

MEN OF THE SPEAR AND MEN OF GOD: ISLAMISM'S CONTRIBUTIONS TO THE NEW SOMALI STATE

INTRODUCTION

In September 2012, Somalia's new government held a presidential election for the first time—Hassan Sheikh Mohamud, an Islamist, won.¹ Twenty years after a coalition of clans overthrew military dictator Mohamed Siyaad Barre and the country fell into anarchy,² a new state is beginning to take shape. Though the government has yet to pass very many laws, Somalia's new Constitution establishes parliamentary democracy,³ declares Islam the official religion,⁴ considers human rights a guiding principle,⁵ and guarantees private freedom of religion while restricting the public propagation of religions other than Islam.⁶ The state is still far from secure, and the government has yet to

¹ *Somali Election of Hassan Sheikh a 'Great Step'*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-19557884> (last updated Sept. 11, 2012, 6:53 AM) (noting responses to the election of Hassan Sheikh Mohamud).

² *Somalia Profile*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-14094503> (last updated Oct. 24, 2012, 9:31 AM).

³ *See* DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, ch. 4 (Somalia); *id.* art. 64(1) ("The members of the House of the People of the Federal Parliament shall be elected by the citizens of the Federal Republic of Somalia in a direct, secret and free ballot."); *id.* art. 72 ("The members of the Upper House of the Federal Parliament shall be elected through a direct, secret and free ballot by the people of the Federal Member States . . ."); *id.* art. 89(1) ("The Houses of the Federal Parliament shall elect the President of the Federal Republic of Somalia in a joint session . . ."). The elections that brought the current government to power were not formal enough to implement universal franchise. *See Somalia's New President: Can He Really Rescue the Place?*, ECONOMIST (Sept. 15, 2012), <http://www.economist.com/node/21562988> ("[President] Hassan was . . . chosen . . . by a newly established 275-member parliament that was in turn handpicked a month ago by a conclave of clan elders. In a first round of voting, in which twenty-two candidates competed, Mr. Hassan came second to the incumbent, Sharif Sheikh Ahmed, but prevailed over him easily with 190 votes to 79 in a run-off.")

⁴ DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, art. 2(1) (Somalia) ("Islam is the religion of the State."); *id.* art. 2 (3) ("No law which is not compliant with the general principles and objectives of Shari'ah can be enacted."); *id.* art. 30(8) ("The teaching of Islam shall be compulsory for pupils in both public and private schools," except those owned by non-Muslims).

⁵ *Id.* arts. 15(2), 16, 26 (prohibiting arbitrary detention while promising freedom of association and the right to property).

⁶ *Id.* art. 17(1) ("Every person is free to practice his or her religion."); *id.* art. 11(3) (prohibiting discrimination on religious grounds); *id.* art. 2(2) ("No religion other than Islam can be propagated in the country.").

extend its authority everywhere,⁷ but Somalia is taking its first steps toward stable government.

Acceptance of Islamists is one significant advantage of the new state compared to earlier transitional governments. Islamists seek to identify and promote “Islamic values” in law, politics, and society through peaceful political participation, armed revolution, and community development.⁸ Islamists are important in Somalia, and they are controversial. The electoral vindication of their efforts to enter democracy is encouraging. After several years of antagonism between Islamists on one side and transitional politicians and their supporters on the other, it is time to recognize that Somali Islamism is more than just extremism. Islamism can offer the state much-needed legitimacy, is likely to reconcile itself to democracy, and has a valuable focus on community development. Islamists can be a positive force for Somalia’s future.

Islamists have been highly active in Somalia for the past four decades. In the 1970s and 1980s, they rose to prominence by opposing the regime of Mohamed Siyaad Barre.⁹ Barre took power in a 1969 coup and unsuccessfully tried to co-opt religion into his brand of “Islamic socialism” while opposing independent-minded religious leaders.¹⁰ Throughout the 1990s and 2000s, after Barre’s fall, Islamists created courts and militias in an effort to restore order. The most prominent of these court-militia organizations banded together as the Union of Islamic Courts (“UIC”),¹¹ which earned popular respect by restoring order to much of the country before being driven out by a 2006 American-backed Ethiopian invasion.¹²

⁷ See, e.g., U.N. News Ctr., *Somalia: Welcoming Recent Gains, UN Envoy Says Consolidating Peace Still ‘Not Easy’* (Dec. 31, 2012), <http://www.un.org/apps/news/story.asp?NewsID=43863&Cr=somalia&Cr1=#.UOYQO3fW5Hk>; Hassan Sheikh Mohamud: *Somalia’s New President Profiled*, BBC NEWS (Sept. 11, 2012), <http://www.bbc.co.uk/news/world-africa-19556383> (featuring a map illustrating who controls which regions of Somalia).

⁸ See discussion *infra* Part I (considering definitions of “Islamist”).

⁹ See AHMED SAMATAR, *SOCIALIST SOMALIA: RHETORIC AND REALITY* 108–10 (1988); see also discussion *infra* Part I.A.1.

¹⁰ See Hussein M. Adam, *Islam and Politics in Somalia*, 6 J. ISLAMIC STUD. 189, 204–05 (1995); SAMATAR, *supra* note 9, at 108–10; see also discussion *infra* notes 28–30 and accompanying text.

¹¹ See discussion *infra* Part I.A.2, for more on the UIC.

¹² See Bill Roggio, *The Rise & Fall of Somalia’s Islamic Courts: An Online History*, LONG WAR J., Jan. 4, 2007, http://www.longwarjournal.org/archives/2007/01/the_rise_fall_of_som.php.

After the invasion, some former UIC members joined groups that were much more radical than the UIC had been.¹³ These groups are considered menaces by many Somalis and foreign observers.¹⁴ The most notorious of these groups, al-Shabaab, continues its war to establish regional theocracy.¹⁵ But many Somali Islamists do not embrace al-Shabaab's extremism. Instead, they have earned respect for their resistance to Barre, efforts at making life better during anarchy, and prominence in community organizing and development.

Many Islamists are willing to take their place in a new regime that respects the rule of law and allows for free political deliberation. The state is right to give Islamists the opportunity to participate, an opportunity that earlier transitional politicians refused them. Islamists have many contributions to offer the state, many benefits to gain from political participation, and many reasons to continue to work peacefully for community development.

This Comment analyzes benefits that can arise from mutual cooperation between the new state and Islamists to rebut anti-Islamist attitudes on the part of transitional politicians and their foreign supporters. This Comment also argues that Islamists who have not committed their support to democracy ought to do so, for pragmatic and principled reasons. Finally, this Comment identifies issues related to political participation that Islamists still need to address. Each of these arguments is meant to expand consideration of Somali Islamism beyond extremism. Part I of this Comment introduces Somali Islamism's tendencies, history, and attitudes toward democracy. Part II describes the most disturbing tendency in Somali Islamism—extremism—and the hostility it has inspired in recent years. Part III considers what benefits Islamists can offer the state as political participants. Part IV discusses the incentives that Islamists who have yet to commit to democracy have for doing so. Part V highlights areas in which Islamist political agendas need further development.

¹³ See JOHN ROLLINS, CONG. RESEARCH SERV., R41070, AL QAEDA AND AFFILIATES: HISTORICAL PERSPECTIVE, GLOBAL PRESENCE, AND IMPLICATIONS FOR U.S. POLICY 25 (2010) ("In February 2008, then Secretary of State Condoleezza Rice designated Al Shabaab as a Foreign Terrorist Organization and as a Specially Designated Global Terrorist."); see discussion *infra* Part II.A–B.1.

¹⁴ See *id.*

¹⁵ See discussion *infra* Part II.B.1.

I. SOMALI ISLAMISM IS IMPORTANT, AND MANY ISLAMISTS ARE WILLING TO ACCEPT DEMOCRACY

“Islamism” is a contested term with three primary persuasions.¹⁶ First, the term can refer to a religious revivalist effort that views a return to authentic Islamic values and practices as the answer to modern social problems, including poverty and the failures of nationalism.¹⁷ Second, “Islamism” can mean militancy aiming to consolidate political power and impose Islamic law on a country.¹⁸ Third, and most broadly, the term can signify a variety of political ideologies professing Islam as their source of inspiration in principles and policy prescriptions.¹⁹

This Comment incorporates all three of these meanings by using “Islamism” to refer broadly to those movements and actors that believe in infusing law, politics, and society with Islamic values. Somali Islamists, in particular, have a long history of taking multiple approaches to political systems, including democracy. Their experiences and beliefs that make them potent partners of the new state.

¹⁶ See Abdurahman Moallim Abdullahi, *The Islamic Movement in Somalia: A Historical Evolution With a Case Study of the Islam Movement (1950–2000)*, at 24 (May 2011) (unpublished Ph.D. dissertation, McGill University), available at http://digitool.library.mcgill.ca/R/-?func=dbin-jump-full&object_id=103487&silolibrary=GEN01 [hereinafter Abdullahi Dissertation]. Abdullahi was a 2012 presidential candidate and is the “director of political office” for the Somali Muslim Brotherhood (al-Islah). Mohamed Odowa, *Platform of a Presidential Candidate*, SOMALIA REPORT (July 21, 2012), http://www.somaliareport.com/index.php/post/3522/Platform_of_a_Presidential_Candidate. Abdullahi’s dissertation, though unpublished, provides a unique insight into Somali Islamism from one of its leading political figures.

¹⁷ See Abdullahi Dissertation, *supra* note 16, at 34–35, 144, 213 (discussing the collapse of pan-Arab nationalism, and anti-poverty efforts by Somali Islamists). This meaning is commonly used with regards to Wahhabism, a movement that has transformed Saudi political and religious life by stressing alleged fundamental beliefs over mere customs. See generally DAVID COMMINS, *THE WAHHABI MISSION AND SAUDI ARABIA* (2006). Saudi Arabia seeks to spread Wahhabism to other Muslim-majority countries. *Id.*

¹⁸ A prime recent example is the attempted uprising by Malian Islamists in 2012. See *Mali Tuareg and Islamist Rebels Agree on Islamist State*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-18224004> (last updated May 27, 2012). The uprising was defeated by French military intervention. *Mali and Tuareg Rebels Sign Peace Deal*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-22961519> (last updated June 18, 2013).

¹⁹ See Abdullahi Dissertation, *supra* note 16, at 24. This meaning can apply to groups ranging the spectrum from staunch supporters of democracy to firm believers in theocracy. See, e.g., *Justice and Development Party (Turkey)*, BERKLEY CTR. FOR RELIGION, PEACE, & WORLD AFFAIRS, <http://berkeleycenter.georgetown.edu/resources/organizations/justice-and-development-party-turkey> (last visited Feb. 4, 2013) (describing Turkey’s governing Islamists, who support that country’s democratic regime); Rahimullah Yusufzai, *A Who’s Who of the Insurgency in Pakistan’s North-West Frontier Province, Part One—North and South Waziristan*, 6 TERRORISM MONITOR (Sept. 22, 2008), http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=5169&tx_ttnews%5BbackPid%5D=167&no_cache=1#.UtGceAVMY_4 (discussing the Pakistani Taliban, a theocratic terrorist group).

A. *Somali Islamism Has a Long History and Is Highly Active*

Islamism emerged as a major force in Somali politics in the 1970s and 1980s by challenging the Barre regime's hypocrisy and violence. Once the government fell, Islamists worked to restore order to the country. In addition to their formal political activities, Islamists have undertaken various "community commitments," providing essential services and social organization. These activities all helped Islamists gain legitimacy and firsthand knowledge that they can contribute to the new state.

1. *Muslims Organized in the Colonial Era and Islamists Resisted the Barre Regime*

Somali Islamism first rose out of indigenous Sufism,²⁰ a variety of Islam that focuses on spiritual perfection through the observance of traditional practices. Sufi Muslims have been politically active in Somalia for over a century. During the colonial era of the late nineteenth and early twentieth centuries, religious leaders worked to forge nationalist movements.²¹ They sought to unite Somali Muslims in an independent nation.²² Sufis continue this legacy of political activity: They recently organized a militia to resist al-Shabaab and bolster the new state.²³ Modern Somali Islamism, though, is not monolithically Sufi.²⁴ An influx of Islamist fundamentalism inspired by Egyptian, Saudi Arabian, and Afghan Islamism has supplemented indigenous Sufi Islamism.²⁵

Due to Barre's hostility to all Islamism in the 1970s and 1980s, Sufi and non-Sufi Islamists came to share a common struggle. Barre used Islamic

²⁰ See SAMATAR, *supra* note 9, at 25.

²¹ See IOAN M. LEWIS, SAINTS AND SOMALIS: POPULAR ISLAM IN A CLAN-BASED SOCIETY 68 (1998). Somalia was occupied by the Italians, the French, and the British. David E. Kromm, *Irredentism in Africa: The Somali-Kenya Boundary Dispute*, 70 TRANSACTIONS KAN. ACAD. SCI. 359, 360 (1967).

²² LEWIS, *supra* note 21, at 69.

²³ See Andrew Harding, *Meeting Somalia's al-Shabab*, BBC NEWS (July 3, 2009, 4:41 PM), <http://news.bbc.co.uk/2/hi/africa/8133127.stm> (explaining the rise of the Sufi militia Ahlu Sunnah Wal-Jamma'a); *Somalis March Against Islamists*, AL JAZEERA (June 23, 2006, 5:58 pm), <http://www.aljazeera.com/archive/2006/06/20084912551665235.html> (describing a rally of 700 Somalis against al-Shabaab organized by Ahlu Sunnah Wal-Jammaa).

²⁴ See AFYARE ABDI ELMI, UNDERSTANDING THE SOMALI CONFLAGRATION: IDENTITY, POLITICAL ISLAM AND PEACEBUILDING 56–57 (2010) (accounting for the rise of four of the largest Islamist tendencies in Somalia).

²⁵ Abdullahi Dissertation, *supra* note 16, at 28. Fundamentalists often consider Sufism to be one of the mere customs that should be pressed out in favor of "authentic" practices and values. See discussion *supra* note 17 and accompanying text.

rhetoric and touted the religious values of his regime in the early years following his takeover in 1969.²⁶ But this rhetoric masked the brutality Barre used against Muslims who dissented from his vision of Islamic socialism. For instance, he made “us[ing] religion to create division or to cripple or weaken the authority of the leaders” a capital offense.²⁷ Barre insisted on Islam’s centrality in Somali society, but forced independent religious leaders to stay clear of politics.²⁸

They refused. Religious leaders protested a law Barre proposed that would have granted women more rights in divorce and inheritance.²⁹ The regime argued that Shari’a family law condoned women’s oppression.³⁰ Clerics responded by accusing Barre of interfering with Somali religious life, and by condemning secularism and bureaucracy.³¹ This charged opposition both the Barre regime and secular-style women’s rights—it was not a watershed moment in the relationship between Islamists and human rights theory.³² But Barre’s response was swift and bloody: He executed ten theologians for “seditious and counter-revolutionary activities.”³³

In the wake of the crackdown, Somalis increasingly attended mosques, worshipped communally at shrines, and joined cooperative Islamic agricultural communities.³⁴ Underground Islamist groups recruited new members and organized at the grassroots level, supporting women expelled from universities for wearing Islamic garb and hosting Qur’anic study circles for students.³⁵ Some took up arms, while others opted for peaceful protest.³⁶ The Barre

²⁶ See SAMATAR, *supra* note 9, at 108–09 (citing MAXAMED SIYAAD BARRE, MY COUNTRY AND MY PEOPLE: SELECTED SPEECHES OF JAALLE SIYAD 94, 181 (1979)) (“Ours is the religion of common man. It stands for equality and justice. . . . If both Islam and Socialism advocate justice, equality and improvement of people’s lives, who can tell me where they differ? Where do they contradict one another?”). One Somali-American scholar reports that “deep down [Barre] did not really believe in any religion.” Adam, *supra* note 10, at 209 n.37.

²⁷ AFRICA WATCH REPORT, A GOVERNMENT AT WAR WITH ITS OWN PEOPLE: SOMALIA 20 (1990) (quoting Law for Safeguarding Nat’l Sec. No. 54, art. 12 of 1970 (Somalia)).

²⁸ Adam, *supra* note 10, at 204.

²⁹ SAMATAR, *supra* note 9, at 109.

³⁰ *Id.*

³¹ *Id.*

³² See discussion *infra* Part IV, for reasons why Somali Islamism and human rights can be compatible.

³³ SAMATAR, *supra* note 9, at 109.

³⁴ See Adam, *supra* note 10, at 210. One such cooperative was comprised of “about 150 celibate men [living] under a religious sheikh,” growing a variety of crops. *Id.* at 212.

³⁵ Abdurahman Moallim Abdullahi, *Recovering the Somali State: The Islamic Factor, in SOMALIA: DIASPORA AND STATE RECONSTRUCTION IN THE HORN OF AFRICA* 196, 209 (Abdulkadir O. Farah et al., eds., 2007) [hereinafter *Recovering*]; Adam, *supra* note 10, at 214.

³⁶ Abdullahi, *supra* note 35, at 271.

regime spent the 1980s and 1990 trying to maintain control by suppressing Islamism.³⁷ Islamists protested and Barre again employed violence, this time killing more than a thousand people.³⁸ In 1991, a coalition of clan leaders—whose role has long been important in Somali society—overthrew the Barre regime.³⁹ No government consolidated power in the years that followed.⁴⁰

After decades of struggle, Islamists had earned the respect of many Somalis. They proved an alternative to the hypocritical, tyrannical government and resisted Barre without becoming corrupt. This reputation will prove a valuable resource for the new state.

2. *Islamists Tried to Restore Order After Barre's Fall*

When the Barre regime was overthrown, Islamism emerged as an important political identity in Somalia. Different Islamist groups set out to bring order to chaos, turning their institutions and networks into forces for stability.

The first post-Barre effort by Islamists failed. After the government fell in the spring of 1991, a band of Islamists led by a local hotel owner organized a militia in Mogadishu, the nation's capital.⁴¹ They tried to enforce strict sexual mores, but this proved too difficult thanks to the unruly “gun-toting youth” brought in by clan militias.⁴² Realizing that they had overreached, the Islamists retreated to a Mogadishu district they idealistically dubbed “Medina” in honor of the Arabian city where Mohammed and his followers created the first Islamic political community.⁴³

Later efforts were more successful. Islamists, especially those affiliated with the UIC, opened courts and mustered militias throughout the 1990s, focusing on broad law enforcement and not just sexual purity. Many Somalis saw this work as a genuine, apolitical effort to stop chaos and crime.⁴⁴ The

³⁷ Adam, *supra* note 10, at 214 (recounting that Islamic leaders in Mogadishu were arrested, accused of destabilizing the government, and sentenced to death after the murder of Salvatore Colombo, the Catholic bishop of Mogadishu).

³⁸ *Id.* at 214–15.

³⁹ See *Siad Barre's Fall Blamed for Somalia's Collapse into Civil War*, VOICE OF AM. (Jan. 31, 2011), <http://www.voanews.com/content/siad-barre-fall-led-into-civil-war-020111-115008454/134345.html>.

⁴⁰ See *id.*

⁴¹ Adam, *supra* note 10, at 216.

⁴² *Id.*

⁴³ *Id.*; *The Prophet Muhammad and the Origins of Islam*, METRO. MUSEUM OF ART, <http://www.metmuseum.org/learn/for-educators/publications-for-educators/art-of-the-islamic-world/unit-one/the-prophet-muhammad-and-the-origins-of-islam> (last visited Jan. 24, 2014).

⁴⁴ See Ken Menkhaus, *Political Islam in Somalia*, 9 MIDDLE E. POL'Y 109, 111–13 (2002).

militias arrested and detained violent criminals.⁴⁵ They also took control of central Mogadishu's main market.⁴⁶ Some of the more radical Islamists applied amputation as a Shari'a punishment, treated women poorly and forced them to veil, and committed other human rights violations.⁴⁷ But even they, along with their more moderate comrades, were regarded as less corrupt and prone to bribery than clan militias.⁴⁸

The UIC brought peace to Mogadishu and gained popular approval by "organizing street cleanups, visiting hospitals, overseeing a mini building boom and recruiting elderly policemen to don faded uniforms" for the first time in years.⁴⁹ They earned good will through their efforts to restore law and order. As one Mogadishu resident said, "[i]t's an exchange . . . They brought us peace, we give them work."⁵⁰ As political leaders, Islamist rapport with the people will prove highly valuable.

3. *Somali Islamists Undertook Community Commitments*

Somali Islamists have undertaken "community commitments" beyond providing law and order. These broad efforts to "Islamize" Somalia do not involve competing for control of state institutions. Nonetheless, they have helped cement the place of Islamism in Somali society and are a great political asset for Islamists.

Sufism has traditional precedents for community commitments.⁵¹ Most Somali Muslims belong to Sufi congregations or communities [*tariiqas*], each of which has its own doctrines and practices.⁵² *Tariiqas* are one of Somali social life's foundations. Some Somalis, for example, live in agricultural communes organized by *tariiqas*,⁵³ an option that became increasingly popular

⁴⁵ Lara Santoro, *Islamic Clerics Combat Lawlessness in Somalia*, CHRISTIAN SCI. MONITOR July 13, 1999, at 8.

⁴⁶ *See id.* at 1.

⁴⁷ *See* Menkhaus, *supra* note 44, at 112–13.

⁴⁸ *See id.*

⁴⁹ Jeffrey Gettleman, *Islamists Calm Somali Capital with Restraint*, N.Y. TIMES, Sept. 24, 2006, at A1.

⁵⁰ *Id.*

⁵¹ LEWIS, *supra* note 21, at 8–9.

⁵² *Id.* at 9.

⁵³ *Id.* at 13; *see also* Adam, *supra* note 26, at 212 (describing in one such commune, "about 150 celibate men [lived] under a religious sheikh growing various crops: cabbages, tomatoes, onions, papayas, carrots, and watermelons. They were also experimenting with specimens of spices and lemons.").

as dissatisfaction with the Barre regime grew.⁵⁴ *Tariiqas* are important providers of charity, missionaries, and education for customary religious leaders.⁵⁵ *Tariiqas*-trained leaders then serve as judges and administer their interpretations of Shari'a in marriage, property, commerce, and tort disputes.⁵⁶

The Sufi tradition exists alongside other Islamist tendencies that do not have networks of *tariiqas* and customary religious leaders. Some of these Islamists established courts with stricter interpretations of Shari'a than the customary leaders provide.⁵⁷ Others organized in the universities.⁵⁸ The Somali Muslim Brotherhood ("al-Islah"), one of the largest non-Sufi organizations, operates medical programs and Arabic-language schools,⁵⁹ provides humanitarian assistance to northern Somalia,⁶⁰ invests in commercial ventures,⁶¹ and organizes peace conferences.⁶² Sufi Islamists can draw on traditional community ties and local authorities, but non-Sufi Islamists also have community commitments.

Somali Islamists have spent the past four decades resisting the government, trying to build new public institutions, and becoming part of community life. These experiences will prove valuable to Islamists in the new state as they seek to establish public social services for the first time in twenty years. Their skills will help develop the country and its democracy.

B. Many Somali Islamists Accept Democracy

Many Somali Islamists profess positive attitudes toward democracy: some believe in it very strongly, while others are more pragmatic and will work with the new state as long as they think they can advance an Islamist agenda. This pragmatism holds the possibility of peace and political pluralism. Even if one would rather see principled commitment to democracy from pragmatists, democratic politics provide incentives that should make the new state attractive to them, both immediately and in the long run.

⁵⁴ See Adam, *supra* note 10, at 210 ("In response to social and economic insecurities [in the 1970s and 1980s], the Islamic reaction adopted various manifestations . . . [including] enhanced activities among relatively self-reliant Islamic agropastoral co-operatives.")

⁵⁵ See LEWIS, *supra* note 21, at 13.

⁵⁶ *Id.* For elaboration on religious leaders and law, see *id.* at 63–64.

⁵⁷ See Menkhaus, *supra* note 44, at 112–13.

⁵⁸ See Adam, *supra* note 10, at 214.

⁵⁹ Abdullahi, *supra* note 35, at 287–89.

⁶⁰ See *id.* at 240.

⁶¹ Menkhaus, *supra* note 44, at 115.

⁶² Abdullahi, *supra* note 35, at 283–85.

1. *Prominent Islamist Groups Embrace Democracy*

Three prominent Islamist groupings—leaders associated with the Islamic Call manifesto, the Somali National Movement (“SNM”), and al-Islah—have historically supported and practiced democracy. Late in 1990, sixty-seven prominent Islamic scholars issued a manifesto entitled Islamic Call.⁶³ The document called for nonviolent dialogue to end conflict with the Barre regime and blamed both secular nationalism and the post-colonial parliamentary system that Barre overthrew for Somalia’s plight.⁶⁴ Though it critiqued Somalia’s first experiment with representative statehood, Islamic Call endorsed parliamentary democracy while rejecting violence and authoritarian theocracy.⁶⁵

Islamic Call’s nonviolent approach failed when the clans overthrew Barre, but other Islamists shared its democratic ideals. The Islamist SNM took power in Somaliland, a region in northwestern Somalia,⁶⁶ after Barre’s fall.⁶⁷ Its leaders established a stable democratic state.⁶⁸ SNM first practiced democracy internally, appeasing fundamentalist supporters by pledging support for Shari’a and featuring the first verse of the Qur’an in Arabic on its flag.⁶⁹ But the fundamentalists do not have a monopoly on power in the state: a humanitarian woman served as foreign minister⁷⁰ and several parties contest elections.⁷¹ SNM established a deliberative democratic system that has thus far withstood pressure from extremists.

⁶³ Adam, *supra* note 10, at 214–15. In an email on January 21, 2013, Dr. Adam informed the author that the sole copy of his and Mohamad Hassan Farah’s English translation of Islamic Call has been lost.

⁶⁴ *Id.* at 199–200, 204, 215.

⁶⁵ *See id.* at 215.

⁶⁶ *Somaliland*, UNREPRESENTED NATIONS & PEOPLES ORG., <http://www.unpo.org/members/7916> (last visited Feb. 20, 2013).

⁶⁷ U.S. BUREAU CITIZENSHIP & IMMIGRATION SERV., SOMALIA: SOMALI NATIONAL MOVEMENT FROM ITS INCEPTION THROUGH THE PRESENT, Aug. 25, 1999, *available at* <http://www.unhcr.org/refworld/docid/3ae6a6b5f.html>.

⁶⁸ *Id.*; Sar Medoff, *Prospects for Islamic Democracy in Somalia*, WARDHEER NEWS (Feb. 13, 2010), http://wardheernews.com/Articles_10/Feb/13_prospects_sar.html.

⁶⁹ Adam, *supra* note 10, at 217.

⁷⁰ *See Somaliland: Edna Adan Ismail Receives Legion d’Honneur From French President*, SOMALILANDPRESS (Nov. 21, 2012), <http://somalilandpress.com/somaliland-edna-adan-ismail-receives-legion-dhonneur-from-french-president-13247>.

⁷¹ *See Mohamed Cisman Dubadd, Somaliland’s Political Landscape and Overcome of Local Elections*, SOMALILANDPRESS (Apr. 18, 2010), <http://somalilandpress.com/somaliland%E2%80%99s-political-landscape-and-overcome-of-local-elections>.

Al-Islah has a similar approach. Internally, it believes in “unity in diversity,” accepting Muslims with different understandings of their religion and its implications.⁷² Radical groups have condemned al-Islah for supporting democracy and women’s participation in politics.⁷³ As early as 1991, al-Islah called for “restoration of the rule of law, releasing all political prisoners, preparing an Islamic compliant constitution, adopting a multi-party system, granting freedom of the press, and conducting a free election.”⁷⁴ It first considered forming a broad political party that would unite Somalis with different political beliefs, then debated changing al-Islah itself into a political party, ultimately deciding to allow members to choose which political organizations to join and support.⁷⁵

Al-Islah has three goals in the democratic process: (1) rebuilding the state; (2) ensuring respect for “Islamic principles”; and (3) winning assembly seats.⁷⁶ It believes Islam should remain the official religion, without other religions being allowed to propagate themselves, and all laws must be compatible with Shari’a.⁷⁷ Al-Islah has not specified what “Islamist principles” and conformity with Shari’a mean in terms of concrete policy, instead calling for “deepen[ing] the right meaning of the Islamic concept of [democratic deliberation] and . . . recogniz[ing] freedom as a human value incarnated in Allah’s dignification of the human being.”⁷⁸ This endorsement of democracy and silence as to what Islamist policies would look like within the new State reflect the diverse views and party allegiances of al-Islah’s members.⁷⁹ It is a promising sign that al-Islah is committed to the new state and is not determined to impose one narrow

⁷² Abdullahi Dissertation, *supra* note 16, at 31, 213 (“[Al-Islah] openly advocates the advancement of the rights of women and strongly supports their social and political participation in community affairs . . . [It] promotes women’s education in all its social development programs. The effect of these policies were so resounding that Somali women now play important roles in politics and social life that were hitherto believed to be in the domain of men.”).

⁷³ *Id.*

⁷⁴ *Id.* at 260 (citation omitted).

⁷⁵ *Id.* at 273. Al-Islah deemed this solution to be the most practical given the relative lack of civil society in Somalia. *Id.*

⁷⁶ *Id.* at 284.

⁷⁷ *Id.*

⁷⁸ *Id.* at 214. This praise of freedom is in obvious tension with al-Islah’s opposition to the propagation of religions other than Islam. One could argue that the fundamental importance of religious freedom should foreclose any positive consideration of Somali Islamists. *See, e.g.*, Universal Declaration of Human Rights, art. 18, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (protecting the right to manifest religion in public). However, absolute refusal to engage with Islamists will only delay Somalia’s reconstruction further. Positive engagement with Islamists, on the other hand, is a prerequisite for real dialogue on how Islamists can balance their religious-political identity with their professed belief in freedom and human rights.

⁷⁹ *See supra* notes 72–75 and accompanying text.

understanding of Islamism. Al-Islah's members translated that commitment into practice when they competed for and won approximately ten percent of the seats in a transitional government after a peace conference in 2000,⁸⁰ and when its political director, Dr. Abdurahman Abdullahi Baadiyow, unsuccessfully competed for the presidency in 2012.⁸¹

2. *Some Islamists are Pragmatic About Democracy*

Many Somali Islamists have a more tepid stance toward democracy than SNM and al-Islah. After so many years of chaos, few want to throw the country into another conflict. But not all are committed to al-Islah's belief that democracy is the best way to honor God-given human dignity. Many are simply willing to work with whatever system is in place, especially given that many Somalis reject strict interpretations of Islam and are suspicious of attempts to impose Islamism.

Somali Islam has historically been a "veil lightly worn": women do not veil unless they choose to, customary and civil law have often trumped Shari'a, and the strict moral purity that the most radical Islamists demand has often been seen as a foreign imposition.⁸² Many Somali Islamists want to reconcile their political beliefs with the prevailing culture. As one Islamist woman said, Islamist politics must be "properly and flexibly implemented."⁸³

Many Islamists would agree with one Islamist leader's recent call "to consider the existing socio-political realities and to push the clan-based organization toward the desired Islamic society and Islamic state" without seeking absolute power.⁸⁴ Many Islamists are unsure of what to do with the new state and have taken this approach, making strategic alliances with businesspeople and militia leaders to foster community development without committing to a political platform.⁸⁵

⁸⁰ Abdullahi Dissertation, *supra* note 16, at 283–84.

⁸¹ See Odowa, *supra* note 16. In addition to the director, Abdullahi, and the successful candidate, Hassan M. Sheikh Mohamud, two other prominent Islamists put forward strong showings in the election. Hassan M. Abukar, *Somalia's New President: A Victory for Islamic Groups*, WARDHEER NEWS (Sept. 11, 2012), http://wardheernews.com/Articles_12/Sept/Abukar/11_Somalias_New_Presiden_A_Victory_for_Islamic_Groups.html.

⁸² See Menkhaus, *supra* note 44, at 111.

⁸³ See Adam, *supra* note 10, at 221.

⁸⁴ Abdullahi Dissertation, *supra* note 16, at 274. The introduction of the dissertation contains Abdullahi's credentials. *See id.* at ii.

⁸⁵ Menkhaus, *supra* note 44, at 115–16.

Pragmatic Islamists want to see Somalia transformed and oriented around religious values. They will seek to preserve official recognition of Islam, and perhaps advocate a greater role for Shari'a in state law than the new state currently authorizes.⁸⁶ Beyond those two goals, many are likely to accept working within various government systems. Those pragmatic Islamists not yet engaging the new state may in time be peacefully included in it.

Others, however, will abandon their pragmatism and join extremists, believing only total power can Islamize Somalia. And some will prove never to have been pragmatists at all, but only extremists biding time before seizing power. Extremists cannot be accommodated within the new state unless they fundamentally change their attitudes toward other political groups and reject the use of terror.

II. EXTREMIST ISLAMISM IS PREVALENT, BUT OPPOSITION TO IT IS OVERBOARD

Not all Islamists share SNM and al-Islah's democratic credentials or follow pragmatism. Some believe that their vision must be imposed through the use of force. This approach is prevalent. The hostility it inspires, though, reaches too far.

A. *Extremist Islamism Is Prevalent*

The history of militant Islamism in Somalia stretches back into the colonial era, just like that of its more moderate counterparts. In the late nineteenth and early twentieth centuries, Mullah Mohamed ibn Abdullah Hassan tried to unite Somalis against British imperialism under a hardline interpretation of Islam.⁸⁷ Though he did not succeed in establishing an independent theocracy, Somalis remember his extremism, absolute control of others, and violence against fellow Somalis.⁸⁸ He is commonly known as the "Mad Mullah."⁸⁹

⁸⁶ See DASTUURKA JAMHURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, art. 2(1). (Somalia). The author uses the word "perhaps" because pragmatists are likelier to wait and see how the Shari'a repugnancy clause functions before making specific demands.

⁸⁷ See SAADIA TOUVAL, SOMALI NATIONALISM: INTERNATIONAL POLITICS AND THE DRIVE FOR UNITY IN THE HORN OF AFRICA 53, 55–56 (1963).

⁸⁸ See *id.* at 53, 56.

⁸⁹ *Id.* at 51.

Hassan was not the last Somali to use violence and authoritarianism to try to impose Islamism. In the late 1990s, a number of Islamist militants returned to Somalia after fighting against the Soviet Union's failed invasion of Afghanistan throughout the 1980s.⁹⁰ They made up the most radical strand of al-Ittihad al-Islamiya ("al-Ittihad"),⁹¹ one of the groups that tried to restore order after Barre's fall.⁹² They imposed draconian punishments—including dismemberment—on criminals, prohibited consumption of the popular narcotic qaat, and forced women to veil.⁹³ Al-Ittihad collapsed in the early 2000s after the United States linked several of its leaders to al-Qaeda and other global terrorist organizations⁹⁴ and several of its former officers rose to power in the nascent UIC.⁹⁵

Several of the most radical al-Ittihad commanders formed Harakat al-Shabaab al-Mujahideen ("al-Shabaab"), the "most powerful, dangerous and far-reaching Al Qaeda affiliate."⁹⁶ Al-Shabaab seeks to unite ethnic-Somali regions of East Africa, including parts of Ethiopia and Kenya, under a theocracy.⁹⁷ Following an internal power struggle, the group affiliated with al-Qaeda and jihad against the West.⁹⁸ It is ruthless, extorting religious alms, caning a woman a hundred times for committing adultery, and arresting imams

⁹⁰ LAUREN PLOCH, CONG. RESEARCH SERV., 7-5700 COUNTERING TERRORISM IN EAST AFRICA: THE U.S. RESPONSE 5 (2010). They fought alongside the Taliban. *See id.*

⁹¹ *Id.*

⁹² *See* Menkhaus, *supra* note 44, at 112.

⁹³ Menkhaus, *supra* note 44, at 112.

⁹⁴ *See, e.g.*, OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF TREASURY, TERRORISM: WHAT YOU NEED TO KNOW ABOUT U.S. SANCTIONS 1-3 (freezing al-Ittihad's assets); TED DAGNE, CONG. RESEARCH SERV., RL 33911, SOMALIA: CURRENT CONDITIONS AND PROSPECTS FOR A LASTING PEACE 6 (2001).

⁹⁵ The most prominent of these was Sheikh Hassan Dahir Aweys. *See* Integrated Regional Information Networks [IRIN], U.N. Office for the Coordination of Humanitarian Affairs, *Somalia: Islamic Courts Set Up Consultative Council*, IRIN (June 26, 2006), <http://www.irinnews.org/Report/59444/SOMALIA-Islamic-courts-set-up-consultative-council> (reporting that the moderate but "controversial" al-Ittihad leader, Sheikh Hassan Dahir Aweys named head of the UIC). Sheikh Aweys was among the first designated a terrorist following 9/11. Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001).

⁹⁶ Tristan McConnell, *Al Shabaab Branches Out Beyond Somalia*, GLOBAL POST (Sept. 10, 2012, 5:00 PM), <http://www.globalpost.com/dispatch/news/regions/africa/120907/al-qaeda-al-shabaab-somalia>; *see also* PLOCH, *supra* note 90, at 6-7.

⁹⁷ PLOCH, *supra* note 90, at 6.

⁹⁸ Mahmoud Mohamed, *Al-Shabaab, Al-Qaeda Union Attempt to Raise Morale—Analysts*, SABAH (Feb. 13, 2012), http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/02/13/feature-01. Ironically, the leader of the wing supporting an exclusively national struggle was Sheikh Aweys, long considered a supporter of global terror by the American government. He was arrested by transitional government forces in June 2013 after the globalists gained the upper hand. Abdi Sheikh, *Prominent Militant Arrested in Blow to Somali Islamists*, REUTERS (June 26, 2013), *available at* <http://www.reuters.com/article/2013/06/26/us-somalia-rebels-idUSBRE95P14F20130626>.

for using loudspeakers.⁹⁹ Al-Shabaab fighters desecrated the bodies of foreign soldiers, an atrocity even its al-Qaeda allies deemed “heinous and anti-Islam[ic].”¹⁰⁰ Since its recent military defeats at the hands of Kenyan and African Union forces,¹⁰¹ al-Shabaab has adopted suicide bombings and other forms of terrorism in resisting the government.¹⁰²

This extremism has no future in the state, but it should not be taken as representative of all Somali Islamism. Somali Islamic scholars recently issued a *fatwa* against al-Shabaab, stating that its ideology is “a danger to the Islamic religion and the existence of the Somali society.”¹⁰³

B. *Extremism Is Dangerous, but Its Opponents Target All Islamists*

Al-Shabaab and other extremist Islamists give supporters of the new Somali State reasons to fear them. Three reasons why are: (1) al-Shabaab’s uncompromising rejection of democracy and its terrorist resistance campaign; (2) the possibility that extremists will corrupt the new state, or build parallel institutions keen on violence; and (3) the threat that Somali extremism poses to

⁹⁹ Mahmoud Mohamed, *Al-Shabaab Uses Zakat as Pretext to Extort Money from Somalis*, SABAH (Aug. 24, 2012), http://sabahonline.com/en_GB/articles/hoa/articles/features/2012/08/24/feature-01; AK, *Al-Shabaab Arrests Imams: Accused of Praying Too Loudly*, SOMALIA REP. (Aug. 24, 2011), http://www.somaliareport.com/index.php/post/1437/Al-Shabaab_Arrests_Imams; Ismail Hassan Olad & Abdirashid Abdi, *Al-Shabaab Canes a Somali Woman Over Adultery: The Victim Received 100 Strokes of the Cane*, SOMALIA REPORT (Oct. 15, 2011), http://www.somaliareport.com/index.php/post/1770/AlShabaab_Canes_a_Somali_Woman_Over_Adultery.

¹⁰⁰ Dominic Wabala, *East Africa: Al Qaeda Criticises Al Shabaab Over ‘Heinous and Anti-Islamic’ Activities*, STAR (Sept. 7, 2012), <http://allafrica.com/stories/201209080109.html>.

¹⁰¹ It is not clear why Kenya launched operations against al-Shabaab. See James Verini, *The Last Stand of Somalia’s Jihad: Can Kenya’s Invasion of Kismayo Put an End to al-Shabab for Good?*, FOREIGN POL’Y (Dec. 17, 2012), http://www.foreignpolicy.com/articles/2012/12/17/the_last_stand_of_somalias_jihad (noting the defeat of al-Shabaab in Kismayo and that some al-Shabaab fighters have withdrawn in order to regroup and redirect their efforts); see also Julius Odeke, *Al Shabaab Militants Disengage in Jowhar*, INDEP. (Jan. 3, 2013), <http://www.independent.co.ug/news/news/7121-al-shabaab-militants-disengage-in-jowhar> (defections from al-Shabaab to international pro-government forces).

¹⁰² See, e.g., Aidan Hartley, *Cooking For Freedom: A London Chef Has Returned to Mogadishu to Make a Stand Against al-Qa’eda*, SPECTATOR, Nov. 24, 2012, at 20 (describing an earlier al-Shabaab suicide attack on the same restaurant, where twenty people died); *Somalia Blasts Hit Mogadishu’s Village Restaurant*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-24000782> (last updated Sept. 7, 2013, 1:34 PM) (describing a car bomb and suicide bombing of a popular Mogadishu restaurant by al-Shabaab, in which fifteen people died). It is also now targeting Kenyan civilians in retaliation for the campaign. See *infra* note 115 and accompanying text.

¹⁰³ *Somali Islamic Scholars Denounce Al-Shabab in Fatwa*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-24057725> (last updated Sept. 11, 2013, 10:41 AM). The *fatwa*, or Islamic religious edict, endorsed the new state as Islamic, forbade Muslims from supporting al-Shabaab, and obligated Muslims to assist the state in suppressing the group. *Id.*

other countries, given its increasingly global outlook and affiliations. However, unfair and imprudent exclusion of all Islamists from the political process often quickly results from hostility to extremism.

1. *Extremism Is a Serious Threat*

Extremism is a genuine existential threat to the new state and its adherents are very unlikely to be reconciled to the political process. According to Al-Shabaab's leader, that group opposes democracy because "Allah says anyone who follows a law that is . . . contrary to Allah's law, has fully become an unbeliever and left Allah's religion."¹⁰⁴ Al-Shabaab greeted fellow Islamist President Hassan's election in September 2012 with three suicide bombings targeting his life¹⁰⁵ and considers government soldiers "apostates."¹⁰⁶ Al-Shabaab has proven an irreconcilable enemy, using venomous rhetoric against the new State and targeting the lives of even its Islamist leaders.

Not all Islamist extremism is so eager to seek the spotlight. Extremists in Somaliland, for instance, are quietly garnering power within the government: They hold three cabinet seats and operate formally-registered political organizations.¹⁰⁷ Apparently, they are trying to "outmaneuver[] a civilian government and indirectly control[] politics without ever claiming direct control of the administration."¹⁰⁸ Other Islamists used the same strategy in Puntland—a semi-autonomous region of Somalia that, like Somaliland, has had a functional government for most of the past two decades—when they took control of the Ministry of Justice against the protests of the region's president.¹⁰⁹ While it is conceivable that these Islamists are trying to find a

¹⁰⁴ *Somalia: Al-Shabaab Leader Calls on Muslims to Fight Democracy*, GAROWE ONLINE (June 25, 2010, 3:40 AM), http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Shabaab_leader_calls_on_Muslims_to_fight_democracy.shtml.

¹⁰⁵ See, e.g., Sudarsan Raghavan, *Somalia's New President Escapes Attack*, WASH. POST, Sept. 13, 2012 at A6. Al-Shabaab followed up that attack in late January 2013 with another unsuccessful suicide bomber who killed several soldiers at the presidential palace. Abdi Sheikh, *Suicide Bomber Kills Two Near Somali Presidential Palace*, REUTERS, Jan. 29, 2013, available at <http://www.reuters.com/article/2013/01/29/us-somalia-conflict-idUSBRE90S08E20130129>.

¹⁰⁶ See *Kenya Sends Troops to Attack al-Shabab*, AL-JAZEERA, <http://www.aljazeera.com/news/africa/2011/10/20111016115410991692.html> (last updated Oct. 24, 2011, 6:48 AM).

¹⁰⁷ See Abdi Hussein, *Are Shabaab Subverting Politics in Somaliland?: Al-Shabaab Seen to Adopt Guerilla Tactics and Political Subversion in Somaliland*, SOMALIA REP. (Apr. 10, 2012), http://www.somaliareport.com/index.php/post/3230/Are_Shabaab_Subverting_Politics_in_Somaliland.

¹⁰⁸ See Menkhaus, *supra* note 44, at 116.

¹⁰⁹ See *id.*

way to engage with the state and not plotting a *coup d'état*,¹¹⁰ their activities are suspicious.

Even some of the community commitments Islamists have undertaken could be vulnerable to—or even fronts for—radicalization. Many Islamists believe in transforming Somali society through education, welfare, and Arabic-language instruction.¹¹¹ It becomes difficult to tell which Islamists are apolitical culture-transformers and which have hidden agendas.¹¹² The line between al-Islah's genuine efforts to build civil society and the nefarious intentions of other groups is a thin one. What is to stop al-Shabaab and others from building a parallel state, complete with propagandistic schools, draconian courts, and violent militias, then using it to challenge the legitimate State's power and authority?

Somalis are not the only ones concerned about possible takeover or circumvention of the State by extreme Islamists: Ethiopia, Kenya, and the United States all have reasons to fear, too. Al-Shabaab wants control over Somali-inhabited regions of neighboring Ethiopia and Kenya.¹¹³ The governments of Ethiopia (which counts nearly as many Muslims as Christians among its citizens)¹¹⁴ and Kenya (recently the site of a bloody, multiple-day siege of a shopping mall by al-Shabaab fighters)¹¹⁵ have obvious reasons to oppose the rise of Islamist theocracy in Somalia. The United States is concerned because al-Shabaab has formally affiliated itself with al-Qaeda to try to make Somalia a base for global terrorism.¹¹⁶ Al-Shabaab seems to have taken particular joy in needling the American government: When the United States placed bounties ranging from \$3 to \$7 million on the heads of al-Shabaab's commanders, the group offered a reward of ten camels for anyone

¹¹⁰ See *supra* Part I.B.2 (discussing pragmatism and indeterminate Islamist attitudes toward democracy).

¹¹¹ See *supra* Part I.A.3 (discussing community commitments).

¹¹² Menkhaus, *supra* note 44, at 114.

¹¹³ PLOCH, *supra* note 90, at 6.

¹¹⁴ BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T OF STATE, ETHIOPIA: INTERNATIONAL RELIGIOUS FREEDOM REPORT 2005 (2005), <http://www.state.gov/j/drl/rls/irf/2005/51472.htm> (last visited Jan. 15, 2014) ("An estimated 40 to 45 percent of the population belongs to the Ethiopian Orthodox Church (EOC); however, the EOC claims 50 percent of the country's total population . . . Approximately 45 percent of the population is Sunni Muslim, although many Muslims claim that the actual percentage is higher.").

¹¹⁵ Jason Straziuso et al., *FBI Agents Inspect Kenya Mall Attack Site, Work To Establish Identities, Nationalities of Attackers and Victims*, HUFFINGTON POST (Sept. 25, 2013), http://www.huffingtonpost.com/2013/09/25/fbi-kenya-mall-attack_n_3991526.html?ir=World. Approximately seventy people were killed and another 175 wounded. *Id.*

¹¹⁶ MOHAMED, *supra* note 98.

with information on “the hideout of the idiot [U.S. President Barack] Obama.”¹¹⁷ Given its terrorist capabilities and connections, al-Shabaab could turn from twisted satire to direct targeting of Americans.¹¹⁸

2. *Opposition to Extremism Is Too Often Hostility to All Islamists*

The beliefs and actions of extremist Islamist groups allow some Somali politicians to reject any engagement with Islamists—even Islamists like al-Islah and President Hassan who embrace democracy and are opposed by extremists for their beliefs. Abdullahi Yusuf, president of the internationally backed Transitional Federal Government (TFG) from 2004 to 2008, did not engage well with Somali intellectuals and clerics—he offended Islamists by using the term “terrorist” when referring to many of them.¹¹⁹ The refusal of the transitional government to foster good relations with Islamists denied it the ability to root its policies in Somali culture.¹²⁰ Abdullahi argues that this failure stopped the TFG from “emphasis[ing] good governance under broad moral principles, and laws divined by God” by appealing to Islamic principles of “justice and fairness.”¹²¹ It also weakened the TFG’s democratic credentials.¹²²

Cynicism suggests another reason for President Yusuf’s language: appeal to foreign governments for support.¹²³ Like President Yusuf, the American government tends to conflate opposition to Islamism with anti-extremism. The

¹¹⁷ *Somali Al-Shabab Camel Reward for Barack Obama ‘Absurd’*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-18394703> (last updated June 11, 2012).

¹¹⁸ It already recruits Somali-Americans and other Westerners. See *Al Shabaab’s American Recruits*, ANTI-DEFAMATION LEAGUE, <http://www.adl.org/assets/pdf/combating-hate/al-shabaabs-american-recruits.pdf> (last updated Oct. 2013) (listing Americans recruited to fight for al-Shabaab in Somalia); see also *Al-Amriki and Al-Britani: Militants ‘Killed’ in Somalia*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-24060558> (last updated Sept. 12, 2013) (announcing the deaths of two Westerners who had once fought for al-Shabaab, killed by its fighters after siding with Sheikh Hassan Dahir Aweys). See *supra* note 98 and accompanying text for a discussion of Aweys’s power struggle.

¹¹⁹ ELM, *supra* note 24, at 26.

¹²⁰ See ABDULLAHI A. AN-NA’IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI’A 25 (2008) [hereinafter NEGOTIATING].

¹²¹ *Recovering*, *supra* note 35, at 205.

¹²² Abdullahi Dissertation, *supra* note 16, at 136 (“The free choice of the citizens through democratic process [sic], as peaceful resolution of the conflict, is blocked by the secular elites with the support of the western powers. . . .”). The most notorious recent case of anti-Islamism morphing into anti-democratic action is the 2013 military coup against Egyptian President Muhammad Morsi of the Muslim Brotherhood. See Ben Wedeman et al., *Coup Topples Egypt’s Morsi; Deposed President Under ‘House Arrest’*, CNN (July 4, 2013), <http://www.cnn.com/2013/07/03/world/meast/egypt-protests> (reporting the coup, as well as a raid on the Cairo offices of Al Jazeera, a leading international news agency).

¹²³ See ELM, *supra* note 24, at 26.

United States deemed the entire UIC an al-Qaeda proxy,¹²⁴ thereby confusing domestic politics¹²⁵ with international terrorism and failing to distinguish between moderate and extremist tendencies. America was quick to back an anti-UIC warlord army that, tellingly, branded itself the “Alliance for the Restoration of Peace and Counter-Terrorism.”¹²⁶ Perhaps President Yusuf hoped that calling his opponents terrorists would garner similar help.

Understandable fears still translate into excessive hostility to Somali Islamists in peacemaking and nation-building, even as Islamists take power. A regional newspaper accused four leading Islamist statesmen in the new presidential administration of having “a common ideological base that is not far removed from the al Shabaab radical Islamists.”¹²⁷ Surely it is too much to accuse President Hassan of appointing advisers sympathetic to the group that is trying to kill him. But, this mentality of conflating Islamism with extremism has predominated for the past twenty years. International peace conferences carried on without any Islamists present.¹²⁸ President Yusuf and the TFG deemed Islamists terrorists and failed to establish good relations with the moderates among them.¹²⁹ The American government encouraged transitional leaders in doing so.¹³⁰

This mentality will not likely have a future. Somali Islamists are now at the center of the new state and their leadership is essential to the process of political reconstruction. Now, they will lead the charge to consolidate power and suppress extremism. Other Somalis and foreigners will need to think about the Islamists in new ways and develop nuance in assessing Islamism’s role in Somali society and politics. This is especially true given the significant foreign aid commitments the American government has made to the new state.¹³¹

¹²⁴ See MARY HARPER, *GETTING SOMALIA WRONG?: FAITH, WAR, AND HOPE IN A SHATTERED STATE* 4 (2012).

¹²⁵ See *id.* at 4; Gettleman, *supra* note 49, at 6 (quoting a UIC minister: “The world was so quick to label us. . . All we are asking is to be judged on our deeds.”); see also *supra* Part I.A.2. for a discussion of the UIC.

¹²⁶ See HARPER, *supra* note 124, at 361 (emphasis added).

¹²⁷ *President’s Inner Circle*, INDIAN OCEAN NEWSL. (Afr. Intelligence, Paris, Fr.) Oct. 6, 2012, ION/politics-power/2012/10/06/president-s-inner-circle,107917826-ART.

¹²⁸ See, e.g., ELMI, *supra* note 25, at 26 (describing the exclusion of many Somali voices, including Islamist ones, from the peace conference that produced TFG’s charter and explaining how that exclusion harmed TFG’s legitimacy).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ OFFICE OF THE SPOKESPERSON, U.S. DEP’T OF STATE, U.S. ASSISTANCE IN SOMALIA, MAY 7, 2013, available at <http://www.state.gov/r/pa/prs/ps/2013/05/209062.htm> (“The U.S. Government hopes to continue substantial financial support to Somalia in future years that will support Somalia’s progress and transition to

Of course, foreign governments could choose another path. They could recognize that their approach to Islamism and to Somali reconstruction has been deeply flawed. Instead of becoming partners to the Islamists and other political actors, they could choose disengagement. For many years, Western governments have subsidized armed factions and intervention by neighboring states rather than long-term development—a strategy that has delayed stabilization.¹³² The resulting power vacuum has proven fertile ground for terrorists, pirates, and war profiteers, each of whom threatens both Somali and foreign interests.¹³³ Behind the fog of this constant conflict, foreign governments often lack the capacity to distinguish friends from foes.¹³⁴ Foreign governments could prevent their past misjudgments of Somali Islamism from continuing to delay reconstruction by limiting their concern with Somali internal affairs.

However, they are unlikely to do so. The American government, in particular, has committed to long-term military and intelligence involvement in Somalia, and Kenya is responding to al-Shabaab's devastating September 2013 terrorist attack on a Nairobi mall with continued military offensives.¹³⁵ Given

longer-term development. U.S. foreign assistance programs support security, development and humanitarian objectives. . . .").

¹³² See Michael Shank, *Why We Should Keep Out of Somalia's Affairs*, CNN BLOG: FAREED ZAKARIA: GPS (Aug. 2, 2013, 11:46 AM), <http://globalpublicsquare.blogs.cnn.com/2013/08/02/why-we-should-keep-out-of-somalias-affairs/> ("Still, the fact is that Somalia needs help building its institutions, developing economically, and improving its legal and security infrastructure. In all the years that the West—America or Britain—aided and abetted war efforts in Somalia, very little money, time or skill was spent on building capacity in the country. Indeed, any capacity building was always undertaken primarily through an interlocutor, be it the African Union, or worse, a neighboring country like Ethiopia or Kenya. This practice must stop.").

¹³³ See Joseph Huff-Hannon, *Piracy in Perspective: The Unintended Consequences of U.S. Foreign Policy in Somalia*, DISSENT (Jan. 22, 2009), http://www.dissentmagazine.org/online_articles/piracy-in-perspective-the-unintended-consequences-of-u-s-foreign-policy-in-somalia ("[W]here there's a vacuum and opportunity for profit, fools rush in, and pirates and those who finance them have not been the only ones. Private military contractors like Blackwater Worldwide are also eager to mine the proverbial gold that crisis, lack of governance, and humanitarian strife have given birth to.").

¹³⁴ See Colum Lynch, *Is the U.S. Ramping Up a Secret War in Somalia?*, FOREIGN POL'Y (July 22, 2013), http://www.foreignpolicy.com/articles/2013/07/22/is_the_us_ramping_up_a_secret_war_in_somalia_al_shaba_b ("In a particularly grim twist, it is America's counterterrorism partners—corrupt Somali institutions and Kenyan collusion with al-Shabab's financial backers—that pose a potentially even more lethal threat to American aims.").

¹³⁵ See, e.g., *id.* ("The Obama administration earlier this year expanded its secret war in Somalia, stepping up assistance for federal and regional Somali intelligence agencies that are allied against the country's Islamist insurgency."); Office of the Spokesperson, *supra* note 131; *Kenya Planes 'Kill Somali Militants' from al-Shabab*, BBC NEWS, <http://www.bbc.co.uk/news/world-africa-25679777> (last updated Jan. 10, 2014, 4:05 AM) ("Kenya has several thousand troops in Somalia, fighting al-Shabab.").

the reality of continued foreign intervention, it is best for interested foreigners not to see all Somali Islamists as threats.

Perhaps one of the reasons why all Islamism was brushed aside because of fear of extremism for so long is under-appreciation of the benefits of mutual engagement between Islamists and the Somali state. The remainder of this Comment will strive to correct that by analyzing three pertinent aspects of Islamism: contributions it offers the state, benefits it stands to gain from political participation, and commitments it has made to Somali communities.

III. ISLAMISM CAN OFFER THE SOMALI STATE LEGITIMACY, VALUES, AND IDENTITY

The Somali state will need security from extremists, as President Ahmed and others realized. But, it must also have legitimacy in the eyes of its citizens, values to guide its policies, and a shared identity to unite the nation. Islamism offers each of these things.

A. *Islamism Offers Legitimacy*

Modern Western political philosophers routinely posit consent as the basis of legitimate government.¹³⁶ Behind consent, though, are the state's "deep and organic links with various non-state actors in the political field across society at large."¹³⁷ People consent to a state that reflects their beliefs and affiliations, one that interacts positively with the other communities with which they associate.

Two things are "inviolable" in Somali culture: Islam and the clan.¹³⁸ Somalis will not consent to the state unless it has deep and organic links with the Islamism through which many Somalis interpret their religion. Islamism is deeply intertwined with Somali social life, from civil society and educational institutions to the economy.¹³⁹ As explained in the preceding Parts of this

¹³⁶ See, e.g., JOHN LOCKE, SECOND TREATISE OF GOVERNMENT para. 119 at 45, *reprinted in* 1 THE FOUNDER'S CONSTITUTION (Philip B. Kurland & Ralph Lerner eds., 1987) ("Every Man being, as has been shewed, naturally free, and nothing being able to put him into subjection to any Earthly Power, but only his own Consent . . .").

¹³⁷ NEGOTIATING, *supra* note 119, at 92.

¹³⁸ *Recovering*, *supra* note 34, at 196, 209. The Pew Forum estimates that 98.6 percent of Somalis are Muslims; the vast majority of these are Sunnis. PEW RESEARCH RELIGION, & PUB. LIFE PROJECT, THE FUTURE OF THE GLOBAL MUSLIM POPULATION (2001), *available at* <http://features.pewforum.org/muslim-population/>.

¹³⁹ *Recovering*, *supra* note 34, at 214.

Comment, Somali Islamism has attained a high degree of popularity over the past forty years by organizing against the Barre regime, proving an alternative to the hypocritical, tyrannical government, and resisting without becoming corrupt. It then helped to maintain law and order after Barre's overthrow, bringing peace to Mogadishu and Somaliland by establishing effective courts and militias. Twenty years later, Islamists operate many community institutions, providing basic social services such as education, famine relief, and health care. And they provide Somalis with an identity that serves as an alternative to the clan affiliation many view as discriminatory.

If the new state is going to mobilize citizens to rebuild and gain legitimacy in their eyes, then its relationship with Islamism will be crucial.¹⁴⁰ Islamists have done much to ingrain themselves in Somali communities. Even aside from the state's moral imperative to earn legitimacy by respecting different constituent groups, it is good that Islamists are helping to lead because they have experience earning legitimacy as governors. Recall the Mogadishu resident who, after Islamists pacified the city and restored social services, said: "It's an exchange They brought us peace, we give them work."¹⁴¹ The state will depend on a similar exchange with its citizens, seeking conformity and contributions in exchange for peaceful order. What better way to forge this relationship than through collaboration with Islamists who have been forging it with Somalis for the past twenty years? Indeed, one of President Hassan's greatest strengths is that he is "completely networked into the strongest and best bits of Somali society" through his Islamist affiliations.¹⁴²

B. Islamism Offers Values

Every state needs values, both as a benchmark against which to measure political performance and as a substantive basis for law. Somalia's provisional constitution recognizes this, privileging human rights and Shari'a as sources of values.¹⁴³ Islamists should have an important role in helping the state craft laws based on these norms.

¹⁴⁰ CARRIE ROSEFSKY WICKHAM, MOBILIZING ISLAM: RELIGION, ACTIVISM, AND POLITICAL CHANGE IN EGYPT 7–8 (2002) (explaining how the Muslim Brotherhood in Egypt could serve as a catalyst for political action).

¹⁴¹ Gettleman, *supra* note 49, at A6.

¹⁴² *Somalia's New President*, *supra* note 3.

¹⁴³ DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, arts. 2(3), 39–40 (Somalia) (establishing repugnancy clause forbidding laws contrary to Shari'a, means of redress for violations of human rights, and the manner in which human rights are recognized under law).

1. *Islamists Can Hold the State Accountable to Transcendent Moral Norms*

Religion is a source of transcendent moral norms: It provides principles and final goals that orient the life of both people and societies.¹⁴⁴ Religious norms can drive policy and call government decisions that threaten the common good into question. Islamists believe that their religion has much to offer political society in this vein. The slogan of Egypt's Muslim Brotherhood expresses the Islamist attitude toward social and political problems: "Islam is the solution."¹⁴⁵

Somali Islamists seek to honor this conviction by monitoring state performance against higher norms of justice, fairness, and empowerment. Abdullahi describes this task as one of the strongest points in favor of Islamist political participation: "[Islamic law supports] justice and fairness[,] prohibits cheating, exploitation, fraud, deception as well as coercive policies . . . [and] emphasizes good governance under broad moral principles, and laws divined by God."¹⁴⁶ He believes that these divine laws include restricting the public propagation of religions other than Islam and adopting visible symbols of the state's affiliation with that religion.¹⁴⁷ But al-Islah has also demanded multi-party democracy, freedom of the press, and free elections since the Barre era.¹⁴⁸ And Abdullahi acknowledges that its robust endorsement of women's education and participation in politics is "striking and pioneering among Islamic movements and traditional societies."¹⁴⁹ On the whole, al-Islah's Islamism is not a diehard effort to implement a rigid understanding of Shari'a. It is a locus for deliberation about how Islamist principles can inform modern development.¹⁵⁰ This kind of Islamism has the potential to serve Somali democracy by demanding that the state respect the rights and morals of its citizens and prioritize democratic deliberation.¹⁵¹

This role for Islamism as a source of moral guidance will conform to Somali notions of public religion better than antagonizing Islamists and keeping them away from politics, as President Yusuf and his international

¹⁴⁴ SAMATAR, *supra* note 9, at 37 (quoting GUENTER LEWY, RELIGION AND REVOLUTION (1974)).

¹⁴⁵ *See Profile: Egypt's Muslim Brotherhood*, BBC NEWS (Dec. 25, 2013), <http://www.bbc.co.uk/news/world-middle-east-13113405> (noting that the slogan has been adopted by Islamists worldwide).

¹⁴⁶ *Recovering*, *supra* note 34, at 205.

¹⁴⁷ *See* Abdullahi Dissertation, *supra* note 16, at 284.

¹⁴⁸ *Id.* at 260.

¹⁴⁹ *Id.* at 213.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 214.

supporters did. Without embracing essentialism, it is fair to say that most Muslims, and certainly Somalia's many Islamists, believe Islam concerns both personal and community life, including politics.¹⁵² Somalis look to religion as a source of transcendent moral norms in questions of government, society, and economics, as do other Muslims throughout the world.¹⁵³ As the new constitution recognizes in contrast to the approach often taken by the TFG, there is little sense in trying to inoculate politics to Islam for the sake of preventing infection with extremism.

2. *Islamism Can Provide Ethical Content for the Law*

In addition to providing transcendent moral norms, Islam has a juridical tradition, Shari'a, that the new state's provisional constitution recognizes as a fundamental source of law.¹⁵⁴ Interpretations of Shari'a, including Islamist ones, will shape how the new state understands its laws and values. The state will benefit from the experience Islamists gained in administering courts, enforcing laws, and interpreting Shari'a.

Not all of the Islamist experience in interpreting and applying Shari'a is worthy of emulation. The first instinct of Islamists after Barre's fall was to crack down on promiscuity and what they deemed public expressions of sexuality in Mogadishu—an effort that clan militia members rejected because of their own abuses,¹⁵⁵ and that many Somalis saw as a foreign imposition, given that women have not customarily been forced to veil.¹⁵⁶ This draconian tendency continues to guide some Islamists to absurd prohibitions.¹⁵⁷ It has led others to use unacceptably harsh punishments, including dismemberment, for a

¹⁵² *Recovering*, *supra* note 35, at 210; *see also* NEGOTIATING, *supra* note 120, at 85 (“Believers will always assert their religious convictions politically, and it is better to acknowledge and regulate this reality than to deny it and force such political expression of religious beliefs to go underground.”). This mentality is certainly not limited to Muslims, as the American Christian Right, Europe's Christian Democratic political parties, Israel's Orthodox Jewish ones, India's Hindu nationalists, and other manifestations of “public religion” show.

¹⁵³ *Recovering*, *supra* note 35, at 210.

¹⁵⁴ DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, art. 2(3) (“No law which is not compliant with the general principles and objectives of Shari'ah can be enacted.”).

¹⁵⁵ Adam, *supra* note 10, at 216.

¹⁵⁶ *See* Menkhaus, *supra* note 44, at 111.

¹⁵⁷ *See* Njoki Ndung'au, Bra Ban in Somalia Is the Apex of Zealotry Nonsense, STANDARD DIGITAL (Oct. 24, 2009), <http://www.standardmedia.co.ke/?id=1144026892&cid=491&articleID=1144026892> (describing a ban on brassieres instituted by Al-Shabaab).

variety of crimes.¹⁵⁸ The state cannot reconcile Shari'a and human rights by countenancing the oppression of women or the use of bodily mutilation.

They do not need to do so to accommodate most Islamists. When the UIC seized control of Mogadishu from warlords in 2006, they did not enforce a harsh moral vision.¹⁵⁹ Their militiamen allowed soccer games, planned for democratic elections, reopened movie theaters, educated girls in schools, and even permitted commercial activity in front of their headquarters during noon prayers.¹⁶⁰ Their law-enforcement efforts focused on arresting and detaining violent criminals.¹⁶¹ Islamists used tolerance—even though the UIC commanded a victorious militia, held the admiration and gratitude of the populace,¹⁶² and was politically dominant.¹⁶³ Somalia's Islamists are, for the most part, less concerned with dogmatic strictures than with maintaining popular legitimacy and peacefully changing their culture.

In places outside Mogadishu, Islamists have also proven adept administrators and enforcers of the law. Customary Sufi religious leaders have long been judges for local communities, interpreting Shari'a to settle various disputes.¹⁶⁴ Other Islamists opened courts to fill something of the vacuum left by the dissolution of the Barre regime: These were often legitimate efforts to establish local order with no overarching political agenda.¹⁶⁵ Islamists were respected for their discipline, especially given the prevalence of corruption among clan militiamen.¹⁶⁶ Islamists worked for order when no one else could, and they should be encouraged to use that experience to help rebuild Somalia's judicial and legal institutions.

In Somali democracy, Islamists will also have the right and duty to influence the state's interpretation of Shari'a and crafting of legislation. Islam provides ethical principles that Muslims believe ought to guide political life.

¹⁵⁸ See Menkhaus, *supra* note 44, at 112–13 (discussing areas controlled by al-Ittihad).

¹⁵⁹ Gettleman, *supra* note 49, at A1.

¹⁶⁰ *Id.* at A6. That these tolerant militiamen were the first to call themselves al-Shabaab shows just how much the Ethiopian offensive against the UIC and its ensuing collapse contributed to radicalization. *Id.*; see also discussion *supra* notes 11–15 and accompanying text.

¹⁶¹ Santoro, *supra* note 45, at 8.

¹⁶² Gettleman, *supra* note 49, at A6 (“Every day at noon women were driving to the front lines to bring these guys food.”) (quoting the late Ali Iman Sharmarke, a Mogadishu-based journalist).

¹⁶³ *Id.* (“The Islamists say the sooner [elections are held] the better. They know they are the most popular force in the country.”).

¹⁶⁴ LEWIS, *supra* note 21, at 13, 63–64.

¹⁶⁵ See Menkhaus, *supra* note 45, at 116.

¹⁶⁶ See *id.* at 112–13 (discussing areas controlled by al-Ittihad).

Public recognition of these principles is part of the right of Muslims to self-determination.¹⁶⁷ Derived from an ancient tradition that has addressed matters of public concern for centuries, these principles can contribute to public policy debates.¹⁶⁸ Islamic principles may not directly translate into modern law, but states can creatively adapt them even while honoring democratic constitutionalism, human rights, and the rule of law.¹⁶⁹ As explained earlier in this Comment, the SNM in Somaliland, the UIC in Mogadishu, and other Somali Islamists already have experience with creatively adapting religious principles to local conditions. As citizens and political leaders, they will continue this work.

Islamists in other countries already know how to participate in democracy. Turkey is a prime example. Islamists there have led the government for much of the past decade, often proving willing to strengthen democracy and collaborate with non-Islamists in making political agendas.¹⁷⁰ Pakistan—which, like Somalia, faces a significant threat from extremist Islamists¹⁷¹—has also managed to accommodate Islamists without surrendering to theocracy: Its Shari'a court system allows Islamists and non-Islamist Muslims to peacefully debate law and religion.¹⁷² Closer to Somalia, Tunisian Islamists continued to participate in coalitions with secular parties even as crises unfolded in the wake of the Arab Spring.¹⁷³

¹⁶⁷ NEGOTIATING, *supra* note 120, at 28.

¹⁶⁸ See generally Abdullahi A. An-Na'im, Islamic Law (2011) (unpublished manuscript) (on file with the author) (describing substantive aspects of Shari'a and law in Muslim-majority societies, with commentary on integrating it into modern state law) [hereinafter ISLAMIC LAW].

¹⁶⁹ NEGOTIATING, *supra* note 120, at 85.

¹⁷⁰ See Mustafa Akyol, *Turkey May Find Itself With 'AKP Constitution'*, AL-MONITOR (Jan. 31, 2013), <http://www.al-monitor.com/pulse/originals/2013/01/turkey-akp-constitution-erdogan-referendum.html> (describing attempts by Islamists to bolster democracy in Turkey following the 2011 elections: "Instead of going solo . . . [the governing Islamist party] joined a parliamentary 'constitutional commission' along with deputies from three other major [non-Islamist] parties'" and negotiated with them.); *Turkey's Erdogan Announces Kurdish Reforms*, BBC NEWS (Sept. 30, 2013), <http://www.bbc.co.uk/news/world-europe-24330722>. In 2013, Turkey's Islamist Prime Minister announced a reform package strengthening rights for ethnic, religious, and political minorities. *Id.*

¹⁷¹ See Yusufzai, *supra* note 18.

¹⁷² See ISLAMIC LAW, *supra* note 168, at 171–72 (discussing debates within Pakistan's Shari'a courts regarding land reform, capital punishment, and the rights of minority religious communities).

¹⁷³ *Tunisia Unveils New Coalition Government*, AL JAZEERA (Mar. 8, 2013), <http://www.aljazeera.com/news/africa/2013/03/2013381546957967.html> (announcing a second Islamist-led coalition, backed by two major secular parties, following the assassination of a leftist politician).

Throughout North Africa, Islamists are experimenting with new roles as the Arab Spring's revolts replace secular autocracy with democracy.¹⁷⁴ In Somalia, too, Islamists can share power and contribute to national conversations about values. Politicians and others ought to view Islamists as partners and legitimate leaders in forging new law and a new national identity.

C. *Islamism Offers a Unifying Identity*

Islamism is also an important support for the Somali state because of its cross-clan appeal.¹⁷⁵ For many years, clans were the basis for Somali society—a truth Barre reinforced by privileging members of clans closely related to his own.¹⁷⁶ He also brutally punished members of clans he identified as opponents, such that clan identity was “literally a matter of life and death, both for the individual and the group.”¹⁷⁷

Barre used clan identity to classify Somalis according to their degree of allegiance to his regime, but clan discrimination was prevalent even before he took power. In the colonial and pre-colonial era, Islamic sheikhs ideally embodied an overarching religious identity and strove to build peace between clans.¹⁷⁸ For that reason, Somali culture distinguished between two kinds of people: “men of the spear, and men of God.”¹⁷⁹ The first fought for the clan, whereas the second built peace. These latter men fought an uphill battle. As one Somali proverb put it, the mentality was “me and my clan against the world; me and my family against my clan; me and my brother against my family; me against my brother.”¹⁸⁰ Post-colonial governments attempted to take over the unification work of the sheikhs, dubbing “clannism” a source of nepotism and inequality.¹⁸¹

¹⁷⁴ See David D. Kirkpatrick, *Named Egypt's Winner, Islamist Makes History*, N.Y. TIMES, June 25, 2012, at A1, available at http://www.nytimes.com/2012/06/25/world/middleeast/mohamed-morsi-of-muslim-brotherhood-declared-as-egypts-president.html?pagewanted=all&_r=0; *Islamist Party Wins Big in Tunisia Elections*, CBS NEWS (Sept. 24, 2011), http://www.cbsnews.com/8301-202_162-20124948/islamist-party-wins-big-in-tunisia-elections/.

¹⁷⁵ There is no ready definition of “clan” in the Somali context—after all, “[o]nly that which has no history is definable,” and clans have a very long history. See FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALS* 27–28 (Walter Kaufmann trans., 1989). See Hussein M. Adam, *Somalia: Militarism, Warlordism or Democracy?*, 54 REV. AFR. POL. EC. 11, 12–19 (1992) [hereinafter *Militarism, Warlordism or Democracy?*], for a brief history and analysis of the role of clan in Somali society.

¹⁷⁶ ELM, *supra* note 24, at 34.

¹⁷⁷ AN AFRICA WATCH REPORT, *supra* note 27, at 4 (citation omitted).

¹⁷⁸ IOAN M. LEWIS, *MAKING AND BREAKING STATES IN AFRICA: THE SOMALI EXPERIENCE* 53 (2010).

¹⁷⁹ *Id.*

¹⁸⁰ HARPER, *supra* note 124, at 11 (capitalization altered for prose format).

¹⁸¹ LEWIS, *supra* note 178, at xvi–xvii.

The new state need not hew to the anti-clan sentiments of early post-colonialism: It could reimagine clans as one “building block” of personal identity.¹⁸² The provisional constitution is silent on the matter, other than prohibiting discrimination on the basis of clan.¹⁸³ Either way, a sense of shared identity—of belonging to something together with every other citizen—is essential to the success of any state.

In Somalia, Islam is the likeliest source of this sense. Islamists certainly believe it is: “Radical clan factions are the continuation of political tribalism,” Abdullahi writes, contrasting them with the “modern Islamic movement [as] a new social and political force.”¹⁸⁴ One Somali Islamist echoes this argument, saying, “[t]he best system that can end discrimination . . . against us is Islam. Nobody can come to me and say I have a monopoly over the Islamic identity, but one can say you are not clan X because your lineage does not conform to that clan’s lineage system.”¹⁸⁵ Not all Islamists view clans so negatively—some reject clans altogether in favor of an overarching national religious identity, while others believe that clan identity and Somali Islam are inseparable¹⁸⁶—but all believe it should at least serve as an identity that transcends the clan.

Whether or not Islamism is the panacea against social fragmentation that its proponents make it out to be,¹⁸⁷ no other identity comes close to having its broad appeal. Somali nationalism, the basis for the first post-colonial state,¹⁸⁸

¹⁸² See Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 AM. J. INT’L L. 359 (1996), for a revisionist critique of earlier narratives unqualifiedly criticizing clan identity (“[F]or some persons, self-identification is best achieved by loyalty to a nation, tribe or ethnic. . . . What is new [in scholarship] is a growing consciousness of a personal right to compose one’s identity. This explanation sees current developments neither exclusively in terms of the inexorable emergence of global and regional regimes nor in terms of a nationalist determinism. Rather, it posits the emergence of a world in which each individual will freely choose a personal identity constructed out of a broad array of building blocks . . .”).

¹⁸³ DASTUURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, art. 11(1).

¹⁸⁴ *Recovering*, *supra* note 35, at 204.

¹⁸⁵ ELMI, *supra* note 24, at 40.

¹⁸⁶ *Id.* at 46.

¹⁸⁷ See, e.g., Mohamed A. Hussein, *Why Somali People in London Protested Against President Hassan Sheikh Mohamud?*, HORSEED MEDIA (May 12, 2013), <http://horseedmedia.net/2013/05/12/why-somali-people-in-london-protested-against-president-hassan-sheikh-mohamud/> (accusing the new Islamist President Hassan “of turning the capital city into clan enclave [sic] where the president, the governor and mayor and everyone else who has position worth mentioning [sic] are from the same clan as president [sic].”).

¹⁸⁸ See generally TOUVAL, *supra* note 87, for a discussion of early Somali nationalism.

has not been a major factor in Somali identity for decades.¹⁸⁹ Liberal democracy alone is unlikely to serve as a foundational identity because many Somalis believe it only offers abstract notions of citizenship and material benefits, but not spiritual identity.¹⁹⁰ The Somali state would do better to accept Islamic identity than to revive nationalism or offer liberal citizenship alone, even if it must reconcile Islamism with democratic norms and human rights.¹⁹¹ Islamists have earned enough legitimacy in the eyes of citizens to help define the national consciousness, and their role in the state will let them do so.

IV. THE NEW STATE OFFERS ISLAMISTS BENEFITS

Islamists have many contributions to offer the new state, but political collaboration is a two-way street: What benefits does the state offer them in return? This question takes on great significance for those pragmatic Islamists for whom support for democracy is a matter of expediency and not principle. But the question is no cause for alarm: Participating in the new state promises rewards for pragmatic Islamists because it will allow them to avoid the hostility extremists face, help shape Somalia's law, and build the country's future without losing the legitimacy they have earned.

A. *The New Constitution Allows Islamists to Help Shape the Law*

Law should reflect the ideals and norms of the people it seeks to govern, and the Somali Constitution will allow Shari'a as understood by Somali Islamists to influence how courts and politicians interpret laws and human rights.¹⁹² Islamists should both accept and participate in the new State's framework of letting deliberative democracy decide the precise contours of law and interpretations of Shari'a. They should do this for two reasons: (1) so that Islamists have incentives to carry out scholarship, adaptation, and public persuasion on behalf of their particular agendas; and (2) so that one generation of Somalis does not unduly bind future ones to its interpretations of religion.

¹⁸⁹ ELMI, *supra* note 24, at 47 ("Between the two overarching identities in Somalia, nation (Somali identity) and Islam (religious identity), Islamic identity has the better chance, at least at present, of functioning as an inclusive identity in identity reconstruction, as various groups have been promoting Islamic identity for a long time.").

¹⁹⁰ *Id.* at 45–46.

¹⁹¹ See generally NEGOTIATING, *supra* note 120, and discussion *infra* Parts IV.A–B, for reflections on how Islamic identity can infuse, and be infused with, democracy and human rights.

¹⁹² See DASTURKA JAMHUURIYADDA FEDERAALKA SOOMAALIYA [PROVISIONAL CONSTITUTION OF THE FEDERAL REPUBLIC OF SOMALIA], Aug. 1, 2012, arts. 2(3), 40–41.

SNM's state-building in Somaliland and al-Islah's electoral successes in the 2012 elections show that many Islamists are willing to accept democracy. Democracy will give them a role in crafting public law, thus protect them from being oppressed by other Islamists who interpret Shari'a differently.¹⁹³ In addition, accepting the ground rules of democracy will keep many Islamists from being considered extremists by the State, its foreign supporters, and the Somali public. Their acceptance of democracy will also allow Islamists to avoid the military targeting,¹⁹⁴ international sanctions,¹⁹⁵ and widespread suspicion¹⁹⁶ that follow al-Shabaab. Recent successes of the government and international forces in pressuring extremists make peaceful political participation a fruitful option for those Islamists who are not committed opponents of democracy.

Although many Islamists will be wary of the State's inclusion of human rights as a source of law alongside Shari'a,¹⁹⁷ they can reconcile themselves to this dual-values regime. Some already have, including al-Islah beginning in the Barre era¹⁹⁸ and, allegedly, even some former members of radical groups.¹⁹⁹ Others are unlikely to reject the regime outright, given that their interest in order and public respect outweighs any desire to implement a pre-made agenda. Undecided pragmatists can look to history for a justification of human rights: in their absence, the Barre regime trampled on the Islamists. Given their history, it would be ironic for Somali Islamists to advocate tyranny of the kind Barre used. Rights compatible with the public aspects of religion sketched out above would prevent Islamists from suffering repression, discrimination, and public suspicion in the ways they once did. Robust protection of human rights would allow Islamists to maintain freedom from interference by the new state and foreign governments and their hard-earned popular legitimacy. Islamists

¹⁹³ See Abdullahi Dissertation, *supra* note 16, at 212 (noting different opinions among Somali Islamists).

¹⁹⁴ See Verini, *supra* note 101 (al-Shabaab defeated in Kismayo by Kenyan and African Union forces); see also, *supra* Odeke note 101 (defections from al-Shabaab to international pro-government forces).

¹⁹⁵ See Exec. Order, *supra* note 94 (designating al-Ittihad's leader a terrorist).

¹⁹⁶ See HUSSEIN, *supra* note 107 (expressing concern over growing faction of extremist sympathizers in Somaliland's government).

¹⁹⁷ See, e.g., ABDULLAHI A. AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 2 (1996) ("The negative constitutional and human rights consequences of Shari'a appear to be entrenched by the assumed religious authority and inviolability of Shari'a. I believe that it is imperative to challenge and modify this assumption . . .") [hereinafter REFORMATION].

¹⁹⁸ See Abdullahi Dissertation, *supra* note 16, at 260.

¹⁹⁹ See Adam, *supra* note 26, at 219 ("Supporters of [al-Ittihad] claim that . . . [t]hey intend to respect the rights of non-Muslims . . .").

can reconcile themselves to this element of the new State and lead in a way that demonstrates faith to constitutional values.

B. Participating in the New State Will Allow Islamists to Maintain Their Legitimacy

If pragmatic Islamists join extremists instead and insist on subjecting the Somali state to their interpretation of Islam, or controlling the state exclusively, they will face a future of hypocrisy and violence. Political conformity would become the benchmark for religious orthodoxy, and respect for certain political leaders would be equated with piety before God.²⁰⁰ Although the idea of secular statehood as the modern West understands it is not suitable for Somalia, the position and moral legitimacy of Islamists would be compromised if they attempted to install a theocracy of the sort advocated by al-Shabaab. Somalis have spent the past twenty years looking for peace and have longed for the orderly government since at least the colonial era. They would not likely look upon launching the country into yet another existential struggle to “Islamize” it any more approvingly than they did the hyper-moralism that defined Islamists’ early efforts to enforce sexual norms in Mogadishu back in 1991.²⁰¹

Beyond the practical outcomes of attempts to install theocracy, there are theoretical reasons for Somali Islamists to favor peaceful democratic politics. If they succeed in establishing theocracy, the Islamists will put themselves in the untenable position of claiming religious sanction without self-righteousness. Islam considers it a contradiction for anyone to lay claim to piety: Historically, political leaders established their Islamic bona fides by respecting the autonomy of religious scholars, who in turn would show that they were loyal to God above all else by asserting their independence from civil rulers.²⁰² Neither the state nor Islam will have authority from mutual support, recognition, and tension if they collapse into each other. And Islamists will lose the support they gain from operating effective, relatively apolitical social-service networks.

In addition, power corrupts. Making religious orthodoxy and piety the criteria for promotion within government, rather than political vision and expertise, will result in hypocrisy, corruption, and incompetence in both the

²⁰⁰ See NEGOTIATING, *supra* note 120, at 34.

²⁰¹ See *supra* notes 29–33 and accompanying text.

²⁰² See NEGOTIATING, *supra* note 120, at 52.

State and Islamic institutions.²⁰³ The Somali Islamist movement suffered terribly at the hands of a tyrant who reveled in religious hypocrisy: recreating that experience for others is the last thing it should seek. Islamism became a potent force in Somalia precisely because it was an alternative to the Barre regime. It would be both tragic and self-defeating for Somali Islamists to become oppressors in the name of religion.

Fortunately, many Islamists already realize this and indicate that they want a democratic Somalia. They are reaping the rewards, through both electoral victory and rapprochement with important foreign powers, including the United States, Ethiopia, and Kenya.²⁰⁴ Their uncommitted comrades should join them in doing so, and observers suspicious of Islamists should recognize that political pluralism can hold its own appeal for pragmatic as well as principled Islamist democrats.

V. ISLAMISTS MUST MAKE POLICY DECISIONS

The conditions are ripe for Islamists to lead the Somali State. Many Islamists are either democrats or pragmatists, and non-extremist Islamists and the State have plenty to offer each other. The new constitution, in particular, provides opportunities for Islamists to contribute to the development of laws and institutions. But conditions and constitutions alone are not enough without a governing agenda. For that to happen, Islamists must decide how they will approach three issues: (1) state policy; (2) clan identity in Somali society; and (3) their own community commitments.

A. *Islamists Must Decide How the New State Should Consolidate and Exercise Power*

Islamists have not yet developed systematic policy platforms. They do not have clearly-articulated positions on constitutional design, how Shari'a will

²⁰³ See *id.* at 292.

²⁰⁴ See Hillary R. Clinton, U.S. Sec'y of State, Remarks With President of Somalia Hassan Sheikh Mohamud After Their Meeting (Jan. 17, 2013), available at <http://www.state.gov/secretary/20092013clinton/rm/2013/01/202998.htm>; *Ethiopia Promises Support to Rebuild Somalia*, VOICE OF AM. (Nov. 28, 2012), <http://www.voanews.com/content/Somalia-ethiopia-rebuilding/1554572.html> ("Ethiopia says it will support Somalia by re-establishing the country's institutions and training its defense forces. These promises were made during the first state visit of Somalia's newly elected president to Ethiopia."); Zahra Rashid, *Somali President Hassan Sheikh Mohamud in Kenya*, HIRAAN ONLINE (Dec. 21, 2012), http://www.hiiraan.com/news4/2012/Dec/27405/somali_president_hassan_sheikh_mohamud_in_kenya.aspx (describing a state visit by President Mohamud to visit Kenyan President Mwai Kibaki and his ministers).

impact and co-exist with public law, and other questions regarding transition, such as how to engage with warlords or rebuild the economy.²⁰⁵ President Hassan is new to politics, a former educator and university administrator who made honest governance the centerpiece of his platform.²⁰⁶ His office will require him to add more substance to his agenda.

Other Islamists would do well to follow those who have engaged in the political process by organizing political parties and campaigning on platforms, entering into dialogue and coalitions with other politicians, and opening themselves to independent media scrutiny.²⁰⁷ Promisingly, many Islamist groups already do so. Now, they need to decide what they will propose to their fellow citizens.

If honored, the new constitution's promise of democratic deliberation and respect for both Shari'a and human rights will give Islamists ample opportunity to help chart the state's course. Islamists will have the right, as equal citizens, to influence the laws of their country and apply their experience in administering them. But that right brings the duty to exercise it intelligently, which means Islamists must be ready to exercise power and not merely gain it. A failure to answer practical political questions, like those Somali Islamists face now, contributed significantly to political unrest in another Muslim-majority country in East Africa: Sudan. There, rival Islamist groups developed their agendas only after taking control of the country's governing institutions.²⁰⁸ Hypocrisy and civil strife ensued.²⁰⁹ To ensure that they did not

²⁰⁵ See ELMI, *supra* note 24, at 68.

²⁰⁶ *Somalia's New President*, *supra* note 3. This proved an especially attractive message in the wake of widespread perceptions of misrule by transitional politicians. *Id.* (“[A]t least he seems honest, compared with what one new MP castigates as the previous ‘government of looters.’”); see also *The New President of Somalia, Who Is Sheikh Mahmoud?*, ALSHAHID NETWORK (Sept. 11, 2012), <http://english.alshahid.net/archives/31546>.

²⁰⁷ See Abukar, *supra* note 81 (discussing prominent Islamist presidential candidates and the organizations that supported them). One of the greatest early tests of commitment to this transparent approach faced al-Islah last year when it dismissed three leaders following accusations of political corruption and pandering to foreign interests. Hassan M. Abukar, *Turmoil in Al-Islah, Somalia's Muslim Brotherhood*, WARDHEER NEWS (July 26, 2012), http://wardheernews.com/Articles_12/July/Abukar/26_turmoil_in_al_Islah.html. One commentator saw its decision to “air[] out [its] dirty laundry to the public” as “an indication that there is an organizational break-down caused by a lack of necessary mechanisms to resolve conflict.” *Id.* The incident may have been a sign of the need for al-Islah to tighten its political agenda and internal discipline, but perhaps it was also evidence of their commitment to democratic transparency and openness to outside scrutiny.

²⁰⁸ ABDULLAHI A. AN-NA'IM, *AFRICAN CONSTITUTIONALISM AND THE ROLE OF ISLAM* 137 (2006) [hereinafter *AFRICAN CONSTITUTIONALISM*] (“Despite their long history of extensive political rhetoric in favor of the application of Shari'a, [Sudanese Islamists] have never produced a definitive statement of their position or detailed in public the specific features of the model they hope to install in the Sudan.”).

come this far in earning power only to squabble with each other over day-to-day controversies, Somali Islamists have to decide what the new state ought to do and how they want it to honor their interpretations of Islam.

B. Islamists Must Decide How to Frame Clan Identity

Islamists must also decide how to relate to the other great force in Somali identity: the clan. Much Islamist rhetoric toward clans is negative, but some of it is more positive.²¹⁰ Clan identity is a living force in Somalia and will be for the foreseeable future, as earlier, popular, failed government attempts at eliminating it make clear.²¹¹ Islamists will need to engage it, critique it, or do both.²¹²

Other Muslim-majority countries in Africa have reconciled ethnicity, citizenship, and Islam into new notions of citizenship. In Senegal, for example, religious scholars have strengthened civil society and mediated between competing political forces.²¹³ Islamists from those countries have perspectives that could be seen as helpful and legitimate by Somali Islamists. Islamists will need to address clan identity if they intend to shape Somali political and cultural identity and they will need to do so in a way that they believe is consistent with their religious agenda. They should do so together with Islamists from other countries and prominent members of various clans so as to ground the process in dialogue and lessons learned from past experiences.

C. Islamists Must Decide the Future of Their Community Commitments

Islamists have undertaken community commitments ranging from providing health care and famine relief to mediating peace conferences,

²⁰⁹ *Id.*

²¹⁰ See *supra* notes 175–87 and accompanying text.

²¹¹ LEWIS, *supra* note 178, at 72 (“Previous civilian governments also sought to . . . eradicate tribalism and other sources of nepotism and injustice. These ambitions and slogans were not new, and dissatisfaction with the previous civilian leaders centered not so much on their stated aims but on their failure to implement them. Strong authoritarian rule and charismatic leadership . . . raised the hopes of many by promising a new and more effective method of tackling old problems. But the most difficult and fundamental of these remained unresolved.”).

²¹² This is especially true given the predominance of certain sub-clans within the ranks of Islamist leadership. See ELM, *supra* note 24, at 67; *Militarism, Warlordism or Democracy?*, *supra* note 175, at 19 (on the close relationship between SNM and Issaq clans).

²¹³ AFRICAN CONSTITUTIONALISM, *supra* note 208, at 151 (stating that Islamists and traditional religious authorities “seem to operate as part of a constitutional system of checks and balances” in “tension, cooperation and mutual dependence” with Senegal’s political leaders).

training local religious authorities, and operating business ventures. Somali Islamists must decide what to do with those agendas as the state rises and they enter politics. They could continue to develop their commitments or abandon them and try to make state institutions carry on the work. The first option seems more prudent and realistic for both Islamists and the state.

Islamists have incentives to maintain their community commitments. Islamist legitimacy does not depend on efforts to govern the country alone: Somalis have seen enough hypocrisy from idealistic regimes not to place all their trust in would-be rulers. The most important Islamist efforts of the past twenty years have been in creating shared identities, establishing law, and providing social services. Islamists have provided social space that is neither controlled by the government nor atrophied under the heat of chaos. Islamism provides hope because it has made law, spread religion, and built community in Somalia, even under tyranny and during anarchy. These are the achievements that earn Islamists support. As they move into positions of power and share in the work of governing Somalia, Islamists should commit themselves to continuing to develop institutions and society at the local level.

The new State, while establishing a unified legal system, would do well to recognize that Islamists have helped fill the void left by Barre's fall. Given support by, and a role in, the State, Islamists can use their experience to further the process of national reunification. Non-Islamists would deprive the state of many experiences, and uproot the routines of many Somali communities, if they insisted on replacing local Islamist institutions with state ones. All of this assumes, of course, that the state could actually expand its jurisdiction and authority quickly enough to administer a service system, at a time when it has yet to consolidate power over the entirety of Somalia and is still facing major threats from extremists. Islamists should assess this situation—and their own political incentives—realistically, and renew their community commitments even as they begin to seek office and state influence.

CONCLUSION

Islamists have spent the past four decades earning the respect of their fellow Somalis by resisting tyranny, restoring order, and building communities. They were rewarded for their efforts with the presidency in 2012. Islamist political victory means that the discourse adopted by many of Somalia's transitional leaders and observers will have to change. Extremism is still very dangerous, but it does not encompass the entirety of Somali

Islamism. Instead of being seen as a threat to be managed, Islamists should be seen as partners to be engaged.

Analysis of the benefits that Islamists and the state can offer each other helps to correct for the antagonism inherent in the framework of anti-extremism. It shows that Islamists can offer the state legitimacy in Somali communities, where Islamists are working for development, identity that transcends clan divisions, and values by which to orient state policy. Meanwhile, the state can offer Islamists the ability to help shape law according to Islamist interpretations of Shari'a without jeopardizing popular support for Islamists in the way the imposition of theocracy would. Many Somali Islamists believe in democracy and human rights for those reasons; others who are less committal right now will still find plenty in political pluralism that they can come to accept.

Islamists have not yet made all the decisions they will need to help govern democratic Somalia. Some never will, choosing instead to resist the new state with arms and terror. But with the election of President Hassan as the state's leader at the start of its next era, it is time to recognize the skills, knowledge, experience, and beliefs that Islamists can bring to Somali politics. And justice respects the right of Islamists as citizens of the new state to contribute peacefully and constructively to the country's governing institutions and communities.

Somali Islamists in the new state can combat extremism, establish the rule of law, develop communities, and provide an example to the world of what happens when democratic institutions, religious commitment, and political pragmatism come together. They can unite men of the spear and men of God under the banner of a free state.

MATTHEW CAVEDON*

* Executive Articles Editor, *Emory International Law Review*; J.D. candidate, Emory University School of Law (2015); M.T.S. candidate, Candler School of Theology (2015); A.B. Harvard College (2011). This Comment owes its existence to two men named Abdullahi. The first, of course, is Professor Abdullahi A. an-Na'im, who advised it from the beginning and whose friendly criticism helped shape many of its arguments. The other is a Somali-American cab driver in Washington, D.C., whose willingness to talk about the politics of his native country on a ride to Dulles Airport in summer 2012 provided this author's initial inspiration. The author would be also like to thank the members of the *Emory International Law Review* who helped organize and polish this Comment. Finally, he is grateful to his fellow executive board members for the leadership and sound judgment they have shown over the past year.