An Afghan girl attends a female engagement team meeting in Balish Kalay Village, Urgun District, Afghanistan (March 2011).

We Are Not Helpless

Addressing Structural Gender Inequality in Post-Conflict Societies[1]

BY VALERIE M. HUDSON, DONNA LEE BOWEN, AND PERPETUA LYNNE NIELSEN

The causes of state fragility are of pressing concern to U.S. foreign policymakers. The concept of state fragility denotes "a fundamental failure of the state to perform functions necessary to meet citizens' basic needs and expectations… [including] assuring basic security, maintaining rule of law and justice, [and] providing basic services and economic opportunities for their citizens."[2] The stabilization of fragile societies has become an important emphasis of U.S. national security policy—so much so that our most recent National Security Strategy asserts that: "within states, the nexus of weak governance and widespread grievance allows extremism to take root, violent non-state actors to rise up, and conflict to overtake state structures. To meet these challenges, we will continue to work with partners and through multilateral organizations to address the root causes of conflict before they erupt and to contain and resolve them when they do. We prefer to partner with those fragile states that have a genuine political commitment to establishing legitimate governance and providing for their people."[3]

Exploring the causes of state fragility and instability thus has profound ramifications for policy choice. In an era of shrinking resources, the most effective use of policy instruments must be sought to lay the foundation for sustainable peace.

Over the last two decades, there has been a growing awareness that state stability is integrally tied to the situation and status of women in society. In a very real fashion, the relationship between the two halves of humanity within a given society sets the horizon of possibility for peace, security, prosperity, health, and good governance.[4] Like the roots of a tree, unseen and yet determinative, gender relations underpin all macro-level phenomena within a society.

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For example, in an empirical analysis of Muslim societies, M. Steven Fish suggests that Islamic societies are disproportionately authoritarian, and that this finding cannot be attributed to differences in national wealth, ethnolinguistic fractionalization, colonial heritage, religiosity, and other conventional explanatory variables.[5] Rather, Fish uncovers two indicators that better explain the variance in levels of conflict and of authoritarianism throughout the Islamic world: sex ratio and the literacy gap between males and females. He hypothesizes that the oppression of females—one of the earliest social acts observed by children—lays the foundation for other types of oppression, including authoritarianism.[6]

In the same vein, Mary Caprioli links measures of domestic gender inequality to higher levels of state conflict and insecurity with statistically significant results. Furthermore, states with higher levels of social, economic, and political gender equality are less likely to rely on military force to settle disputes.[7] Caprioli and Mark Boyer also note that states exhibiting high levels of gender equality also display lower levels of violence when they do become involved in international crises and disputes.[8] Caprioli extends this analysis to include militarized interstate disputes, a broader category than international conflicts, and finds a similar relationship: states with the highest levels of gender equality display lower levels of aggression in these disputes, and were less likely to use force first.[9] Virtually the same pattern was found with respect to intrastate incidents, as well.[10] Hudson et. al. added to this corpus by demonstrating that the best overall predictor of state peacefulness and

Young girls reading at a Jordanian primary school. Education and literacy are key elements of achieving gender equality.

relations with neighboring countries is its level of violence against women, and that even among democracies, those with a high level of violence against women, such as Zambia, Kenya, and Nigeria, were more likely to score considerably worse on the Global Peace Index than those with low levels, such as Denmark, Austria, and Finland.[11]

In sum, while space does not permit us to comprehensively review the empirical literature of this subfield, this growing body of scholarly work demonstrates that the promotion of gender equality goes far beyond the issue of social justice and has important consequences for international security.

Policy Translation in the United States

With the growing realization of the linkage between what is happening with women and what is happening with state security and stability has come a determination by state, interstate, and non-state actors to foreground this relationship in a policy sense. One of the most critical turning points was the adoption of United Nations Security Council Resolution (UNSCR) 1325 in 2000, which urged member states, among other things, "to ensure increased representation of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict," and to "take special measures to protect women and girls from gender-based violence . . . in situations of armed conflict."[12] UNSCR 1325 has been followed in turn by UNSCR 1820, 1888, 1889, 1960, 2106, and 2122, which reiterate, extend, and focus these same efforts.

Even in the absence of U.S. ratification of the Convention on the Elimination of Discrimination Against Women (CEDAW), the mandates of these resolutions are legally binding on the United States. More specifically, in 2004, the Security Council called on member states to develop National Action Plans (NAPs) to implement UNSCR 1325.[13] In December 2011, under the leadership of Secretary of State Hillary Clinton, the United States unveiled its own National Action Plan (NAP) on Women, Peace, and Security, for which it is now accountable before the international community.[14]

As informed by the provisions of UNSCR 1325, the U.S. NAP identifies five primary areas of concern: 1) national integration and institutionalization of a gender-responsive approach to diplomacy, development, and defense; 2) strengthening women's participation in peace processes and decisionmaking; 3) protecting women from sexual and gender-based violence; 4) the promotion of women's role in conflict prevention; and 5) gender-sensitive access to relief in the case of humanitarian crisis.

After the NAP's appearance, other pieces of a U.S. foreign policy strategy were assembled, including a Counter-Trafficking in Persons Strategy, a Policy on Gender Equality and Female Empowerment, an Implementation Plan for the National Action Plan on Women, Peace, and Security, a Strategy to Prevent and Respond to Gender-based Violence Globally, the Equal Futures Partnership, and a Vision for Ending Child Marriage and Meeting the Needs of Married Children.[15]

In addition to this strategic planning framework, U.S. involvement in Afghanistan and Iraq over the past decade has also provided an operational component to the vision implied in UNSCR 1325. For example, the Lioness Teams in Iraq and the Female

Engagement Teams (FETs) in Afghanistan were pioneering in their "asymmetric" use of female soldiers in ground operations and stabilization efforts. Though these teams were disbanded with the drawdowns in each nation, the FET concept was subsequently taken up by Colombia, which now boasts its own "EFEO" teams (*Escuadrón Femenino de Enlace Operacional Rural*), based on the FETs of Afghanistan. Indeed, the Colombian EFEOs will enjoy a number of capabilities that the U.S. Marine FETs did not, including full arresting authority. Noting that U.S. Marine Corps reports show a "direct correlation between the presence of a FET in an area and the reduction of tension and violence against U.S. forces," the hope is that the same magic would happen for Colombian forces.[16]

Furthermore, the U.S. Agency for International Development (USAID) has been heavily involved in developing innovative programs to further the goals of the U.S. NAP. For example, one of the most important USAID programs for Afghan women is PROMOTE, which is USAID's five-year programmatic response to the 2014 drawdown of U.S. troops, designed to shore up the gains Afghan women have made since 2001. Announced in July 2013, the $410 million project is easily USAID's largest-ever gender programming effort, though half of these funds are to be provided by partner nations and have not fully materialized. Target beneficiaries are primarily Afghan women who possess at least a secondary education, for the hope is to establish a female quota of at least 30 percent within the Afghan Civil Service. Future components of PROMOTE are designed to facilitate the entry of women into the Afghan economy and related initiatives. This is but one of the many gender programs implemented by USAID and the State Department to empower women, in line with the 2010 and 2015 Quadrennial Diplomacy and Development Reviews which heavily spotlight women as a special target of development programming.
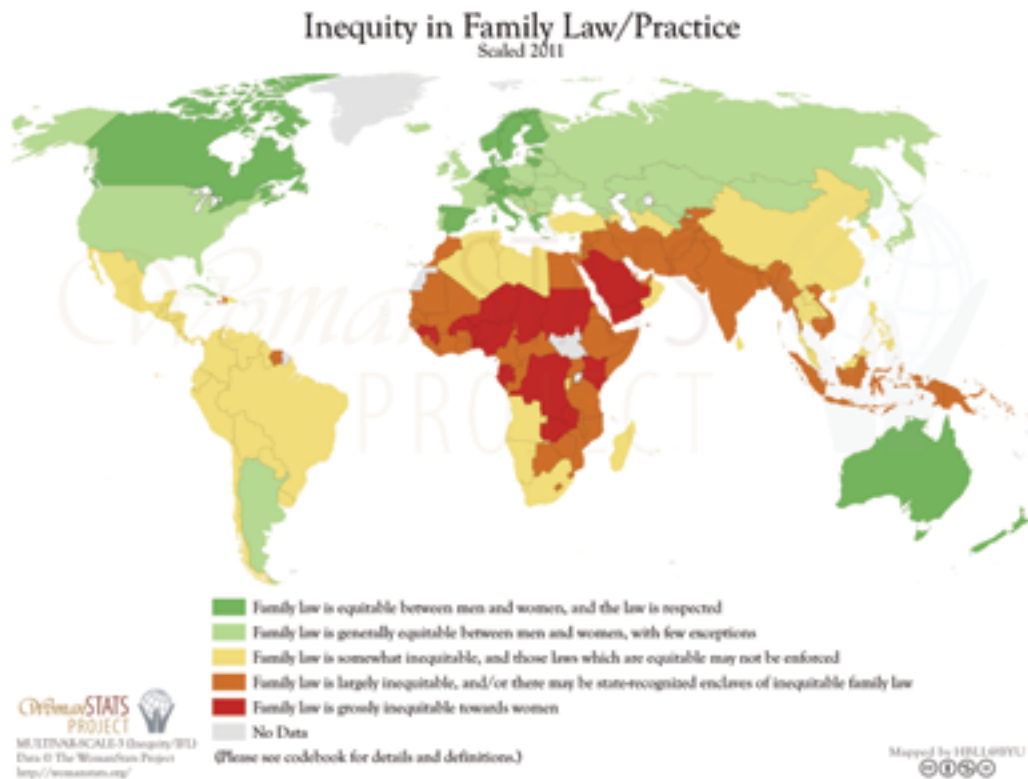
A Deeper and Largely Unseen Structure

We have reviewed how explicit attention to gender has developed within contemporary U.S. foreign policy, catalyzed in part by the international community's women, peace, and security agenda, and increasingly become a focus of operational planning and programming. While the UNSCR 1325 framework and programs like Female Engagement Teams and PROMOTE are laudatory, we argue that an important dimension of the relationship between women's security and state security is still, generally speaking, overlooked in U.S. foreign policy and the U.S. NAP. We believe there are deeper roots entwining these two securities that remain largely untouched by current efforts. It may well be that the addition of female soldiers in ground operations or greater numbers of female students in universities or more female civil servants in the government or even additional female legislators in parliament will not be enough to put a post-conflict society on a stable foundation without attention to that deeper level.

That deeper level is the legal structure under which women must live their lives in the family setting. Family law, enshrined in the formal legal system as well as myriad social customs, establishes the relationship between the two halves of humanity in every society. In this article, we assert that the impact of family law extends far beyond individual families and impacts more macro-level phenomena, such as national stability and resilience.

"Family law" refers to the statutory and customary law that regulates marriage, parenthood, and to a great extent speaks to how a given state or society views the relations between men and women. It establishes the legal order which defines how males and females, with their resultant kin-based groups, whether families or tribes, relate to each other and the rights each individual holds as part of a family under the state. Included in the arena of family law would be such things as minimum age of marriage, the form of consent in marriage, decisionmaking rights in marriage, property and inheritance rights in marriage, divorce and custody rights in marriage, sexual rights in marriage, the right to "discipline" a spouse in marriage, and so forth.

A woman may vote, she may work, and she may have a graduate degree and even be a Member of Parliament, but if she cannot in practice obtain a divorce or custody of her children or hold property in her own name or inherit as a widow or refuse an arranged marriage or an underage marriage, she is a *de facto* (and sometimes even a *de jure*) subordinate to the men in her life and, by extension, her society. According to our most recent scaling of the WomanStats Inequity in Family Law Index, 38.3 percent of nations have either high or extremely high levels of such inequity (N=174).[17] The day-to-day effects of these inequitable family arrangements underpin the general subordination of women to men in the society. It is this deep governing structural gender inequality that lays a sandy foundation for

Figure 1. Map of Inequity in Family Law/Practice

Inequity in Family Law/Practice
Scaled 2011

- Family law is equitable between men and women, and the law is respected
- Family law is generally equitable between men and women, with few exceptions
- Family law is somewhat inequitable, and those laws which are equitable may not be enforced
- Family law is largely inequitable, and/or there may be state-recognized enclaves of inequitable family law
- Family law is grossly inequitable towards women
- No Data

(Please see codebook for details and definitions.)

state stability. Societal sanction for the subordination of women as expressed in family law is, we argue, an overlooked wellspring of societal instability and violence.

The history of family structure is a story of historical asymmetry where men's rights have prevailed over those of women in their marriages and families from the days of the first organized legal code, the Code of Hammurabi, on down to this very day. In the early 20th century, women pursued and obtained the right to vote in most countries. Even so, women lacked other rights that they considered much more vital to their day-to-day lives. Legal codes enacted by states denied them rights to divorce, inheritance, and property rights—even basic physical security—within the family. Even within the Western liberal tradition, where women were considered autonomous and deserving of fair and impartial treatment under the law, legal sources based on patrilineal social traditions retained significant bias for a very long time. As late as the 1970s in the United States, for example, marital rape was not illegal, and it was difficult for a married woman to obtain credit under her own name.

While this type of legal discrimination is largely a thing of the past in the United States, gross inequities in family law remain for a large percentage of the world's countries (Figure 1). So, for example, in Saudi Arabia, women are minors first to their fathers, and then upon marriage, to their husbands. They may not travel or become employed without their guardian's formal permission. Saudi women voted for the first time—in municipal elections—in 2015. Saudi husbands may practice polygyny, and a Saudi husband may divorce his wife at will, without even appearing before a judge. A Saudi wife would have to

prove one of several situations to obtain a divorce, such as seven years' worth of abandonment, or insanity or criminality of their spouse in order to divorce. Custody of the children devolves to the father and his family at age seven for boys and nine for girls. For many Muslim states such as Saudi Arabia, family law became the final bastion of Islam as other areas such as education became secularized and put under the purview of the state.

This disparity of power expressed through inequitable family law codes has already been empirically shown to be significantly associated with higher levels of violence against women.[18] We can certainly understand why that should be so, but is there a larger horizon to see as well? Is there a linkage between inequitable family law and levels of state stability? And how might an understanding of that linkage inform U.S. foreign policy towards post-conflict states?

Family Law's Effects on State Stability

The lines of battle over family law are hotly contested because of how foundational choices regarding the relations between males and females are to any society, and even in the 21st century, family law systems differ fairly substantially across societies. While some states enshrine relatively equitable family law, others, as we have seen, do not. The situation is ever-changing; in most cases, the direction is towards greater equity and safeguards for women in marriage and family matters, but we also see instances where the change is not in the direction of greater equity or safeguards. Regression in the family codes of several "Arab Uprising" nations has led women's rights activists to conclude that this period constituted an "Arab Winter" for women. For example, one of the very first acts of the

newly-established regime in Libya following Qaddafi's overthrow was the re-legalization of polygyny.

In every human society, we find a universal phenomenon: human beings are divided into two roughly equal-sized groups, both of which must be involved in the production of the future of their group in the form of offspring.[19] This simple parameter gives rise to some foundational decisions to be made in all human societies about what we call the "First Difference:"

1) Status in the context of difference: Will these two groups engage each other as equals, or as subordinate and superordinate?

2) Decisionmaking in the context of difference: Will decisions in the society be made by one group or by both groups?

3) Conflict resolution in the context of difference: If the two groups disagree, how is that disagreement to be resolved?

4) Resource distribution in the context of difference: Which group will control resources necessary for survival and persistence—such as food, land, weapons, children, and wealth—or will control be shared?

5) Agency in the context of difference: Can one group be coerced to provide what is required for survival and persistence of the group against its will?

Consider what type of society is formed when the answers are: One group, group "A," is superordinate over the other ("B"), and makes all important decisions in the society. The second group, "B," may be ignored or punished if it protests this arrangement. "A" will monopolize and control all resources necessary for survival and persistence, including land, wealth, and children. "B" can be coerced into providing what the first group needs through physical violence until acquiescence is obtained. "B" becomes, in essence, another resource controlled by "A" from which rents are extracted by coercion and subordination.

What type of society originates from such choices? The groundwork will have been laid for an inequitable society ruled by monopolistic rent-seekers prepared to assure continued flow of their rents through corruption and violence. Worse yet, such societal arrangements will seem "natural and right" given the original choices made with regard to the "First Other," the first "B"—woman.

All recognized differences within the society—ranging far beyond the originary difference of sex—will entail subordination, and physical violence will be used if necessary to effect that subordination. All "others" in the society—those of different ethnicity, religion, ideology, etc.—will be relegated to the lower status accorded to the female, that is, in a sense, "feminized"—because their status, agency, and so forth, correspond more to that of females in society than to males.

That is why the structure of relations between men and women in any society is so important; it is important because the answers given above concerning the First Difference normalize inequity, violence, and a parasitical and monopolistic rent-based economy within the society. Such a society, we argue, will be inherently unstable. Since the clearest way to "see" the structure of relations between men and women is to examine family law and customs, inequity in family law should be a strong determinant of societal stability.

And indeed it is. In our latest empirical research, we were able to demonstrate that societies maintaining inequitable family law and custom prove significantly more fragile and less peaceful than those which do not.[20]

Figure 2. Countries with very inequitable family laws are least peaceful[24]
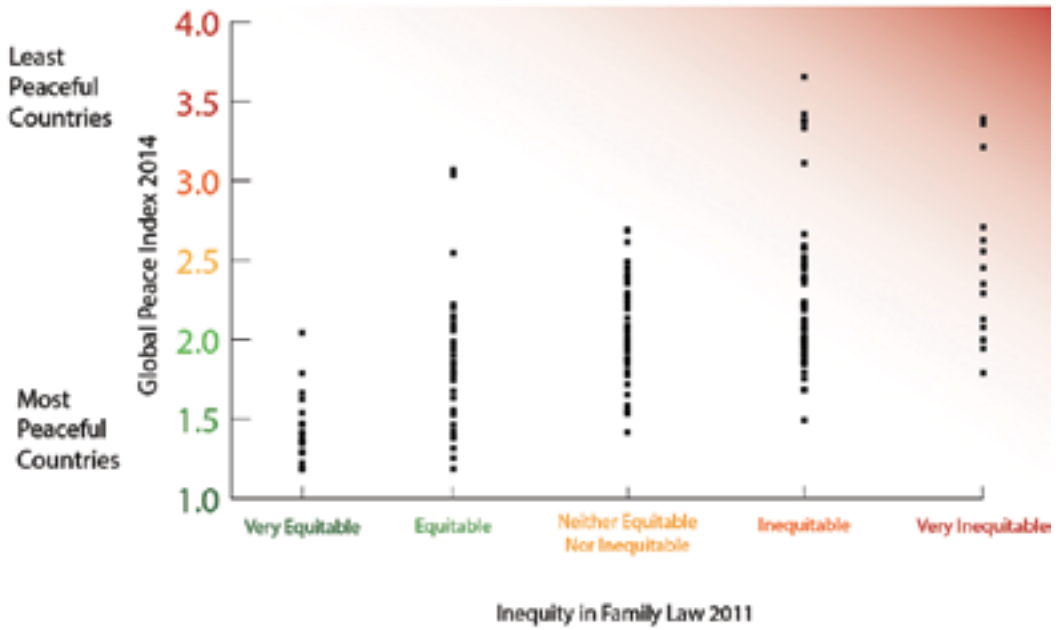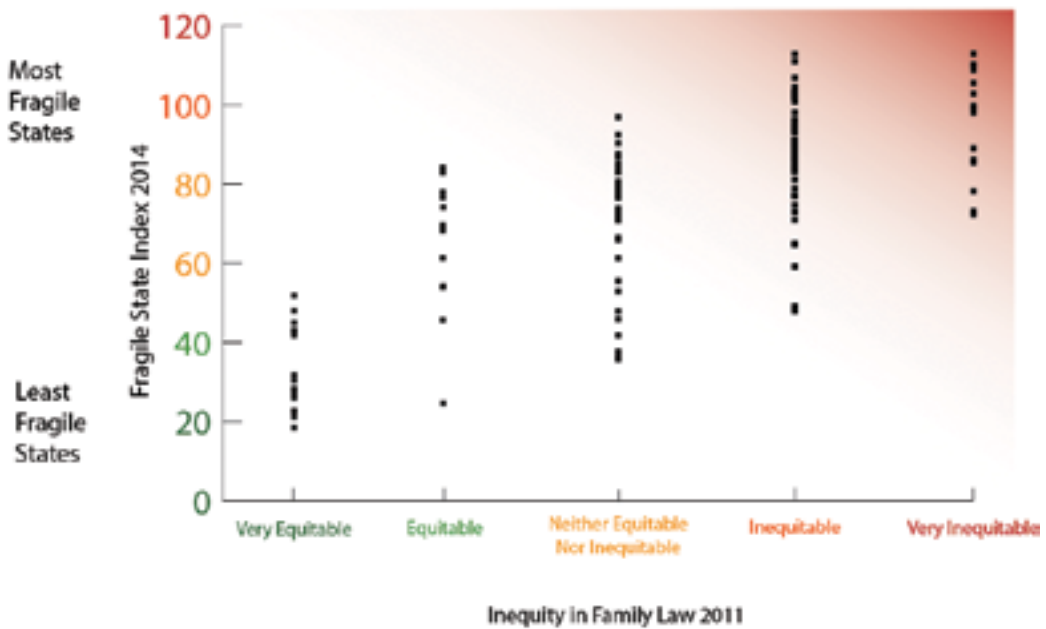

Figure 3. Countries with the most inequitable family laws are the most fragile[25]

The WomanStats Database has a five-point scale of the degree of Inequity in Family Law and Practice disfavoring women. Inequity in Family Law[21] has a moderately strong correlation with the Institute for Economics and Peace's Global Peace Index (r = 0.5477), and a relatively strong correlation (r = 0.7549) with the Fund for Peace's Fragile State Index. Multivariate regression models including Inequity in Family Law alongside more conventional variables such as level of democracy and literacy show moderate strength in predicting Global Peace (r^2 = 0.43) and great strength in predicting fragile states (r^2 = 0.72).[22] Taken overall, these results suggest the ability to predict the level of state fragility and peacefulness is significantly enhanced by examining Inequity in Family Law, in addition to more conventional explanatory variables.

Figures 2 and 3 display in clearer detail the relationship between Inequity in Family Law and our two indicators of state fragility and instability.[23] Figure 2 shows that countries with very inequitable family laws are the least peaceful, and Figure 3 shows that countries with very equitable family laws are the least fragile and those with the most inequitable laws are the most fragile.

The Case of Afghanistan

Attention to inequitable family law may well prove to be one of the most potentially powerful policy levers for the stabilization of fragile societies. There are both strong theoretical reasons and complementary empirical work that suggest this is no spurious relationship, but rather a deep intertwining of the foundational choices made by any human society with regard to sexual difference, on the one hand,

and the macro-level sequelae of those choices in terms of fragility and corruption.

We submit that while entirely laudatory and worthwhile, efforts in U.S. foreign policy to increase female secondary and tertiary education, increase female participation in the police and the armed forces, and increase female participation in government, will only go so far in stabilizing at-risk states. The deeper level of inequitable family law must also be addressed for societies to escape from an endless cycle of state fragility. Surely this is one reason why Rule of Law programming by the U.S. and other countries in Afghanistan often includes a gender component.

And yet these are admittedly some of the most intractable and contentious issues of all, because they touch on issues of self-identity, religious identity, and power within the family and within society. We can see that clearly in the case of Afghanistan. After over a dozen years in that country, amazing advances in the education and empowerment of women have taken place. The 2004 Constitution of Afghanistan guaranteed equal rights to men and women, not to just "citizens," and a quota of 25 percent of parliamentary seats were reserved for women in the lower house and 17 percent in the upper. Afghanistan also signed on to the Convention on the Rights of the Child, CEDAW (without reservations, remarkably), and the International Criminal Court (ICC)—which is noteworthy because the U.S. government has refused to adopt any of these three international treaties. In addition, the new Afghan government also established a Ministry of Women's Affairs (MOWA). Women also initially headed several other ministries, including public health, labor, social affairs, and the ministry for the disabled.[26]

Women have also made inroads in local politics: the first female governor of an Afghan province is Habiba Sarobi in Bamiyan, appointed in 2005 (who also ran for Vice President in the 2014 national election). In early 2013, the first-ever female district governor was appointed. Furthermore, Afghanistan now has a National Action Plan for the Women of Afghanistan (NAPWA), approved by the cabinet in 2008, which sets goals for the advancement of women in that country. One goal, as we have seen, is to have women make up 30 percent of the civil service by 2018. Women are increasingly participating in the police force (1,974 female police officers in 2013, compared to less than 500 in 2007) and in the legal field (150 female judges in 2012; 300 female defense lawyers and 250 female prosecutors in 2013).[27]

In addition to the expansion of women's rights, education and health indicators for women have significantly improved. Ashraf Haidari notes, "Of nearly five million children in grades one through six, 36.6 percent are girls. The number of girls in high school almost doubled from 2007 to 2008, from 67,900 to 136,621 students. Some 8,944 university students graduated in Afghanistan in 2008. Of them, 1,734 were female students. These numbers have continued to rise in 2009, 2010, 2011, and 2012."[28] Haidari adds that infant mortality has decreased by 23 percent since 2001. Maternal mortality has seen impressive drops as well; the World Bank estimates that the rate has been reduced to 327 deaths per 100,000 live births in 2013, down from 1600 deaths per 100,000 live births in 2001. Though still ranking next-to-last in

An Afghan National Policewoman (ANP) stands at attention

maternal mortality, this is a stunning improvement.[29]

But the context in which women live their lives still strongly constrains their voice and their security. Provincial quotas for women were lowered from 25 to 20 percent, even before the U.S. troop drawdown in 2014. And in a 2013 parliamentary discussion over fully "instating" the Elimination of Violence Against Women presidential decree, male MPs attempted to strip the proposed legislation of provisions that curbed polygyny, early marriage, forced marriage, domestic violence, rape, and so on, on the ground that these provisions are "un-Islamic."[30]

Moreover, less than a year later, the Afghan parliament voted in February 2014 to ban all testimony from family members, doctors, and lawyers in domestic abuse cases. Even the victim herself would be banned from testifying. While the legislation is still in limbo—hopefully a permanent limbo—after the recent election of Ashraf Ghani, this is a startling legal reversal that would have offered impunity to those who abuse family members.[31] The moral is clear: years of effort by Afghan advocates (and supported by the U.S.) can be undone overnight, and will be unless vigilance and leverage is mustered.

Assassinations of women in the public sphere have increased significantly even during this time of advancement for women in education and health. A 2015 Amnesty International report concludes:

There has been a significant increase in threats, intimidation, and attacks against people at the forefront of promoting and protecting women's rights, in particular in the south and south-eastern parts of the country. Many women human rights defenders have been threatened and their homes or family members have been attacked. Some have even been killed for their activities, while others have had to flee the country for fear they will be next . . . Women human rights defenders face threats and violence not only from the Taliban and other armed opposition groups but also from state actors, and in particular, law enforcement and security officials. They are also at risk of harm from powerful commanders and warlords, who are either connected to state authorities or are the local officials themselves.[32]

It is important that the United States study this saga carefully. In Afghanistan, the U.S. changed the surface structure for women—which was very important and very significant—but the deep structure of family law remains untouched. As a result, we see a creeping clawback of women's rights over time. The U.S. ensured legislative quotas for women; they are being eroded. The U.S. made sure Afghanistan acceded to CEDAW without reservations, but that has produced no substantive change for Afghan women. The U.S. provided the programming to enable more women to become educated in Afghanistan, but violence against women is arguably rising, not falling. Because these changes were perceived as being imposed by an invading power, despite the fact that they had been strongly advocated by Afghan women's groups—and because of the predictable backlash against such a perception—real reform of Afghan family law seems as distant a possibility as it was before the U.S. invasion. It may be that the increasing education rate of women will eventually produce reform and Afghanistan may one day be able to follow a different path, but while the surface

structure and the deep structure remain at odds, the country will continue to be highly unstable.

Policy Recommendations

If it is family law that undergirds the real position of women in the society, the next horizon for U.S. foreign policy is to devise creative and effective means of encouraging states to view inequitable family law as a barrier to internal stability, and of rewarding states that choose to prioritize positive legal reforms in this area. Even so, these issues are extremely sensitive ones; as we have seen, inequitable family law is the quintessential expression of foundational societal choices about the First Difference, which may underpin all other social arrangements in the society. So, for example, after its progressive overhaul of family law in 2004, Morocco's stability was improving according to outcome measures such as the Fragile States Index, until the advent of the regional upheaval engendered by the Arab Uprising. Many would argue that the 2004 reform of the Moroccan family law code, which not only recognized the important role that women play in family and society, but offered state protection of women's financial and legal position, was a factor in helping to stabilize the country and dampen the appeal of extremism during this critical time in 2011-2012.

The United States should not make matters worse by tempting apologists of the status quo to reject positive change in family law as a rejection of "Westernization." Some policy guidelines seem appropriate in view of the sensitivity of the subject area:

■ Let respected state elites take the lead and encourage them to do so. Since most regard inequity in family law as a woman's issue, it is critical that, where possible, male leaders be in the forefront of reform. For example, in Morocco, family law reform was led by the Prime Minister and legitimized by King Mohamed VI's support. A Million Women March in favor of reform of the Moroccan family law code drew attention to the need for change. Religious elites are also important to involve. For example, the King drafted religious scholars, both men and women, to work with legislators and civil society activists, again both men and women, to negotiate and write the new code, which passed in 2004.

■ Consult a wide range of local experts, take signals from them, and leave management of change in practice or law in their charge. "Shaming" or calling out states for violations of CEDAW or inequity in family law codes is likely to be counterproductive. Although this tactic may produce useful responses for other human rights issues, gender issues are linked to deeply-rooted sensitivities, and negative publicity often produces backlash.

■ Recognize religious and cultural boundaries. Turning to Morocco once more as a good example, during negotiations for the reform of Morocco's family code, King Mohamed VI stated flatly that if a precept is found in the Qur'an, it could not be contravened. He also stated, however, that there might be ways to put fences around practices that are often abused. Thus, polygyny in Morocco can be regulated, and therefore discouraged, but cannot be outlawed.

■ Use soft power. Western actors should aspire to remain in the background. Advocates from countries in the same region, or cultural or religious traditions may be better able to speak to the

advantages of equitable family law. So, for example, in Malawi in February 2015, the age of marriage was raised after a concerted campaign by Malawian civil society actors and parliamentarians, but it is also true that regional forces were at work, since Malawi is a signatory to (and has ratified) the Maputo Protocol of the African Union, which obligates signatories to just such action. Soft power practices include steady rhetorical support of equitable human rights law, noting that inequity in family law is recognized by the United Nations as a human rights issue. Some family law issues may permit a rhetorical emphasis on health benefits to women and families resulting from greater equity (e.g. child marriage). The U.S. might, for example, fund international conferences to draw state actors together for consultation on best health practices, some of which may have ramifications for family law.

■ Work on a long timeline. For example, despite the fact that over 40 sub-Saharan African nations had signed the Maputo Protocol by 2005, it has taken a full decade for most (though still not all) of these nations to raise their legal age of marriage to 18. Change has come, but it was by no means instantaneous. Similarly, in 2004, when the Moroccan reforms were passed, there was an initial outcry from both conservative women and men. Furthermore, judges in Morocco lacked training in the new code and consequently made faulty judgments. In time the majority of the society backed the reforms, largely because of the quiet steady leadership of the King, key state actors, and respected religious officials and scholars, all of whom played a role in negotiating the reforms.

■ Understand that any regime change will almost certainly be accompanied by efforts to roll back women's rights under family law; be vigilant in watching for signs this is happening, and react by using any leverage at the disposal of the United States to convince newly powerful actors that there are other, more pressing, priorities to which they should attend first. Women's rights are slow to win, but fast to lose. If the United States can use its influence to delay or stall regress, it may well prevent unwanted change from taking place at all, such as the successful U.S. efforts to help stymie the official rollback of Afghanistan's Elimination of Violence Against Women Act (EVAW), as well as pushback against Karzai's attack on the personal status of Shia women in Afghanistan. Though the Shia Personal Status Law was deemed a done deal, international pressure brought it to the Justice Minister's bailiwick to decide which portions would have to be repealed because they were unconstitutional. In essence, many of the law's provisions are in legal limbo to this day. In Tunisia, early announcements by Ennadha leaders that they would be seeking to re-legalize polygyny and to found Tunisian law in sharia, were stymied by female parliamentarians through the lengthy process of constitutional reform,[33] and these MPs had the support of international actors, as well.

The take-away is that inequity in family law in post-conflict states deserves far greater attention by the United States (or any other third party actor) than it has received to date. Action can be undertaken, but only if done wisely and carefully. One recent example where the United States is making a positive

contribution in this regard is the growing worldwide campaign against child marriage, in which the United States is heavily involved along with the United Nations, other concerned state governments such as the UK, and a plethora of nongovernmental organizations. Legalized child marriage is an important element of inequitable family law, and has far-reaching effects on state fragility.[34] In the 2013 provisions of the Violence Against Women Act, the U.S. Congress mandated the president "direct the Secretary of State to develop and implement a plan to prevent child marriage, promote empowerment of girls at risk of early marriage, and target countries where a high prevalence of child marriage is known to occur."[35] Furthermore, USAID has developed a "Vision for Ending Child Marriage."[36]

In Yemen where there is still no minimum age of marriage for girls, and where lawmakers have come to blows over the issue,[37] USAID funded a project (before the recent descent into chaos), called the Safe Age of Marriage Project, in two districts in rural Yemen to attempt to raise the age of marriage through community mobilization. USAID reports:

In 2010, community members pledged to ban child marriage and set marriage dowry at approximately $2,000 to deter trade marriage. As a result, the most commonly reported age of marriage of girls rose from 14 to 17 over the duration of the project. The project also helped avert child marriages and helped the first ever female school principal be appointed in Al Sawd District, encouraging parents to enroll and keep their daughters in school. From baseline to endline, there were statistically

Students read in class at the Shaheed Mohamed Motaher Zaid School in Sana'a.

significant increases in the proportion of people identifying benefits to delaying marriage (e.g., from 45 percent to 79 percent agreed that delayed marriage provides more opportunities for girls' education and from 36 percent to 67 percent agreed that delayed marriage leads to healthier pregnancies). The intervention is now being replicated in two new districts, and it will be managed by the Yemeni Women's Union. Due to the entrenched beliefs that Islam condones child marriage, the Yemeni Women's Union is planning to engage a larger proportion of religious leaders as community educators to address these religious misconceptions. In addition to assuming the management of Safe Age of Marriage activities, the Yemeni Women's Union has been actively lobbying the Yemeni government for a change in Yemeni law that would prohibit the marriage of girls under age 17.[38]

If change in customary age of marriage—long advocated by Yemeni women's groups—can be facilitated by USAID programming, we are convinced the U.S. is not helpless in the face of inequitable family law and custom.[39] Not only is the U.S. not helpless, but we have recently seen how toleration of abusive gender-related customs, such as the sexual slavery of young boys in Afghanistan by U.S.-supported Afghan commanders, can redound to the detriment of U.S. foreign policy interests.[40] No one benefits when the U.S. overlooks these issues. Even though these are difficult and sensitive issues, if U.S. policymakers look for opportunities to make a positive difference, they will find them in abundance.[41] As Ambassador Swanee Hunt has put it, our goal must "not be simply the absence of war, but a sustainable peace fostered by fundamental social changes."[42] The most fundamental social change imaginable, we submit—one that would strongly promote stability and peace—is facilitating change of inequitable family law.

The struggle to dismantle inequitable family law will be with us for a long time. Battles that were won will be re-fought, over and over, because the rewards to certain societal actors for adopting inequitable family law and safeguarding it are just too tempting. But if "the subjugation of women is a direct threat to the security of the United States," as asserted by former Secretary of State Hillary Clinton,[43] U.S. foreign policymakers must begin to consider how the reform of inequitable family laws disfavoring women might be prioritized. State fragility is rightly a key concern of U.S. foreign policy today, and inequitable family law must be understood as one of its primary wellsprings. PRISM

NOTES

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23 Figures 1 and 2 are adapted from Donna Lee Bowen, Valerie M. Hudson and Perpetua Lynne Nielsen, "State Fragility and Structural Gender Inequality in Family Law: An Empirical Investigation," *Laws*, no 4 (2015): 667. For a fuller discussion of the relationship between Inequity in Family Law and state fragility and peacefulness, see that article.

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Photos

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