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Edited by Heinz Klug and Sally Engle Merry

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The New Legal Realism, Volume II

STUDYING LAW GLOBALLY

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The Politics of Islamic Law and Human Rights: Sudan's Rival Legal Systems

*Mark Fathi Massoud*¹

I. INTRODUCTION

Shortly after the end of Sudan's 23-year civil war in 2005, I visited an encampment for displaced survivors in the desert near Khartoum, Sudan's capital. At the time I was traveling with a small group of lawyers from the United Nations (UN). A sultan (local customary leader) greeted us and asked whether we sought information from his community to conduct "a needs assessment," as he put it, or whether we sought to provide assistance. His people required resources like clean water, schools, and money, he said, but foreigners visit, ask questions, and do not return. A member of the UN delegation responded that, as lawyers, the team could provide legal resources. She asked the sultan whether his community needed lawyers. He responded that he did not think lawyers would be able to help.

So goes the experience of human rights law among those displaced by war, refracted by encounters with aid agencies offering legal solutions to the cycle of poverty. And, I argue, so also goes their experience of law under Sudan's successive military governments. Just as aid activists promote a universal and immutable interpretation of human rights law, the Sudan government, particularly since 1989 under President Omar al-Bashir, has promoted its own interpretation of an immutable law, rooted in Islam. Viewed from the perspective of marginalized persons displaced by civil war, then, human rights and Islamic law offer competing narratives of legal order, salvation, and protection. But they do so only when one submits to a system of institutions and ideas configured and dominated by elites and outsiders, while rejecting the competing system.

¹ Some elements of this chapter draw from or expand upon material found in Mark Fathi Massoud, *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan* (Cambridge University Press). Thanks to Anthony Tirado Chase, Heinz Klug, Sally Engle Merry, Adam Millard-Ball, the four anonymous reviewers, and audiences at UC Santa Cruz and the International Studies Association for helpful feedback. The Institute on Global Conflict and Cooperation, a Fulbright-Hays fellowship, and a University of California, Santa Cruz, Faculty Research Grant provided financial support for research in Sudan. Arabic translations and transliterations are my own; simple apostrophes are used to represent diacritical marks from the *International Journal of Middle East Studies* system. This research would not have been possible without the kindness of many respondents in Sudan.

In Sudan, a parallelism exists between the unitary and top-down character of law in the state's uses of religious law and the international aid community's uses of human rights law. Citizens experience the force of an authoritarian government advancing Islamic law to preserve the state, and they interact with aid agencies advancing human rights law to liberate citizens from the state's harmful actions. This chapter offers an empirically grounded analysis of these two rival discourses as they are presented to the survivors of civil war. My analysis draws on 15 months of research in Sudan and 57 semistructured interviews with officials, lawyers, and activists, along with ethnographic observations from encampments for those displaced by war.² Adopting a "new legal realist" approach that emphasizes the empirical study of people's lived experiences of law, politics, and power, I investigate the tensions and contradictions inherent in how civil society activists and the displaced persons whom they represent experience Islamic law and human rights, particularly in political contexts marked by authoritarian rule. Depicting this parallelism in the discourses of human rights and Islamic law reveals a pattern in the functions of law in conflict settings and the importance of comparing transnational (here, Islamic) and international (here, human rights) legal orders that circulate within national boundaries. Such comparative inquiry also illuminates the challenges of promoting the rule of law in the world's troubled regions.

The case of Sudan offers a useful site in which to examine this unlikely juxtaposition between the discourses of human rights law and state-imposed Islamic law. The country has been at war with itself for all but 10 years since gaining independence in 1956, most recently in the Darfur region after 2003 and the Nuba Mountains region after South Sudan's 2011 secession. Sudan's multicolonial legacy – Turco-Egyptians through most of the nineteenth century followed by the British in the first half of the twentieth century – forms the bedrock of the contemporary leadership's claims to Islamic authority. One of Sudan's many interconnected civil wars was Africa's longest (1983–2005), resulting in the world's largest number of internally displaced persons and the 2011 secession of South Sudan, now the world's newest country (Johnson 2003; Deng 1995). In this place riven by parallel wars of ideologies and identities, those displaced by civil war must confront two visions of legal modernity, one from state authorities and another from aid workers. Both interpretations are portrayed as universal, unchanging, and designed to stabilize the state and prevent it from descending deeper into chaos. Survivors of war are conscripted into these wars either as believers or as sidelined adversaries.

The following analysis proceeds in three parts. First, I uncover how Sudan's governing officials have sought to monopolize political and economic power by disguising state law under the mask of religion and the will of God, turning a blind eye to the blend of religious and nonreligious sources that makes up Sudanese law.

² I conducted 205 interviews between 2005 and 2010 in Sudan, from which I draw on a sample of 57 of the most relevant for this essay.

Second, I discuss how international human rights activists encourage the war-displaced poor to see human rights similarly, as a form of incontrovertible law that would replace the immutable law promoted by the government. Finally, I conclude with implications of the two contending visions of legal modernity for civil society and the poor in conflict settings and authoritarian states, and for sociolegal scholars and policy makers examining the local experience of transnational and international law.

II. THE STATE'S FLATTENING OF ISLAMIC LAW DISCOURSE

Political elites in Sudan have used Islamic law to build up the state and to undergird their rule in a variety of ways throughout Sudan's modern history. Turco-Egyptian occupiers (1821–1884) sought to centralize their authority by installing a singular administrative law rooted in the Hanafi school of Islamic law (Fluehr-Lobban 1987). In so doing, colonial occupiers constructed a statelike legal apparatus over diffuse localized customs that had been generally associated with Islamic law's Maliki school.

Sudan's first modern independent government (1884–1898) rose to power in 1884 and adopted a similar vision of a state-controlled Islamic law under the self-proclaimed Mahdi, or "the anointed one." The *Mahdiyya* (Mahdist period), while short-lived, cemented the foundation of the Sudanese state's claims to Islamic authority (Collins 2008).

The fall of the Sudanese Mahdist state in 1898 and the concomitant rise of a British-led colonial administration (the Anglo-Egyptian Condominium, 1898–1956) resulted in an extreme compartmentalization of *shari'a* (roughly translated as Islamic law). The British governed the Sudanese according to what the British called "principles of justice, equity, and good conscience" (Sudan Government 1901 and 1929 Civil Justice Ordinances). Such broad legal language effectively allowed British colonial administrators to import Western norms of governance and cultural sensibilities into Sudan's administrative and legal structures, while confining Islamic law to family-related disputes (e.g., divorce and inheritance) among Muslims. These efforts were the British administration's bid to provide some domestic legitimacy by accepting and incorporating local religious values into the government (Mustafa 1971). British colonial administrators divided the judiciary into two divisions – *shari'a*, which handled Islamic personal status disputes, and civil, which handled crimes, torts, and all other matters outside family law (Ibrahim 2008; Massoud 2013a; for comparative examples see Mallat and Connors 1991; El-Gawhary 1995; Fyzee 2009). One lawyer I met referred to the British project to integrate Islamic personal status law into the government as "wise" given the Sudanese context. "The [British] left personal matters to *shari'a*," he continued, "for the simple reason that they took over from a fundamentalist Islamic government – the *Mahdiyya* – and the people were very sensitive about . . . their religion."³

³ Interview with Abdul Moneim, lawyer, in Khartoum, Sudan (February 2007) (Author's File Reference Number 70). All names have been changed to preserve confidentiality.

Hostile to their colonial past, postindependence governments in Sudan have expanded the scope of Islamic law to govern matters beyond the family, including public law, crimes, and constitutionalism. Their efforts culminated in three pivotal moments that together exemplify how postcolonial Sudanese political leaderships have sought to rule by Islamic law.

First, in the mid-1970s, then-President Nimeiri – at the time, a military ruler with deep socialist leanings – launched what he called a national reconciliation with opposition parties, including the Muslim Brotherhood. When the more secular- and democratic-minded parties fell out of favor with Nimeiri's regime after the reconciliation's failure, a faction of the Muslim Brotherhood led by Hassan al-Turabi (a lawyer and renowned intellectual) grew closer to President Nimeiri (Burr and Collins 2003). As socialism's popularity began to wane, Nimeiri took steps to curry favor with an increasingly influential conservative Muslim elite. His government, for instance, completed the process of translating all laws from English (the language of Sudan's European colonizer) into Arabic (the language of much of Sudan's citizenry, particularly those who live in and around the capital city).

Second, in 1983, in President Nimeiri's final bid to hold on to political power following a set of disastrous economic policies and rapid inflation, Nimeiri extraordinarily declared himself a sheikh and adopted a radical and sweeping vision of Islamic criminal law. In what is now known as Sudan's notorious *qanoon September* (September law), courts were ordered to implement corporal punishment, including amputations, for Islamic *huduud* crimes such as theft (Massoud 2013a, 113–114).

Third, soon after seizing power in 1989, President Omar Hassan al-Bashir claimed Islamic law as the source of all law for Sudan, just as Nimeiri had attempted to do in 1983.⁴ Bashir successfully consolidated his authority under Islam, in a way that Nimeiri did not, through a series of critical revisions to the legal codes in 1991. The personal status code for Muslims codified the personal affairs rules of the Hanafi school. And a revised criminal code for the first time included the death penalty for the *huduud* crime of apostasy, or criticizing Islam.⁵ The criminalization of religious criticism meant that any statements or actions interpreted as threats to Bashir's rule were labeled as condemnations of Islam – a crime punishable by death.

Bashir's self-proclaimed “national salvation revolution” had the express goal of cementing an Islamization of the Sudanese state, or, in the words of one Sudanese civil society activist, “to modernize Sudan as a modern, civilized, Islamic nation.”⁶

⁴ Sudan's short-lived democratic government between Nimeiri's 1985 ouster and Bashir's 1989 coup failed to abolish Nimeiri's laws in part because “Islamists had much support on the streets.” Interview with Shadi, lawyer, in Khartoum, Sudan (April 2007) (Author's File Reference Number 135).

⁵ Mahmoud Mohamad Taha, an outspoken 70-year-old Muslim activist against the Nimeiri regime's September laws, was put to death for apostasy in January 1985. His death – later deemed unlawful by Sudan's High Court because apostasy was not a crime in 1985 – spurred mass revolutions that led to the toppling of the Nimeiri dictatorship in April 1985 (Massoud 2013a, 115–116).

⁶ Interview with Michael, NGO program director, in Khartoum, Sudan (June 2010) (Author's File Reference Number 154).

Today, all Sudanese laws – regardless of their Islamic, Western, or mixed ancestry – are now ostensibly Islamic. A telling example is Sudan’s corporate code, which is essentially the British colonial administration’s 1925 corporate code, only translated into Arabic to reconfigure it as Islamic law (Massoud 2013a, 84). The state’s claim to rule according to divine also allows it to reject international human rights law as a constraint on state behavior and, thus, on divine law.

These three key events – Nimeiri’s reconciliation with the Muslim Brotherhood in the mid-1970s, his self-declaration as a sheikh and ensuing *qanoon September* in 1983, and Bashir’s criminal and civil code revisions in 1991 and the resulting political uses of religious law – together showcase the diverse and complex ways that postcolonial governments have sought to control the discourse of religious law. Capitalizing on the broad appeal of *shari’a*, they claimed political authority, demanded citizen compliance, and consolidated state rule under a single, top-down and Islamic legal order. In other words, to enhance domestic legitimacy, state authorities replaced Sudan’s multicolonial legacy of legal pluralism with an image of legal power under the force of the religion to which the majority of Sudan’s urban citizenry belonged. As one Sudanese lawyer put it, “After independence we developed what I call Sudanese law, borrowed from our own practice. Now they call it Islamic law, but I don’t think it’s Islamic as such. It has borrowed certain principles from Islam.”⁷

As Sudan’s history reveals, Islamic law has been a layered project and remains an ongoing political and legal process (see, e.g., Harding 2001). It has been made and remade by multiple hands and the protean tools they use – Maliki customs, Hanafi decrees, and even non-Islamic traditions entirely, imported by colonial and nonstate actors and then labeled “Islamic” by subsequent governments. During Sudan’s colonial and early postcolonial administrations, state authorities offered, transcribed, used, and compartmentalized different aspects of Islamic law to suit their purposes and govern the people of Sudan. Regimes like those of Nimeiri and Bashir – in, for instance, labeling waywardness as anti-Islamic and punishing it by death – also turned to religious law as their unalterable and everlasting defense of the state and its leadership. In this way, legal plurality and fluidity are masked by *legal rigidity*, an inflexible and absolutist system of law manufactured by state authorities seeking to monopolize political and economic power. Summing up his experience as a human rights lawyer under the Bashir government, one Sudanese man said, “They want to control everything, this regime,” including religion.⁸ And speaking of his experience of the Bashir government, a prominent judge said simply, “They wanted *shari’a* to prevail in all aspects of the law.”⁹

⁷ Interview with retired senior judicial official 1, in Khartoum, Sudan (February 2007) (Author’s File Reference Number 64).

⁸ Interview with Omer, human rights lawyer, in Khartoum, Sudan (November 2006) (Author’s File Reference Number 35).

⁹ Follow-up interview with Hassan, retired senior judicial official, in Khartoum, Sudan (April 2007) (Author’s File Reference Number 88).

III. GRASSROOTS EXPERIENCES AND INTERPRETATIONS OF LAW

As in other Muslim-majority contexts, Islam is central to law and politics in Sudan and is felt throughout urban life, whether or not one adheres to the faith. The call to prayer from the local mosque, for instance, is audible multiple times per day; it can grind court proceedings to a halt, often in midsentence (Massoud 2012). The state's top-down imposition of religious law, however, contrasts remarkably with the diverse experiences and interpretations of law, particularly Islamic law, at the grassroots level.

Some Sudanese activists I met turn to *shari'a* to justify their disapproval of the government's political uses of religious law. For instance, one young lawyer commented that *shari'a* is "something between me and my God. I'm not going to show [off] my religion or how good a Muslim I am; it's not another person's business to tell me that."¹⁰ She continued, "If someone protects my rights, I will respect him. It doesn't matter if . . . he believes in God. Also, I don't mind taking a case for [a client who is] Christian or Jewish."¹¹

The state's practice of *shari'a* is also felt differently across the population, with the poor and non-Muslim minorities more likely to experience *shari'a* as a punitive force. One striking example is the criminalization of alcohol sales and possession, which disproportionately impacts war-displaced persons who are monitored by police, women who survive by brewing and selling alcohol, and non-Muslims (see Abusharaf 2009; Massoud 2006). During the 1990s, the Bashir government strengthened its power to criminalize by constructing hundreds of new courts. By the end of the civil war in 2005, almost half of all courts in Sudan were criminal courts, shaping people's contact with state legal institutions through the criminal law (Massoud 2013a, 148–149).

Other prominent examples highlight the ways that criminal courts impact the experience of state law, especially for women and minorities. In 2007 a British schoolteacher working in Khartoum was imprisoned and later expelled for allowing her students to name a teddy bear Mohammed – ostensibly after one of the popular students in her class, though some state and religious leaders labeled it an affront to the Prophet (BBC News 2007). Two years later in 2009, police arrested and imprisoned a woman for wearing trousers in public, and Internet videos circulated of another woman begging for mercy as she was being flogged outside a courthouse (*The New York Times* 2009). And in 2014, a pregnant woman who claimed to be Christian was arrested and imprisoned for apostasy for marrying a non-Muslim man (Al-Jazeera 2014).

While these cases illuminate the ways people experience the state's power through criminal and religious law, many Sudanese citizens continue to access

¹⁰ Interview with Malika, lawyer, in Khartoum, Sudan (October 2006) (Author's File Reference Number 31).

¹¹ *Ibid.*

courts in a way that has little to do with crimes or even religion. Sudanese courts hear more than 150,000 civil and family-related cases each year (Massoud 2013a, 149–150) – women divorcing their husbands, disgruntled employees in the local labor court seeking remuneration for wrongful dismissal, students bringing suit against universities for scholarships promised but not received, and thousands who file claims of justice denied before Sudan’s Public Grievances Board (for examples, see Massoud 2013a, 146–148). In these ways, Sudanese people are certainly turning to state courts and other government agencies to have their disputes resolved and their grievances redressed.

Lawyers I met in Sudan told me how, in these myriad cases, they cite to any legal provisions that might help their clients, including English common law (part of Sudan’s colonial heritage), Egyptian civil law (imported when Sudan’s legal system flip-flopped from common law to civil law and back again in the 1970s), and Islamic law (Massoud 2012; Salman 1981). Islamic law, for these lawyers, becomes another overlapping layer in Sudan’s radically plural legal system – it offers another package of arguments that may be made before the judge. Consistent with other countries in the region, Sudan’s labor laws stemming from the late 1960s and early 1970s under Nimeiri’s socialist administration deliberately eschewed Islamic law, and work-related claims using these socialist rules continue to arise in Sudan’s courts. Cases related to the transfer or sale of real property similarly articulate rules of fairness consistent with but not specific to any religious prescription. In other words, from the perspective of litigants and judges, a great number of the thousands of disputes before Sudan’s courts may have little to do overtly with the core content of Islamic law – making people’s experiences and interpretations of law more diverse than the unitary and top-down character of the state’s interpretation of law.

Local experiences of *shari’a* are more complex when one considers that religion and religious law are also tools of war, strategy, and survival. Some Sudanese claimed to me that, particularly during the most repressive periods of rule over southern Sudan during Sudan’s north–south civil war, conversion to Islam correlated with increased access to state resources. “People who accepted Islam, [the government] would give them more,” said one activist and civil war survivor.¹² Benefits that people contended were unavailable to non-Muslims included food rations, higher status, and travel permits during curfew (on the implications of religious conversion from a comparative perspective, see Gilsenan 2011). For this reason, South Sudanese I met spoke of Islam as part of a state project to change society (*mushroo’a al-hada’i al-ijtima’i*). “The issue is to link [conversion] to material benefits. If you have poverty and no choice, and something is placed before you, people will say even temporarily that they accept the Islamic faith.”¹³

¹² Interview with Michael, NGO program director, in Khartoum, Sudan (June 2010) (Author’s File Reference Number 154).

¹³ *Ibid.*

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Despite people's diverse experiences of law, the Bashir-led government portrays law as an unchanging, top-down system of religious legality justifying state authority. But contemporary law, including Islamic law, typically draws from multiple sources and offers competing schools and interpretations. In Sudan, Islamic law has mixed origins, including Islamic and non-Islamic principles sometimes labeled Islamic. In comments echoed by many of those whom I met, one political activist told me that Sudan's enduring conflict is not founded upon a division between religions; rather, it is the way in which the "government is using religion as a tool."¹⁴

IV. THE POLITICS OF HUMAN RIGHTS DISCOURSE

As Sudan's north-south civil war drew to a close in the early 2000s and particularly after the 2005 peace accords, foreign aid agencies and nongovernmental organizations (NGOs) converged on Sudan, setting up headquarters or field offices in the capital city, Khartoum. While the organizations and their efforts are certainly diverse, many have been funding local Sudanese NGOs to spread knowledge of human rights and build the rule of law. They are the Sudanese arm of a global effort to build knowledge and appreciation of the values associated with international human rights law. While the goals of these NGOs often run counter to those of the government regime, there are numerous parallels in how the state and NGOs use law. Just as the Bashir-led government portrays *shari'a* as an unchanging, top-down system of legality, international rights activists disguise the politics of human rights with rigidity, immutability, and universality. Meanwhile, local activists turn to human rights for a variety of reasons, including material gain.

A centerpiece of the aid community's efforts to promote human rights consists of workshops and training sessions for Sudanese citizens, from judges and lawmakers to displaced persons living in encampments or squatter settlements. While conducting research in Sudan, I attended human rights education workshops in the vast desert encampments where war-displaced families had fled after their homes and villages were burned. In these training programs, I witnessed how human rights law was portrayed as an ideology meant to transform people's experiences of pain and suffering into thoughts of liberation (Massoud 2011). Just as Sudanese law was oppressing the workshop attendees in their daily experiences – including arrests and floggings for alcohol possession – a belief in human rights was simultaneously encouraged as a necessary step toward raising them up from that poverty and oppression.

Following one workshop, I spoke with the facilitator, who reiterated her call for displaced persons, particularly women, to frame their grievances as undelivered human rights. Doing so allows "women to raise their awareness . . . and work

¹⁴ Interview with Rafiq, political opposition leader, in Khartoum, Sudan (April 2007) (Author's File Reference Number 132).

together . . . to come together.”¹⁵ The trainings also encouraged displaced persons to inform police, in the event of an arrest, of their right to consult a lawyer. While participants I met did not seek to mobilize their rights in Sudanese courts or vis-à-vis the police, they did speak of the significant material benefits they gained from the human rights model. Workshop attendees earned an education, a training on nonviolent dispute resolution, and a certificate of completion. They also openly discussed democratic principles, postwar freedoms, and the independence of South Sudan – taboo topics, particularly prior to South Sudan’s 2011 secession (Massoud 2011).

The workshops I visited promised liberation through knowledge of international law in a way that fundamentally conflicted with the regime’s approach to law and with people’s experiences of state-imposed Islamic law. For example, when I spoke at one of these workshops with a non-Muslim woman displaced by the civil war, she mentioned the contrast between rights as she was being taught them by aid groups and rights as she was experiencing them under Bashir’s government. “They apply all these Muslim laws to us Christians,” she said. She understood, in the abstract, that aid workers were leading her to believe that “you have the right to be free.” “But,” she continued, “our right is not considered [by the government] because we are living here under Islamic law. So we are not free.”¹⁶

Human rights itself has plural beginnings, as with any set of legal principles or discourses. Each international human rights treaty is the result of the relative power of states on the international playing field; their relationships with interest groups, citizens, and neighboring states; and the particular values they seek to espouse to themselves, their constituents, and their allies and enemies abroad (Merry 2006; Hathaway 2002; Goldsmith and Posner 2005). The political origins and evolution of human rights principles are also the cause of spirited debate (Lauren 2011; Moyn 2008; Mutua 2008).

While human rights principles are the complex result of much of this diversity, when taught to displaced persons (often by Sudanese activists working for foreign aid agencies), the diverse origins and politics of human rights are swept aside. Human rights are repackaged and taught as the universal foundation of modern legal systems – an abstract and timeless form of law – and, thus, more authoritative than Sudanese state law.

International aid agencies also teach displaced persons to see human rights as an apolitical logic emanating from specific written texts, including international treaties and declarations such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESR), and the Convention

¹⁵ Interview with Majda, women’s rights activist, in Khartoum, Sudan (June 2005) (Author’s File Reference Number 14). See also Massoud (2006, 9).

¹⁶ Interview with Najwa, health awareness educator, in Mayo camp for displaced persons, in Khartoum, Sudan (June 2005) (Author’s File Reference Number 18).

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on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁷ At human rights workshops I attended, participants were given Arabic versions of these documents to take home with them and study, along with copies of Sudan's Interim National Constitution, adopted in 2005 following the end of the north–south civil war.¹⁸

Efforts to promote human rights in Sudan are also singular in that they largely dismiss the potential for other discourses of modernity, particularly those rooted in religious belief. Two competing visions of modernity, rooted either in Islamic faith or in Western political liberalism, are often set out in opposition, despite the many commonalities between the two visions and substantial efforts by scholars, past and present, to link Islamic and human rights norms (Al-Mawdudi 1961; An-Na'im 1990, 2008; Baderin 2003; Mayer 2012).

According to those designing and implementing human rights education programs, their goal was to educate people to mobilize human rights ultimately to “help [Sudan] to have an independent judiciary.”¹⁹ Notably, while discussing the relationship between human rights and Islamic law, one NGO director dismissed the possibility of activism that builds upon rights-based frameworks from Islamic law, rather than from international law. Equating *shari'a* with the state's unchanging interpretation of it, he commented, “If you do *shari'a*-oriented development, you won't be able to work in other [areas] like community development; you won't be able to achieve” your goals.²⁰ For these persons, the character of human rights and, ultimately, the attainment of human dignity derive from a set of international treaties and other legal solutions to poverty. Religion and religious law become reframed as part of the problem that human rights resolves, just as the state reframes human rights as part of the problem that Islamic law resolves.

In these ways, human rights in practice appear strikingly similar to a religious ideology into which the marginalized are asked to put their faith, just as the Bashir government asks its citizens to put faith into its distinct vision of legal order and modernism. That is, displaced persons are encouraged to experience human rights much as they already experience state law – top-down and imposed by elites (authoritarian or humanitarian) who aim to ensure a governable society and prevent the onset of chaos. Certainly Bashir's government and international aid activists

¹⁷ Although Sudan has not ratified CEDAW, it has ratified or acceded to a number of human rights treaties, which like CEDAW are taught in these workshops. These include the ICCPR, ICESCR, and the Convention on the Rights of the Child. See “Ratification of International Human Rights Treaties – Sudan,” University of Minnesota Human Rights Library (n.d.). Available at <http://www.umn.edu/humanrts/research/ratification-sudan.html>.

¹⁸ National constitutions that authoritarian states effectuate may paradoxically consolidate state power and construct leaders' images as “just and pious” believers in the rule of law (Stilt 2013, 134; see also Albertus and Menaldo 2013).

¹⁹ Interview with Sohir, NGO director, in Khartoum, Sudan (June 2005) (Author's File Reference Number 15). See also Massoud (2006, 8).

²⁰ Interview with Tofeeq, NGO founder and director, in Khartoum, Sudan (June 2005) (Author's File Reference Number 17).

have different goals, backgrounds, and ideas of how to create a stable and functioning society, but both believe ultimately in the power of law – whether under Islam or human rights – to shape behavior and sustain political power in conflict settings.

V. BENEFITS AND COSTS OF “LEGAL RIGIDITY”

Despite the diverse origins of Sudanese law, state leaders use a singular version of Islamic law to promote their authority and build state institutions. Aid workers also portray human rights in a manner that befits secular development goals. Likewise, some citizens use human rights discourse strategically. That is, just as an Islamic conversion has yielded material benefits to some citizens, so too may a human rights conversion. For some, human rights is not only an abstract system of protections into which they put their faith but also an opportunity to gain donor funding, allowing their social-service programs to proceed. Human rights become a discursive resource critical to implementing social-service delivery programs and providing some relief from decades of war. In Sudan, for instance, I met with leaders of human rights networks, or umbrella groups representing a set of human rights NGOs. But many of these NGOs they represent had no offices or were managed by the same person, raising questions of their legitimacy (Massoud 2013a, 167–168). Activists told me privately that some of these groups are formed to siphon donor funds that come to Sudanese persons who speak the language of human rights, whether bona fide activists or NGOs affiliated with the ruling party (*ibid.*).

Civil society activists reported to me that their work in human rights has led to additional benefits, many of them material, including increased access to work and travel opportunities as they move into and out of positions with international NGOs and UN agencies. Despite these benefits, the disparity between compensation for local and expatriate staff creates a sense of relative deprivation. One Sudanese program director in an international NGO said, “Imagine, they [expatriates] earn US\$12,000 [per month]. I earn less than US\$1,800 per month. I am a program director!”²¹

For displaced persons and other intended beneficiaries, the benefits of adopting a human rights discourse is also uncertain (Massoud 2011; Englund 2004). Women’s rights activists in particular told me of the tensions between human rights and religious law. For example, one of the difficulties they face in challenging laws permitting certain forms of female circumcision is the government’s claims to authority arising from Islam.²² The *Quran* is silent on women’s circumcision, and the *Hadith* (teachings of Muslim scholars) offers a plurality of views, only some of which condone the controversial practice. But “once they [in the government] say

²¹ Interview with Michael, NGO program director, in Khartoum, Sudan (June 2010) (Author’s File Reference Number 154).

²² Interview with Intisar, lawyer, in Khartoum, Sudan (December 2006) (Author’s File Reference Number 52).

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this law is based in religion, they cannot [overturn] this law because *shari'a* is the main source of legislation.”²³ While some activists also try to use *shari'a* principles to advocate for outlawing all forms of female circumcision, they must confront a religious system that the government claims is the foundation of its authority and cannot be changed. One type of sweeping argument advanced by the government is that the rights of the Muslim society as a whole must take priority, and that women's rights fundamentally “contradict Sudanese family values” forged and enforced by Islamic law (Köndgen 2010, 222; see also Emon 2010 and Johansen 1999 on the enduring “rights of God”).

Some people I met felt a tension between their personal religious beliefs and the outward expressions of those beliefs demanded by the regime. One woman lawyer said to me that “people . . . here in Sudan see me like [I am] not a good Muslim.” She continued, “The way I dress maybe,” as she gestured toward the head scarf that was draped around her shoulders and neck, but left her hair mostly uncovered.²⁴ Her experience of Islamic law was rooted in an institutional and hierarchical political structure seemingly incompatible with her promotion of human rights ideas in Sudan. Similarly, other women told me how the way a woman dressed provided an indication whether she supported or opposed Bashir's government. One women's rights activist told me she was often singled out for “not wearing the hijab.” She continued that a police officer stopped her while she was driving and asked her to wear a veil, a legal obligation for Sudanese women since the 1990s. “I had to take [out] my marriage certificate. He said to take out my *tarha* (head scarf) from my bag. I told him that this bag has a *waraqqa* (paper) not a *tarha* (head scarf).”²⁵

The consequences of a regime of legal rigidity are faced in particular by displaced persons living in squatter encampments and those who attempt to serve them. According to Sudanese activists providing social services to these persons, “If you ask the people why [they] don't have these services, they wouldn't even answer you that the government didn't serve us. They just say to you, ‘We don't know. It is God's fate,’ things like that.”²⁶ According to one displaced woman, the implementation of rights under the Sudanese state is at best incomplete: “Sometimes they give you a few rights, but they don't give you your full rights.”²⁷ She suggested that the government should provide health treatments (*ihlajaat*) at no cost, but “everything costs money.”²⁸

²³ *Ibid.*

²⁴ Interview with Malika, lawyer, in Khartoum, Sudan (October 2006) (Author's File Reference Number 31).

²⁵ Interview with Najima, NGO founder, in Khartoum, Sudan (February 2007) (Author's File Reference Number 62).

²⁶ Interview with Nahda, women's rights activist, in Omdurman, Sudan (June 2005) (Author's File Reference Number 24).

²⁷ Interview with Nisreen, internally displaced person, in Haj Yoosef, Sudan (June 2005) (Author's File Reference Number 11).

²⁸ *Ibid.*

In addition to activists and lawyers, judges also experience benefits and costs associated with the regime's rigid imposition of law. Some judges resist strict interpretations of Islamic law, often to avoid imposing punishments like stoning or amputation. Part of the reason, lawyers told me, is because local and foreign activists are watching.²⁹ Judges, however, must balance any acts of resistance with their need to earn a living. A senior lawyer told me, "If you don't pay allegiance to *al-mu'tamir al-watani* [the National Congress Party, led by President Bashir], you will not get anything."³⁰ The founder of an NGO echoed these comments; she had been dismissed alongside hundreds of judges and other public servants in the early 1990s during Bashir's self-proclaimed policy of *salah al-aam* (reforming the public interest). "When this government came to power, they retired all of them, not because they're not competent. It's because they were not supporters of this government."³¹ Adhering to the government's ideology becomes a way to increase the likelihood of being protected (or at least ignored) by it.

VI. CONCLUSION

The discourses of human rights and Islamic law in Sudan are paradoxically quite similar. Both provide frameworks for interaction among people, for dealing with and resolving disputes, and for arranging sets of benefits to their adherents. Both require the teaching of and adherence to specific documents and texts as laws, proscribing certain behaviors under a threat of moral sanction. Both human rights and religious law are directive forces, claiming supremacy in their prescriptions and in the personal and social obligations they demand. Generally, Islamic law and human rights law are engaged in inculcating basic teachings or norms around how to interact with others and interpret facts, to guide and influence people's decision-making processes. But a political underclass is certainly maintained under each legal system as each is implemented in Sudan, constituted by those persons with little ability to access the norms, institutions, and funding that form those legal and ideological systems.

Fundamentally, this chapter has sought to reveal the parallel structure between how the state uses religion and how human rights activists use human rights charters and documents. Both the state and international aid agencies present a flattened and unchanging system of law as a means to increase their power and influence. Legal discourses, then – of Islamic law and of human rights – become the political tools of elite actors seeking to win the hearts and minds of the poor. But these tools are

²⁹ Interview with senior judicial official 3, in Khartoum, Sudan (January 2007) (Author's File Reference Number 58).

³⁰ Interview with Balima, human rights activist, in Khartoum, Sudan (March 2007) (Author's File Reference Number 73).

³¹ Interview with Najima, NGO founder, in Khartoum, Sudan (February 2007) (Author's File Reference Number 62).

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imperfect. Their power lies in the lure they provide to state and nonstate actors in war-torn contexts, and in the ways they change the behavior of elites in government and in civil society.

Just as Islamic law has plural roots, human rights comes not only through indigenous forms from local lawyers but also by way of international funding to those lawyers and NGOs seeking to promote rights-based approaches. In these ways legal norms built on a foundation of human rights principles are appearing through the interaction of local lawyers with international aid groups, just as Islamic legal norms in Sudan emerged through the interaction of local customs and practices with those introduced by foreigners. If both human rights and Islamic law are distinct but universal and unchanging – and need to call upon universalism to be effective tools of governance – then from the perspective of those subject to these legal systems, at least one of them cannot be universal, and must instead be fallible.

What do these interpretations of the discourses of human rights and state-imposed Islamic law mean for future studies of rights in countries that adopt narrow or strict interpretations of religious law, and for civil society groups and human rights promoters in these places? First, it means scholars cannot study the rise of modern forms of Islamic law without studying the relationship between religion and state politics, culture, or even economic development. (Recall that in 1983 at a time when Sudan's economy was crumbling, President Nimeiri sought to refocus the nation's attention on the law by declaring himself a sheikh and his government under Islam.)

Second, scholars, aid workers, and human rights activists must appreciate and contend with the similarities and tensions in how people experience both human rights and state-imposed Islamic law on the ground. While there is certainly rhetorical advantage to claiming the universality and immutability of religious law or of human rights, scholars and activists would be well suited to continue to investigate the local and contextual factors that enable deeper questioning of the grassroots experience of universalizing discourses.

Third, just as human rights cannot be disaggregated from the local polity in which those rights are promoted, those rights also cannot be disaggregated from people's experiences of religion and the state's uses of religion as a political tool. Studying law in settings divided by violence includes investigating how the promotion of human rights takes place in states that turn to religious law – as another layer of law, a separate system supplanting religious law, or something else – and investigating law from the perspective of those who experience it (Massoud 2013b). In these places, citizens may be conscripted to fight in a war of ideologies between religious law and human rights law, and between the state and activists calling for change. Future research in conflict settings and authoritarian states might also investigate the thorny questions of aid dependence and why some citizens adopt multiple or instrumental interpretations of religious law and human rights law, and whether the top-down, elite-controlled, and homogenized form of human rights promoted to war survivors is becoming a parallel kind of homogenizing authority.

This chapter is based on fieldwork in a specific context and during a specific time period, and the experience of Islamic law among those I studied in Sudan may not be the same for everyone in Sudan, or for citizens in other Muslim majority contexts such as Saudi Arabia, Somalia, or Iran. A new legal realist approach to Islamic law and society demands a fine-grained, empirical understanding of the plurality within Islamic legal discourse and of the culture, politics, and economic practices shaping law and religion in each context in which Islamic law is used. Altogether, this inquiry invites scholars to analyze the layered construction of law in an interdisciplinary manner, involving politics, theology, economic development, culture, psychology, and society.

I conclude with three broad suggestions for scholars interested in law and society in conflict settings and authoritarian states, and in Islamic law and society. First, adopt an empirical or data-driven approach to understand the effects of how elites present distinct forms of secular and religious law to the marginalized. Second, investigate the ways in which state leaders mask legal pluralism under a disguise of legal rigidity. Finally, be mindful of the ways different legal orders and discourses – national, international, and transnational – are captured, experienced, and exported, and their similarities, tensions, and contradictions, particularly from the perspective of those whom they are most meant to support.

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