SEX EQUALITY IN FAMILY LAW: HISTORICAL LEGACIES, FEMINIST ACTIVISM, AND RELIGIOUS POWER IN 70 COUNTRIES

Htun, Mala, and Laurel Weldon

2011

The findings, interpretations, and conclusions expressed in this paper are entirely those of the authors. They do not necessarily represent the views of the World Development Report 2012 team, the World Bank and its affiliated organizations, or those of the Executive Directors of the World Bank or the governments they represent.
SEX EQUALITY IN FAMILY LAW: 
HISTORICAL LEGACIES, FEMINIST ACTIVISM, 
AND RELIGIOUS POWER IN 70 COUNTRIES

Mala Htun and Laurel Weldon
New School for Social Research and Purdue University
htun@mindspring.com and weldons@purdue.edu

World Development Report 2012 
Background Paper

April 11, 2011

---

1 Weldon and Htun are equal contributors to all parts of this project. We are grateful for research assistance from Kimberly Proctor and Amanda Burke and for comments from Aline Coudouel, Tazeen Hasan, Juan Pablo Micoczi, and participants at seminars at Indiana University, the University of Minnesota, UNRISD in Geneva, the University of Chicago, and the University of Illinois.
Introduction

Family law—also called personal status law—is one of the central institutions of gender. It molds social identities and distributes rights and responsibilities, forging relations of power between men and women, parents and children, brothers and sisters. These status differences are consequential not just for the private sphere but also for public opportunities. Family laws shape the capacity of a citizen to own, inherit, and manage property; to work outside the home; her freedom to marry, divorce, and remarry; and her or his relationship with children.

Most modern family law emphasizes patriarchy and other forms of male dominance. It tended (and still tends) to maximize men’s power over women and limit the latter’s ability to make decisions and take independent action. Classical Islamic law, the Napoleonic Code, Anglo-American common law, and the customary law of many sub-Saharan African groups and indigenous peoples of the Americas all upheld the notion that men were in charge of family life: they controlled property, were the legal guardians of children, and had the right to restrict their wives’ public activities. Women were obliged to obey their husbands, had limited access to divorce, and, in many traditions, fewer inheritance rights than men.

Family laws in many countries were liberalized during the 20th century to promote sex equality and expand individual rights. Most European and North American countries reformed in the mid- to late-twentieth century (Glendon 1989; Glendon 1987; Rheinstein 1972). Communist countries in the West and East reformed family law to eliminate religious and traditional influences, promote women’s participation in the labor force, and encourage broader social transformation (Molyneux 1985a; Berman 1946; Johnson 1983). Asian countries modified family laws to eliminate patriarchal provisions though at different times: Japan was earlier to change than Korea, for example (in 1948 and 1990).

---

2 Though the legal traditions we review here endorse patriarchal authority, other family forms and social orders around the world deviate from this model. (For an introduction to terminology and some examples, see the chapter on diversity of family formation in Conway-Turner and Cherrin 1998.) For example, polyandry (wives taking multiple husbands) was practiced in the Ladakh region of India before its ban in the 1940s by the government of Jammu and Kashmir. Traces of the practice can still be encountered today. In addition, polyandry has been observed in pre-contact Polynesian societies (Goldman 1970) and among the Masai (a highly patriarchal society). Turning to a different dimension of variability, some societies are matrilineal, including the federation of societies known as the Iroquois. These groups also reserved some governing functions for women: the clan mothers of the Oneida selected those who served on the governing council and made all decisions about land, property, and family. Some customary laws in Africa granted women more rights to land than the colonial laws that replaced them. Our review of the world’s most influential (and patriarchal) legal traditions does not ignore the other historical and cultural patterns that existed and are possible. There are many other examples, too diverse and numerous to review here, that preserved special roles for brothers, uncles and other male and female kin.
Other countries held onto patriarchal provisions. These included many post-colonial states—especially former British colonies—with multiple legal systems of statutory, customary, and/or religious law. Often, colonial rule codified a more uniform and male-dominated version of indigenous practice than the social orders and family forms previously existing. With a few exceptions, these systems have remained relatively stable since Independence. In addition, countries applying religious law to family matters—including those of the Middle East and North Africa (excluding Turkey), Indonesia, and Israel—have changed little and remain largely discriminatory, with some exceptions (Musawah 2009; Women Living Under Muslim Laws 2006; Williams 2006; Halperin-Kaddari 2003).

What accounts for these divergent approaches to family law? Why are laws of personal status so stubborn to change in some contexts? How can we explain reforms toward sex equality?

Using an original dataset of family law in 70 countries, this paper begins to answer these questions. The dataset contains indicators of sex equality in several areas of family law, including marriage, divorce, property, inheritance, and parenting, measured at four points in time (1975, 1985, 1995, 2005). We test hypotheses accounting for change and continuity in legal traditions shaping the mutual rights and obligations of men, women, and children.

We argue that the content of family law in different countries and regions reflects state projects and patterns of state building. As the state strengthens and expands, it often—but not always—seeks to seize control over family law from churches, clans, tribes, and other cultural communities. These sub-national rivals to the state were historically the undisputed authorities over marriage, birth, inheritance, and other family law matters. Legal provisions thus tend to reflect the historical, institutionalized relations between the state on the one hand and religious groups, clans, tribes, and cultural communities on the other (Charrad 2001; Htun 2003; Kang 2010a).

Transformative state projects seeking to secularize, modernize, and civilize the nation and the polity are often played out on the terrain of the family. Socialist and some nationalist states—including the Soviet Union, Communist China, Cuba, Vietnam, and Kemalist Turkey—attempted to eradicate the authority of religion and traditional cultural practices. These regimes introduced equal rights in the family to promote profound social change (Molyneux 1985a; Kandiyoti 1991a; Johnson 1983).

Accommodative state projects, by contrast, consolidated their power through

---

3 For example, see Peters and Peters (1998) on how colonial practices disadvantaged women in relation to land tenure in present day Zimbabwe.
bargains that upheld the authority of religious and cultural organizations. These states—including many in the Middle East and North Africa but also former British colonies such as Bangladesh, India, Kenya, Malaysia, Nigeria and Pakistan—institutionalized religious dominion over family law (Williams 2006; Charrad 2001).

Historical legacies of religion-state relations help us understand patterns of cross-national variation in family law. Do they also shape the prospects for change? By affecting the probability of success of different action paths, historical legacies shape the context of contemporary struggles for gender-equitable family law reform. But the past does not determine outcomes. Conjunctural moments can create windows of opportunity that empower the advocates of change and disempower opponents.

This data reveal that a large number of countries—mostly in the West but also Japan and communist countries—entered the period of our study with fairly egalitarian family laws. Ivory Coast and Tanzania had also reformed before 1975. A smaller group underwent major change between 1975 and 2005. Almost all of this change was in the liberalizing direction. Only one country—Iran—became significantly more restrictive as the regime of the Islamic Revolution revoked the gains in women’s rights adopted by the Shah’s government in 1967 and 1975 (Bernardi 1987; Pakizegi 1978). Indonesian laws also backtracked with the introduction of the “Compilation of Islamic Laws” in 1991 (Musawah 2009).

Studying these episodes of change reveals the important role of feminist movements for family law reform. Working in coalition with other reformers, including modernizing officials, lawyers, liberal and socialist politicians, and development practitioners, feminist activism has spurred major changes. Feminist pressure alone does not suffice, however: there must be openings, needs, or elective affinities with the state (Skocpol 1992; Htun 2003). Our qualitative analysis reveals that these moments can come immediately after a transition to democracy, when the state distances itself from religion for other reasons (such as conflict over education and human rights), or when conjunctural events undermine the ability of opponents to prevent reform.

The analysis of this paper proceeds in several stages. After a brief discussion on the nature of family law, we describe its historical evolution in the four legal traditions most pertinent to the global South: Islamic law, multiple legal systems, civil law, and socialist law. Next, we use multivariate regression analysis to assess the relative importance of factors associated with more progressive family laws. This type of technique is better for revealing associations among variables than for specifying the specific causal mechanisms underlying the connections. The third part of the paper thus selects a small number of cases from the change group to show the mechanisms linking enabling conditions to eventual policy changes.

The strong influence of state-religion institutional legacies and religious authority on family law offers a contrast with other areas of women’s rights such as
violence against women, abortion, and parental leave (Weldon 2002; Htun and Weldon 2010; Htun and Weldon 2008). Religion is rarely a factor explaining variation in policies to combat VAW. Instead, countries from diverse cultures and regions made common progress toward reform. Countries with restrictive family laws including India, Bangladesh, and Indonesia have introduced numerous policies to prevent VAW and punish perpetrators. Our work shows that autonomous women’s movements were the primary force responsible for government efforts on VAW. As international and regional agreements began to treat VAW as a question of human rights and encourage state action, these global norms gave an added push to local feminist efforts (Htun and Weldon 2011).

Other policy areas follow a different dynamic. Preliminary analysis suggests that laws on abortion are strongly correlated, not with historical legacies but with contemporary levels of religiosity. What’s more, countries with restrictive policies on abortion may have egalitarian family laws (and vice versa). More and less generous parental leave policies, by contrast, are not associated with religion at all but with fertility levels (as advanced democracies with low birth rates expand social policies to encourage women to have more children) and with the strength of left and labor parties (Htun and Weldon 2010; Htun and Weldon 2011).

Though sex equality in family laws is profoundly conditioned by historical legacies, these do not wholly determine outcomes. Some countries—including Morocco, Turkey, and Botswana—changed legislation virtually overnight, catapulting them from the group of most discriminatory countries to among the least. Feminist mobilization and the formation of reformist alliances can promote change, even in seemingly unfavorable contexts.

What Is Family Law?

By family law, we refer to rules governing the formation of marriage and its dissolution; the respective rights, obligations and capacities of spouses; the relationship between parents and children; marital property; child custody or guardianship; and inheritance.

Legal constructions of the status of women and the family are symbolically important. As Mary Ann Glendon puts it, “the law “tells stories about the culture that helped to shape it and which in turn it helps to shape: stories about who we are, where we came from, and where we are going” (1987, 8). The law is simultaneously interpretive and constitutive. It interprets social reality by summarizing social facts in legal language that can be processed by the courts. At the same time, “legal language and legal concepts...affect ordinary language and the manner in which we perceive reality” (Ibid, 9). This constitutive dimension helps us understand the passions that family law reform evokes.

Family law is perceived to be crucial for the construction and maintenance of cultural identity (Shachar 2008; Okin 1998; Razavi and Jenichen 2010). A central
focus of most human cultures is the provision of explanations for the universal mysteries of life: death, sex, and reproduction. This symbolic interpretation of mating and kinship is one important feature that divides nature from culture and distinguishes humans from other animal species (Benhabib 2002, 84; Levi Strauss 1969). Control of women’s sexuality and reproductive capacity is one way to impose order and meaning on these phenomena. Most contemporary cultural systems endorse male power and dominance over women. Yet this is not natural or inevitable. Many early civilizations practiced ritual worship of female fertility and some condoned male subservience and sexual exploitation.

In many contemporary societies, family law demarcates the membership of cultural communities (Shachar 2001). Through rules governing marriage and birth, it determines who can become a member of the group and who is responsible for maintaining its values and ways of life. Sexuality in general, and women’s sexuality in particular, is a crucial part of this social order: by regulating how, when, and with whom women and men bear children, family law controls entrance into the community. In this way, Shachar notes, family laws “fulfill a task similar to that of citizenship law for a state…. [it] provide[s] the bonds which connect the past to the future, by identifying who is considered part of the tradition” (2001, 45).

Family law also has a distributive function. It allocates rights, responsibilities, and privileges between men and women, parents and children, brothers and sisters, and so forth (Shachar 2001, 54-5). These rules tend to put women at a disadvantage relative to men and perpetuate their dependence on other family members. For example, most legal traditions historically granted husbands greater—if not exclusive—control over common property during (and often after) marriage and limited women’s ability to seek independent work and request divorce. Women, who play such an important role demarcating the boundaries of the cultural community, are the ones most often disabled by its family law.

Historically, family law has been non-state law (Glendon 1989; Charrad 2001). It consisted of rules interpreted and administered by traditional authorities including tribal chiefs, heads of clans, and religious officials. In many countries, large sectors of the population are still governed by non-state family laws, including the customs of their cultural and religious communities.

The state’s assumption of authority over family law has been a crucial part of the state building process, particularly in the poor, weak states created by colonial powers. In much of the world, it is still uneven and incomplete. Bargaining between state leaders on the one hand and religious, tribal elites, and regional elites on the other over the demarcation of legal jurisdiction have often played out on the terrain of family law.

In North Africa, for example, weaker central leaders preserved traditional Islamic family laws to appease clan groups (Morocco) and stronger central leaders broke clan power by secularizing the law in national family codes (Tunisia) (see
In India, Nehru, following British policy, opted not to secularize family law but to preserve separate personal laws for the main religious groups so as to ease Muslim fears about their domination by Hindus in Independent India, particularly after partition (Williams 2006). State elites in Malaysia and Pakistan deployed Islamic symbols and policies in their quest for political hegemony: Islamicization under Mahatir Mohammad and Zia ul-Haq, respectively, paved the way for an unprecedented expansion of state power (Nasr 2001). As this suggests, the codification and preservation of religious and customary family laws can be part of the state building process, as central leaders use family law as a bargaining chip to cultivate broader national loyalties.

At the other extreme lie communist and former communist states. Perhaps no other world historical force was able to impose itself nationwide at the expense of the power of religious authorities and cultural traditions. With the deliberate intention of marginalizing (if not destroying absolutely) religion, pre-modern cultures, and tribal traditions, communist governments adopted secular and egalitarian family laws (Hazard 1939; Berman 1946; Molyneux 1985a; Glendon, Gordon and Osakwe 1985). As our paper shows, this legacy has persisted in the former Soviet bloc and is evident in China, Vietnam, and Cuba.4

Two world historical forces shaped the relations between the state and its sub-national religious and cultural rivals, though in divergent directions. Communism and some transformative nationalist projects oppressed religion and eradicated its authority over family law. As a result, countries with a legacy of communism—or currently under communist rule—tend toward equitable family laws. British colonial rule, by contrast, institutionalized religious dominion over religious and customary laws. This policy forged a symbolic linkage between the public status of a communal group on the one hand and the preservation of a “traditional,” “authentic” vision of its family law on the other. Countries with the experience of British colonialism tend to have more discriminatory policies.

Family law is a barometer of the strength and scope of state power. Some state building projects smashed traditional religions and customs. Other leaders preserved religious and customary family law in bargains to consolidate their power. Both projects used women’s status in family law as an instrument. The goal of state elites was power and position, not an actual improvement in women’s autonomy, dignity, or rights. Official efforts to “emancipate” women were therefore rarely accompanied by moves to create the space for autonomous women’s organizations to formulate and represent their own interests (Kandiyoti 1991b, 13; Molyneux 1985a; Najmabadi 1991, 60-3). States could take rights away quickly depending on what officials determined to be in the nation’s interests.

---

4 In some countries of the former Soviet bloc, there has been a rolling back of liberal abortion laws, as in Poland. Elsewhere reproductive rights have been contested but the outcomes have not been as restrictive. Across these various cases, however, family laws have remained largely preserved.
Though egalitarian family law tends to correlate with greater state control (as opposed to religious control), this does not imply the state is always good for women’s rights. States with democratic polities, free civil societies, and autonomous feminist organizations are preferable to authoritarian states whose interest in women’s rights is driven by other goals or mere convenience. What’s more, state codifications of family law were often as discriminatory as those of a more explicitly religious nature. The Swiss Civil Code and the Turkish Code that copied it—adopted in 1907 and 1926 respectively—were both secular and sexist. Women’s legal status in those countries differed little from the shariah laws codified around the same time in Egypt.

Nor is religion always bad for equality. Religious perspectives on women’s rights vary depending on who is talking on behalf of religion. Is it a small group of old men? Or does the religion and culture honor spaces for reflective deliberation by all participants about its traditions? The correlation between religious control and discriminatory law is more a function of organizational hierarchies and sexism within the religion than innate doctrines or traditions. The interpretation of religious doctrine depends on who is at the helm.

Even in secular contexts, religious ideas and organizations, customary law, and social norms may still be important influences. Religious ideas may be brought to bear through the beliefs of the law makers, political pressure exerted by religious authorities, and threats made by ecclesiastical leaders to politicians. Decades after the state disestablished religion, ecclesiastical authorities—and their counterparts from tribes and cultural communities—continue to exercise a veto over family law reforms.

Though the ecclesiastical veto is commonly taken as a function of church strength, we argue in this paper that it reflects state choices. Religious authorities are only as influential as the state allows them to be. At moments when incentives change—when the state loses the advantage to be had by religious loyalty or increases its bargaining power vis a vis ecclesiastical leaders—changes for reform improve.

Our historical analysis shows that coalitions of reformers in many countries struggled against the weight of religious legacies and the political power of organized religion. Feminist movements, liberal lawyers, and state modernizers—organized against a backdrop of profound social changes brought about by women’s entrance into the labor force, a decline in fertility, and growing education levels—pushed countries toward reform. They tended to succeed when conflict erupted

---

5 The term "secular" is subject to multiple, often competing meanings and interpretations. Here, we take “secular” to mean a formal separation between the state and religion. Later in the paper, we operationalize secular as constitutional disestablishment, though we recognize that there are many other areas (such as public funding for religious education, subsidies for church activities, and so forth) of church-state connection. We do not understand “secular” to mean a decline in religious belief. For discussion see Katznelson and Stedman Jones (2010).
between the state and religious authorities over authoritarian rule, economic policy, and human rights, among other issues. At these moments, ecclesiastical power was weakened and politicians had little incentive to cede to threats. Examples include the middle period of authoritarian rule in Brazil, the aftermath of the transition to democracy in Argentina and Spain, and the early 2000s in Morocco.

Other conflicts have played out on the terrain of family law. In many formerly colonized countries, for example, national elites further reimagined and reinvented indigenous traditions in the wake of decolonization, contrasting them to Western mores. Cultural authorities and entrepreneurial politicians reasserted customary and religious family laws as a nation-building project, often in ways that erased gains in women’s rights. We argue that these processes are more likely to occur in former British territories where colonial codifications encouraged linkages between traditional gender roles and national identity. In such a context, opponents frame efforts to advance women’s rights as unpatriotic (Narayan 1998). Family law reforms in Kenya and Uganda, for example, have been defeated in Parliament by opponents claiming that they assaulted local customs (Casimiro et al 2009; Baraza 2009). The subtle fact that traditions are always contested and multiple is lost in movements equating family law reform with capitulation to Western imperialism (Narayan 1998).

Later in this paper, we systematically test hypotheses about the effects of state-religion legacies, religious strength, feminist movements, democracy, social transformation, and other factors on family law. Now, we offer historical background on the construction of men and women’s roles in different legal traditions.

Legal Traditions Around the World

Table 1 locates countries of the study according to their legal tradition and whether or not the country’s legal order is unitary or multiple. The columns of the table sort countries according to the source of the law, whether religious, civil, common, Nordic (a unique blend of common and civil), or customary. The rows of the table indicate whether the country has a unitary legal order (where the same body of law applies to all—or virtually all—citizens) or a multiple legal system. Under the latter, different family laws apply to people depending on their religion or other factors (such as place of residence or personal choice). Table 2 describes our coding decisions in multiple legal systems.

In the next several sections, we elaborate on the legal traditions affecting the bulk of citizens in the global South: Islamic family law (under the broader category of religious law); multiple legal systems (common in former British colonies, these systems promote the co-existence of religious, customary, and civil and/or common law); civil law; and socialist or communist law. Socialist law is a subset of civil law but merits a separate section since its ideological orientation is distinct and relevant for family matters.
Religious law: Islamic family law

Of the legal traditions considered in this paper, Islam has had the most enduring influence. Most countries with Islamic family law have changed very little since national laws were codified throughout the 20th century (as early as the 1920s in Egypt and as late as 1984 in Algeria). Only one country of our study—Morocco—has thoroughly overhauled its Islamic family law to conform to principles of gender equity. Turkey, also a Muslim-majority country, did not adopt Islamic family law but opted for a European-style civil code modeled on the Swiss Civil Code, inspired by the Napoleonic Code of 1804. This family code, also patriarchal, was significantly modified in 2001. The contemporary situation in most countries with Islamic law is therefore significantly shaped by classical doctrine.6

It is widely believed that women are disadvantaged under shariah provisions on marriage, divorce, inheritance, and other areas. Many scholars argue, however, that the Quran’s rules represented an improvement in women’s status over previous practices. Under the tribal customary law prevalent in ancient Arabia, for example, only male relatives (agnatic heirs) inherited property. Men had an unlimited right to polygamy and unrestricted rights to divorce, with no waiting period (Esposito and DeLong-Bas 2001; Jawad 1998; for a more nuanced perspective highlighting the diversity of social practice prior to Islam, see Ahmed 1992). According to Kabyle customary law—operative among the Berbers of Algeria until the national Family Code was codified in 1984—women had no rights to inheritance and were considered part of a man’s inheritance. The dower paid at the time of marriage belonged to the male guardian and not to the woman. Mothers had practically no custody rights over their children (Charrad 2001, 47).

Quranic family law modified these practices in several respects. Instead of denying women any inheritance, it ordered fixed shares to go to wives, children, and other female relatives. Among these “Quranic heirs,” women received about half the amount of male shares, a discrepancy justified by men’s legal duties to maintain their wives and families. The remainder of the estate would go mostly to male relatives on the male line, so-called “Class 2 agnatic heirs” (Esposito and DeLong-Bas 2001, 37-41). What’s more, women were permitted to own and manage property and to retain control of their personal property even after marriage. The dower—or mahr—was explicitly named as the woman’s property. Intended to safeguard their position in marriage, a portion of the mahr is usually paid at the time of the marriage contract; in the event of divorce, the husband is required to pay the remaining amount to the wife.

---

6 As will be argued below, there are competing views about the nature of classical doctrine, specifically the extent to which the Quran’s principles are modifiable in light of a changing society. (Mir-Hosseni 1999)
Unlike the Roman Catholic tradition, which views marriage as a sacrament, or institution authored by God, Islamic marriage is a contract. The marital bond, in fact, is assumed to be fragile. Far more stable and during are ties among agnates (male kin). The fragility of marriage is evident in the way Islamic law facilitates divorce (at least by the man), separation of property between spouses (in contrast to the community of property characteristic of most civil and common law systems), and polygamy (Charrad 2001, 31-40).

What’s more, marriage is a purely private matter, a contract between families, not a question of public order or responsibility. Until the twentieth century—when laws requiring marriage registration and, later, notification of divorce and additional marriages were adopted—the state had no purview over marriage.

A male guardian (wali) contracts—and consents to—the marriage on behalf of the woman, while men contract their own marriages. A woman need not even be present at the marriage ceremony (Charrad 2001, 33). Though men were permitted to marry women of other religions, women could marry only other Muslims. Under classical Islamic law, men and women reaching puberty were considered eligible for marriage, usually at the age of nine for girls and 12 for boys.

Men and women have distinct rights and obligations. Women are required to obey their husbands, care for children, and maintain the home. A woman who does not fulfill these obligations is considered “disobedient” (nusyuz in Indonesia and Malaysia) and can lawfully be denied maintenance in some countries (Musawah 2009).

Men, in turn, are obliged to support their wives and children financially and to provide the marital home. (In the Hanafi school dominant in the Middle East and South Asia, however, a husband’s failure to maintain was not considered grounds for divorce until 20th century reforms.) Men also have the right to restrict their wives’ activities, such as preventing them from working and going out in public. They are considered the legal guardians of children—a status they retain even after divorce, though mothers are entitled to temporary custody.

Men enjoy far greater rights to divorce. They may divorce their wives by order (talaq), unilaterally and automatically: they do not need any grounds, nor do they need to notify the court. In less frequent (and officially disapproved of) divorces (talaq al-bidah), men can utter an irrevocable declaration of divorce at a single point in time. If a man makes three declarations of divorce, it is final and irrevocable: the couple may not be reconciled or remarried unless the woman marries another man and then divorces him (Esposito and DeLong-Bas 2001, 29-37).

After divorce, men are required to give their wives the remainder of the mahr (dower). Yet remarriage is prohibited until the end of the iddah period (typically
three months). In case the woman was pregnant, *iddah* would help determine parentage. It also offered time for reconciliation (and revocation of an *ahsan* divorce) and payment of maintenance.

Women’s ability to initiate divorce under classical Islamic law is heavily restricted and differs across the four schools. A judicial divorce is available to women under Maliki law (the most liberal), on the grounds of cruelty, desertion, or lack of maintenance. Hanafi law, by contrast, permits the woman to initiate divorce under far more limited circumstances, such as if one spouse renounces Islam or if the husband is unable to consummate the marriage (Esposito and DeLong-Bas 2001, 33-4).

After divorce, mothers have custody rights of boys until age seven and girls until age nine, after which time children are returned to their father (legal guardian) and his relatives. Crucially, whereas women may retain their individual property after divorce, common property—including the marital home—is considered to be the husband’s.

The distributive functions of Islamic family law disadvantage women relative to men. Various provisions, however, are intended to protect them, including the dower (*mahr*), the husband’s legal responsibility to maintain his wife and children, and the waiting period (*iddah*). Women and men had clearly asymmetrical rights and obligations, but the law was not inattentive to the vulnerable situation it placed women in (Agnes 2001; Esposito and DeLong-Bas 2001).

Most modern Muslim countries have codified family law, though late by global standards. Prior to codification, many countries had multiple and overlapping legal systems. Often, colonial authorities tolerated the co-existence of Islamic law, tribal law, and other customary laws in order to divide and rule (Charrad 2001). In this context, the state had little authority over family matters. Marriages were not even required to be legally registered until the 20th century.

Whereas the Napoleonic Code dates from 1804, the first modern codification of Islamic family law was the Ottoman Law of Family Rights, promulgated in 1917. It legislated aspects of family life previously left entirely to religious authorities. The Code instituted civil marriage (by requiring the presence of a special state employee at the ceremony) and banned marriages not based on consent (Kandiyoti 1991b, 36). In addition, it extended to the Hanafi and school what had already been practiced under Maliki law: greater access to divorce for women. Women now had the right to divorce in the event of desertion, incarceration, disease, refusal to pay maintenance, insanity, threat of bodily harm, or continuous strife in the home (Esposito and DeLong-Bas 2001, 51).

The Ottoman Code inspired reforms throughout the Muslim world. Egypt was a pioneer: first through registration requirements and later through bans on child marriage and provisions for women’s protection. In 1897 and later in 1910 Egyptian
laws instructed shariah courts to require written documentation of marriage, divorce, and inheritance claims. Then, in 1923, marriage officials were prohibited from issuing certificates unless brides were 16 and grooms, 18 (Esposito and DeLong-Bas 2001, 49-50). Algeria did not introduce a law requiring marriages to be registered until 1959, as French rule was waning. The same law established a minimum marriage age of 15 for women and 18 for men (Charrad 2001, 137-8).

In 1920 and 1929, Egypt introduced reforms stipulating grounds under which women could sue for divorce. These same laws extended the age of maternal custody to nine for boys and 11 for girls and revised laws on divorce. Talaq al-bidah (irrevocable divorce by triple pronouncement) was rendered ineffective through rules declaring that all divorces were single and revocable. What’s more, a valid divorce had to be intended as such: pronouncements made while intoxicated, in jest, or as threats were no longer valid. (Under Hanafi law, they had been valid.) (Esposito and DeLong-Bas 2001, 50-7).

British India-Pakistan adopted reforms in the 1939 Dissolution of Muslim Marriages Act, though stipulations about lack of maintenance and desertion were not as generous as in Egypt. On the other hand, the grounds for proving cruelty were expansive and included inequitable treatment by husbands who had taken on additional wives (Ibid, 76-8).

Pakistan introduced further reforms after partition. The Muslim Family Laws Ordinance of 1961 (which still applies in Pakistan and Bangladesh) aimed to improve women’s position in various ways. Like in Egypt, they required the written registration of marriage and limited talaq al-bidah by ruling that all divorces were revocable. Divorces were to be processed through an Arbitration Council, required written notice, and were valid only after a ninety-day waiting period. Finally, men wanting to marry additional wives were required to apply and obtain permission from the Council.

Egypt, by contrast, has been unable to restrict polygamy (to this day, court permission is not required for a man to marry again). In 1985, reforms introduced the requirement that a wife be notified if her husband marries again and grants her the right to divorce if she deems herself harmed by the additional marriage. Husbands are also required to give legal notice of divorce to their wives. This seems incredible. How could a wife not know if she was divorced? But in fact, there were cases of husband’s divorcing by talaq without the wife’s knowledge and continuing to live with her, rendering her vulnerable to charges of zina and denying her the right to maintenance.

In addition, men’s traditional right to restrict women to the home was modified in 1985: they were subsequently required to summon their wives to

---

7 Divorces not processed through the arbitration council, however, were still considered valid. Failure to observe legal procedures would incur a light fine or up to one year in prison.
return home via official channels, after which time the wife had 30 days to appeal and recourse to divorce. In 2000, additional reforms granted wives the right to unilateral divorce historically held by men, but under the condition that they forfeit their right to the *mahr*, maintenance during *iddah*, and support for children in her custody.\(^8\)

Iran introduced reforms to expand women’s rights in 1967 and 1975. These were framed as “royal grants,” not the result of women’s lobbying (Najmabadi 1991, 60-2). Under the Family Protection Act (and its revision), women had equal rights to divorce and equal guardianship rights over children. The law also increased women’s freedoms by removing a husband’s right legally to prevent his wife from working (he had to seek such an order from a judge). What’s more, a husband was entitled to maintenance from his wife. These reforms also raised the minimum marriage age to 18 for girls and 20 for boys (Mirvahabi 1975; Pakizegi 1978). The timing of these changes reflected the Shah’s whims and his perceived need to improve the country’s image abroad, though feminists had long been agitating for the changes (Najmabadi 1991, 63-4).

In Malaysia, family law for many Muslims is governed by the Islamic Family Law (Federal Territories) Act of 1984. Under this law, which conforms fairly closely to classical Islamic law, fathers serve as legal guardians of children. In 1999, however, Malaysian civil law governing non-Muslims was modified to grant equal guardianship rights to mothers and fathers. Islamic feminists have lobbied for a similar reform of Muslim family law. In response, the government issued an administrative act granting mothers (as well as fathers) the right to sign a child’s application for school, an identity card, and a passport. This decree softened the edges of the paternal authority upheld in the Shariah.\(^9\)

Overall, these 20\(^{th}\) century codifications and reforms of Islamic family law led to greater public regulation and control of what had previously been seen as private family matters (such as the requirement for marriage registration and the participation of courts and Arbitration Councils in divorce). Reforms raised the minimum marriage age to restrict child marriage and imposed condition on polygamous marriages (while still permitting them). They expanded women’s rights to divorce, most prominently in the event of a failure to provide maintenance and offered them greater protection including access to the dower and maintenance after divorce (Esposito and DeLong-Bas 2001).

---


Reforms granting women greater rights were not uncontested, however. After the Islamic revolution of 1979, several of Iran’s earlier advances were reversed. The minimum marriage age was lowered to nine for girls and 15 for boys. Women’s grounds for divorce were restricted and they lost their right to equal guardianship rights over children (Bernardi 1987).

Later, however, Iran reversed these reversals, but stopped short of granting women equal rights with men. In the early 1990s, parallel to policy changes granting women greater opportunities in employment, equal pay, and family planning, women gained further rights to divorce in the event of hardship and also the right to alimony, signaling compensation for their contributions to marriage (provided they did not initiate divorce and were not at fault) (Moghadam 2002; Women Living Under Muslim Laws 2006, 287). In 1997, a new law required that the amount of the dower (mahr) be indexed to inflation, creating an additional disincentive to husband’s unilateral divorce of women (Women Living Under Muslim Laws 2006, 36). In 2002, women gained rights to initiate divorce proceedings without their husband’s consent (but lacked the unilateral right to divorce enjoyed by men). At around the same time, the minimum marriage age was raised to 13 for women, though courts could offer permission for younger girls to get married. What’s more, a woman’s guardian could authorize a pre-pubescent marriage if he claimed it was in her best interest (Women Living Under Muslim Laws 2006, 127). In 1995, the law was amended to require husbands divorcing their wives to pay a salary compensating for years of unpaid household labor (Women Living Under Muslim Laws 2006, 317).

Processes of Islamicization produced greater restrictions on women’s rights in Indonesia. The Compilation of Islamic Laws, issued by presidential decree in 1991, was designed to unify policies on marriage and divorce for Muslims. It disadvantaged Muslim women in at least two respects over the 1974 Marriage law: women no longer had equal inheritance rights with men and their consent was no longer required to make a marriage valid. Marriage was defined as a contract between the groom and the wife’s father or wali (Musawah 2009, 17).

Pakistan also saw backtracking with the Hudood Ordinances—adopted by General Zia Ul Haq in 1979 following a military coup and part of his Islamicization initiatives. The Ordinances rendered zina--extra-marital sex—an offense against the state (as opposed to individual men), non-compoundable (meaning, the police may continue to prosecute even if the accuser withdraws his/her complaint), nonbailable, and punishable by death. The law conflated two distinct practices—fornication (extra-marital sex) and adultery (illicit sex outside marriage) and also

---


11 The death penalty and other aspects of the Ordinances were widely held to be contrary to Islamic principles and also in violation of Pakistan’s constitution. In a 1981 ruling, the Federal Shariat Court revoked the death penalty as punishment for zina, as the Quran had stipulated that the maximum penalty would be 100 lashes (Khan 2006, 8).
included rape under its rubric, defined as extra-marital sex without consent. As a result, rape victims who were unable to offer adequate proof of coercion ended up being considered guilty of *zina*. Writing in 2006, Khan observed that there had been hundreds of thousands of cases of women accused of *zina* and many sentences to public whippings (2006, 8-9). These injustices were amended only in 2006 under the Women Protection Act which made *zina* impossible to prosecute, though it still remained a crime (Shaheed 2010).

A summary of the main provisions of classical Islamic law and contemporary, reformed versions are presented in Table 3. There are variations across countries, with women enjoying greater and lesser freedoms for divorce, guardianship rights, and rights to maintenance. As the Table shows, most 20th century codifications vary little from classical Islamic family law, though the differences that do exist are important. Modern laws preserve the patriarchal structure of marriage—including men’s responsibilities and women’s obedience, men’s far greater rights to divorce and guardianship over children. However, women have gained greater rights to divorce, to custody of their children, and rights to maintenance and alimony in some countries.

Only one country with Islamic law—Morocco—has overhauled its family code to eliminate most of the disadvantage suffered by women. Morocco’s provisions are summarized in the final column of Table 3. The law remains faithful to Islamic values and traditions while giving women significantly more rights. The reformed *Moudawana* declares that spouses have equal rights and duties in marriage (article 51), men and women have the same rights to initiate divorce, and the minimum marriage age is 18 for both sexes. Though men and women administer their separate property during marriage, common property is managed by agreement (and not by the husband) (article 49). Some inequalities remain: the father is the presumed legal representative and tutor of his children while the mother exercises these rights only if he is absent or incapable (articles 231, 236). What’s more, though the law imposes equality between spouses, it also requires men to pay maintenance for their wives after the marriage has been consummated (article 194).

Contemporary debates about reform are informed by different views of how to interpret classical doctrine. Perspectives of clerics, scholars, and other feminist activists vary on whether or not the Koran, the sunnahs and so forth can be interpreted to endorse modern notions of gender equity (Mir-Hosseni 1999). Reformers argue that the Quran reflects social conditions prevailing in the era of its revelation, that times have changed, and that the doctrine must evolve accordingly. These Islamic feminists search for textual support for women’s rights.

Feminist reformers exercise the right of *itihad* (judicial reasoning), arguing that gender equality promotes the Islamic principle of social justice and community

---

well being (Balchin 2009, 200). Arguments made from within Islam have helped push reforms in Iran that instituted an equal division of property following divorce (provided the wife was not at fault) and also provisions for maintenance based on a wife’s non-monetary contributions to the household (Ibid).

Others, by contrast, claim that the search for theological justification ends up upholding the legitimacy of the Quranic reference point (as opposed to universal human rights standards) as well as the existence of religious states such as the Islamic Republic of Iran. Real emancipation requires secular arguments and institutions that defend rights regardless of religion (Moghadam 2002, 40).

Since the 1980s, women’s demands for family law reform have gained momentum in the Muslim world. Concepts like gender equality and human rights have become normalized. Even Islamist parties feel compelled to explain how their positions will advance women’s rights (Balchin 2009, 213).

Multiple Legal Systems

Several countries of our study have multiple legal systems. This means that parallel systems of law coexist, even though their rules vary and may even contradict one another. As Table 1 shows, all are former British colonies. Yet legal pluralism is more than a legacy of colonialism. It can also be the product of post-conflict processes of reconstruction, including attempts to forge a new social contract between state and citizens (as in South Africa) (ICHRP 2009). In addition, several advanced democracies with culturally diverse populations tolerate a degree of legal pluralism as a way to protect cultural group rights (Benhabib 2002; Shachar 2001; Song 2007; Okin 1989).

Historically, multiple legal orders were tolerated—and even encouraged—by states seeking to hold onto power and avoid conflict. The Mughal and Ottoman empires permitted minority groups to retain their own laws and religion in exchange for paying tribute (ICHRP 2009, 7). British colonial policies of indirect rule in Africa enhanced the power of traditional, local authorities to administer local laws (Lugard 1965). In many instances, they reified what had been fluid and variable social norms and practices by inscribing oral languages, codifying customs, and introducing categorical ethnic distinctions (Vail 1989; Ranger 1983).

British policy on family law was developed in South Asia and later extended to colonies in Africa. This approach rested on the principle of “non-interference” in the personal laws of the so-called Hindu and Muslim religious communities, at least when it came to marriage, divorce, guardianship, inheritance, and so forth. As Warren Hastings, then Governor-General of India, put it in 1772: “the laws of the Koran with respect to the Mussalmans, and those of the Shasters with respect to the Hindoos, shall be invariably be adhered to” (quoted in Williams 2006, 6). Even after Independence, the government of India—along with its counterparts in Kenya and
Nigeria—chose to continue the “non-interference” policy and upheld the religious personal laws that had been codified under colonial rule.

“Non-interference,” however, was a policy that was politically and selectively interpreted, if not a misnomer altogether. By codifying and applying religious personal laws, the British transformed—if not outright invented—not just the laws but also the communities. Hindus and Muslims had been internally diverse and overlapping categories, not distinct communities. What’s more, many practiced local customary laws—some of which were more advantageous to women—instead of Hindu or Muslim religious law (Williams 2006). Legal codification—which the colonial government justified on the grounds of administrative rationalization—also tied religious identity to the fate of family law, a move that produced long lasting consequences for Indian politics.

The Muslim personal laws codified in the 1930s—including the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939—were largely faithful to classical texts that upheld male prerogatives in marriage and divorce, property, and guardianship, while enhancing women’s dependence and vulnerability. The Acts aimed to unify diverse practices and build a stronger sense of pan-Muslim identity. Abrogating local customs and practices that had denied inheritance rights to women, the Acts extended Maliki teachings on divorce to women previously governed by Hanafi law. The purpose, however, was less to expand women’s divorce rights then to prevent Muslim women from converting to other religions in order to obtain a divorce (Williams 2006, 85-8).

Codification of Hindu law began under the British but, due to debate and opposition, was concluded only after Independence. A committee of experts appointed by the government formulated the original version, which represented a progressive change over most existing law. Hindu personal laws had varied across region, caste, and over time, and parts of the country even upheld matriarchal systems. Women’s rights to property, inheritance, and guardianship therefore varied from place to place, as did the possibilities for divorce and customs like dowry. Among upper-caste Hindus, the bride provided a dowry upon marriage; among lower classes, the groom supplied it (Ray 1952, 270-1). The government proposed to unify these diverse practices in a Code that granted women equal inheritance and property rights, abolished polygamy, and permitted divorce, even among upper-caste Hindus.

---

13 As Olsen has persuasively argued, the state is always and inevitably intervening in the family (1985).
14 Codification occurred rather late in the colonial period, with initial attempts in the 1920s but and formal codes approved for Muslims and Hindus in the 1930s and 1940s, respectively. Criminal laws, civil laws, and laws on criminal and civil procedure had been codified during the 19th century, but the non-interference principle, combined with a lack of demand from Hindu leaders, delayed codification of personal laws until the 20th century.

18
After Independence, the cause of the Hindu Code Bills was assumed by Dr. Babasaheb Ambedkar, the first Minister of Law, and strongly supported by Prime Minister Nehru. Yet proposals to grant women greater rights—especially equal inheritance rights—provoked considerable controversy. Ambedkar eventually resigned as minister out of frustration over what he perceived was the government’s unwillingness to confront the opposition and force the bills through (Williams 2006, 104-5). Hindu conservatives opposed provisions on divorce, to changes in the joint family property system that would give daughters more inheritance rights, to the granting of greater property rights to widows, among others. Eventually adopted in 1955 and 1956, the Hindu Code represented significant progress over earlier law but was a watered down version of what had been proposed by Ambedkar. Women still faced discrimination with respect to inheritance and agricultural land was excluded from the purview of the Code’s terms on succession (Williams 2006, chapter 4).

Adoption of the Hindu Code Bills—which departed in significant ways from prevailing laws and customs—demonstrated that Congress party governments were more willing to interfere in Hindu than in Muslim personal laws (Hasan 2010). This trend continued as the Hindu Succession Act was significantly modified in 2005. Academics, feminist activists, and civil society organizations worked with members of parliament to see that agricultural land was brought within the purview of inheritance regulations, daughters were made co-partners in family property and gained rights to the family home, and widows gained greater inheritance rights (Agarwal 2005).

Indian government policy toward Muslim personal laws has followed the opposite trajectory: resistance to reform. The courts had introduced piecemeal modifications in favor of women, principally by applying the colonial-era Code of Criminal Procedure to compel husbands to pay maintenance to destitute ex-wives. In its famous Shah Bano ruling in 1985, the Supreme Court upheld this practice. Conservative politicians objected, claiming that Muslim personal law required husbands to pay maintenance only during the iddah period; afterward, the obligation to support destitute women belonged to their children, fathers, siblings, and so forth (Williams 2006, chapter 5). The Congress party government capitulated to these demands for adherence to the “non-interference” policy and instructed its deputies to support the “Muslim Women’s (Protection of Rights on Divorce) Bill,” which rejected Shah Bano in favor of the more limited interpretation of the ex-husband’s obligations. Subsequently, the Hindu nationalist BJP was able to capitalize on what it called the government’s capitulation to “minority” religious opinion (Hasan 2010, 943-4). India continues to uphold different personal laws as a constitutional mandate to adopt a Uniform Civil Code governing all Indians has proven extraordinarily controversial. Secular feminists oppose a Uniform Civil Code

---

15 The Code included the Hindu Marriage and Divorce Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act.
due to its association with the Hindu nationalism. They have opted to pursue reforms within each of the distinct family law traditions and realized some success with reforms to the Hindu Succession Act in 2005, described above.

The experience of British colonialism produced similar effects in Southeast Asia, the Middle East, and sub-Saharan Africa. In Malaysia, colonial authorities granted Malay sultans relative autonomy over religious and cultural matters, including laws of personal status to gain their allegiance to the state. As in India, British policy tended to invent religious doctrine in the face of diverse and fluid customary practices. As Hussin notes, “The matriarchal laws of the Minangkabau of West Sumatra began to be replaced by more patriarchal adat temenggong, and British interpretations of Islamic law from India came to be accepted legal practice for some areas of Malay religion and custom: marriage and divorce, for example” (2007, 779).

Israel, another former British colony, upholds multiple legal systems. Following practices under the Ottoman empire, British rulers in Palestine recognized the rights of different cultural groups to apply their respective family laws. This legacy persists today. Rules on marriage, divorce and support are determined by the religious affiliation of the parties involved. Orthodox Jewish law—hardly egalitarian—thus applies to the majority population. Though feminists have campaigned for reforms promoting gender equality, opposition from religious parties renders “change in the near future...inconceivable. The maintenance of religious law in matters of marriage and divorce is still considered a basic tenet in the Israeli polity in general and in the delicate construction of Jewish identity in particular” (Halperin Kaddari 2003: 228).

With the exception of Tanzania, which applies a uniform family law incorporating principles of statutory, customary, and shariah law, sub-Saharan African polities formerly under British rule maintain multiple legal systems. In Botswana, customary law is a parallel legal system to statutory law (modeled largely on South African law) and forms the “framework of norms within which the large majority of the people of Botswana think and act” (Garey and Townsend 1996, 191).

Nigeria upholds a tri-partite legal system, the complexity of which is exacerbated by its federal structure. First, Nigeria has a body of statutory law inherited from the British that applies to family issues. Marriage and divorce are governed by the 1914 Marriage Act and the 1970 Matrimonial Causes Act which largely emulated the 1968 and 1969 divorce reforms adopted in Australia and the U.K., respectively. Second are the multiple and diverse sets of laws respected by different ethnic groups, regions, and even villages. Largely uncodified, customary law is still upheld in court. Finally, Islamic law is widely applied in the North. These three bodies of law differ, particularly when it comes to divorce. Conflicts occur since marriages under both customary and statutory law are common (Rahmatian 1996).
Statutory law permits only monogamous marriages between men and women based on consent. Provisions for divorce, the rights and responsibilities of spouses, rules on maintenance and custody, are largely similar to those of Anglo-American common law. Customary law, by contrast, is more similar to Islamic law in several respects, though internally variable. As in Islamic law, the marriage contract is usually concluded between two families and the bride’s consent is often not necessary. The husband’s family pays the wife’s family a bride price (as opposed to Islamic law, when the dower is paid to the woman herself). Upon divorce, the bride price must be repaid. Divorce is most commonly arbitrated by family members—with marital breakdown the most frequent reason—but can also be processed through the courts. Women have no right to maintenance under customary law and custody is usually held by the father (Rahmatian 1996).

Nigeria has made few changes to family law. An exception is the Child Rights Act, adopted in 2003, established a minimum marriage age of 18 for both sexes and made it a criminal offense for a husband to consummate a marriage with a girl under 18, equating the act with rape. It also introduced equal inheritance rights for male and female children. These provisions challenge classical Islamic law’s provisions on marital eligibility and inheritance. The President of the Supreme Council for Sharia in Nigeria claimed that the Act amounts to “a conspiracy against Islam...and a direct attack on Islam and...no Muslim will obey this law. It doesn’t matter who passes it” (quoted in Toyo 2006, 1309).

But the country’s political institutions make the Act extremely difficult to implement. Under the prevailing interpretation of the federal constitution, national laws in some areas, including areas of concern to women and children, may be passed but state legislatures must adopt similar legislation in order to take effect there. As of 2005, only four states had passed child rights laws, though twenty more were considering it and 12 had not responded at all (Toyo 2006).

What’s more, the extension of shariah jurisdiction beyond family to criminal law in 12 northern states, has led to further abuses of women’s rights. The emphasis in these states has been on criminal punishment for alcohol, theft, and zina (extra marital sex). As in Pakistan, victims unable to prove rape (which requires a confession from the rapist and two male witnesses) are considered to be guilty of zina. What’s more, under the Maliki law applied in Nigeria, pregnancy outside of marriage constitutes prima facie evidence of zina. While men have been able to practice “transgressive” sexuality with impunity, the brunt of criminal punishment has been borne by women (Pereira and Ibrahim 2010). In 2001, for example, a teenage girl was sentenced to 100 strokes of a cane for giving birth to a baby outside of marriage (Amnesty International 2006).

Kenya has four different family law regimes: customary law, the Hindu Marriage and Divorce Act, the Mohammedan Marriage and Divorce Act, and the Marriage Act (governing people who choose to marry under statutory law, regardless of their religious background). After Independence, the government
attempted to unify these multiple laws dating from British rule. It appointed a Commission on the Law of Marriage and Divorce in 1967, which presented its recommendation in 1968. However, the proposal was repeatedly defeated in parliament for being too Western and un-African and giving too many rights to women. Though it failed in Kenya, the proposal was adopted virtually verbatim in Tanzania in 1971 (Baraza 2009; Rahmatian 1996, 297).

The only change Kenya has made to its family laws has been to the law of succession, dating from 1981. The government made another attempt at unification in the 1990s, which also failed. In the late 2000s, parliament was considering three bills on Marriage, Family Property, and Matrimonial Property but as of this writing in early 2011, had not yet approved them. Because of this legal paralysis, Kenya continues to apply antiquated laws. In the area of marital property, for example, courts use the Married Women’s Property Act, an English statute from 1882! (Baraza 2009, 11).

The Tanzanian marriage law—unique among British colonies for unifying various religious, customary, and statutory laws—permits marriage to be either monogamous or polygamous if both spouses agree. Marriage may be religious but has to be registered with civil authorities. Divorce must be processed through the courts and requires a waiting period and attempts at reconciliation, except for divorce by *talaq*, which the law accepts as valid. Elsewhere, it conforms to common law principles by giving women equal custody rights as well as rights to maintenance and prescribing that the division of property after divorce take into account the wife’s nonmonetary contributions (Rahmatian 1996).

South Africa and Botswana uphold parallel legal systems of customary and statutory law but have introduced extensive reforms to the latter to promote gender equity. The South African Marital Property Act of 1984 largely abolished the institution of marital power and the male prerogatives it upheld. (Botswana followed suit with the Abolition of Marital Power Act of 2004.) The Constitution of 1996 endorses sex equality and a range of women’s rights. It recognizes customary law (as did the Recognition of Customary Marriages Act of 1998), but renders its provisions subject to constitutional norms, including the clause on sex equality. Muslim marriages, however, are not recognized by law. In the 2000s, parliament considered a Muslim marriage bill which codified classical rules on divorce, maintenance during *iddah*, etc. but was criticized by feminists and human rights advocates (Manjoo 2007).

Other sub-Saharan African countries, including Ivory Coast and Senegal (both former French colonies) have unified family laws modeled on the civil law tradition, to which we now turn.

**Civil Law**
Based on Roman law, civil law is the most widely used system in the world. The Napoleonic Code, promulgated in 1804, was extremely influential for family law as it was copied and adopted in continental Europe and Latin America. The German and Civil Code, adopted in 1900, was shaped by the Napoleonic Code but had a different structure and was far more detailed. It, in turn, influenced the codes in Japan, Korea, and China. Moves for reform in favor of gender equality began in the late 19th century, but many countries remained faithful to both Codes’ patriarchal provisions until the mid- to late 20th century. The first part of this discussion focuses on the Napoleonic Code, though significant differences with the German Code are noted.

Like Islamic family law, the Napoleonic Code disadvantaged women relative to men. Article 213 states: “The husband owes protection to his wife, the wife obedience to her husband.” This means that “The wife is obliged to live with her husband, and to follow him to every place where he may judge it convenient to reside: the husband is obliged to receive her, and to furnish her with every thing necessary for the wants of life, according to his means and station” (article 214). Even if she is a “trader” or has separate property, a wife cannot plead in her own name or give, sell, acquire, or any property (articles 215 and 217). The German Code gave the husband similar prerogatives, though it did not contain an explicit clause about obedience, opting instead to compel both spouses to “live together in a matrimonial community of life” (quoted in Glendon 1989, 91).

As Vogel describes, these articles reflect the concepts of male power (puissance) and female incompetence (incapacité) upheld by the Code. Puissance refers to the husband’s control over the person, property, and activities of his wife. It enables him to monitor her friendships and correspondence, prevent her from working, deny her a passport, fix the marital home, and manage her property. As Napoleon himself described: “The husband shall have the right to say to his wife: ‘Madame, you will not go out today; Madame, you will not visit the theater; Madame, you will not visit this person; in short, Madame you are mine with body and soul’” (quoted in Vogel 1998, 34).

The wife’s incapacité implied that she was unable to engage in legally valid transactions without her husband’s authorization on a case-by-case basis. What’s more, all property she had entering marriage was lumped together as common property and managed by the husband, though wives were entitled to an equal share of marital assets upon dissolution of the marriage (where and when permitted; most Catholic countries in Europe and Latin America did not permit divorce until the mid- to late-twentieth century). Women could not sell, trade, or lease this property without the husband’s authorization (the reverse was not true).

---

16 The Code represented “twenty two years of careful study and research by the most eminent German jurists” and has been called “the most carefully considered statement of a nation’s laws that the world has ever seen” (Wang 1907, v).
As in shariah, fathers had guardianship rights over minor children. Unlike shariah, however, mothers could become guardians in the event of a father’s death. These rights were not absolute: a father could appoint a special council to share guardianship rights with the mother. What’s more, if a woman remarried, the law required convocation of a family council to decide whether she could retain guardianship rights (Code Napoleon, articles 389-396).

The Code sets the minimum ages of marriage at 15 for women and 18 for men. Unlike shariah, it requires the consent of both parties to the marriage and additionally requires parental consent if spouses are less than 21 and 25 years old (Code Napoleon, articles 144-148). Marriages must be performed publicly, before a civil official (article 165).

Divorce is permitted by mutual consent, bad conduct, imprisonment, or adultery. The notion of adultery, however, differs for women and men (a discrepancy that proved enduringly influential). A man may demand divorce if his wife commits adultery but a woman has grounds to terminate the marriage only if the man brings his concubine to live in the family home (articles 229-233). As this suggests, French civil law was similar to shariah in permitting polygamy, as long as it was not formalized and places of residence were kept separate. Women have rights to alimony and guardianship of children after divorce unless they are the guilty party.

Family law in most civil law countries has undergone profound transformation since the original Code but the process has not been uniform. Some countries changed earlier while others held on to the famous clause on the husband’s protection and wife’s obedience until 1989 (Chile). Some countries legalized divorce in the late 19th century; others waited until the middle to end of the 20th (Italy, Spain, Portugal, Brazil, Argentina, Colombia) and even the first decade of the 21st (Chile). The rate and scope of change also varied. The reasons for these differences are explored in the following sections of this paper. The rest of this section briefly summarizes the nature of these changes so that their import can be fully appreciated.

The first set of widespread changes concerned the property rights of married women. Married Women’s Property Acts, passed in the late 19th century in Europe—and incorporated into the German Civil Code of 1900—and early 20th century in Latin America, kept the wife’s earned income separate from the pool of common property managed by the husband and granted her full control over it. Reforms in the southern cone of South America also allowed couples to opt for separation of property regimes, common in Islamic law (Htun 2003, 48-9). In 1887, Costa Rica became the first Latin American country to adopt separation of property as the default marital property regime (Deere and León 2001, 51).

The next set of changes involved granting married women full civil capacity and revoking clauses obliging them to obey their husbands. In Mexico and some
Central American countries, reforms around the turn of the 20th century granted married women full civil capacity and changed rhetorical images of marriage, though some, such as El Salvador, opted to retain the obedience clause (Deere and León 2001, 41-4). Elsewhere, these changes came about only in the mid-20th century. In France, the obedience clause was deleted in 1938 but the wife had to seek her husband’s permission to work until 1965 and the law called him the “head of the family” until 1970 (Glendon 1989, 89). Brazilian law upheld the man as the head of the household until the civil code was reformed in 2001, following 25 years of feminist agitation for change (Htun 2003, 127-32); similar reforms were adopted in Colombia in 1974 (Deere and León 2001, 43). Germany reformed patriarchal provisions of its code in 1957 but women did not gain equal rights to work outside the home until the Social Democratic Marriage Law of 1976, which declared that “the spouses will conduct the running of the household by mutual agreement” and “both spouses have the right to be employed” (Glendon 1989, 92-3).

Some countries made these changes as part of a big package that also included granting wives equal control over common marital property and reforms to the system of parental authority (equal guardianship rights for mothers and fathers): Spain in 1981, Peru and Switzerland in 1984, Korea in 1990 (Deere and León 2001, 43; Valiente 1996; Annual Review of Population Law 1985). Elsewhere, reforms were adopted on a piecemeal basis. Marital property reforms were intended to accommodate competing principles of individual rights, sharing between spouses, and compensation for unpaid household work. In Latin America, several countries, including Brazil, Mexico, Colombia adopted versions of the “deferred community” and “participation in earnings” regimes prevalent in Nordic countries and in Germany. Under these systems, husband and wife administer their separate property during marriage. If the marriage is terminated, however, common property—and sometimes just the increase in the monetary value of their estates during marriage—is pooled and split evenly\(^\text{17}\) (Glendon 1989, 132-4; Htun 2003; Deere and León 2001). In addition, mothers were granted equal guardianship rights with fathers in Argentina in 1985 (after forty years of feminist activism on the issue)\(^\text{18}\) and in Chile in 1998 (Htun 2003).

Finally, divorce. As described earlier, Islamic law always permitted divorce but terms of divorce disadvantaged women, if not denied to them altogether. In many civil law countries, especially Catholic ones, divorce was not legally available until the mid- to late-20th century, with some exceptions. Though the Napoleonic Code permitted divorce in the wake of its legalization during the French Revolution, indissoluble marriage was reinstated in France in 1816. In 1884, the Loi Naquet re-legalized divorce. In Latin America, Mexico legalized divorce in 1917 after the

\(^{17}\) Deferred community was introduced in Argentina in 1968 and Brazil in 1977; participation in earnings as an alternative property regime in Chile in 1994. In 2010, Chile’s default regime was still the community property managed by the husband (Htun 2003).

\(^{18}\) The Argentine Congress had approved a law for equal parental rights in 1975 but it was vetoed by President Isabel Perón
Revolution and Uruguay in 1907, during liberal rule. Other countries—including Costa Rica—permitted legal divorce at an early stage.

Elsewhere, the civil law upheld the Roman Catholic principle that marriage was indissoluble and precluded legal divorce. In Brazil, even the Constitution contained a clause defining marriage as indissoluble. The principal challenge for liberal reformers was to challenge the political authority of Catholic bishops in order to render divorce legally available. Partisans of divorce struggled for decades, tending to succeed when conflicts erupted between Roman Catholic bishops and the state over authoritarian rule, control of education, human rights, and other issues (Htun 2003, chapter four). Once this occurred, the divorce laws adopted—in Italy in 1970, Brazil and Portugal in 1977, Spain in 1981, Argentina in 1987, Colombia and Paraguay in 1991—were generally egalitarian in their provisions about grounds, property division, and child custody, though not all permitted divorce by mutual consent.19

Korea and Japan deserve special mention, since their laws were shaped by customary norms as well as European influences. Japan’s Meiji-era civil code (modeled on the Napoleonic Code), adopted in 1898, was patriarchal and upheld the power and prerogatives of the male head of the house (ie). Departing from the French Code and conforming to customs during the Edo period (1600-1868), however, the Code permitted easy divorce. Couples could merely inform the civil registry official that they had divorced; processing through the court was not necessary. (The courts would, however, process contested divorces.) (Fuess 2004). The Meiji Code lacked provisions on division of property and alimony after divorce and allowed parents to establish their own custody arrangements (while stipulating that the father’s word would prevail in a disagreement). It preserved the control of families over marriage by requiring parental (or ancestral) consent for women and men marrying under the ages of 25 and 30, respectively (Ibid, 115-7).

Japanese law was overhauled during the U.S. occupation. The Civil Code was reformed in light of the 1947 constitution, which upheld principles of sex equality in the family and society at large. It aimed to shift power from the ie and toward the equitable marital relationship. The “New Civil Code,” adopted in 1948 thus promoted women’s equal rights to property, parenting, and activities outside of the home. But it retained the customary and Meiji-era provisions on private, consensual divorce, requiring only that spouses inform the staff—orally or in writing—at the

19 Divorce in several countries was legalized, banned, and then re-legalized over the course of the twentieth century, following changes in political regime more or less close to the Roman Catholic Church. Portugal, for example, legalized divorce in 1910, but then restricted the practice to non-Catholics in 1940 under a concordat with the Vatican. In 1966, mutual consent was removed as a ground for non-Catholic divorce. The overthrow of Salazar in 1974 led to a revision of the concordat and divorce was legalized for all citizens in 1977. In Spain, divorce was legal during the 1930s, banned under the Franco regime, and then made legal again after the transition to democracy. Argentina enjoyed legal divorce during a brief period of Peronist rule during the 1950s; it was banned following a military coup in 1956 (Phillips 1991, 121-2; Htun 2003, 95-6).
local government office that they are divorcing (Schmidt 2005; Fuess 2004, 146-8). Unlike other advanced economies in Europe and North America, Japan never experienced a revolution in divorce law: policies on divorce have remained remarkably stable over hundreds of years and rates have actually declined (Fuess 2004).

One area of gender disadvantage that persisted into the 21st century in Japan concerned the marital name. The civil code requires that couples assume a common marital name. In 98 percent of cases this is the husband’s (Schmidt 2005). Women are required to use their marital name on all official documents (drivers license, ID card, health insurance cards, etc.) (Gelb 2003). The rationale for this comes from the civil registration system (koseki) that lists all citizens (and residents) by household. Every household has a family head which is usually the man (Mackie 2003, 130). When Mala Htun lived in Japan in 2006 and 2007, her national ID card specified her husband’s name as “householder.”

A comparable situation exists in Germany, where the law before 1976 required that couples assume the husband’s name after marriage. After the Social Democratic Marriage Law of 1976, couples still had to have a common name and unless they specified otherwise, it would default to the husband’s (Glendon 1989).

In Korea, gender-equitable changes came much later than in Japan. The Korean Code was influenced by the German Code but also by local, Confucian customs. Like the Napoleonic and German codes, as well as Islamic law, it designated the man as the head of the family and stipulated that other members owe him obedience. Fathers held guardianship rights over children, even if mothers held temporary custody after divorce and only innocent wives could claim maintenance from former spouses. Unlike the European laws, and more in line with Islamic (and classical Hindu) practice, women had fewer inheritance rights than men. Married daughters received one-quarter the share of men of equivalent rank. What’s more, the law prohibited people from marrying someone with the same last name (Cho 1995). A major civil code reform in 1990 changed these provisions, but men continued to be considered head of household. In 1997, the Constitutional Court ruled the marriage ban unconstitutional; a law to amend the Code—which banned marriage only between relatives—came into effect in 2005.20

Table 4 summarizes the main differences between the Napoleonic Code of 1804 and the situation in most civil law countries after mid- to late-20th century reforms. As the Table makes clear, the changes have been dramatic. Patriarchal and discriminatory laws were largely replaced by norms endorsing gender equity.

**Socialist/Communist Law**

---

Socialist theory endorsed equality within the family and the termination of religious influence over family law and society in general. Alexandra Kollontai called in 1909 for “No more inequality within the family,” maintaining that “The woman in communist society no longer depends upon her husband but on her work. It is not in her husband but in her capacity for work that she will find support” (1977).

Why did socialists champion women’s rights in the family? In addition to the theoretical connections between private property, capitalism, and women’s subordination identified by Engels, liberating women was an instrument to achieve broader ends, such as increasing the size, quality and skill of the labor force; modernizing the rural economy; and transforming the family into a unit of socialization to the new order (Molyneux 1985a, 53; see also Molyneux 1985b, 245-6). When women’s rights conflicted with other goals such as economic and population growth, the latter won out, evinced by the Stalinist decree banning abortion in 1936.

The Soviet decrees on marriage and divorce of 1917 and the Family Code of 1918 were designed to produce a sharp break with the religious principles guiding pre-revolutionary family law. The Soviet’s primary aim was to reduce the influence of the Eastern Orthodox Church. Marriages had to be registered with the state: religious marriages were no longer valid (Hazard 1939, 225-6). These early laws banned polygamy, introduced equality between the spouses and between parents, made divorce easy to obtain, and eliminated the stigma of illegitimacy. The laws aimed “to deliver the woman from her traditional legal disabilities and to emancipate her from all subservience to her husband” (Berman 1946, 39, 48).

The Soviet decrees on marriage and divorce of 1917 and the Family Code of 1918 were designed to produce a sharp break with the religious principles guiding pre-revolutionary family law. The Soviet’s primary aim was to reduce the influence of the Eastern Orthodox Church. Marriages had to be registered with the state: religious marriages were no longer valid (Hazard 1939, 225-6). These early laws banned polygamy, introduced equality between the spouses and between parents, made divorce easy to obtain, and eliminated the stigma of illegitimacy. The laws aimed “to deliver the woman from her traditional legal disabilities and to emancipate her from all subservience to her husband” (Berman 1946, 39, 48).

The Russian Family Code of 192621 further relegated marriage and divorce to the sphere of private agreement, with only a minimal role for the courts and the state (Ibid, 40). Private agreement, however, did not mean religious. Similar to the situation in Japan, divorce had merely to be recorded at the civil registry, whether by mutual consent or at the petition of one spouse. Only conflict over the division of property and child custody had to be processed through the courts (Hazard 1939, 238-9).

Also notable was the recognition of (common law marriage) rights. (Hazard 1939, 229). And in a precursor to communist China’s requirement of medical exams prior to marriage, the 1926 Family Code required each spouse to be properly informed of the other’s health, especially venereal diseases, tuberculosis, and mental health (Ibid, 232). Note that U.S. states had similar provisions, including bans on marriage to people with diseases.

Some legal changes in the 1930s and 1940s—dramatically including the ban on abortion in 1936—amended these earlier liberal provisions, for example, by

---

21 The constitution of the Soviet Union of 1924 had vested the right to formulate family law with each republic. Most followed the spirit of the Russian Code.
imposing some restrictions on divorce, including the requirement of spousal summons (Hazard 1939, 239; Berman 1946, 41). These reforms were motivated by a plummeting birth rate and delinquency in payment of child support and included, in addition to the abortion ban, state allowances paid upon the birth of third (and subsequent) children and improvements to social services for women and children. Rhetorical emphasis was shifted from women as equals to men to women as mothers. However, the key principles of the 1917 reforms, including monogamy, lifelong marriage, equality of husband and wife, and protection of illegitimate children—endured.

Communist states of the global South also introduced egalitarian family laws. Codes adopted in North Korea in 1946, China in 1950, North Vietnam in 1959, South Yemen in 1974 and Cuba in 1975 shared similar features: they introduced the principle of formal legal equality between spouses and eliminated religious or traditional practices associated with the old order (Molyneux 1985a, 48-9). See Table 5 for a comparison of the early Soviet family codes with more recent laws in other countries.

The Chinese Marriage Law of 1950 was intended to produce a radical break with traditional, Confucian family traditions and the social order they upheld. The law’s inspirations, however, had been brewing for decades. Intellectuals and nationalists of the May Fourth movement of the late 1910s and early 1920s had offered profound critiques of the traditional family system, especially the ways it oppressed and dehumanized women (Johnson 1983, 28-9). Meanwhile, the immense suffering of peasants in the first decades of the 20th century—brought about by starvation, migration, warlordism, and civil war—broke families apart at the same time that it made traditional family forms seem more desirable. Resolving this contradiction proved a challenge to the Communist Party in the aftermath of the new Law (Ibid).

The first article of the 1950 Marriage Law states that “the feudal marriage system based on arbitrary and compulsory arrangement and the supremacy of man over woman, and in disregard for the interests of the children, is abolished. The new democratic marriage system, which is based on free choice of partners, on monogamy, on equal rights for both sexes, and of the protection of the lawful interests of women and children, is put into effect” (cited in Johnson 1983, 225). The law states that “husband and wife are companions living together and enjoy equal status in the home” (article 7). Both have equal rights to work and to engage in social activities outside the home; to possession and management of family property; to use their own name; and to inherit (articles 9-12). Divorce is granted “when husband and wife both desire it;” in the event of disagreement, the local people’s government can grant the divorce after attempts at reconciliation have failed. Issues of custody and division of property are subject to agreement between the spouses or court decision, taking the wife and children’s interests into account.
Vietnam’s Marriage and Family Law of 1959 had similar features. It banned forced marriages, child marriages, and polygamy and introduced equality between men and women in rights, obligations, property, and parenting. The law also recognized household labor as productive labor relevant to the division of property in the event of divorce (article 29).\footnote{The text of the 1959 law (in Vietnamese) is available at the National Assembly’s website: http://www.na.gov.vn/sach_qh/vkqhtoantap_1/nam1959/1959_18.html. Date accessed: March 4, 2011.} In a precocious move for a socialist society, article 3 also bans wife beating and abuse. China’s marriage laws did not recognize the problem of domestic violence until 2001 (Woo 2003; Htun interviews in Shanghai in 2007).

Cuba’s Family Code, adopted in 1975, conforms to communist traditions of equal rights. The Code offers detailed descriptions of the duties of spouses in marriage and parenting, stating that: “both partners must care for the family they have created and must cooperate with each other in the education, upbringing and guidance of the children according to the principles of socialist morality. They must participate, to the extent of their capacity or possibilities, in the running of the home.” As this suggests, even men who work outside the home are encouraged to contribute to housework. Parents jointly exercise parental power and spouses are equal executors of marital property. What’s more, the code avoids gendered language, opting instead to refer to spouses, parents, guardians and providers (Htun 2007).

Lest readers run out to champion socialist achievements for women’s rights, it is important to recognize that sex equality was not a feature of all spheres of life. With the exception of the Vietnamese law mentioned above, male socialist leaders generally refused to acknowledge the reality of male dominance in the family and of problems of domestic and sexual violence. Men defined national priorities according to their needs and rarely women’s. Occupational segregation by sex, wage gaps, high rates of divorce and abortion, and a persistent sexual division of labor disadvantaged women in most socialist states (Molyneux 1985a, 51). Htun-Weldon data on policies on violence against women (VAW) show that communist and post-communist countries on average perform more poorly than other countries. In the Latin American region, for example, Cuba lags far behind the rest of the region in the adoption of policies to prevent and punish VAW (Htun and Piscopo 2010).

**Data and Descriptive Statistics**

Our family law index attempts to capture these variations among different legal traditions, countries, and time periods. Table 6 identifies the components of the index. Each variable is dichotomous (0,1) to indicate whether or not the provision in question disadvantages women or promotes equal rights. The maximum score if 13, indicating that a country’s family laws are fully in line with sex
equality principles. The minimum score is zero, implying that a country discriminates against women in every respect.

Note that our index does not capture some important changes. It is a blunt measure, capturing only big changes that grant women equal rights with men. Yet some countries have made important advances in women’s rights that still stop short of sex equality. Egypt and Iran, for example, have made significant moves to expand women’s rights to divorce but have not revoked men’s historic and classical rights to *talaq* (divorce by order).

The index does not include information about post-divorce alimony and maintenance for women. This reflects our (and general scholarly) ambivalence about the implications of protective legislation for women’s equal rights. On the one hand, these provisions advance women’s *de facto* status by reducing their vulnerability. On the other, their mere existence may reinforce the idea—and the practice—of women’s dependency. Most gender equitable legislation makes support provisions gender neutral and judges determine the need for support on a case-by-case basis. Yet this approach may not do enough to protect the vulnerable in countries with extreme gender inequalities where families (and even judges) may want to punish women by withholding maintenance.

Nor does our index reflect attempts to deal with problems arising from cohabitation (also known as common law marriage), a salient issue across many countries and increasingly prevalent in the West, where marriage rates have dropped precipitously in recent decades.\(^{23}\) It is ironic that formal marriage is increasingly rare in the region that arguably made the earliest and most vigorous efforts to render it gender equitable.

Maps depicted in figures 1-4 compare the aggregate scores of each country at four points in time: 1975, 1985, 1995, and 2005. The maps reveal that most countries have made significant progress toward gender equity in family law. Almost half (33 of 71) countries in the study had a score of 13 in 2005. They include Australia, Austria, Belgium, Botswana, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Kazakhstan, Lithuania, Netherlands, Norway, Peru, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Spain, Sweden, and the United States.

Most of these countries are Western, including not just Europe, North America and Australia but also Latin America and the post-communist space.

---

\(^{23}\) In 2009, merely 250,000 French couples married in 2009, with fewer than four marriages per 1,000 residents. In 1970, almost 400,000 French couples got married. In Germany in 2009, there were just over four marriages per 1,000 residents compared with more than seven per 1,000 in 1970. “In France, Civil Unions Gain Favor Over Marriage,” *New York Times*, December 15, 2010. http://www.nytimes.com/2010/12/16/world/europe/16france.html?_r=1&scp=1&sq=france%20marriage&st=cse
Meanwhile, a significant group of countries kept discriminatory laws on the books over these four decades. In these countries, laws emphasize men’s power and women’s submission in marriage, give men greater rights over property, and prevent women from obtaining a divorce without extensive legal proceedings, among other handicaps. Table 7 identifies those countries with the lowest scores of the study.

As the Table shows, all of the low-scoring countries apply Islamic family law. They include Middle Eastern, North African, South Asian, and Southeast Asian countries. Some countries with multiple legal systems, including India, Kenya, and Nigeria, also apply shariah to their Muslim populations, though our study tended to code civil statutes (in Kenya and Nigeria) and Hindu law (in India) (see Table 2 for a guide to coding in multiple legal systems).

There is variation in Islamic-inspired codifications: laws in Bangladesh and Pakistan, for example, are more egalitarian than in Egypt, Jordan, and Saudi Arabia. In 2004, Morocco overhauled its discriminatory family code to promote sex equality in multiple spheres. In addition, significant reforms have been introduced to expand women’s rights (for example in Egypt in 2000 and Algeria in 2005) but they have stopped short of full equality.

States with Islamic family law are not the only stable countries: former British colonies including India, Kenya, and Nigeria have not changed much either.

Several countries began the period with low scores and later reformed (See Table 8). Morocco and Turkey jumped by eight points, Korea and Greece by seven, Portugal and Taiwan by six. Botswana, Brazil, Chile, Spain and Switzerland also changed significantly over the time period of our study.

Iran moved significantly in the opposite direction: it lost four points in reforms promulgated after the Islamic Revolution. Indonesia lost two points after 1991, when the Compilation of Islamic Laws was introduced by presidential decree.

Explaining Variation

How can we explain these trends? What factors account for the differential embrace of sex equality in family laws around the world? Why did countries with shariah family law largely diverge from global trends toward equality? How can we account for the timing and pace of reform in countries such as Morocco, Turkey, Botswana, Korea, Greece, Spain, Brazil, and Chile, among others?

Our original dataset offers an unprecedented opportunity to test hypotheses about some of these questions. Using multivariate analysis, we explore the relationship between several independent variables and the family index score. In particular, we test the effects of religion, feminist movements, economic development, democracy, and legal legacies. In this section of the paper, we describe
the theoretical basis for these hypotheses and specify our expectations about the relationship between our independent and dependent variables.

Some answers to our questions require deeper analysis of the historical, institutionalized relationship between the state on the one hand and religious organizations, traditional authorities, and cultural groups on the other. These types of relationships are difficult to capture in statistical analysis because of a lack of adequate cross-national measures. In addition, the effects of such variables are subject to path dependence and sensitive to timing and sequence, phenomena that multivariate regression considers with some difficulty (Hall 2003; Brady and Collier 2010; Pierson). Detailed process tracing of episodes of reform in individual countries will identify crucial actors, contexts, and strategic interactions that may not show up in the statistical analysis. Later sections of this paper supplement our statistical tests with comparative historical analysis.

**Religion**

Religion exerts a singular influence for the simple reason that until relatively recently, all family law was religious. (In this paper, we adopt a broad definition of religion that includes not just the world’s major faiths but also the traditions upheld by smaller cultural and indigenous groups.) By the time period of this study, the state had assumed control of family law in virtually every country. But state authority did not everywhere eliminate religious power. (Nor was state control always good for women’s rights, as mentioned earlier). Many states established official religions. And states that secularized commercial, criminal, and other bodies of law often upheld religious authority over family law.

As this paper’s discussion on legal traditions noted, the state administers religious law in many Muslim and post-colonial countries as well as in Israel. Elsewhere, such as in Latin America and Catholic Europe, the law is more secular but relied for decades on ecclesiastical principles (such the Catholic notion of the indissolubility of marriage).

In many countries, religious leaders have vetoed—or attempted to veto—changes that violated their doctrine. Why are they able to exercise a veto in secular contexts? State leaders, particularly in developing world contexts but also in the competitive contexts of electoral democracies, need the legitimacy religious and cultural authorities can offer. As Weber argued, all political authority, to endure, must cultivate a belief in its legitimacy (Economy and Society). Where the authority of constitutional government is new, untested, or mistrusted, religion offers an enduring and reliable legitimacy basis. What’s more, religious authorities are the most trusted—or among the most trusted—of public institutions in many countries.

The legitimacy certification offered by religious groups is therefore a precious political resource. In a competitive electoral contest, it can be decisive. Religious and cultural leaders can tarnish the public image and reputation of
politicians who fear being labeled “an enemy of Islam,” “un-Christian,” “a traitor to the faith,” “immoral,” and so forth. The veto power of religion is therefore often negative or implied. It takes only a few times of actual exercise to establish the credible threat. Fear of religious wrath prevents many politicians from joining coalitions for liberalizing reform (Htun 2009).

Religious groups also draw influence from institutional configurations that give them leverage. Religious parties often make family law central to their agenda. When they are part of a coalition government, these parties use their power to oppose efforts at family law reform or shape it in a way that furthers their sectarian interests. In Israel, the minority Shas party has played a critical role in blocking reform of family laws. As a result of their threats, the gender equality legislation adopted in 2000 exempted family law from its provisions (Halperin-Kaddari 2003). In India, the Hindu nationalist Bharatiya Janata Party (BJP) has used its influence to inflame religious conflict by pointing to discriminatory elements of Muslim Personal Law and calling for reform of this “backward” religion. This has put advocates of rights for the Muslim minority in a difficult position, not to mention feminists who would otherwise support efforts to grant women greater rights (Hasan 2010).

Yet religious veto power and influences vary over time and across issues. Some religious and cultural doctrines have evolved to endorse principles of gender equity. The Roman Catholic Church, widely reviled as an enemy of feminism, changed its position on women’s equality after the Second Vatican Council. After upholding a patriarchal model for millennia, the Church made an about-face and declared its support for women’s equal rights on the family. Bishops continued to oppose the legalization of divorce and the decriminalization of abortion, but supported granting women equal rights to property, equal parental authority, and full civil capacity (Htun 2003).

As this suggests, not all religions are opposed to liberalizing family law reform. What’s more, a religion may support some aspects of family law reform and oppose others (Kang 2010a). Roman Catholic bishops in Latin America, for example, supported women’s equal rights in the family but opposed the legalization of divorce (Htun 2003). Finally, the impact of religion may vary not just across issue but also across countries of the same religious group, depending on local circumstances and tactical considerations.

As this suggests, religion shapes family law in myriad ways: through constitutional and legal prerogatives, religious beliefs of state leaders, political pressure by clerics, and politicians’ fear of ecclesiastical wrath. This implies several hypotheses:

H1: Constitutionally-established state religions should be associated with less egalitarian family laws.
H2: Countries with strong religious organizations should have family laws with less egalitarian provisions.

H3: The presence of religious parties in government should be conducive to conservative and religious family laws.

H4: Strong religious feeling among the population renders credible the threats by ecclesiastical leaders against politicians. If no one believes in God, few will care when a cleric says that senator so-and-so is violating the moral law. If everyone is a believer, a prominent bishop's claim that a president running for re-election is a bad Catholic could swing the election. High religiosity should therefore be associated with more discriminatory family law.

We are able to operationalize some of these variables with data collected by Grim and Finke (2006). (See also the archives on [www.thearda.com](http://www.thearda.com)). Coding U.S. State Department Reports of religious freedom in 2003, they have measures of religious establishment and other indicators of government favoritism to religion. In addition, their “social regulation of religion index” (SRI) offers a sense of the strength of religious organizations, though only for the 2005 cross section. It “refers to the restrictions placed on the practice, profession, or selection of religion by other religious groups or associations or the culture at large” (Grim and Finke 2006, 19). We supplemented their measure of religious establishment with additional research on earlier time periods so that we could use it in all of the four cross sections. In several countries, the constitutional establishment of religion changes over time (Islam became the official religion of Bangladesh in 1988, Roman Catholicism ceased to be established by Spain in 1978, and so forth).

The Database of Political Institutions (DPI) has a measure of the presence of religious parties. We counted the presence of these parties in a governing coalition and also when the chief executive was from a religious party.

In addition, we use data from the World Values Survey (WVS), particularly the question asking respondents to rate the importance of God in their lives. This question was asked consistently in the different waves of the WVS and contains significant cross-national variation. We use it as a measure of the intensity of religious belief among the population.

**Legacies of state-religion relations**

Historical legacies of state-religion relations are important. Our analysis focuses on two: communism and British colonial rule. Both legacies shaped relations between the state on the one hand and religious groups, clans, and tribes on the other, but in utterly divergent directions. Whereas communism divorced family law from religion, British colonialism institutionalized religious authority over matters of personal status.
As mentioned earlier, communist states sought to eradicate the public status of religion, tribal traditions, and customary law. Marx and Engels wrote that “Communism abolishes all eternal truths, it abolishes all religion, and all morality…” (Tucker 1978). Movements drawing on their work conformed to this approach to religion. The Chinese Marriage Law, for example (1950) reversed centuries of tradition of child marriage, granted men and women equal rights, and facilitated divorce. The goal was not primarily to liberate women but to promote a socialist vision of society and full economic participation. (Reportedly, former soldiers also wanted to divorce their wives.)

Even after states transitioned from communism, earlier family laws were largely preserved. By contrast, some countries—such as Poland--sought to roll back liberal communist era abortion laws as religious influence increased. We used data from La Porta et al (1999) on legal origin, available at the University of Gothenburg’s Quality of Government Institute website (http://www.qog.pol.gu.se/).

H5: A communist past (or present) creates a legal legacy of sex equality and should be associated with family laws that conform to principles of equal rights.

Interestingly, Chinese marriage law has moved to reject some elements of the 1951 reforms and become more conservative, but not inequitable. In 2000, fault grounds for divorce were reintroduced in the attempt to make it harder to obtain. These grounds included gambling, violence, and mistreatment, including domestic violence (the first time Chinese Law mentioned VAW). Divorced spouses were granted the right to damages (Glendon 2007, 18).

As our earlier discussion of legal traditions described, the majority of former British colonies uphold multiple legal systems combining religious, statutory, and/or customary laws. Several—including India, Bangladesh, and Pakistan—apply multiple religious laws. These policies were enacted by the British under the principles of indirect rule and “non-interference” in the personal laws of subject populations. As we argued previously, indirect rule and non-interference are misleading terms. By codifying religious and customary laws, the British invented pre-colonial traditions and the communities they corresponded to.

British policy institutionalized religious authority over family law. Once in place, these laws generated vested interests. Following the logic of increasing returns, they became weightier over time. As a result, reform to family law became more contentious and momentous. The integrity of personal status laws came to be seen as the marker of the status of the religious and cultural groups they demarcated. Muslim identity in India, for example, was bound up with the preservation of Islamic laws on marriage and divorce. Congress Party proposals to reform the Muslim Code—not to mention enact a Uniform Civil Code—provoked outrage from conservative members of the community and were revoked.
H6: British colonial rule institutionalized religious and cultural authority over family law. Being a former British colony therefore inclines a country to more discriminatory personal status laws.

For data on colonial rule, we used Hadenius and Teorell’s data on region and colonial origin (Teorell and Hadenius 2005) (also available at the Quality of Government Institute). However, we parted ways with them by considering Canada, Israel, Australia, and New Zealand as former British colonies.

The linking of cultural and national identity with women’s roles and bodies is not unique to family law. During the colonial period in Kenya, British feminists attempted to ban the practice of female genital mutilation (FGM). Kenyan nationalists, including women, responded by defending FGM as an indigenous practice and mark of cultural identity (Pedersen 1991). The practice was banned among minors only in 2001 as part of law protecting the rights of children.24

Experiences in other European colonies were different and more varied. The French emphasis on cultural assimilation and national unity is often contrasted to the British policy of indirect rule and multiculturalism (Mamdani 1996). These legacies led to contrasting outcomes in the post-colonial period: countries such as Senegal, Mali, and Ivory Coast adopted unified family codes whereas Kenya, Tanzania, and Botswana upheld multiple legal systems (Toungara 1994; Rahmatian 1996; Baraza 2009; Kang 2010a).

French policy was not entirely uniform, however: it varied according to state building needs. The French tolerated customary laws in colonial Algeria, unwilling to risk the tribal rebellions that national codification would trigger (Charrad 2001). Attempts at national family law, including requirements that marriages be registered with the state, came late and were controversial, resisted, and poorly implemented (Ibid). In Niger as well, French rule ended up strengthening the authority of religious and customary leaders over family law by adopting a parallel legal system: one applied the Napoleonic Code to French citizens; the other, applying to locals, was based on customary and Islamic law (Kang 2010a, 87-9). The autonomy of customary law has consolidated the power of traditional leaders such that they were able to resist promulgation of a national family code even after the country achieved independence (ibid).

Feminist movements

Family law is a gender status issue. It upholds institutionalized patterns of cultural value that constitute women as a status group (Fraser 2007). Like other status issues including constitutional equality, reproductive rights, and gender quotas, family law affects all women regardless of their class, race, ethnicity,

religion, and other social positions (though different women may have different experiences of these issues) (Htun and Weldon 2010). Family law molds societal beliefs and practices that are consequential for the lives of all women. Rich women cannot pay to avoid the low status the law imposes on them (though wealth certainly contributes to one’s ability to bend the laws to one’s liking, if not avoid them entirely).

Gender status issues can be contrasted with class-based issues. The latter include publicly-funded childcare, parental leave, and subsidized contraceptives, among others. They touch upon state-market relations and have divergent effects on women of different social classes. Wealthy women can afford to pay for nannies and private child care providers; poor women rely on family members or the state. Wealthy women can afford to take time off to care for their children; poor women need publicly-funded leave. Wealthy women can purchase contraceptives at market rates in pharmacies; poor women are more dependent on public distribution and subsidies (Htun and Weldon 2010).

We expect women’s movements, including elite and upper-class feminists, to play a key role in gender status issues. These issues rarely come the fore unless they are championed by feminists. Family law reform and policies to prevent and punish violence against women (VAW) are the two priorities of most women’s movements in the Global South. (It was the top issue—besides suffrage—for feminists in the Global North until they succeeded in changing the laws.).

In policy areas marked by class differences, by contrast, leftist parties and unions tend to be responsible for initiating change (Htun and Weldon 2010). Advocates of the rights of the working class, human rights, and the poor tend to champion the public provision of goods to ease women’s disadvantages in the sexual division of labor.

**H7:** The presence of autonomous feminist movements should favor progressive family laws.

To explore the impact of feminist movements on gender-related policy, we compiled an original database. Previous data had counted numbers of women’s groups in country directories or the number of national organizations participating in UN conferences. These quantitative measures, however, revealed nothing about whether or not the movements were autonomous. Canada and China, for example, had the same number of groups attending a U.N. Conference. But the critical capacity of Canadian women’s groups far exceeds those in China where the state/party has little tolerance for civic movements that fail to conform to its agenda. Our dataset and indicators account for the existence of feminist movements, their strength, autonomy, as well as the presence of anti-feminist groups.

**Controls**
Finally, we controlled for other factors hypothesized to affect gender equality and reform, including GDP per capita, democracy, majority religion, region, female labor force participation, fertility and the percentage of parliamentary seats held by women. (Sources available on request.) Although there is a degree of multicollinearity in these models, examination of condition indices and variable inflation factors suggest that it should not be overly distorting of the results. Female labor force participation was closely related to GDP and so is not shown in the models we present here. Our results held even when we controlled for female labor force participation (not shown).

**Results**

Table 9 shows the results of multivariate regression analysis.

Our theoretical argument focused on the historical, institutionalized relations between the state and religious institutions and the contemporary power of religion. They key variable tapping this relationship--constitutionally-established religion--is significant in all models shown in the table. In addition, it has a substantively important, negative effect: it is associated with one fewer element of egalitarian law.

We also expected that the intensity of religious belief—as an indicator of the ability of religious institutions to veto reform—would be negatively associated with family equality. Our simple measure of religiosity is significant in two of five models (and almost significant in a third) and all the coefficients are in the hypothesized direction. As this suggests, the relationship is less robust than the religious establishment. Since our argument focuses more on institutionalized state-religion relations than societal religiosity, this is consistent with our expectations.

The legacy of a communist past proves to be highly significant and has a substantively large positive effect on egalitarian family law in every model. It is associated with between two and four additional elements of egalitarian law, controlling for region (models 1, 2, 4 and 5).

The experience of British colonialism produces the opposite relationship. It is significant in all five models but has a negative effect. The size of the effect is smaller, ranging from about one-half of an element of inequality (model 1) to about one and one-half elements (models 3 and 4).

The robustness of these results for variables tapping historical legacies of state-religion relations gives us confidence that these are important forces driving variation in family law.

---

25 We did not use the indicator for the social regulation of religion index (SRI, by Grim and Finke 2006) in our models as it was very closely related to constitutional establishment and gave us little additional explanatory leverage. In addition, their data were available for 2003 only.
Our historical analysis showed that specific doctrinal features of the world’s major religions influenced the codification of family law. This implies that a country’s religious orientation may be associated with our family law index. Our analysis reveals that whether or not a country has a majority Muslim population is significant in all models in which it was included. The effect is large and negative, accounting for some two to three additional elements of inequality. In our model that omits regional controls, the association is even larger. Catholicism is also associated with less equality though the effect is smaller, amounting to fewer than one element area of inequality, and the relationship is less robust.

It is important, however, not to over generalize about Islamic countries: scores on the family law index vary from a high of 12 in Turkey and 10 in Morocco to a low of 1 in Saudi Arabia, Iran, and Egypt. What’s more, Muslim countries have introduced generous policies in other gender-related areas such as maternity leave. We should also be cautious in our assessments since some of the effects of Muslim religion may actually be the result of a lack of democracy. As we discuss below, our data do not permit us adequately to disentangle the effect of the Muslim religion from democracy and region.

Autonomous women’s movements are significant and produce a substantively important effect in all five models in which this variable is included. The variable is associated with about one additional element of egalitarian law reform in every model. This smaller but strongly significant and consistent effect, in the expected direction, supports our argument that autonomous feminist activism is associated with more egalitarian family laws. Historical analysis of episodes of reform in countries such as Morocco, Brazil, Algeria, Canada, and South Korea, among others, confirms this relationship.

Democracy is included in Model 3 and is significant, but the effects are difficult to disentangle from region, religion and fertility. The variable, measured using the polity dataset, ranges from 10 to -10 but the standard deviation is 7.4. With a significant coefficient of .13, a 7.4 point difference in degree of democracy is associated with a .96 increment in the family law index. It is impossible to tell if this effect held controlling for region, religion and fertility as these variables are all tightly related. Indeed, the MENA region and democracy are so tightly correlated in the dataset that our quantitative analysis is unable to disentangle the effects of a lack of democracy from the effects of being in the region and being Muslim when these are all included together.

Regional dummy variables for the Middle East and North Africa (MENA) and Asia are very strong and highly significant across all models in which they are included. Other regional variables—for Latin America and Sub-Saharan Africa—are not significant or more weakly significant with much smaller effects. This implies that it is not region per se but something specific to the MENA region and Asia that accounts for the difference. It may be that the lack of Muslim democracies (or, put
another way, the presence of Muslim autocracies) is part of what accounts for this negative effect. Analysis of data on oil rents using measures constructed by Michale Ross (2008) did not produce any additional insight into this distinctive impact of the MENA region.

The percentage of parliamentary seats held by women is significant in all four the models in which it was included but the effect is not substantively important. The standard deviation for women's presence is seven percentage points and the average change over time is three percentage points. Using the coefficient for this variable in models 2, 4, and 5 (.06), a three-point change would be associated with less than a fifth of a single element (.06*3=.18) of reform, a tiny effect in relation to the 13 point range of our index. A seven percentage point difference in women's presence between countries would be associated with less than half an element (.06*7=.42) of our index. These changes are smaller than the effects associated with autonomous women's movements and historical trajectories of state-religion relations.

Why is the MENA region a powerful predictor of discriminatory family law? MENA’s effects, which persist even when we control for religious variables, raise the question of the distinctiveness of the Arab world. Is it Islam (Inglehart and Norris 2003; Alexander and Welzel 2009; for a more nuanced perspective, see Fish 2002)? An economy dominated by oil rents (Ross 2008)? Kin-based political systems (Charrad 2001, 2010)? A particular brand of Islamic fundamentalism? Sultanistic or authoritarian rule? In future iterations of this paper, we expect to analyze the structural and political variables accounting for discriminatory family law in much of MENA region.

Qualitative analysis has identified the Convention on the Elimination of Discrimination Against Women (CEDAW) as an important influence on family law as well as other areas of women’s rights. We analyzed the withdrawal of reservations to CEDAW rather than ratification of the Convention. Since most countries had ratified by 2005, there was little variation to capture. By contrast, many countries ratified the convention with reservations, and a significant number later withdrew these reservations (though at varying points in time). Withdrawal signals a change in the national attitudes toward sex equality.

We tested the effects of the withdrawal of reservations to CEDAW in Model 5. The variable is significant at the broader .1 level and the coefficient is in the expected positive direction but the effect is too small to matter in our broader analysis. Future research can examine whether a different specification, or an analysis of interaction terms, or other methodological refinements reveal a stronger relationship.

What were the effects of our control variables? GDP per capita was insignificant in all but one model (though it came close to significance in a second). Fertility was significant in two models but the effect was small and in the opposite
direction from what we would expect. Other controls were too closely related to variables included in the equation to include. For example, female labor force participation (FLFP) was insignificant in most specifications and highly collinear with GDP per capita. As a result, we omitted it from the five models presented here in an effort to minimize our use of degrees of freedom and to minimize collinearity.

In summary, this analysis shows strong support for principal hypotheses about historical legacies and state-religion relations. These variables and the impact of autonomous feminist movements are remarkably robust.

**Explaining Change Over Time**

The descriptive statistics presented earlier suggest that the countries can be grouped into three categories: 1) countries that entered the period of the study with relatively egalitarian laws and did not backtrack; 2) countries that entered the study with discriminatory laws and largely stayed that way; 3) countries that began with discriminatory laws and introduced significant reforms to promote sex equality. (Iran, a country that became significantly more discriminatory, occupies a fourth category.)

Multivariate analysis identified factors associated with the different levels of our index, thus helping to account for the situation in the first two groups of countries. It is less able to illuminate exactly how these phenomena shape the changes experienced by the third group. However, a comparative historical analysis of the processes and mechanisms of change helps to shed light on this question.

This section of the paper analyzes some cases of significant change over time in our sample. Table 8 lists countries with index scores that moved four or more points. Roughly half of these countries experienced a transition from authoritarian rule to democratic governance during the period under study, including Brazil, Chile, South Korea, South Africa, Greece, Portugal, Spain, and Taiwan. In most of these cases, reform of family law occurred immediately following democratization. Other countries reformed family law in the context of an otherwise stable political system, either authoritarian or democratic: Botswana, Switzerland, Turkey, Morocco, and Algeria.

Democratic transitions can create window of opportunity for reform of family law but are neither a necessary or sufficient condition. Transitions from authoritarian rule were associated with episodes of major reform in Korea, South Africa, Greece, Portugal, Spain, and Taiwan. In Brazil and Chile, however, gender-equitable family law reforms occurred during and after military rule. Military governments in both countries (as well as in neighboring Argentina) presided over

---

26 Algeria, which experienced a military coup and civil war during the period of our study, could hardly be considered stable. Yet by the time of its family law reform (2005), the polity had stabilized.
reforms improving married women’s position and, in the case of Brazil, legalizing divorce (Htun 2003).

What’s more, many reforms were stalled under democratic governance. Brazil’s civil code reforms were delayed for 16 years after the return to democracy. A civilian government assumed power in 1985 and the civil code was approved only in 2001 (Htun 2003). Chile returned to democracy in 1990 but waited until 2004 to legalize divorce. What explains the delay? The first two post-transition governments were dominated by the Christian Democrats, a party with close ties to the Roman Catholic Church. What’s more, the Church entered the democratic period with a high degree of legitimacy for its opposition to military rule and support of dissidents. Democratic politicians were wary of antagonizing the Church on the one hand and the socially conservative parties of the Right on the other (Ibid). The eventual legalization of divorce depended on the assumption of power by the Socialist party and the perception that democracy was consolidated enough to handle contentious social issues (Htun 2010, preface).

In Greece, the end of dictatorship created space for feminist mobilization, but gender-egalitarian change was not automatic. Feminist organizations were dedicated to modifying the country’s patriarchal and religious family law. Until 1982, only marriages formalized in an Orthodox Greek religious ceremony were recognized by the state. In addition, the family law named the man as head of the household and relegated the woman to a subordinate position. It also stipulated that the bride’s father would pay the groom a dowry, based on the idea that women were a burden meriting compensation (Moustaira 2003; Van Steen 2003). Feminist activists wrote articles to raise awareness of these problems, held workshops to emphasize the importance of reform, and made demands on the government. They encountered resistance from forces loyal to orthodox doctrine and to the historic principles of the country’s civil law. As a result, the first democratic government neglected to modify family law though it did promote women’s status in the labor force (Cacoullos 1994; Papaigeorgiou-Limberes 1992).

The movement for reform endured the formation of three distinct government commissions appointed to consider family law. The first two committees were dominated by men and failed to produce proposals that advanced sex equality in a significant way. The last committee, by contrast, included women lawyers. In 1983, the legislature adopted their recommendations (Ibid). The reformed family law granted men and women equal rights in marriage, parenting, and property; it introduced divorce by mutual consent; eradicated the institution of dowry as well as distinctions between “legitimate” and “illegitimate” children, and decriminalized adultery (Van Steen 2003: 262). As Van Steen notes, “the revised Family Law made gender equality an appealing new social value (Ibid: 263).

As this suggests, we cannot merely assume that democratic transitions will automatically lead to progressive reforms. The effects of democratization may be indirect, mediated by the constellation of civil society actors that exist and emerge
in the wake of democratization. Where this includes feminist groups, it is important to ask how able organized religion is to take similar advantage of the openings provided by democratization. As this suggests, we need to analyze the configuration of civil society-state relations under democratic conditions as well as other factors, including the role of religion, the “fit” between progressive coalitions demanding change and the openings, needs, and interests of the state (Htun and Weldon 2010; Skocpol 1992; Htun 2003).

Conditions surrounding Morocco’s transformation of its family code in 2004 reveal the combination of factors conducive to reform in non-transitioning polities: feminist mobilization, state allies, and a window of opportunity that undermines religious opposition.

Feminist activists had long agitated for reform of the Moudawana. In the early 1990s, they gathered one million signatures on a petition to then-monarch King Hassan II. This effort, combined with lobbying, public awareness, and demonstrations compelled some modest reforms of the family code in 1993 (Charrad 2001a).

The same year, Morocco ratified CEDAW. In 1997, the country’s report to the CEDAW committee generated a great deal of discussion. A coalition of Moroccan NGOs had submitted an alternative “shadow” report to the committee, carefully critiquing the government’s claims that Islam justified discrimination and offered specific suggestions for reform. On the basis of the shadow report, CEDAW committee members closely scrutinized the government’s position. This marked the first time that the government had been held accountable to the claims of the feminist organization, having earlier refused to meet with its representatives (Association Dématocratique des Femmes du Maroc 2003; Women’s Learning Partnership 2006).

In 1999, the socialist-led government announced a national plan to integrate women into development that would include radical changes to family law and other policies. An estimated 50,000-100,000 people demonstrated in favor of the plan. But it provoked opposition: reportedly, the Islamist countermarch was ten times bigger. In response, the government shelved the development plan (Clark and Young 2008, 336-7).

In 2003, the government and NGOs again engaged in a process of consultation related to CEDAW. Feminists identified reform of the personal law as a critical area for action that had still not been adequately addressed (Association Démocratique des Femmes du Maroc 2003; Women’s Learning Partnership 2006).

Feminists had allies in high places: the monarchy. The new King Mohammed VI convened a high-level royal advisory commission (including religious scholars, lawyers, and activists) to consider reform of the Moudawana. After a few years of closed-door meetings, the commission presented its report to the king. In a historic
speech to parliament, the King justified the proposal with reference to the Shariah and framed the reforms as part of the process of state building.

This religious justification helped disarm opponents. What’s more, the king’s intervention was carefully timed to take advantage of a window of opportunity. A few months before his speech to parliament, terrorist attacks in Casablanca killed and wounded dozens of people. The attack put Islamic fundamentalists on the defensive. As a result, they fared poorly in national elections and dared not oppose the reforms. In January 2004, four months after the king’s historic speech to Parliament, the legislature adopted a new Moudawana unanimously, with the participation of the Islamist Party of Justice and Development (Clark and Young 2008, 339).

Conclusion

We have shown that the historical, institutionalized relations between the state on the one hand and religious organizations, clans, tribes, and cultural groups on the other shapes family law. Two influences in particular—communism and British colonial rule—had decisive, though opposite effects. Communism eradicated religious influences and was associated with more egalitarian family laws. British rule institutionalized religious (and customary) authority over family law and was associated with more discriminatory policies.

Interestingly, those political trajectories that favor reform in family law are not those that are generally thought to be conducive to democracy. In some of the classical literature on comparative politics, communism is argued to inhibit democracy while the experience of British colonialism favors it (Weiner 1987, 1989; Lipset 1990; see discussion in Fish 2005: 86). We have shown, by contrast, that a communist past, by forging legal equality between men and women, creates a more favorable starting point for women’s rights in family law. Our analysis also shows that British colonial legacy is a disadvantage. By vesting the cultural identity of the various communities lumped together in post-colonial states in the status of their family law, it imposed a formidable obstacle to reform.

Democracy has a complex relationship with gender equality. Democratization generates opportunities for feminist activist to mobilize and influence the state. At the same time, however, it creates conditions for the organization and growth of religious fundamentalists and other forces opposed to expansion of women’s rights (Htun and Weldon 2010; Htun 2003). The results of these conflicts depend not just on the historical alliances and patterns of state building, but also coalitions social actors and their ability to take advantage of political opportunities and openings in the state (Ibid; see also Charrad 2001; Skocpol 1992).

Our work also shows that there is nothing preordained about family law reform. In spite of general tendencies—involving former communist countries,
former British colonies, states with established religions, Muslim-majority countries, and states in the Arab world—many unlikely countries did reform. Morocco thoroughly overhauled its family law in 2004, catapulting itself from the group of most patriarchal countries to one of the least. Botswana did likewise in the same year. Tanzania—a former British colony—defied its counterparts by adopting a uniform civil code incorporating influences from common law, customary law, and shariah in 1971.

By touching upon the allegedly central tenets of religious doctrine, cultural tradition, and the sacred discourse of social groups, family law reform poses a threat to those who benefit from the status quo. Who and what is being threatened varies from place to place. Roman Catholic bishops long claimed that the legalization and liberalization of divorce would undermine the institution of marriage and weaken the family, leading to social anomie and breakdown. Islamist parties and their allies today argue that granting women equal rights to divorce and restricting polygamy undermine national identity, morality, and values, in addition to weakening the family and society. Tribal authorities in sub-Saharan Africa reject women’s land and inheritance rights on the ground that they violate local customs.

These allegations of threat, violation, and assault raise many questions. Are society, the family, national identity, morals, values, and customs really at risk? Or does family law reform simply call into question male dominance in these various spheres? And if male dominance were to erode, then what? Would women not remain committed to the same ideals—family, community, nation—cherished by men? In family law, as in other political battles, what is really at stake is the struggle for power.
Table 1. Typology of family law legal systems

<table>
<thead>
<tr>
<th></th>
<th>Religious: Muslim, Hindu, Jewish</th>
<th>Common</th>
<th>Civil</th>
<th>Nordic(^{27})</th>
<th>Customary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unitary</strong></td>
<td>Algeria, Egypt, Indonesia, Iran</td>
<td>Australia, Canada, Ireland, New Zealand, Tanzania, U.K., U.S.A.</td>
<td>Continental Europe, Latin America, China, Ivory Coast, Japan, Korea, Taiwan, Turkey, Vietnam</td>
<td>Denmark, Finland, Iceland, Norway, Sweden</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Iraq, Jordan, Morocco, Pakistan, Saudi Arabia</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Multiple</strong></td>
<td>Bangladesh (multiple religious laws), India (multiple religious laws), Israel (multiple religious laws), Kenya, Nigeria, Malaysia, South Africa</td>
<td>Botswana(^{28}), Kenya, Nigeria, Malaysia, South Africa</td>
<td></td>
<td>Botswana, Kenya, Nigeria, South Africa</td>
<td></td>
</tr>
</tbody>
</table>

\(^{27}\) The Nordic countries have a distinct legal tradition that combines elements of common and civil but is not reducible to either type. Glendon, Gordon, and Osakwe (1994) suggest that it be considered a unique legal family.

\(^{28}\) Botswana is difficult to classify, for it also has elements of civil law.
Table 2. Guide to Coding in Countries with Multiple Legal Systems

<table>
<thead>
<tr>
<th>Country</th>
<th>Ethno-religious composition(^{29})</th>
<th>What We Coded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>Muslim 90%; Hindu 9%.</td>
<td>1961 Muslim Family Law Ordinance</td>
</tr>
<tr>
<td>Botswana</td>
<td></td>
<td>Civil statutes including Matrimonial Causes Act of 1973, the Marriage Act of 2001, and the Abolition of Marital Power Act of 2004</td>
</tr>
<tr>
<td>India</td>
<td>Hindu 80%; Muslim 13%; others include Christians, Sikhs, Buddhists.</td>
<td>Hindu Code, including the Hindu Marriage Act; Hindu Succession Act; Hindu Minority and Guardianship Act; and the Hindu Adoptions and Maintenance Act.</td>
</tr>
<tr>
<td>Israel</td>
<td>Jewish 76%; Muslim 16%; others include Christians, Druze.</td>
<td>Orthodox Jewish law</td>
</tr>
<tr>
<td>Kenya</td>
<td>Christian ~78%; Muslim ~10%.</td>
<td>Civil Statutes, including Marriage Act, the Matrimonial Causes Act (of 1941), the Married Women's Property Act (of 1882!) and the Children's Act of 2001.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Muslim 60%; Buddhist 19%, Christian 9%, Hindu 6%.</td>
<td>Islamic Family Law (Federal Territories) Act of 1984</td>
</tr>
<tr>
<td>Nigeria</td>
<td>Muslim (50%); Christian (40%)</td>
<td>Marriage Act; 1970 Matrimonial Causes Act; 1882 Married Women's Property Act</td>
</tr>
<tr>
<td>South Africa</td>
<td></td>
<td>Marriage Act of 1961 and its amendments</td>
</tr>
</tbody>
</table>

\(^{29}\) Statistics on religious composition come from the CIA World Factbook.
Table 3. Main features of Islamic family law

| Area                        | Classical version                                                                 | Majority of 20\textsuperscript{th} century codifications                                                                 | Morocco's 2004 
\textit{Moudawana}                                                                 |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions of marriage</td>
<td>* Eligibility for marriage at puberty (9 for girls; 13 for boys)</td>
<td>* Minimum marriage age of 16 for girls, 18 for boys (some variation)</td>
<td>*Minimum marriage age of 18 for both spouses (article 19)</td>
</tr>
<tr>
<td></td>
<td>* Male guardian consents and contracts on behalf of woman</td>
<td>* Male guardian consents and contracts on behalf of woman (some variation)</td>
<td>*Guardian’s participation is optional; women may delegate right to contract marriage (articles 13, 25)</td>
</tr>
<tr>
<td></td>
<td>* Women may not marry non-Muslims</td>
<td>* Women may not marry non-Muslims</td>
<td>*Civil registration and authorization of marriage</td>
</tr>
<tr>
<td>Rights and duties in marriage</td>
<td>* Women must obey their husbands, care for home and children</td>
<td>* Women must obey their husbands, care for home and children</td>
<td>*Rights and duties are the same for both spouses (article 51)</td>
</tr>
<tr>
<td></td>
<td>* Husbands must support wives and children</td>
<td>* Husbands must support wives and children</td>
<td>*Husbands are required to maintain their wives (article 194)</td>
</tr>
<tr>
<td></td>
<td>* Husbands can prevent wives from working and going into public</td>
<td>*Male power to prevent wives’ work varies</td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>* Separation of property during marriage</td>
<td>* Separation of property during marriage</td>
<td>*Separation of property during marriage (article 49)</td>
</tr>
<tr>
<td></td>
<td>* Husband provides dower (\textit{mahr})</td>
<td>* Husband provides dower (\textit{mahr})</td>
<td>*Common marital property administrated by agreement (article 49)</td>
</tr>
<tr>
<td></td>
<td>* Husband retains marital home after divorce</td>
<td>* Husband retains marital home after divorce</td>
<td>*Husband provides dower, but it should be modest (article 30)</td>
</tr>
</tbody>
</table>

\textsuperscript{30} In the absence of formal agreement, “recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.” Unofficial translation prepared by Human Rights Education Associates, 2005. [http://www.hrea.org/moudawana.html](http://www.hrea.org/moudawana.html). Date accessed: September 10, 2010.
<table>
<thead>
<tr>
<th>Divorce</th>
<th>*Husbands may divorce by order (talaq) and immediately (talaq al-bidal)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*Wives have access to divorce under extremely limited circumstances (Hanafi) or grounds including cruelty, desertion, failure to maintain (Maliki)</td>
</tr>
<tr>
<td></td>
<td>*Husband must pay mahr to wife in full upon divorce</td>
</tr>
<tr>
<td></td>
<td>*Husband pays maintenance during iddah</td>
</tr>
<tr>
<td></td>
<td>*Husbands may divorce by order (talaq)</td>
</tr>
<tr>
<td></td>
<td>*Wives have access to divorce on grounds including cruelty, desertion, imprisonment, failure to maintain (some variations)</td>
</tr>
<tr>
<td></td>
<td>*Divorce processed through courts and formal notification required</td>
</tr>
<tr>
<td></td>
<td>*Wives may divorce unilaterally if they forfeit mahr and maintenance (Egypt)</td>
</tr>
<tr>
<td></td>
<td>*Husband must pay mahr to wife in full upon divorce</td>
</tr>
<tr>
<td></td>
<td>*Husband pays maintenance during iddah</td>
</tr>
<tr>
<td></td>
<td>*Divorce permitted by repudiation (a right seemingly granted to both spouses, article 78-9), mutual consent, or cause</td>
</tr>
<tr>
<td></td>
<td>*All divorces processed judicially</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Guardianship</th>
<th>*Fathers are legal guardians of minor children</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*Mothers may retain temporary custody after divorce until age 7 (boys) and 9 (girls)</td>
</tr>
<tr>
<td></td>
<td>*Fathers are legal guardians of minor children</td>
</tr>
<tr>
<td></td>
<td>*Mothers may retain temporary custody after divorce for longer periods of time</td>
</tr>
<tr>
<td></td>
<td>*Some countries allow courts to grant mothers greater custody and even guardianship rights</td>
</tr>
<tr>
<td></td>
<td>*Fathers are the first legal guardians of minor children; mothers serve as guardians when fathers are absent or incapacitated (article 231, 236)</td>
</tr>
<tr>
<td></td>
<td>*At divorce, custody awarded first to the mother (article 171)³¹</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Inheritance</th>
<th>*Female Quranic heirs receive around half of men’s share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*Freedom to bequest up to one-third of men’s share</td>
</tr>
<tr>
<td></td>
<td>*Female Quranic heirs receive around half of men’s share</td>
</tr>
<tr>
<td></td>
<td>*Inheritance rights for orphaned grandchildren (Egypt 1946; Pakistan 1961)</td>
</tr>
<tr>
<td></td>
<td>(Unable to find translation of book on inheritance)</td>
</tr>
</tbody>
</table>

³¹ A mother may lose custody to a child over seven years of age, however, if she remarried and is not the child’s legal representative.
<table>
<thead>
<tr>
<th>Estate to non-heirs</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Waqf</em> (endowment) for religion, charity, or family</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Freedom to bequest up to one-third of estate, even to heirs (Egypt 1946)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Waqf</em> (endowment) could no longer be used to circumvent other inheritance laws (Egypt 1946); family waqfs abolished altogether in Egypt in 1952 but not in Pakistan</td>
</tr>
</tbody>
</table>
Table 4. Main Features of Civil Law

<table>
<thead>
<tr>
<th>Area</th>
<th>Napoleonic Code, 1804</th>
<th>Situation after reforms in mid- to late 20(^{th}) century</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions of marriage</td>
<td>Minimum age of marriage 16 for women, 18 for men</td>
<td>Minimum age of marriage 18 for both spouses</td>
</tr>
<tr>
<td>Rights and duties in marriage</td>
<td>*Husband must protect the wife; wife must obey the husband&lt;br&gt;*Marital power ➔ husband has rights over person, property, and activities of his wife&lt;br&gt;*Female incapacity ➔ women cannot work, appear in court, engage in financial transactions without husband’s permission</td>
<td>Rights and duties are equal; some codes describe equitable marriage</td>
</tr>
<tr>
<td>Name</td>
<td>Law requires a common marital name, usually husband’s (varies)</td>
<td>Couples can keep their own name or use a common name (some variation)</td>
</tr>
<tr>
<td>Property</td>
<td>*Men controlled common property during marriage, including wife’s property&lt;br&gt;*Property divided after divorce but guilty spouses loses rights</td>
<td>Wife and husband control separate property and/or common property administered by both spouses</td>
</tr>
<tr>
<td>Divorce</td>
<td>*Permitted for mutual consent; bad conduct; imprisonment; adultery (by woman)&lt;br&gt;*Illegal in most Roman Catholic countries until 20(^{th}) century (timing of legalization varies)</td>
<td>Equal access for both spouses; grounds and waiting periods vary</td>
</tr>
<tr>
<td>Guardianship</td>
<td>Fathers hold rights of parental power over children; mothers assume conditional guardianship at father’s death</td>
<td>Parental power exercised jointly or indiscriminately by mother and father</td>
</tr>
<tr>
<td>Inheritance</td>
<td>Equal rights in intestate succession (some variation, e.g. Korea)</td>
<td>Equal rights in intestate succession</td>
</tr>
<tr>
<td>Area</td>
<td>Soviet Family Code 1918; Russian Code of 1926/7</td>
<td>Other countries</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>Conditions of marriage</td>
<td>Minimum marriage age of 16 for women and 18 for men; Only civil marriages recognized</td>
<td>China (1950) and Vietnam (1959) banned child marriage, forced marriage, polygamy</td>
</tr>
<tr>
<td>Rights and duties in marriage</td>
<td>Equality between spouses</td>
<td>Equality between spouses (China, Vietnam, Cuba 1975)</td>
</tr>
<tr>
<td>Name</td>
<td>Common surname not required</td>
<td>Common surname not required (China, Vietnam, Cuba)</td>
</tr>
<tr>
<td>Property</td>
<td>1918 Code prescribed separation of property; 1926 Code established community property, with division after divorce to be determined by court according to spousal needs and interests of children</td>
<td>Equal enjoyment and use of property; household labor considered productive labor at divorce (Vietnam)</td>
</tr>
<tr>
<td>Divorce</td>
<td>Divorce had to be recorded with the civil registry at petition of both spouses or one spouse (other spouse served a summons)</td>
<td>Divorce processed by a notary public, not the courts (Cuba 1994)</td>
</tr>
<tr>
<td>Guardianship</td>
<td>Equality between parents</td>
<td>Equality between parents (China, Vietnam, Cuba)</td>
</tr>
<tr>
<td>Inheritance</td>
<td>Equality between males and females</td>
<td>Equality between males and females (China, Vietnam, Cuba)</td>
</tr>
<tr>
<td>Variable</td>
<td>Description</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Minimum marriage age</td>
<td>No minimum age of marriage OR different minimum marriage ages for women and men</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Consent</td>
<td>Marital consent is problematic, meaning, one (or more) of the following conditions holds: 1) the consent of people other than the spouses themselves counts as consent to marry (in other words, a woman’s father can consent to her marrying groom X even if the woman does not want to); 2) parental consent is required even when people are above the minimum marriage age</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Marriage ban</td>
<td>The law forbids people (or some people—such as women) from marrying certain categories or groups besides relatives (Sunni from Shia Muslim, foreigners, people of a different race, etc).</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Spousal rights and duties</td>
<td>Marital duties are patriarchal, for example, by containing phrases such as “the husband has the duty to support his wife and the wife must obey him,” “the husband is the head of the household,” etc.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Guardianship</td>
<td>The father holds and exercises parental power/legal guardianship and the mother does not have this right OR mothers and fathers have equal rights to parental power in theory, but the father is the one who exercises these rights, for example, in the event of a disagreement between the spouses.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Name</td>
<td>The law requires a common marital name. This includes situations in which the common name must be the man’s name and when there is no stipulation that the name must be the man’s name. (In practice, the common name is almost always the man’s name.)</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Marital Property Regime</td>
<td>The marital property regime discriminates against women. This means that one or more of the following conditions holds: 1) the husband has exclusive right to administer and dispose of common property; 2) the husband and wife may both administer common property but the husband prevails in the event of a disagreement or the wife otherwise has fewer rights; 3) husband and wife can administer their separate property but the husband has control over the marital home and/or other common assets (a common situation in Islamic law); 4) the husband is named as head (boss, chief) of communal property.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Right to work</td>
<td>Men have more rights to work than women do (in family law). This means that one of the following</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Conditions holds:</td>
<td>1) wives need their husbands’ permission to work; 2) husbands can legally prevent their wives from working.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Divorce</td>
<td>Men and women do not have equal rights to divorce OR the grounds for divorce differ between men and women OR the country does not legally permit divorce.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Custody after divorce</td>
<td>The law gives fathers guardianship or custody of children following divorce, even if the mother may have temporary custody.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Property after divorce</td>
<td>The division of property after divorce favors the man, for example, by 1) presuming that he will keep common property such as the marital home, even if the wife keeps her own property; 2) denying the wife’s economic contribution to the marriage, even if she worked only in the home; 3) giving all property to the man.</td>
<td></td>
</tr>
<tr>
<td>Note: if one of the following conditions holds, the division of property is egalitarian: 1) the property is divided evenly between the spouses; 2) husband and wife keep the property they had prior to marriage but everything acquired or earned (including by the husband’s work) during marriage is split evenly.</td>
<td>0 = yes; 1 = no</td>
<td></td>
</tr>
<tr>
<td>Adultery</td>
<td>Laws on adultery are more favorable to men. This means that one of the following conditions holds: 1) the law states—for example, among the grounds for divorce—that men commit adultery only by having a long term concubine whereas women commit by having one sexual act; 2) the law exempts from criminal punishment (or attenuates the punishment of) men who murder their adulterous wives (so called “honor killings”).</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>Inheritance</td>
<td>Men (sons, brothers, widowers) inherit more than women of equal status do by law or in the event of intestate succession.</td>
<td>0 = yes; 1 = no</td>
</tr>
<tr>
<td>TOTAL</td>
<td>13 = full gender equity; 0 = no gender equity</td>
<td></td>
</tr>
</tbody>
</table>

55
Figure 1.

Note: The GIS software used to create these maps does not permit us to code Taiwan as a separate country from the P.R.C.
Note: The GIS software used to create these maps does not permit us to code Taiwan as a separate country from the P.R.C.
Note: The GIS software used to create these maps does not permit us to code Taiwan as a separate country from the P.R.C.
Note: The GIS software used to create these maps does not permit us to code Taiwan as a separate country from the P.R.C.
Table 7. Most discriminatory countries (scores of five or lower in 2005)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Egypt</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Iran</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Jordan</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Pakistan</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Country name</td>
<td>Change Value</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morocco</td>
<td>+8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>+8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Korea</td>
<td>+7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>+7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>+6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taiwan</td>
<td>+6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td>+5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>+5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td>+5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>+5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>+5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Algeria</td>
<td>+4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>+4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>+4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td>-4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>+4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>+4</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 9: Regression Analysis, Panel Corrected Standard Errors, 70 Countries, 1975-2005

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N=249</td>
<td>N=239</td>
<td>N=239</td>
<td>N=233</td>
<td>N=239</td>
</tr>
<tr>
<td>R²</td>
<td>0.80</td>
<td>0.82</td>
<td>0.76</td>
<td>0.82</td>
<td>0.82</td>
</tr>
<tr>
<td>Established Religion</td>
<td>-0.92</td>
<td>-0.97</td>
<td>-1.22</td>
<td>-1.17</td>
<td>-0.95</td>
</tr>
<tr>
<td>SE</td>
<td>0.19</td>
<td>0.22</td>
<td>0.22</td>
<td>0.18</td>
<td>0.21</td>
</tr>
<tr>
<td>p</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Religiosity</td>
<td>-0.92</td>
<td>-0.75</td>
<td>-0.50</td>
<td>-0.56</td>
<td>-0.78</td>
</tr>
<tr>
<td>SE</td>
<td>0.46</td>
<td>0.40</td>
<td>0.43</td>
<td>0.44</td>
<td>0.40</td>
</tr>
<tr>
<td>Communist</td>
<td>2.93</td>
<td>1.84</td>
<td>1.04</td>
<td>3.42</td>
<td>1.84</td>
</tr>
<tr>
<td>Former British Colony</td>
<td>-0.67</td>
<td>-0.84</td>
<td>-1.15</td>
<td>-1.17</td>
<td>-0.85</td>
</tr>
<tr>
<td>Autonomous Women’s Movement</td>
<td>1.00</td>
<td>1.13</td>
<td>1.23</td>
<td>0.79</td>
<td>1.10</td>
</tr>
<tr>
<td>Fertility</td>
<td>0.01</td>
<td>0.00</td>
<td>0.02</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>GDP per capita (logged)</td>
<td>0.44</td>
<td>0.17</td>
<td>0.29</td>
<td>-0.03</td>
<td>0.13</td>
</tr>
<tr>
<td>Muslim</td>
<td>-2.14</td>
<td>-2.59</td>
<td>-4.74</td>
<td>-2.60</td>
<td></td>
</tr>
<tr>
<td>Catholic</td>
<td>-0.79</td>
<td>-0.60</td>
<td>0.26</td>
<td>-0.61</td>
<td></td>
</tr>
<tr>
<td>Eastern Europe and Former Soviet Union</td>
<td>-2.09</td>
<td>-1.17</td>
<td>-2.57</td>
<td>-1.17</td>
<td></td>
</tr>
<tr>
<td>Latin America</td>
<td>-0.10</td>
<td>-0.04</td>
<td>-0.16</td>
<td>-0.01</td>
<td></td>
</tr>
<tr>
<td>Middle East and North Africa</td>
<td>-5.46</td>
<td>-4.62</td>
<td>-5.09</td>
<td>-4.62</td>
<td></td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>***</td>
<td>***</td>
<td>***</td>
<td>***</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>-1.42</td>
<td>-1.61</td>
<td>-0.81</td>
<td>-1.62</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SE</td>
<td>0.57</td>
<td>0.49</td>
<td>0.29</td>
<td>0.51</td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.01</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*</td>
<td>***</td>
<td>**</td>
<td>**</td>
</tr>
<tr>
<td>Asia</td>
<td>-3.30</td>
<td>-2.82</td>
<td>-3.12</td>
<td>-2.89</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SE</td>
<td>0.42</td>
<td>0.25</td>
<td>0.33</td>
<td>0.25</td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>***</td>
<td>***</td>
<td>***</td>
<td>***</td>
</tr>
<tr>
<td>Women's Share of Parliamentary Seats</td>
<td>0.06</td>
<td>0.08</td>
<td>0.06</td>
<td>0.06</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SE</td>
<td>0.02</td>
<td>0.03</td>
<td>0.02</td>
<td>0.02</td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>**</td>
<td>**</td>
<td>***</td>
<td>**</td>
</tr>
<tr>
<td>Democracy (Polity)</td>
<td></td>
<td>0.13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>SE</td>
<td>0.03</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>***</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Withdraw Reservation to CEDAW</td>
<td>0.41</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>SE</td>
<td>0.24</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>p</td>
<td>0.09</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* for p<.05  
** for p<.01  
*** for p<.001
References


Htun, Mala. 2007. “Gender Equality in Transition Polities: Comparative Perspectives on Cuba.” In *Looking Forward: Cuba’s Democratic Transition,*


Affairs.
(March 10, 2011).


and Ideology in Contemporary Iran." In Women, Islam, and the State ed.
Deniz Kandiyoti. Philadelphia: Temple University Press. 48-76

Critique of Cultural Essentialism." Hypatia 13 (2): 86-106


Gender 5 (4): 553-560.


in the Muslim World, eds. Nikki Keddie and Lois Beck. Boston, MA:
Harvard University Press.

in Jill M Bystydzienski, ed. Women Transforming Politics. Bloomington, In:
Indiana University Press, pp.67-79.


Pereira, Charmaine, and Jibrin Ibrahim. 2010. “On the Bodies of Women: the
Common Ground between Islam and Christianity in Nigeria.” Third World
Quarterly. 31 (6): 921-937.

Peters, Beverly L., and John Peters. “Women and Land Tenure Dynamics in Pre
Colonial, Colonial and Post-Colonial Zimbabwe.” Journal of Public and
International Affairs 9: 186-92.

Cambridge University Press.

of Retrenchment. Cambridge: Cambridge University Press.

Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of

Rahmatian, Andreas. 1996. “Termination of Marriage in Nigerian Family Laws:
The Need for Reform and the Relevance of the Tanzanian Experience.”

Invention of Tradition eds. Eric Hobsbawm and Terence Ranger.
Cambridge: Cambridge University Press.

268-277.


