educational opportunities for Somali students outside of Somalia. One country, however, opened its doors for Somali students and became a popular destination: Sudan. Sudan became a popular destination because it continued to accept education certificates from Somalia even after the collapse of state institutions.[248] Not only that, Sudan also provided scholarships and allowed easy entry into Sudan for Somali students. The attraction and accessibility of Sudan for Somali students had to do with political developments there.

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[248] Later on in the mid-90s, when the creation of false documents became widespread, an umbrella organization representing Islamic charities working in the education sector, Formal Private Education Network of Somalia (FPENS), was established in 1999 to provide the privately owned and run schools with a single certificate. For more on the establishment of FPENS and the role of Islamic charities in funding these schools, see Abdullahi (2015); Le Sage and Menkhaus (2004); Marchall (2002); Saggiomo (2011).

In 1989 a coup brought to power the National Islamic Front (NIF) in Sudan. The NIF proclaimed a project that "sought to lay claim to the Islamic identity of the state and to conceive of the state as a political form for the development of an Islamic way of life that could meet the challenges of modernity" (Salomon 2016: 13). Sudan thus became the first example of an Islamic state in the Sunni World where Islamists held the reins of state power. The NIF undertook an Islamization project, including the Islamization of knowledge which provided more funding for education institutions in an attempt to harmonize modern regimes of knowledge with the ethical and moral teachings of Islam (Salomon 2013).[249] As a byproduct of the assertion and emphasis on Islamic identity by the NIF, Sudan relaxed its visa requirements for citizens of Muslim countries and established Islamic institutions and universities to internationalize this project. Africa, and particularly Somalia, according to Abdullahi (2015), received special attention in this project. Geed and the other men I interviewed weren't unaware of the connection between the Islamization project in Sudan and the opportunities Sudan made accessible to them. But for them the kindness that the people of Sudan and government extended to them only enhanced Sudan's credentials as a proper Islamic country. A man who made his way to Sudan by journeying through Ethiopia and Eritrea and who was amazed by how well he was received by the guards at the Eritrea-Sudan border explained the guards' behavior, "they were good Muslims and they realized we were a Muslim people who were without a government and suffering." Others explained that as fellow

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[249] The discourse on the need to *Islamize knowledge* as a way of meeting the challenges of the modern world is a key aspect of contemporary Islamic reform. Sudan in the late 80s and early 90s, as Salomon points out, was unique in that such a discourse found a state sponsor, "while intellectuals across the Muslim world had debated the merits of such a project for several decades, never had a context arisen in which a state provided the resources for the flourishing of such a project not only in educational institutes, but at all levels of governance in which Islamic knowledge would be used" (Salomon 2013: 830). For more on the *Islamization of knowledge* discourse, see Mona Abaza (2002); Aziz Talbani (1996).

African Muslims they felt culturally closer to the Sudanese people than they did in other countries, and, they speculated, perhaps that's why they were so well received.

Many of the students who ended up in Sudan did so in one of two ways: they either managed to get to Sudan through individual initiative by going through Ethiopia and Eritrea, or as part of the Islamic organizations in Somalia and their networks. When offering scholarships to Somali students, Sudan did so through reformist Islamic organizations, such as al-Islah and al-Ittihad[250] or through Islamic charities, which were themselves connected directly or indirectly to these organizations. Prominent sheikhs who had personal connections to Sudan also received some scholarships individually. Overall the students who ended up in Sudan were young men who had limited religious education and some proficiency in the Arabic language, which they picked up either in the Arabic language high schools, or in the process of their religious education in mosques. They were predominantly young and belonged to reformist Islamic organizations. They considered themselves part of the *Islamic Awakening* (*al-Sahwa al-Islamiyya*, or *Baraarugga Islaaamka* in Somali). According to Geed, the reason the reformist Islamic organizations were receiving scholarships and sending their members abroad for further education was because they were better organized and had better international connections than the Sufi organizations. He estimates that 90% of the generation that went to Sudan in the 90s were of this background. Geed was fortunate as he was selected by his organization and ended up going to Sudan on a scholarship. Geed thinks he was selected because he was an active member of the organization and because the organization's leadership thought he would succeed academically.

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[250] Al-Ittihad al-Islamiyya, or Islamic Union is a salafi-oriented Islamic organization formed in the early 80s.

An important point to underline from the above narrative is in relation to the popularity of reformist Islamic organizations in Somalia in recent decades, and what it means to belong to such an organization. As we just saw, the primary reason Geed joined the organization had to do with a desire to become a part of an association that was united by something other than the politicized kinship of the day, the security the organization provided from the civil war, and the opportunities that came with being a member of the organization. One of the most important opportunities that reformist Islamic organizations in Somalia provided was, and is, the chance to seek further education – Islamic or secular – in Muslim countries outside of Somalia. Such education allows one to gain employment and social prestige both in Somalia and outside of Somalia. The socialization and experience that comes with that education inevitably informs the religious practice and discourse of the graduates. Geed no longer considers himself a member of the Islamic organization which he joined in 1992, and this is not because he disagrees with them ideologically, but because in his capacity as a businessman and an aspiring politician he no longer finds the organization all that useful to his current state and ambitions.

C. Socialization and Formation of a New Identity in Sudan

In Sudan Geed was one of the few lucky ones for he had a scholarship which paid for his housing and tuition. He arrived in Khartoum, Sudan, in 1993 and began the process of gaining admission to the International University of Africa – Khartoum. IUA was one of the key institutions of the Sudan state's Islamization project.[251] Besides the Somali students, Geed also met many other African Muslim students there. IUA was different from other universities in Sudan. It was

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[251] Salomon (2016) writes that the state's focus on education was an element in a broader effort to reform the individual, "From the establishment of Islamic universities such as Holy Qur'an University or African International University, to the funding of small circles for study or prayer, such as the humble Omdurman circle which I visited in 2007, from the legal restrictions on dress, gender mixing, and personal comportment, to the da'wa camps established in war zones to train civilians in both Islamic knowledge and military skills, the focus on the individual as the locus of Islamic renewal was clear in all in all that the NIF did" 73.

previously an Islamic institute which had been turned into a university for the purposes of internationalizing the state's Islamization project with particular focus on Africa. For example, unlike other state universities IUA administered its own exams independent of the ministry of education's specific requirements. If one failed its entrance exams the university had an institute where one could spend a year or two preparing for the exams. Geed passed the exam which was on the Arabic language and other general topics. IUA had five facultie, and the exam one took depended on the faculty one was entering. Geed enrolled in the faculty of Shari'a and law, which had two areas of specialization: 1) Shari'a; 2) Shari'a and qanun[252] (administrative law). Geed's specialization was on Shari'a and *qanun*. He explained that the difference between the two areas of specialization was that the latter wasn't just about Shari'a, but also dealt with state law such as criminal or commercial law. In those days the majority of the Somali students at IUA were majoring in education because that was the field where one could find employment back in Somalia. Indeed, many of the graduates, upon coming back to Somalia, became involved in the education sector either by founding their own private schools, becoming teachers, or working for the Islamic charities that funded these schools. When I asked Geed why he chose to specialize in Shari'a and *qanun,* he responded that he knew a government would eventually return to Somalia and someone with his specialization would be needed, "I was waiting for a government." Geed didn't want to talk much about the content of his education in Sudan, but he was enthused, as were many others I interviewed, to tell me how great and transformative his experience in Sudan was.

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[252] In Islamic history *qanun* is known as the body of administrative laws promulgated by the political sovereign, which didn't draw their authority from the Shari'a. This is in contrast to the Shari'a, the body of legal opinions and norms established by Muslim jurists based on their understanding of God's will as expressed in the foundational texts (Qur'an and hadith). In Somalia today, secular or state law is referred to as *qanun*.

Among the most important consequences of these students' experiences in Sudan, which my interviewees highlighted, is a shift in their religious views as a result of being exposed to more debates and differing religious views, conviction in political activism and political organizing as a means of achieving social change, and the consolidation of lasting friendships between the Somali students. In terms of how Sudan influenced their religious and world views, Geed explained that the level and complexity of Islamic learning and debates in Sudan were significantly higher than what they knew in Somalia. This was an eye opening experience. He pointed out that in Somalia people follow the Shafiʻi *madhhab*[253] (one of the four Sunni schools of legal tradition in Islamic jurisprudence, or *fiqh*), while in Sudan the Maliki school is predominant. Geed said they were very aware of the existence of different schools of thought within *fiqh*, but encountering that difference in practice was very different than learning about it theoretically. As Geed quipped, "I learned that another Muslim could have an opposing view to yours on a religious position and you could debate and disagree about it without becoming enemies. For a person coming from Somalia where people were killing each other this was medicine." He was amazed at the number of student organizations and debates that were taking place at the university campus. He described a scene where student groups belonging to different organizations gathered and debated. These debates would get so heated that Geed thought a scuffle would break out, but to his amazement the same people whom he thought were about to fight would be sitting, laughing, and eating together.

Geed and the other Somali students' time in Sudan coincided with the state led Civilization Project (*al-mashruʻ al-hadari*)[254] which Geed described as a revolution. He explained that because

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[253] For more on *Madhhabs*, see Bearman, Peters, and Vogel, *The Islamic School of Law: Evolution, Devolution, and Progress* (2005).

[254] On the Civilization Project, Salomon (2016) writes, "The initiative that the regime called Civilization Project (al-mashruʻ al-hadari) took place both in the realm of political and legal institutions, where studies of Sudanese Islamization generally place their focus (Layish and Warburg 2002; Sidahmed 1996), and in less-studied areas, such as culture and the arts, science, architecture, language, and even in the promotion of certain forms of family and

of this revolution a bus would come to the campus every Friday and take anyone who was interested to lectures and debates around the city in government ministries and attended by well-known international dignitaries and scholars. Another man among this group whom I interviewed told me that he met the Doha based Egyptian Muslim scholar Yusuf al-Qaradawi,[255] one of the most recognizable and influential Muslim clerics in the world today. This was an important and memorable event for the man who came from a small farming village in southern Somalia. In Sudan they also had access to big libraries, which Geed said was a drastic change compared to what was available in Somalia. Underlining how miniscule the amount of reading material available in Somalia was in comparison to Sudan, one interviewee told me, "it was like coming out of darkness into the light." Exposure to this material and the Islamic public sphere in Sudan changed their religious views. Geed said that most of the Somali students in Sudan were *salafi* in orientation, particularly those that went there as members of reformist Islamic organizations. Their teachers in Sudan realized this and so would challenge and argue with them. He emphasized the debating of ideas had a big influence on him and the other Somali students. It informed them of the variety of positions and opinions possible within Islam. For example, he pointed out, if a person left Somalia and went to Sudan with a big beard, refraining from listening to music, and not shaking women's hands, he came back from Sudan having trimmed or shaved his beard, no longer under the impression that Music was *haram* (forbidden), and having no problem with shaking a woman's hand. Geed concluded "Sudan made us moderate our views (*dhehdhahaad*)."

This idea that Sudan moderated their religious views is one that was expressed by many of the men I spoke to. What Geed is describing is an Islamic public sphere where Islamic principles

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kinship. Indeed it was these latter arenas of intervention that made the NIF's project properly one that was 'civilizational' in nature, rather than merely an effort at political or social reform" (64).

[255] For more on this important scholar, see Salvatore (1997); Zaman (2004).

and terms frame public debate and discussion. This lively public sphere was made possible by the effects on Sudanese society of the Islamization policies of the NIF. This, however, didn't meant that this public sphere was characterized by the absence of meaningful debate because it was monopolized by the ruling Islamist elite. The public sphere was Islamic in so far as it was informed by "a normative framework that far exceeded the state, one that individuals inhabited regardless of their positions on the particular government in question" (Salomon 2016: 5). The only condition in participating in this public sphere was that one had to frame one's argument in the normative Islamic framework in order to be heard. The public sphere was thus populated by various actors including Islamists, non-Islamists, Sufis, and Salafists. It was this Islamic public sphere populated by diverse actors that the Somali students, who left a country in the middle of religious polarization based on doctrinal debates between Sufis and Salafis, encountered. It is thus no surprise that they left Sudan having softened their hardline doctrinal positions.

The experience in Sudan was also influential in that it created lasting friendships between the Somali students who met there. Though some of these students knew each other because of their membership in the same organizations or through the towns and cities they came from, many didn't know each other and sometimes were on opposing sides of competing Islamic organizations. Their experience in Sudan, as they describe it, has led them to establish a network of friends and colleagues which would be crucial in their activities upon their return to Somalia. Some of the Somali students in Sudan, like Geed, had scholarships but many didn't. This meant that those without scholarships shared food and room with those that did. In situations where some of these students were receiving occasional stipends from relatives the stipends were shared. The money was used to buy and cook food for the group. Since no-one consistently received monthly stipends everyone shared what they had when the others were short. They were thus often better off than

the other students at the university, which puzzled the other students since the Somalis were coming from a war ravaged country. This collectivity and camaraderie led to the establishment of a Somali student organization which represented their collective interest and helped newly arriving Somali students navigate the system.

Back in Somalia, these students might have belonged to different Islamic organizations, lineage groups, or came from different regions of the country. Consequently, a certain amount of tension and arguments existed which manifested themselves in competition for leadership roles in the Somali student organization. The men I interviewed, however, stressed that these tensions and disagreements were worked out in debates within the Somali student organization. So whereas back home such differences might have led to more serious confrontations, in Sudan they resolved such tensions through debating and grassroots campaigning. This, they contend, was a crucial lesson from their experience in Sudan. Overtime, the members of this network, which extended into different parts of the Somali inhabited regions in the Horn of Africa and Sudan, began to be referred to as *bah Sudan*.[256] The friendships and collegiality formed in Sudan became more important upon their return to war-torn Somalia. The network was particularly important in finding employment in the Islamic charity funded private schools of Mogadishu. The collective experience and socialization which gave the network coherence became the bases for their formation as a group whose self-understanding vis-à-vis the rest of the society was that of a vanguard. They saw their experience in Sudan as having made them more 'moderate' i.e. more open to varying interpretations of Islamic practice. They also viewed their education and time in Sudan as having

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[256] *Bah* is a Somali kinship term that is used to distinguish the members of a single family when the father is married to more than one woman. So the children from different mothers who share the same father are distinguished in reference to their mother's name. For example, *bah Asha* are the children of Asha. Given the significance of kinship ideology in Somalia it's telling that these students began to refer to themselves as *bah Sudan* indexing Sudan as their common origin and the source of their loyalty.

equipped them with an understanding of the issues facing a modern Muslim society, thus uniquely positioning them to play a leadership role in transforming the war-torn society.

Though there is no doubt their experience and socialization in Sudan made a great impact on their identity, discourses, practice, and worldviews, the emphasis on the transformative nature of their time in Sudan is part of their self-description as modern and worldly Muslims. Their view of Islamic knowledge in Somalia is that it's very limited and Islamic practice as unnecessarily restrictive, both the *Sufi* and *Salafi/Wahhabi*[257] variety. They often view the conflicts and heated debates between Sufis and Salafis as a product of their collective ignorance and intolerance. The narrative of Sudan's dramatic and moderating influence on their lives should be seen as part of this group's critique of Islamic practice in Somalia and their self-perception as more modern. Geed's description of what happened once he returned to Mogadishu brings to the fore this group's understanding of their identity and role in society.

Geed returned to Mogadishu in 1998. Over the four years of his absence, life in Mogadishu had become more precarious. Warlords and criminal gangs had multiplied dividing the city into fiefdoms and protection rackets making movement between different parts of the city almost impossible. There also emerged a big kidnapping for ransom business which created an even more complex mosaic of militias and criminal groups. Upon returning to Mogadishu close friends and acquaintances in Sudan found themselves in different parts of the city unable to visit and see each other. As a way of challenging these enclosures Geed describes how one day he and a friend from Sudan tried to walk though parts of the city. After every couple of blocks they would encounter a checkpoint manned by a ragtag militia. Since they had nothing of value on their body the militia

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[257] I am using these terms in the same way they are used in local discourse. I am, therefore, not using the labels to index a particular worldview or propensity to political violence as is commonly assumed by commentators, though that might sometimes be the function of the labels in local discourse as well.

would let them go, but not before enquiring into who they were and where they were going. Upon finding out that the two friends calmly walking through Mogadishu belonged to different lineage families whose militias were engaged in a bitter turf war, the militiamen would be dumbfounded and warn them not to go any further. Geed and his friend would thank them and continue on their way. Whether this story actually happened or not the significance of the story is that it's meant to highlight the new found identity and self-perception of *bah Sudan*. They saw themselves as above the politicized kinship allegiances and local understanding and practices of Islam. They viewed politicized kinship and intra-religious polarization as the sources of the conflict in Somalia. Because of their new found identity the graduates thought themselves above these squabbles and so uniquely positioned to lead society to overcome them.

D. Bureaucratization of Shari'a Practice and Transformation of Shari'a Authority

Soon after his return in 1998, Geed got a job in the education sector, where many of his friends in Sudan were employed. The school he began to teach at was founded by someone who also came back from Sudan. This school, like the majority of the schools in Mogadishu after the civil war, was established and sometimes run with the assistance of Islamic charities. In helping to fund these schools, the Islamic charities would agree to pay for part of the initial expenses of setting up the school with the goal that the school would eventually become self-sustaining through the fees collected from students (Le Sage and Menkhaus 2004). The schools used Arabic as the language of instruction and their curricula were often copies of those from the Arab world. Their choice of a curriculum was dictated by the absence of up-to-date Somali language textbooks and the availability of textbooks from the home countries of the charities that helped fund these schools.

Locally the schools were viewed as 'Islamic' schools.[258] Except for an Islamic studies subject which focused on a different religious topic each week, however, the schools taught regular subjects like mathematics, history, science, etc. The reasons for the designation of these schools as Islamic seems to derive from their use of Arabic as the language of instruction and connections to Islamic charities.

The schools' designation as Islamic was significant not so much in terms of the religious instructions they provided but because of the perception by Mogadishu residents that these were spaces where young people were disciplined to be virtuous Muslims. The schools came to be viewed as spaces where one was disciplined in the proper Islamic etiquette and behavior (*adab*).[259] This perception was significant because it turned the schools into centers where parents took their children not only to be educated, but to prevent them from joining militias and gangs. An administrator of one of these schools noted, "some parents when called to the school to be told about their children's behavior would tell you: please keep them in school even if they don't learn anything, because if they are suspended they would end up in the street with other armed robbers" (quoted in Abdinoor 2007: 166). Another administrator told me that his school was one of the first to open in the city after the eruption of the civil war. After opening the school the administration of the school held a meeting. They told the parents they didn't have text books or teachers to

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[258] In many ways these schools resembled what in Louis Brenner's (2001) account of Islamic education in Mali was referred to as *medersas* (modernized Muslim schools). Like the medersas in Mali the Islamic charity funded schools in Mogadishu are established and taught by graduates from universities in Islamic countries. Like the medersas, Arabic is the medium of instruction and religion is taught as a subject among other subjects. Nonetheless, they were not called madrasas.

[259] These schools were locally viewed as spaces where students were inculcated in the proper *Adab*. Ira Lapidus (1984) writes on this concept "Adab was used throughout the classical era of Islam to imply learning and knowledge for the sake of right living. [It meant] in its most general sense: correct knowledge and behavior in the total process by which a person is educated, guided, and formed into a good Muslim. In this larger . . . sense, adab is part of a system of Muslim ideas, part of interrelated set of concepts that constitutes the basic vocabulary of Islamic belief and makes up a Muslim anthropology of man." Another related concept is *tarbiya* (education, pedagogic, training) which is viewed as an integral part of any Islamic education. See Anne Roald (1994).

instruct their children in anything, and that all the school offered was a space for parents to keep their children off the streets and away from becoming victims or perpetrators of the violence that was rocking the city. The parents agreed to send their children to the school and pay the small fee.[260] As Mogadishu's situation deteriorated throughout the 1990s, Islamic institutions, authorities, and discourses provided the spaces and language for critiquing and addressing the violence of the war. It was in this context that the private schools of Mogadishu became popular as a space where young people could be sheltered from the effects of the war partly by being disciplined in Islamic ethics.

It's important to remember that initially many of the Shari'a courts of Mogadishu began life as rehabilitation centers where parents or relatives of delinquent youth, and the not-so young, were taken to be rehabilitated by religious authorities on the right conduct and responsibility of a proper Muslim subject. One of the most important communal Shari'a courts, the court of Harar Yaalle, which operated between 1994 and 2007, was primarily a rehabilitation center. I was told that at one point it held over 350 individuals to be rehabilitated. It is, therefore, a widely held and Shari'a-informed assumption of the need to cultivate and embody Islamic virtues in order to live the life of an ethical Muslim subject that explains the emergence of the rehabilitation centers i.e. the Shari'a court, and the popularity of the private 'Islamic' schools.[261] The popularity of these schools allowed the foreign-educated university graduates, like Geed, to rise to positions of authority within the environment provided by these schools. They leveraged their university

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[260] Along the same lines, Le Sage and Menkhaus (2004) write, "They consistently state the charity-supported schools are the only substantial efforts to keep young men 'off the technicals' – the gun-mounted trucks that form the cavalry of the Somali civil war – and out of gangs. In addition, the mixed classrooms create horizontal interaction and build bonds between members of different clans" 23.

[261] For an insightful discussion of the importance of the cultivation of the human sensorium as a prerequisite to embodying the virtues necessary to ethical living in the Islamic tradition, and how this aspect of the tradition is being recalibrated in the contemporary moment under reformist Islamic movements, see Charles Hirschkind (2006).

degrees, their proficiency in Arabic, and their connections to Islamic internationalism to gain influence and become prominent figures in these schools. The popularity and proliferation of these schools throughout Mogadishu was part of a process where Islamic institutions, authorities, and discourses were offering an alternative and a way out of the cycle of violence that the city was thrown into in 1991. Since members of *bah Sudan* were leading figures in these schools they were well positioned to play a leading role in the transformation of the Shari'a courts from locally-established and community based institutions to a city-wide administrative organization under the UICs.

As mentioned above, upon returning from Sudan Geed found a job at a private school founded by another man who also came back from Sudan. For money and for prestige, however, Geed wanted to be in a management position. He also thought he could manage a school better than most because of his university degree. Establishing your own private school was a big undertaking requiring both money and community support, so Geed's best bet for getting into a management position was to find employment in one of the big charity organizations that funded orphanages with their own schools. He approached the local office of a large charity based in one of the Gulf States. Most of the local staff of the charity were Somali and Geed was told that the only position they could offer him was a teaching position. He declined that offer. A few months later Geed found out a big delegation from the charity was coming to Mogadishu and rumor had it that a reorganization of the orphanages and their management was on their agenda. He was even more excited when he heard they wanted to select people with university degrees. He jumped on this opportunity by writing a letter to the delegation in Arabic. He gave the letter to a friend of his who worked for the charity, so that he could hand it to the delegation once they arrived in Mogadishu, bypassing the local Somali staff. After receiving the letter the delegation agreed to

meet with him for an interview. Geed was asked many questions in the form of various hypothetical scenarios having to do with management issues. The delegation was so pleased with his performance that a few days later he got a call from the charity's office informing him that he was assigned as the deputy manager of an orphanage. The Somali staff at the charity's Mogadishu office couldn't believe he went over their head and were furious, but what could they do.

A few months into his position as the deputy chairman of the orphanage, the chairman of the orphanage was asked to submit a detailed itemization of the previous year's budget showing where and how the money was spent. The chairman had no idea what to do, "he was a turban-wearing *wadaad* (a man of religion); he was always at the mosque. He didn't know anything about math or administration, but I knew these things well," explained Geed. Confronted with this, the chairman called on Geed to help him prepare the report. Geed assisted him in preparing the budget, but this only made the chairman angrier because he felt his position more threatened than ever. Geed claims that he always paid the chairman's animosity towards him with kindness. He read a verse from the Qur'an whose rough translation is 'if you repay their bad deeds with good deeds your enemies will become your friends' to underline his attitude. A few months passed before another delegation from the charity came to Mogadishu to inspect all the orphanage centers. They checked many things: the overall condition of the orphanage, the staff, the hygiene of the children (hair, nails, etc.), the beds, and many other things. As the head of the orphanage, the chairman took the delegation around. Whenever they saw something wrong, like a garbage can knocked over, they reprimanded the chairman. The chairman got angry every time he was scolded, "he was just an old *wadaad* who had always been in the mosque and couldn't tolerate being scolded." To add to the misunderstanding, "the old man's Arabic wasn't good. He knew classical Arabic which he learned in the mosque in the process of his religious education, but he couldn't speak well." After

walking around with the delegation for a while the chairman had had enough and left Geed alone with the delegation. The head of the delegation, a Sudanese man, was very pleased with Geed. A few weeks after the delegation's visit Geed was informed that he was to be the new head of the orphanage.

What is fascinating about this story is Geed's deft exploitation of his international connections, university degree, and mastery of the Arabic language to outmaneuver the local Somali staff in the political economy of the charity-supported schools. He skillfully uses his experience in Sudan and his mastery of the Arabic language to go above the local networks that controlled access to employment in this sector. Geed never mentioned ideological affinity or awareness of more contemporary or reformist Islamic discourses as the reason for his relationship with the foreign based leaders of the Islamic charities. Rather, the bases of his relations with them and what makes him more valued by the international/Arabic staff of the charity is his mastery of the Arabic language, and his capacity for bookkeeping and management. Time and again Geed referred to his capacity to establish and administer a system (*nizam*) as uniquely qualifying him. He viewed *nizam* as central to the practice of Islam. Without order there is only mayhem. His high valuation of rational bureaucratic know-how is grounded on the assumption that this is what the modern world requires. Such traditional Islamic virtue as patience is recast in Geed's narrative as necessary because it's an indispensable virtue in functioning within the chain of command of a bureaucratic organization. The traditionally-trained chairman of the orphanage, whom he disparagingly called a simple *wadaad* and whom he eventually replaced, is said to be lacking such patience because he wasn't schooled in a modern institution. Geed uses the term *wadaad* to mean a simple man of religion who has only had religious education in traditional settings and therefore ill-prepared for running an organization requiring bureaucratic and administrative knowledge. His

use of *Wadaad* encompasses both those who self-describe or are described as Sufi or Salafi. In fact, the particular sheikh, the chairman of the orphanage, that is the subject of his above commentary is considered a Salafi. Geed's view of the locally-trained religious scholars and their place in society becomes clearer as he describes his role within the UICs.

After the September 11, 2001 terror attacks in New York and Washington things began to deteriorate in Mogadishu. Some of the biggest Islamic charity organizations that were supporting the private schools and orphanages came under scrutiny as directly or indirectly supporting 'radicalization.' Some charities curtailed their activities, while others withdrew from the country completely. The city's security also deteriorated. As in 1993, the quest for education gave Geed the reason to leave a city that seemed on the verge of another round of intense conflict. By this time there was a sizeable Somali community in Egypt and some of the students from Sudan had made their way to Egypt. Geed had contacts there and through them he secured a visa to Egypt. Once in Egypt Geed enrolled in an institute funded by the *Arab League Educational, Cultural and Scientific Organization* (ALESCO). There, he first did a two-year diploma and then a masters on Shari'a and *qanun* which he completed in mid-2005. After completing his studies he returned to Somalia in early 2006. By this time the situation in Mogadishu had changed dramatically. When he left the city in 2001 there were small and independent community centers known as Shari'a courts in some neighborhoods of the city. Around 2003 the Shari'a courts began to go through a transformation. They grew in strength as they gained more community support and began to coordinate their activities. The rise to power of courts led to a conflict with Mogadishu's most powerful warlords for control of the city. Taking advantage of the opportunities for funding made available by the U.S.-led 'war on terror' the warlords rebranded themselves the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) in early 2006.

Shortly after the creation of ARPCT, an intense conflict erupted between them and the alliance of the Shariʻa courts. The conflict ended with the victory of the Shariʻa courts and their allies in July 2006. Soon after taking over the city the Shariʻa courts and their allies created the Union of Islamic Courts (UICs). With the city under the control of the UICs everyone began to flock to the winning side. Even communities that didn't have their own Shariʻa court, and therefore, didn't partake in the conflict with the warlords created their own Shariʻa courts so as to share in the emerging power dispensation. Many people thought the movement which they came to call an uprising (*kaʻdoon*) would lead to an Islamic government, though no-one was quite sure what exactly an Islamic government entailed, and those that had some idea were in disagreement. One thing everyone agreed upon was that an Islamic government must be governed by the Shariʻa, though of course what a Shariʻa-based government looked like wasn't clear as well. It was one thing to call the community centers run by the sheikhs from the local mosques Shariʻa courts, but establishing a city-wide Shariʻa-based court system that functioned essentially as the city's new administration was a different story. One group that was well-positioned within the *revolution* and who prided and distinguished themselves on their understanding of Islam and the modern world were members of *bah Sudan*. Members of this group took on a leading role in bringing together the leadership of the different Shariʻa courts and coordinating their activities during the conflict with the warlords, as well as establishing a unified judiciary once the UICs was in control of the city.

Sheikh Sharif Sheikh Ahmed, for example, who used to be the chairman of the university graduates was now a chairman of an important court, the court of Siissi. He was also a leading figure in the Shariʻa court movement's conflict with the warlords. Many other members of *bah Sudan* were playing different roles within the movement. Even those among them who were not

directly involved with the Shariʻa courts were helping the courts in other ways. They would, for example, go on local radio stations and encourage everyone to assist the courts with whatever they could. This was an Islamic duty and the right thing to do, they argued, because the courts were doing the just thing in opposing the warlords and their crimes. On multiple occasions during the conflict between the warlords and the Shariʻa courts, members of *bah Sudan* helped draft Friday sermons applauding the work of the Shariʻa courts and encouraging people to support them. Copies of the sermons were secretly handed out to all the mosques of the city to be read simultaneously during Friday sermons. This was tremendously important in rallying the residents of Mogadishu to the cause of the Shariʻa courts against the warlords. Since many of the members of *bah Sudan* were in positions of influence in various spheres of social life, their support was important in the courts' rise to power. This support for the courts was not haphazard but was planned by the Organization of Somali University Graduates. They were also the leading figures in the attempt to establish a unified judiciary under the UICs, a process that essentially entailed the bureaucratization and centralization of Shariʻa practice and authority.

We now turn to Geed's involvement in this process to get a better understanding of the changes the rise of the UICs brought to the authority and practice of Shariʻa. Geed was intrigued by the courts and what they were doing. He was specially fascinated by the efficiency with which the courts were mobilizing the population and securing the city. He kept referring to the events of that time as a miracle. His friends from Sudan, who were active in the courts, encouraged him to get involved but he refused till July 2006, when the unified militia of the Shariʻa courts evicted the warlords and took control of the city. In July 2006, as the UICs was attempting to establish an integrated court system, Geed was convinced to join the project by an acquaintance, a graduate from a university in Egypt, who was in the UICs' *Shura* council. The friend knew Geed had a

masters in Shari'a and *qanun*, and thus judged him perfectly qualified for the task at hand. Because of this expertise Geed was assigned to a senior position in the newly created *Court of the Union* (*mahkamada midowga*) located in the dilapidated buildings of the old Banaadir regional court. This court was the creation of the newly formed UICs made up of a Shura Council (*Guddiga Shurada*) and an Executive Council (*Guddiga Fulinta*). After taking control of the city the UICs created the Court of the Union as the principal component in establishing for the city a new and centralized governing structure. The Court of the Union was composed of three courts: a) the highest court of the new court system; b) an appeals court; c) the *Court for Returning Forcefully Taken Fixed Assets* (*Mahkamada Hanti Isu Celinta*). Significantly, the UIC officials declared that only individuals with degrees in Shari'a and qanun could be appointed as judges or administrators at the new Court of the Union complex. Since Shari'a and qanun wasn't a subject learned in the traditional religious education in Somalia, this requirement meant that only individuals with university degree could be appointed to the Court of the Union. Many of the people who met this requirement were the young men who had graduated from modern Islamic universities outside the country in the Muslim world.

A seminar[262] was held for the sheikhs and judges of the previously community-based Shari'a courts, and only those who passed the exam at the conclusion of the seminar were given a judgeship position in the Court of the Union. Those who failed the exam were reorganized and assigned to district level courts. The old community-based Shari'a courts were thus transformed into district courts, the lowest level of the new Shari'a court system. The jurisdiction of the district

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[262] The material for the seminar came from Qaradawi's book, *Al-siyasa al-shar'iyya fi daw' nusus al-shari'a wa maqasidiha* (Governance according to Shari'a norms in light of the sacred legal texts and their purposes), a work that, according to Zaman (2005) "runs to over three hundred pages and offers an extensive discussion of the juristic concepts of maslaha (public interest) and, as the work's title suggests, of *siyasa shar'iyya* (governance according to shari'a norms)" 96. The man leading the seminar was a graduate of one of the Saudi Islamic universities.

level courts was limited to family matters and minor disputes. Effectively, district courts occupied the same space and had the same jurisdiction as family courts under the previous military regime. In dismantling and reorganizing the original communal Shari'a courts as district courts, the UIC was taking the first steps in bureaucratizing and centralizing Shari'a practice. This also meant the usurpation of the Shari'a-based authority of the traditionally trained neighborhood sheikhs who found and run the original communal courts. In so doing the UIC was also essentially undermining the communal embeddedness of Shari'a authority and practice.

In his new position as one of the top officials at the Court of the Union Geed was responsible for setting up the administration and management of the new court complex. The administrative procedures and institutional reforms which he and his colleagues instituted helped to streamline and centralize Shari'a practice, further undermining the authority of the neighborhood Shari'a authorities. Among the administrative procedures he and his colleagues instituted at the Court of the Union included, the requirement that each case would be presided over by 1-3 judges, depending on the severity of the case. Upon reaching a decision the judges were required to run their final decision by Geed so that he would be able to give attention to those cases that involved politically sensitive issues. Under the previous communal Shari'a courts the local sheikhs who presided over disputes were often the same figures as the traditional elders of the community or worked very closely with them. This meant that considerations of the effects of their decisions, political or otherwise, were an integral part of their deliberations and not separate from it. This had to be the case since, in the absence of a monopoly over the use of force, their decisions were effective only in so far as they were perceived to be just. Under the UICs such considerations were removed from the deliberation of the judges and placed in a different office.

Geed proudly told me that they were working on giving the judges codified versions of the Shari'a copied from other Islamic countries to systematize the rulings and limit the judges' latitude.

He and his colleagues also transformed the position of *wakiilu da'wa*. In the community-based Shari'a courts, litigants could avail themselves of the services of *wakiilu da'wa* to make their case for them in court. Such a person didn't have to have any specific expertise in law or in any other subject. *Wakiilu da'wa* was widely used in the Shari'a courts before their unification under the UICs. The only requirement was the *Wakiilu da'wa* had to be "a good Muslim", someone with an outstanding moral character as judged by the sheikhs and elders at the court. Geed transformed the position by requiring that only someone with a university degree in Shari'a or in Shari'a and *qanun* could represent another person in court. Moreover, it would be Geed himself and his office where the determination of whether a person met the necessary qualifications were made. He justified this by stating that the position of *wakiily da'wa* had been abused and was undermining the course of justice. Litigants, he argued, were employing *afminshaars* (literally, someone who cuts or dissects with his/her tongue i.e. someone who isn't constrained by the difference between a truth and a lie in making a case) to argue their cases in court. By instituting this change Geed hoped that knowledge of Shari'a and *qanun* as well as the moral and ethical virtues cultivated through such knowledge, which he assumed a person trained in Shari'a and *qanuun* possessed, would prevent them from knowingly representing a false claim.

Another innovation that had a similar impact is the creation of a court of appeals under the UICs. Under the UICs a court of appeals was established to allow parties dissatisfied with a court's decision the opportunity to challenge the decision. Geed's office determined whether a case should be forwarded to the appeals court after considering the arguments for and appeal. There was an appeals process under the communal Shari'a courts but it was very different than the appeals

process under the UICs. Under the communal Shari'a courts there were no hierarchy of courts and thus there was no specific court of appeals. This, however, didn't mean that a court's decision couldn't be contested. Such contestation of a court's decision happened in two ways. It was a common practice in the communal Shari'a courts to invite well-known and reputable Shari'a authorities, locally referred to as *Mufti* (jurisconsult) or *Fuqaha* (Shari'a specialists) to sit on as cases where argued and be present for judgements rendered. This was done so that the public would have confidence that the judgments rendered were in accordance with the Shari'a. In some instances, these Shari'a authorities would contest the decision reached by the judges. This led to a new round of deliberations and debate in the court between the challenging Shari'a authorities and the judges. In such situations, the court's judgment would be postponed until the challenge had been satisfactorily addressed. In some cases the previous decision would be overruled.

Another way a case was appealed was when one of the litigants was unhappy with the decision of the court. The litigant could take her/his case and the judgement of the court to a *Mufti* and ask for an opinion. If the consulted *Mufti* disagreed with the court's decision then the case would be brought back to the court to be argued once more. This was the process through which a case was appealed under the communal Shari'a courts. This process allowed for more contestation of a court's decision and Shari'a authorities were crucial to this process. After the establishment of an appeals courts and Geed's office, the appeals process was taken out of the hands of Shari'a authorities outside of those working as judges for the UICs. Interestingly, under the communal Shari'a courts an appeal of a court's decision hinged upon arguments over the position of the Shari'a. Under the UICs disagreements over the position of the Shari'a weren't the basis of appeals. Rather, appeals under the UICs were on matters of procedure and evidence. In other words, the Shari'a understanding of the judges of the UICs were final and could not be contested.

This was a major transformation of the openness and contestation that was part and parcel of Shari'a practice under the communal Shari'a courts. Geed also instituted a small fee (*gar furasho*) before filing a case with the court. He hoped this would discourage people from making false accusations and also help to pay for the running of the court. Many of the administrative procedures that Geed instituted got him involved in heated debates with traditional 'ulama who opposed the changes on the bases of their incompatibility with the Shari'a. These arguments and the process of their resolution shed light on the conflicts within the newly victories UICs and the position and thinking of the group of young men with university education whom Geed is a representative of.

At the newly established Court of the Union, which was essentially the city's new municipality under the UICs, the most important court was the *Court for Returning Forcefully Taken Fixed Assets* (*Maxkamada Hanti Isu Celinta*). As Geed pointed out throughout the decade and half of civil war "people killed each other and that we could do nothing about, but a lot of people fled Mogadishu and all their houses and land were taken over by a new group of people. This was the biggest issue we had to resolve. Over 90% of the cases the court dealt with had to do with this issue. This is why the Shura Council set up the special court dealing with this issue." This special court was also set up because conflicts over land and houses were very complex and politically sensitive. Because of the complexity of the issues this court had to deal with the Shura Council decided to create a special committee made up of some of the most renowned and respected sheikhs in the area to preside over cases involving complex land disputes. The Council thought that because of their reputation and knowledge of Islamic jurisprudence (*fiqh*) the judgments by such well-respected sheikhs would carry more weight and was more likely to be accepted by the litigants and their respective communities. Geed, however, was opposed to the

assignment of these sheikhs to the special court because he thought they didn't have the technical and administrative know-how to run such a court.

The Sheikhs, for their part, opposed some of Geed's administrative innovations, such as the imposition of a fee before opening a case with the court. The sheikhs objected to such a requirement as un-Islamic i.e. unjust, arguing that the poor who had been wronged shouldn't be made to pay to receive justice. They also feared that once collected such money could become a source of corruption. Geed insisted that there was nothing wrong with the practice and that it was essential to the functioning of a court system anywhere in the world. He argued it was an internationally recognized practice. Geed referred to most of his technical and administrative innovations as international ('alami) so as to suggest that they were beyond reproach since they were an internationally recognized standard. He asked the sheikhs, who was going to pay for the running of the court? "The 'ulama didn't think about that," he explained. The conflict between the sheikhs and Geed reached the Shura Council. The Council agreed with Geed that the fee for opening a case with the court should be levied. The Council, however, disregarded with Geed's argument that the *Court for Returning Forcefully Taken Fixed Assets* shouldn't be placed under the 'ulama's care and the special court was placed in the care of the 'ulama. After the 'ulama took over the running of the special court everything came to a standstill. Said Geed, "the 'ulama just sat there with their hands crossed and everywhere people crowded around them wanting to have their cases heard. I came to them and told them for God's sake what are you doing, why aren't you working? They said, we're 'ulama and we are here to decide on the Shari'a position of disputes, we're not here to write things (paper work). They couldn't understand that you needed to file a case, give the person a number, summon the litigants, schedule a date for the case to be heard, create and file documents, and many more things." After a week it became obvious to the Shura

Council that the 'ulama couldn't run the court and the court was turned over to Geed and the judges he picked. The 'ulama, however, were retained as advisors to this court and were called upon in very difficult cases when their standing in the community was crucial to establishing the legitimacy of the UICs court's rulings.

Conclusion

Many of the institutional and procedural changes made under the UIC were led by university educated men. These changes included the establishment of a distinct court dealing with family matters and the creation of a hierarchical court system. These transformations involved a bureaucratization of Shari'a practice, a process that transferred authority away from traditional religious figures (*wadaads*). Though this process was led by the graduates, authority didn't thereby transfer to them. This is because bureaucracy, "rule by writing desk" (Hull 2012), is by definition impersonal. The bureaucratization of Shari'a practice meant various mundane procedures of converting formerly family/communal run courts all over the city into a networked system of compatible arbitration centers that could be recognized as a cohesive municipal legal system. These procedures—as Geed shows in both his narrative of the orphanage where he deploys mastery of paperwork and accounting systems that are legible to international organizations seem mundane but are actually crucial in usurping the "traditional" authority of wadaad. These mundane *procedures*—paper work, archiving, paying fees—are significant because they illustrate the very processes that transferred authority from one party to a network. The "traditional" *'ulama* lost control over the courts not just because they didn't know how to do paperwork. They still would have lost their authority because that is how bureaucratization works. Bureaucratization is not just about institution building but converting a "rule of expertise" (in the sense of the *'ulama* whose

authority comes from their knowledge of Shari'a) into a *Rule* of *Records* (Hull 2008, 2011), where

authority is transferred from people to the material stuff of paperwork, accounting, and the file.

Epilogue

The memory of the communal Shari'a courts of Mogadishu and the Union of Islamic Courts (UICs) was a hotly contested issue in Mogadishu when this fieldwork was carried out between 2014 and 2015. On the one hand there are those who view the experience of the courts as a lost opportunity, referring to that time as a "golden time" (*wakht al-dahab*) and the Shari'a courts "as a gift from God." And, on the other hand, there are many who see the courts as the harbingers and forerunners of terrible times and events yet to come. They blame the courts' leadership for negligence and inexperience, and for not having the foresight to anticipate the kind of reaction they would provoke from regional countries and the "international community." Whether it's positive or negative, the memory of the courts is conditioned not so much by what the courts and the UICs actually did during their time, but by the events that followed their rise which resulted in the terrible conditions of the present. As mentioned in the introductory chapter, the transformation of the Shari'a courts of Mogadishu into the UICs was followed by a series of reactions labelled as "counter-terrorism" operations, beginning with the American-backed Ethiopian invasion of Mogadishu and the UN-led state-building project. These events turned Somalia, particularly Mogadishu and southern Somalia, into a front in the Global War on Terror (GWOT). It's these events and the current condition of pervasive insecurity, fear, and suspicion that frame the memory of the courts. The following is an example of how the memory of the courts is being re-evaluated in light of what has come after the courts.

I met Agon at one of the many hotels in Mogadishu, which cater primarily to employees of the government and international NGOs. As such, these hotels are targeted by the Islamist militant group al-Shabaab, which considers anyone associated with the government and its international backers an enemy. I was at the hotel with an acquaintance who introduced me to

Agon. We sat in the open courtyard of the hotel fenced in by high walls made up of wires, sandbags, and concrete. Agon, who is in his 60s, got involved with the Shari'a courts in 2005 during the courts' confrontation with the warlords. His didn't really join the courts in any formal way. He just became one of the many who supported the courts without being actual members of the courts. He organized and joined demonstrations whenever the leaders of the courts were holding a rally. He told people that the work the courts were doing was good and that everyone should support in whatever way they could. He went on local radio stations to sing the praises of the courts. When the Shari'a courts evicted the warlords out of Mogadishu and created the UICs, the UICs began spreading to other parts of the country. One of the ways the UICs spread to other cities and towns was to send a delegation from the UICs in Mogadishu to the area in question and encourage the people there to join the UICs by creating their own Shari'a court and declaring allegiance to the UICs. After the UICs' take-over of Mogadishu, Agon was among a group of elders sent to a town in central Somalia to convince the people there to create a Shari'a court and declare allegiance to the UICs. Agon said his primary reason for supporting the courts was because he felt that "the warlords were an obstacle," and, continued "if the warlords were defeated it would lead to a reconciliation among the Somali people and then there would be a government." I asked Agon to reflect on his experience during the rise of the courts and what he thought about the courts now:

> *When the courts first appeared everyone in Mogadishu was in panic; people were overwhelmed because there was so much violence. Everyone in Mogadishu thought the same way. When you are among hundreds of ignorant people you become like them. The educated and the regular people were all alike in their support for the courts. This is because no-one was able to take a neutral view of*

the courts: who were they? Where were they heading? In those days people thought a sheikh was a sheikh; they thought they were all the same. People didn't know the difference between extremist (xag-jir) and moderate (qunyar so'od). People didn't see that there were many different groups within the courts. They were overburdened with insecurity which they were desperate to throw off. When the Ethiopian forces came to Mogadishu and al-Shabaab spearheaded the resistance, the Shabaab killed many innocent people. I criticized al-Shabaab. They threatened me and then attacked my house. I had to flee the country.

I wish I had a chance to read about the Taliban in Afghanistan before I joined the courts. In Afghanistan, after the mujahideen defeated the Soviets they began to fight amongst themselves. They fought because of the different religious views they held and not just over how to rule. The only thing that united them was their opposition to the warlords. There is no question that even if the Ethiopians didn't come the courts would have fought amongst themselves and divided the city into different sections just like the warlords. They were only united by their opposition to the warlords, which concealed their real differences.

Throughout our conversation Agon was eager to highlight his association with and support for the Shari'a courts during the courts' confrontation with the warlords, but at the same time felt the need to justify his support for the courts. He explains that he and everyone else in Mogadishu were too overwhelmed by insecurity to correctly judge what the courts were. The layman and the educated were alike panic stricken and embraced the courts without thinking about who the courts were. Agon also reveals that when the Shari'a courts first appeared in the 90s the current categorization and differentiation of Islamic organizations and movements into "extremists" (*xag-*

jir) and "moderates" (*qunyar so'od*) was not yet standard in Mogadishu. The Somali terms *xag-jir* and *qunyar so'od* did exist as terms prior to the 90s, but only recently are they used to describe Islamist groups or personalities. Another interlocutor told me that the usage of these terms was first introduced by the media, particularly the Somali language BBC services. He noted that initially people were skeptical and thought that it was just away to discredit Muslims, but nevertheless the terms were slowly adopted. Clearly, the international context and not just events in Somalia condition the memory and experience of the courts.

Agon illustrates this best when he says that had he known about the history of the Taliban in Afghanistan, he would have been much more skeptical about the Shari'a courts of Mogadishu. He points out that as soon as the coalition of Islamist units defeated the Soviet Union forces in Afghanistan, they started fighting amongst themselves for power. If he knew this history, he contends, he would have been able to surmise that the Shari'a courts were going to end up just like the *mujahideen* fighters in Afghanistan. But he was blind to such considerations because of the weight of insecurity, which put him and everyone else in Mogadishu in a state of panic. It's worth noting that Agon didn't mention specific wrongs that the Shari'a courts themselves committed. When he mentions wrongs committed, it was al-Shabaab, an organization that was very distinct from the courts, that was the perpetrator. However, because the experience of the Shari'a courts has been subsumed within and framed by the events that have followed since, including the internationalization of the Somali conflict under the GWOT, the uniqueness of the Shari'a courts as expression of autonomous and communal self-governance is often long forgotten. The aspirations of a Shari'a governed future society where justice prevailed, which the Shari'a courts summoned, is now lived and experienced as the nightmare of a present characterized by insecurity, fear, uncertainty, and suspicion.

During my field work, Mogadishu was the epicenter of a conflict between a weak government, which barely controlled the capital city even with the support of the "international community," and a militant Islamist group, al-Shabaab, which stubbornly continuous to wage a deadly campaign of attacks despite prophecies by "experts" that its demise is imminent. The government is supported and protected by the forces of the African Union Mission in Somalia (AMISOM), a regional "peacekeeping" mission operated by the African Union with the approval of the United Nations. This force, which number over 20,000, are armed, trained, and funded primarily by the U.S. and E.U. With the help of AMISOM forces, al-Shabaab has been driven out of most urban centers, but it still controls large swathes of rural areas in southern Somalia. From their bases in the bushes they stage direct attacks on isolated military outposts, suicide commando raids on government and U.N. buildings in urban centers, suicide bombings on restaurants and hotels, and assassinations of anyone associated with the government and its international backers. As the biggest city in southern Somalia, Mogadishu is the epicenter of this conflict. For the people of Mogadishu, this conflict means living with the ever-present reality that a bomb could go off or an attack could take place at anytime and anywhere. This has created an environment where fear and suspicion have become so ubiquitous that they affect almost every aspect of social life.

Observers often comment how quickly the rhythm of life returns to its normal routine after a major attack in war-ravaged cities like Mogadishu. But what these observers fail to notice is how every attack jolts people back to the reality of the danger and insecurity of their lives which they desperately try to forget. The quickness with which the daily rhythm of life returns is partly a reflection of the fact that life must continue, but it also indexes a desperate desire for things to be normal. But despite such desire, every attack infuses social life with fear and suspicion. This fear and suspicion spread in specific ways. One way fear and suspicion is expressed and spread is

through constant and running commentary on every major attack and suicide bombing that takes place. When major attacks occur they don't just end there. For days they continue to constitute the major theme of conversation and commentary in gatherings small and large. Since both the government and al-Shabaab are engaged in misinformation, neither of them can be relied for the "truth" regarding an attack. People, therefore, try to gather as much information as possible from as many sources as they can to gain an adequate understanding of the attack. This is necessary because it's through an analysis of such attacks that people make their own calculations as to who has the upper hand in this constantly seesawing conflict, and to know the sort of security precautions they should take to avoid becoming a casualty in this war.

In conversations about such attacks, often carried in hushed tones in small groups, people want to know more about the casualties, the target of the attack, why it was targeted, who was behind the attack, how it was carried out, what the security forces of the government did or didn't do, and what they could have done. Within a few hours after such an attack, there are usually pictures circulating online posted by the government, al-Shabaab, the news media, or regular people. These pictures provide hints regarding the sophistication of the attack, the casualties, and identities of the perpetrators. People go online, listen to local radio stations, call friends or family members who might have better information, or gather in small groups in their houses or business establishments. One of the first things that people begin to discuss are the names of the victims of such attacks. Upon finding out the names of victims everyone begins to talk about those among the victims whom they personally knew or met, even if only once. They talk about the kind of person the victim was and when they saw her/him last, and if they had any future plans to interact with that person. What such conversations about the victims do is to bring the attack much closer. One feels especially touched by the attack not only because one is devastated and mourns for the

victims, but one also feels touched by the attack in a more direct way. This happened to me once. I was scheduled to meet and interview a man when I heard that he was one of the victims of a suicide bombing in a hotel. I didn't know the man and never spoke to him. Nevertheless, for days after the attack, the precarity of life in Mogadishu and the fact that I might, at any moment, fall victim to such attacks was so acutely present that I found it difficult to leave my place of residence.

Another way in which fear spreads after such attacks is the constant remarks about one's connections to or physical proximity to the location of the attack. Such talk underlines how close one was to becoming a victim. People often talk about how close they were to the location of the attack when the attack happened. They also talk about how close they could have been. For instance, one might remark that s/he was at the site of the attack a few hours or days before the attack. Or might mention that s/he was in the process of going to the site. All this is to underline that had the attack happened a few hours or days before or after anyone of the people conversing could have been victims of the attack. Through such conversations attacks reverberate through society spreading fear and suspicion. It's almost as if everyone dies just a little after every major attack.

In their small gatherings people also talk about the tactics the attackers used to break through the defenses of the government. Such conversations revolve around the clever schemes the Shabaab use to outmaneuver the government and gain access to their target locations, and the laziness and reactionary nature of the government's response. After major attacks there are in-depth conversations regarding the tactics used by the attackers. A constant theme is how the Shabaab always have an inside help. This adds to the sense that al-Shabaab is very much present in every sector of society, including the government itself. There are plenty of stories that portray in an almost humorous fashion the omnipresence of al-Shabaab. One such story is about a man

who worked for the government inside Villa Somalia, official residential palace and principle workplace of the President of Somalia, and therefore one of the most heavily guarded compounds in Mogadishu. One day while out and about in the city the man was captured, blindfolded, and taken to a house by a group of men. The men, whose faces were all covered, told him that they were al-Shabaab and they knew he worked for the government. A fact which rendered him an apostate and an enemy in their eyes. They informed him, however, that they were willing to spare his life if he agreed to give half his monthly salary to al-Shabaab. Relieved to know that they were willing to spare his life, he gladly took the offer and was let go. After giving it some thought, the man decided to renege on the deal thinking that he was safe. At the end of the month when he went to collect his salary, he was given only half of his monthly salary by the government official handing out salaries. When he enquired where the rest of his money went, the man who was giving out the salary asked him, didn't you promise to "donate" half your salary? Astounded, the man simply walked away, left his job, and fled the country. This is just one of many stories that speak to al-Shabaab's ubiquitous presence. Every time there is a successful attack by them it occasions yet another round of commentary and conversations around their omnipresence, further spreading fear and suspicion throughout the city.

The constant bombings and assassinations and the pervasive fear and suspicion that characterize everyday life in Mogadishu has resulted in the emergence of well-known tactics and strategies for survival. One of the most important pieces of advice that people share with you is to never look like you are new to the city. Both the government and al-Shabaab are very wary of anyone who appears, either by their dress or physical appearance or mannerism, new to the city. The government is suspicious of unfamiliar faces because it's said that al-Shabaab uses young men from other parts of the country or even from outside the country to carryout attacks in Mogadishu.

Similarly, the Shabaab are also very distrustful of the sudden appearance of a stranger in the city. They suspect that such a person might be a spy for the government or foreign entities. Both antagonists in the conflict are therefore on the lookout for people who are unfamiliar. To avoid becoming a victim to either of them, people in Mogadishu try their best not to do anything that would make them stand out. For example, a new comer is advised not to look up or around when you are walking in the streets or dress in ways that make you standout.

Another strategy for staying alive in this war-ravaged city is to never answer a call from an unknown number. Al-Shabaab carries out assassinations on a daily basis targeting anyone with connections to the government or the various NGOs and UN offices that work with the government. The assassins frequently do not know the person they are killing or the reason why the person is being killed. One of the ways these assassinations are carried out is a group of two or three Shabaab members are told to go to a particular location and they are given a number to call at a designated time. The number they are told to call is the cell phone of the target person. Only when they make the call and the target person answers the call do they know the person they are to assissinate. Once the call is answered and the target is identified, they proceed to carry out the murder. As a result, Mogadishu residents say you should never answer a call from an unknown caller. This is specially the case when you are outside your house. As is usual there are stories shared to bring this lesson home. Whether the story actually happened is beside the point. There is a story about two friends: one from the diaspora and the other a local. The local man worked with a Western NGO, which made him, as far as al-Shabaab was concerned, an enemy. One day the two friends were sitting in a restaurant when all the sudden the local man's cell phone rang. Realizing that he didn't know the caller, the local man simply ignored the call. A few minutes later the phone rang again, and again he looked away from the vibrating phone. Confused, the diaspora

man enquired why his friend was ignoring the call. The friend told him to just let it go. The phone rang again for a third time, and again the local man declined to answer it. Agitated by it all, the diaspora man picked up the phone and answered the call. Soon as he answered, the caller hanged up. A few minutes later someone walked up to the man who answer the phone, shot him multiple times, and walked away.

Another strategy for survival in the midst of this conflict is to try to do your utmost to not only remain neutral in the conflict but to appear entirely unconcerned and uncurious about the conflict at all. But this is much more difficult than it appears because the very language that is used to describe events or groups is itself part of the conflict. Consequently, one can easily get implicated in the conflict, regardless of whether one is impartial or otherwise. The situation is made more difficult when both the government and al-Shabaab demand that their derogatory labels of each other be used by everyone else. For instance, the government's label for al-Shabaab is *khawarijuun* or "heretics," while al-Shabaab calls the government and anyone associated with it *murtidiin* or "apostates." During my fieldwork in Mogadishu, the government put out a decree that from then on al-Shabaab were to be called UGUS, an acronym from the Somali name *Ururka Gumaadka Ummada Soomaaliyeed* (The Organization that Massacres the Somali People). The government ordered the media to stop using the name al-Shabaab, and instead to call the group UGUS. Not surprisingly, al-Shabaab declared that anyone calling it UGUS would be considered an enemy. One man's advice to me in response to the government's decree was not only that I should I not use the label UGUS to refer to al-Shabaab, but I should do all I could to forget the acronym lest my tongue gets used to it and I utter it unintentionally. For their part, al-Shabaab demand that they be referred to as *mujahideen* (those engaged in *jihad*).

To avoid this dilemma, people in Mogadishu try to avoid engaging any conversation that might involve the conflict, except with close friends and family, and preferably in the safety of their homes. This strategy is necessary because it's widely assumed that both the government and al-Shabaab have spies and sympathizers everywhere. The basic assumption is that you should always assume the person next to you could be anyone. Another way to avoid being caught up in this predicament is by using labels that are outside the language war of the government and al-Shabaab. One such name, popular especially among young people, is Arsenal for al-Shabaab. Arsenal is an English Premiere League soccer team. The team is known for the youthfulness of its players, which might explain why it's used in place of al-Shabaab. Such names are attractive because they aren't associated with either of the conflicting parties and are value neutral, making them safe to use.

Such is the life people lead in one of the frontline cities in the GWOT. The harrowing conditions of their life has led many people to invest their hopes in the rise of a strong state that could win the war against al-Shabaab and ensure their security. Despite the attempts to guard against the expression of this sentiment for fear of al-Shabaab, you see this hope expressed in the silent delight and satisfaction when the government announces, as it often does, that a potential suicide bomber had been apprehended. You also see this wish expressed in the nostalgia narratives of the now-gone postcolonial Somali state of the 1970s and 80s. The long-time military dictator Mohamed Siyad Barre is now remembered as a hero and a capable leader unlike the squabbling petty politicians of today. You see this hope on display in the collective excitement and celebrations of the people every time a new president is selected by parliament. The selection of new leaders provides a brief moment of relief from the disappointment of the last administration,

and a reason for hope despite all evidence to the contrary. But what will this hoped-for state look like?

The signs are all pointing to the formation of a neo-liberal security state if, and that is a big if, the current state-building project of the "international community" succeeds. There are two objectives the achievement of which are assumed would entail a successful state-building project: a strong military force which can defeat al-Shabaab and hold the territory to prevent the re-emergence of militant Islamists; the creation of state institutions capable of generating revenue from the land and the people to sustain the state. To achieve the first goal, a strong military, there are a number of countries, including the U.S., E.U., and Turkey, that are each training and funding different components of the military and security forces. The forces are armed and paid, when they are paid, by the respective foreign countries that train them. In some cases the chain of command of each of these forces goes directly to the foreign country in question.

To achieve the second goal, revenue generation, the Somali government has turned to selling or leasing national resources to multinational corporations. The government in Mogadishu is incapable of generating revenue from the levying of taxes on everyday transactions because of insecurity. So its best hope for generating revenue is from selling national resources like oil, fishing rights, and land, or leasing sea and air ports. For example, the major air and sea ports in Mogadishu are operated by Turkish companies. The company shares part of the revenue with the central government. Predictably, the selling and leasing of these resources often leads to the economic displacement of the local population. This happened during my fieldwork in 2015, when the seaport of Mogadishu was turned over to a Turkish company and thousands of porters were let go. Despite the complaints and protests of the porters, the leasing of the port went ahead. It thus appears that a successful state-building project in Somalia will establish security-oriented

neoliberal state, whose security forces are largely unaccountable and whose economic policies result in the economic disenfranchisement of large segments of the population.

Despite the problems mentioned above, people in Mogadishu are today yearning for a powerful security state as an antidote to the insecurity and fear of the present. Never mind that such a state will in the long run pose its own forms of subjugation. It's sought as a remedy for today's suffering because it's the only game in town. There was a brief moment, however, when history conspired to offer a different political future based on a form of governance and organization that was distinctly different from the neoliberal security state whose roots are being planted today. I tried to argue in this dissertation that the Shari'a courts of Mogadishu, which existed from 1992 to 2006, represented that brief historical moment when a different political future was imagined and experimented with. The transformation of the courts into the Union of Islamic Courts (UICs) in 2006 was an interesting political phenomenon, but we will never know what kind of political formation the UICs would have become since it was upended within six months of coming into existence. The fact that the novelty of the Shari'a courts is completely forgotten today speaks to the dominance of the nation-state form as the organizing principle of global politics today.

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