At the military hospital in the heart of the capital, Afghanistan’s top surgeon [a general in the Afghan army] wrapped herself in a large shawl and hid in a back room to have a cigarette with four colleagues.

When the door opened, she jumped, quickly put out the cigarette and buried herself further inside the shawl, afraid the intruder was one of the Islamic Taliban soldiers who overran the capital only days earlier.

But it was a reporter. After confirming the new Taliban rulers had granted permission for her to be interviewed, the doctor arranged to meet the reporter the next morning. She smiled, shook hands and said goodbye.

But the next day, seven unsmiling Taliban fighters, rifles slung over their shoulders, blocked the door to her office.

“She’s gone,” said one. They didn’t know where, but they knew she had been replaced – by a man.1
1. INTRODUCTION

On September 27, 1996, the Taliban, a militant Islamic group, seized control of Afghanistan's capital. The Taliban, comprised of Islamic clerics and students, established a new fundamentalist Islamic government over two-thirds of Afghanistan. Initially, the Afghan population welcomed the Taliban regime, hoping the new government would bring peace to this war-torn area. The fundamentalist regime, however, would soon bring drastic change to the Afghan society and economy. This Comment examines the

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4 See John F. Burns, In A Stalemate, Afghan Foes Reload, N.Y. TIMES, Aug. 24, 1997, at 16. A coalition, known as the Northern Alliance, see John F. Burns, As Foes Splitter, Afghan Islamic Victors Press On, N.Y. TIMES, Feb. 16, 1997, at 3, controls the northern third of Afghanistan. See Plone Crash Kills Foes of Afghan Rulers, N.Y. TIMES, Aug. 22, 1997, at A5. The Taliban and Northern Alliance continue to fight. See Burns, supra. In May 1997, the Taliban advanced all the way to Mazar-i-Sharif, the principal stronghold of the Northern Alliance, but the Alliance pushed the Taliban back to their initial position when they first took over Kabul. See id.


6 Afghanistan has a long history of conflict, first by rebels trying to depose communist rule and then among the various tribal factions trying to gain control of the country. See John-Thor Dahlburg, Cold War Incursion Sowed Seeds of Terror, L.A. TIMES, Aug. 4, 1996, at A1. In 1978, after a left-wing revolution against the Daoud republic, a pro-Soviet Marxist regime was installed. See id. at A17. In 1979, the new ruler, Hafizullah Amin, imposed “rigorous and unpopular Communist policies, resulting in an ... uprisings that [led] to a massive military intervention by the Soviet Union ... .” Id. This civil war lasted until 1989, with the United States supporting the resistance and the Soviet Union supporting the Communist government. See id. In 1989, Soviet troops withdrew, and fighting continued between the old Communist government and the resistance. See id. In 1992, the old Communist regime stepped down. See id. Four years of factional warfare among the various Afghan tribes followed, and the fighting continues between the Taliban and the alliance of the northern provinces.

7 See CBS Evening News: Taliban Rulers Impose Strict Islamic Law on Women (CBS television broadcast, Oct. 10, 1996); Morning Edition: Rebel Islamic Group
Taliban's economic effects on women.

Women particularly face a darker side of Taliban rule. For example, one of the Taliban's first actions was to ban women from all employment. Moreover, two women were beaten in the street for not wearing proper Islamic dress. Understanding the full effect of Taliban's rule on women, however, requires a deeper analysis than a mere listing of current abuses. It requires an examination of Islamic law.

The Taliban government has promised that the laws of Islam will be the laws of the state. Islamic law, or Shari'a, affects

Captures Capital of Afghanistan (NPR radio broadcast, Sept. 30, 1996) [hereinafter Morning Edition: Islamic Group]. Upon gaining control of the capital, the Taliban hung the former leader in public. See Islamic Rebels Pursue Retreating Afghan Army, supra note 3, at 14 (noting that the Soviet Era leader was left "hanging by wire nooses outside the presidential palace"). The Taliban also forbade men from trimming their beards for 45 days; banned canaries because they sing, outlawed card games and chess because they encourage gambling; banned soccer as un-Islamic; and beat a married couple who were riding too closely together on their bicycles. See Christopher Thomas, Divine Rulers Free Canaries and Ban Chess, TIMES (London), Oct. 8, 1996, at 11. The Taliban closed movie theaters, burned films, cut music cassettes, destroyed bottles of liquor, and forced all men to pray in the mosques. See 60 Minutes: Profile: Taliban (CBS television broadcast, Nov. 3, 1996) [hereinafter 60 Minutes: Taliban].

8 See John F. Burns, New Afghan Rulers Impose Harsh Mores of the Islamic Code, N.Y. TIMES, Oct. 1, 1996, at A1, Christopher Thomas, Militants Bring A Veil Down On Battered Kabul, TIMES (London), Sept. 30, 1996, at 11. The Taliban have not hesitated to enforce the full extent of their laws. See, e.g., Swain, supra note 3, at 17 (noting that a "widow was prevented . . . from burying her dead husband because [women were] forbidden to work").

9 See Thomas, supra note 8, at 11 (noting that women were beaten for wearing "un-Islamic" dress).

10 The Deputy Foreign Minister of the government, Sher Mohammed Stanakzai, has stated, "Afghanistan is an Islamic state, and our rules and regulations will be . . . Islamic rules . . . [W]hatever is in Islam . . . will be implemented [by the Taliban]. We will be strict with that." 60 Minutes: Taliban, supra note 7. Mullah Mohammed Hassan, one of the most powerful clerics in the Taliban, has stated, "We take our lead from our Holy Prophet . . . and whatever it [Islam] prohibits, we prohibit." See John F. Burns, With Sugared Tea and Caustic Rules, An Afghan Leader Explains Himself, N.Y. TIMES, Nov. 24, 1996, at 9. The Afghan new agency in Pakistan "declared that Afghanistan was now a 'completely Islamic state' where a 'complete Islamic system will be enforced.'" Christopher Thomas, Swift Revenge as Taliban Seizes Control of Kabul, TIMES (London), Sept. 28, 1996, at 11. See also Afghanistan's Agony, TIMES (London), Oct. 1, 1996, at 17 (noting that the Taliban have imposed Sharia law); John F. Burns, New Afghan Rulers Shock Even Their Backers in Pakistan, N.Y. TIMES, Sept. 30, 1996, at A3 (noting that the Taliban is imposing the Islamic laws); Jon Swain, Terror Chief Found Behind Taliban Lines, TIMES (London), Oct. 27, 1996, at 19 ("The [Taliban] movement swept through the country imposing harsh sharia law . . .").
women in unique ways. The Shari'a has detailed rules concerning women's inheritance rights, dower rights, and marriage duties. These rules have specific economic consequences for Afghan women. Therefore, to understand the economic effects of the Taliban government on women, one must understand the economic effects of Islamic law.

This analysis does not, however, automatically conclude that Islam is anti- woman. Some of the technical Islamic laws, particularly the laws based on the Quran itself, actually grant women specific rights to economic resources. At the same time, the laws of marriage, based more on jurisprudential tradition than on the Quran itself, can limit women's ability to earn income through employment.

The real culprits in the economic oppression of women, however, are social norms and customs. More than the technical Islamic law itself, these social realities limit Afghan women's economic opportunities. Studies of women in the Muslim communities of Egypt, Israel, and the West Bank reveal that the patriarchal norms of society are the strongest forces that limit women's access to wealth. Thus, to understand the economic future of Afghan women, one must understand the interaction of social norms and Islamic law. This understanding supports the claim of many Islamic feminists that a rejection of the oppression of women does not necessarily involve a rejection of Islam.

11 See Leila P. Sayeh & Adriaen M. Morse, Jr., Islam and the Treatment of Women, 30 Tex. Int'l L.J. 311, 312 (1995) ("Islam has often been named as the main factor inhibiting the development of women's rights in Muslim countries.").

12 See id. (noting that commentators often mistakenly blame Islam itself, and not the "misinterpretation of Shi'ih law perpetuated by patriarchal societies," as the real cause of women's oppression) (footnote omitted).

13 Ann Elizabeth Mayer, in her study of Islamic human rights theories, also makes this distinction between the Islamic law itself and its interpretation. See ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS xii (2d ed. 1995). She argues that in order to understand Islamic views of human rights, one must look at the extrapolation of rules and policies from Islamic law and not "the core doctrines of Islam." Id.

14 See Morning Edition: Muslim Women Gather to Discuss Responses to Militants (NPR radio broadcast, May 13, 1996) (noting that Buthena Sibahn, a professor in Syria, feels that the problem of fundamentalism is its misinterpretation of the basic tenets of Islam); see also Weekend Edition: Muslim Feminist Comments on Women in Islam (NPR radio broadcast, Nov. 20, 1994) (noting that Dr. Mahnaz Afkhami, executive director of the Sisterhood is Global Institute, stated that the essence of Islam is egalitarian, whereas anti-feminism comes from society). See generally GERALDINE BROOKS, NINE PARTS OF DESIRE (1995) (arguing that Islam essentially carries a liberating message for women, but that cultural practices have
This Comment argues that social norms, more so than the technical Islamic law, limit Afghan women's access to economic resources. Subsequently, this Comment predicts the economic future of Afghan women by analyzing both Islamic law and Muslim society. First, Sections 1.1 and 1.2 present the relevance of Afghanistan's experience to other international issues. Having established the Taliban's importance in the international realm, Sections 2 and 3 examine the internal forces in Afghanistan that affect women economically.

Section 2 analyzes the Islamic laws on inheritance, dower, and marriage. Section 2 determines that Islamic law grants women rights to certain types of wealth. Section 3 then examines the social norms that limit the economic rights to inheritance, dower, and marriage found in Islamic law. An analysis of studies from other Islamic communities shows how social forces shape the reality of Muslim women's legal rights and predicts the economic future of Afghanistan. Thus, Section 3 contends that social norms acting upon inheritance, dower, and marriage, and not the definition of these legal rights, limit Afghan women's access to economic resources. Section 4 then suggests a methodology for improving the economic status of Afghan women. This Section shows that any reform must come from a new interpretation of Islamic law, rather than a total rejection of Islamic jurisprudence.

1.1. Afghanistan's Stability Is an Important International Issue

The effect of Islamic rule on Afghanistan is especially relevant to current international issues. First, the unstable situation in Afghanistan is of immediate significance to the international community. The Taliban continue to fight against an alliance of the more moderate northern provinces. India, Iran, and Russia support the northern government, whereas Pakistan supports the Taliban. The United Nations ("UN") has expressed concern over
distorted this message).

15 See supra note 4; see also John F. Burns, As Foes Splinter, Afghan Islamic Victors Press On, N.Y. TIMES, Feb. 16, 1997, at 3 (noting that the Northern Alliance gives women far more freedom than the Taliban).


the continued fighting and human rights abuses in the country.\footnote{See UN General Assembly Concerned Over Human Rights Abuses, (BBC Summary of World Broadcasts, Dec. 20, 1996).} On December 17, 1996, the UN passed a resolution calling for all Afghan parties to meet with UN representatives in an attempt to restore peace.\footnote{See id. The United Nations also faces the controversy over the Taliban's request to be given Afghanistan's seat in the General Assembly.} In addition to the problems caused by the continual war, Afghanistan's condition raises issues of international aid,\footnote{Afghanistan is very weak economically and the civil war between Islamic rebels and the Soviets led to further economic and civil destruction. Afghanistan is one of the poorest nations in the world. See Dahlburg, supra note 6. Most of its roads were damaged during the civil war and it has almost no railways. See id. It has one of the lowest life expectancies and the highest infant mortality rates in the world. See id.} the spread of Islamic fundamentalism,\footnote{Understanding the Taliban in Afghanistan helps in understanding the implications of the continual spread of Islamic fundamentalism. The spread of Islamic fundamentalism and its consequences are pressing current issues. "Islam has also re-emerged in Muslim politics. Islam is used by governments to legitimate their rule and policies, and it also serves as an umbrella for opposition forces who seek to topple 'un-Islamic governments.'" JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW ix (1982); see also Urfan Kahliq, Beyond the Veil?: An Analysis of the Provisions of the Women's Convention and the Law as Stipulated in Shari'ah, 2 BUFF. J. INT'L L. 1, 3 (1995) (noting that Islam is experiencing a resurgence in many countries). Even the traditionally secular Turkey has faced a resurgence of Islamic Fundamentalism. See Morning Edition: Kemalists Try to Counter Rise in Islamic Fundamentalism (NPR radio broadcast, July 22, 1996).}
supply of heroin world-wide, and international terrorism.

1.2. The Economic Situation of Afghan Women Is Relevant to International Human Rights Efforts

Islam's effect on Afghan women presents an important international issue. In response to the Taliban's repressive significant force in political movements.

Thus, "fear of the Taliban's fundamentalism has reached beyond Afghanistan's borders." Burns, supra note 3, at A8; see also Rieff, supra note 17, at 23 (noting that an Islamic government in Afghanistan would facilitate the further spread of fundamentalism in Uzbekistan).

Afghanistan is currently the supplier of almost half of the world's heroin. See Michael Dynes, Holy Army Bolsters Heroin Trade, TIMES (London), Oct. 2, 1996, at 9. Despite the Taliban's opposition to heroin use by Afghans, it profits from taxing drugs sent abroad. See John F. Burns, Afghanistan Reels Back Into View, N.Y. TIMES, Oct. 6, 1996, at 5; see also Dynes supra (noting that the Taliban levy a 10% tax on the heroin crop).

Many Muslim fundamentalists who fought in the Afghan wars have transformed their ideological and military experience into terrorist action. See Congressional Testimony Document Clearing House, D. Khalid Duran testifying on the Situation in Afghanistan, Apr. 16, 1996. "Transnational groups comprised of fanatical Islamic extremists who fought in Afghanistan now drift to other countries with the aim of establishing anti-western, fundamentalist regimes by destabilizing traditional governments and attacking U.S. and Western targets." Dahlburg, supra note 6, at A16. For example, the terrorists who bombed the United States Military base in Saudi Arabia had fought in the Afghan war. See id. The State Department reports that almost all Afghan factions are still involved in training terrorists. See id. Saudi Islamic militant Osama Bin Laden, a suspected organizer and financier of terrorist acts (specifically the Saudi Arabia bombing), lives in Afghanistan and is "an honoured guest in Kabul." Swain, supra note 10, at 19.

These implications for international terrorism do not end with the establishment of one rule over a major part of the country. Afghanistan does more than offer a military context in which terrorists can be trained. It gives the ideological underpinnings for an aggressive jihad, and is spreading jihad enthusiasm to other countries. See Dahlburg, supra note 6.

The Taliban's clerics support the notion of jihad that entails overthrowing non-Muslim states through force. See id. For example, one Taliban member stated, "When we have conquered Afghanistan, we will conquer the whole world for Islam." Tim McGirk, Taliban Zealots Determined to Enforce A Strict Vision of Islam, VANCOUVER SUN, Sept. 28, 1996, at A10 (quoting a member of the Taliban).

The economic impact of Islamic rule upon women is a current issue in many other countries.

Because of the resurgence of Islamic movements, the position of women living under Islamic laws has become of increasing importance in recent years. . . . This "re-awakening" of religious identity has led to a surge in the "Islamisation" of domestic laws in countries such as Iran, Egypt, Sudan, Malaysia and Pakistan, and a corresponding decline in the fortunes of women living under these regimes.
actions, an international group of Muslim women has published a manual on the rights of women under Islam. The Taliban has admitted that the "treatment of women in Afghanistan is a stumbling block to better relations... [with] the West." In addition, the experience of women in Afghanistan is relevant to the ongoing debate over the compatibility of Islam and international human rights agreements. The recent United Nations Conference on Women has highlighted the problem of applying International Women's Rights conventions to the particular situation of Islamic women. Thus, an examination of the economic effects of the Taliban rule on women offers relevant information for understanding both the impact of Islamic fundamentalism and the problems fundamentalism causes for international women's issues.

2. THE ECONOMIC EFFECT OF ISLAMIC LAW ON AFGHAN WOMEN: INHERITANCE, DOWER, AND MARRIAGE

The economic effect of Taliban rule initially seems obvious. Before the Taliban came to power, women were a significant part

Khaliq, supra note 21, at 3.

The impact of the Taliban on Afghan women's economic position is also relevant to international aid programs. First, banning women from work promises to place more Afghan families into poverty and increases the need for aid. See, e.g., CBS Evening News (CBS television broadcast, Oct. 10, 1996) (noting the large number of war widows who were the sole family providers until the Taliban banned women from work); Swain, supra note 3 (noting that tens of thousands of families who were dependent upon the income of their female relatives have been put on the breadline). At the same time, a number of agencies are leaving Afghanistan because of its oppressive policies toward women. See, e.g., Christopher Thomas, Crackdown on Women's Rights Leaves Aid Agencies Split on Kabul Pullout, TIMES (London), Oct. 31, 1996, at 15 (noting Oxfam suspended its operations in Kabul because women were banned from working).


https://scholarship.law.upenn.edu/jil/vol24/iss4/4
of the workforce. The Taliban’s rule banning women from work denies women access to wages, a crucial means of support. The challenge in understanding the economic reality of Afghan women is to understand how Islamic law, as distinct from cultural norms, contributes to their plight.

A common Western response to the economic oppression of women in Muslim countries is to blame the Islamic religion. Islam does have specific laws that affect women economically. An analysis of these laws, rather than a reliance on stereotypes, is necessary to know whether Islam and its law deserve this blame. This section examines the Islamic laws on inheritance, dower, and marriage in order to show that the technical Islamic law is not the main factor limiting Afghan women’s wealth. Rather, some Islamic laws actually give women specific rights to economic resources.

2.1. The Legal Impact of the Islamic Religion

An analysis of the economic position of Afghan women necessarily involves an examination of the tenets of Islam. An understanding of Islamic law is necessary, not simply because Islamic clerics formed the Taliban government, but because Islam’s effect on Afghanistan goes beyond shaping the government’s

29 “Kabul’s women had been allowed to work for 50 years, and without women the city could not function. The civil service, hospitals and schools depended on them.” Christopher Thomas, Crackdown on Women’s Rights Leaves Aid Agencies Split on Kabul Pullout, TIMES (London), Oct. 31, 1996, at 15; see also Bernard Levin, Taleban Meets Caliban, TIMES (London), Oct. 18, 1996, at 22 (noting that approximately 250,000 women were working before the Taleban arrived); Jon Swain, Kabul Hushed by Taliban Dark Age, TIMES (London), Oct. 6, 1996, at 17 (noting that hospitals in Afghanistan are paralyzed because many of the doctors were women). In Kabul, one woman doctor pleaded with the Taliban members on the street, asking them to let her work because she had three patients to operate on. See Swain, supra. “The schools [in Kabul] closed, because all the teachers were women.” Christopher Thomas, Kabul Traffic Cops Under-Employed in City of Disruption, TIMES (London), Oct. 19, 1996, at 16.

30 The Taliban bar on women’s employment will further impoverish the already struggling population of Afghan women. See, e.g., CBS Evening News (CBS television broadcast, Oct. 10, 1996) (noting the large number of war widows who were the sole providers for their families until the Talibab banned women from work); Swain, supra note 29, at 17 (noting that tens of thousands of families who were dependent upon the income of their female relatives have been put on the bread line).

31 See Sayeh & Morse, supra note 11, at 312.

32 See discussion infra Parts 2.1.1-2.1.3, 2.2.
philosophy. The Islamic religion of the Taliban provides many of the specific laws of the state. In Islam, religion governs politics, economics, and law. "A striking element in the cultural configurations that are grounded in Islam is the primary place that law has within them." The Shari'a (Islamic Law) generally, and the Quran (the Holy Book) specifically, offer detailed rules of a legal nature. These rules are more than theological concepts; they offer a comprehensive framework for a community, including its legal provisions. Thus, becoming a Muslim state has meant

33 See Khaliq, supra note 21, at 7 (noting that in addition to being the source of religious norms, Islam is the source of legal principles and rules for Muslims).

Modern Islamic countries have not rejected the Quran and Shari'a as the basic framework for an Islamic community. For example, both the Iranian and Pakistani constitutions specifically state that all laws must conform to the dictates of the Quran. See Ayatollah Yahya Noori, Legal and Political Structure of an Islamic State: The Implications for Iran and Pakistan 108 (1987) (Appendix 3, Extracts from the Pakistani Constitution). All evidence shows the new Taliban state will also use the Quran to structure its laws. See supra note 10.

34 See Noori, supra note 33, at 68. The structural effects of Islam are very different from Western concepts of government. For a Muslim state, religion is not separated from government interference; it is the foundation for the government itself. See id.


36 Esposito, supra note 21, at 3. The Quran has detailed rules for criminal punishment, marriage and divorce, custody and legitimacy of children, inheritance, dower, adoption, and slavery. See generally Imetiyaq Hussain, Muslim Law and Customs (1989) (describing in detail the various laws of the Quran and Shari'a).

37 Dwyer, supra note 35, at 1. The impact of Islam on the structure of a state can be seen in Pakistan, where religious courts were created as part of the judicial arm of the government. Noori, supra note 33, at 106. These courts have the power to nullify secular laws that do not conform to Islam. Id. at 107.

Thus, Islam clearly has an effect on the entire society. See Audrey Chapman Smock & Nadia Haggag Youssef, Egypt: From Seclusion to Limited Participation, in Women: Roles and Status in Eight Countries 33, 37 (Janet Z. Giele & Audrey C. Smock eds., 1977) ("Islam, as an integral religion, formulates a total pattern of living rather than focusing primarily on theology."); Robert Roberts, The Social Laws of the Quran 2 (2d ed. 1971) (noting that Muhammed, in addition to founding a religion, was also a social reformer as well). The impact of Islam on community structure can be seen in its early history. Islam changed the tribal practices of the early Arabian communities, often in very significant ways. See Esposito, supra note 21, at 4 (noting that Islam changed the social customs of Arabian communities). See also Aharon Layish, Women and Islamic Law in a Non-Muslim State 279 (1975). For example, pre-Islamic Arabian tribes denied women all rights to any inheritance. The Quran, in contrast, gave women specific shares of their relatives' estates. See Esposito, supra note 21, at 5. The Quran also, to some extent, changed marriage from the sale of women to a contract where women, at least technically, were legal partners. See id. at 4.
implementing the Shari'a and the Quran's specific laws.

All Muslim states with governments similar to the conservative Taliban rule have instituted the laws of the Quran and Shari'a as the official law.\(^{38}\) For example, when Pakistan was formed as a Muslim state it incorporated the Quranic laws of succession, dower, and polygamy.\(^{39}\) Even non-Muslim states sometimes have special Islamic courts that apply Quranic laws to its Muslim citizens.\(^{40}\) Thus, as Sher Mohammed Stanakzai, Deputy Foreign Minister of the Taliban government, has stated, “Afghanistan is an Islamic state, and our rules and regulations will be according to Islamic rules. I mean to say, whatever is in Islam . . . that will be implemented. We will be strict with that.”\(^{41}\)

This implementation of Islamic law is especially relevant for women because many Quranic and Shari'a laws address women in particular.\(^{42}\) These rules do not solely dictate women's theological or social position; they also significantly affect their economic position.\(^{43}\) By granting specific inheritance rights,\(^{44}\) dower rights,\(^{45}\) and maintenance rights in marriage,\(^{46}\) the Quran and Shari'a dictate the distribution of property within a Muslim community. Therefore, an analysis of the economic effects of an Islamic rule on women should begin with the Shari'a.

\(^{38}\) See Sayeh & Morse, supra note 11.

\(^{39}\) See Esposito, supra note 21, at 81-88 (noting the various modern reforms in Pakistan were necessary because the traditional Quranic laws were in place).

\(^{40}\) See Layish, supra note 38, at 2 (noting that special Islamic courts in Israel have exclusive jurisdiction over personal status and waqf (religious endowment) issues for Muslims).

\(^{41}\) See 60 Minutes, supra note 7.

\(^{42}\) See Smock & Youssef, supra note 38, at 37 (noting that Mohammed was particularly concerned with the position of women); Mayer, supra note 13, at 110 (noting that the Quran devotes considerable attention to the status of women); Esposito, supra note 21, at 4 (noting that some of the most important changes Islam brought to society came from the Quranic passages on women). The Quran gives specific rules for women in dower, marriage and divorce, inheritance, the iddat, maintenance, and custody. See generally Jamal J. Nasir, The Status of Women Under Islamic Law (1990) (describing the various Shari'a laws that affect women).

\(^{43}\) See, e.g., Smock & Youssef, supra note 38, at 37 (noting that Mohammed gave women property rights).


\(^{45}\) See id. at 43.

\(^{46}\) See Nasir, supra note 43, at 60.
2.2. Inheritance

Islamic law, also known as the Shari'a, is comprised of four sources: the Quran (the Holy Book), the Sunna (the model behavior of the Prophet), qiyas (analogic reasoning), and ijma' (the consensus of the community). This section examines inheritance an aspects of the Shari'a based on the Quran, the strongest and most immutable source of law.

The Quran provides detailed rules governing inheritance. Certain relatives in an extended family receive a specified share in a decedent’s estate. Overall, female relatives get approximately one-half of what their male counterparts receive. For example, if a couple have children, a husband will inherit one-quarter of his wife’s estate, whereas a wife will only inherit one-eighth of her husband’s estate. The father of a decedent will often inherit more than a wife. Moreover, a son, as the most favored heir of the decedent, inherits twice as much as a daughter.

Thus, women generally inherit less than men do under Islamic law. They do, however, inherit at least a specific amount that a

47 See Dywer, supra note 35, at 2; R.S. SHARMA & NAREHEH KUMAR MAHESHWARI, KEY TO MUSLIM LAW 1 (1988).
48 See Esposito, supra note 21, at 3; Khaliq, supra note 21 at 6.
49 See Moors, supra note 45, at 50-51.
50 See Roberts, supra note 38, at 66; Khaliq, supra note 21, at 14 (noting that women suffer discrimination in Islamic inheritance law in many ways); Behind the Chador, ECONOMIST, Jan. 18, 1997, at S9 ("Women, worth less than men under Islamic law, do not get equal rights to... inheritance."); Muharyani Othman, Syariah Court Comes Under Fire, NEW STRAITS TIMES, Dec. 16, 1996, at 6 (noting that in Malaysia, under Islamic law, men are given a larger share of property inheritance).
51 See Hussain, supra note 36, at 446-447. If the couple had no children the husband gets a one-half share whereas the wife receives one-quarter. See id.
52 See id. (noting that the father receives a one-sixth share under certain circumstances).
53 See id. at 450; Can Muslim Women Thrive Under the Veil? SWISS REV. OF WORLD AFF., Oct. 1, 1996 ("According to Islamic canon, a daughter’s share of an inheritance should be smaller than a son’s."); Roula Khalaf, How to be an Iranian Islamic Feminist, FINANCIAL TIMES, Nov. 21, 1996, at 6 ("[A] daughter receives half her brother’s inheritance.").

The grandmother and grandfather both receive one-sixth shares, but the paternal grandmother only inherits if there is no father or mother. The paternal grandfather inherits if there is no father. Both the son’s daughter and the full sister inherit only in the absence of a male counterpart. See Hussain, supra note 36, at 446-47.
will usually cannot override. \(^{54}\) Thus, the Islamic law of inheritance affects women economically by guaranteeing female relatives a certain amount of property through inheritance. The positive effect of inheritance law on women is that they receive property to use in the economic system. Compared to men, however, women are at an economic disadvantage under the inheritance law. Thus, the Shari'a grants a woman economic resources, but diminishes her financial position by giving other economic actors, namely men, more.

2.3. Dower

Dower law probably offers the most positive economic rules for women under the specific dictates of the Quran. In a study of Palestinian women living in the West Bank, Annelies Moors concluded that dower is still the major medium through which women gain access to property. \(^{55}\) Despite some legal limitations, the Quran gives women genuine property rights through dower. \(^{56}\)

The Quran dictates that a woman should receive dower as a free gift upon her marriage. \(^{57}\) Dower is a gift of either money or property that a man must give his bride upon the marriage contract's enactment. \(^{58}\) The purpose of dower is not consideration for the sale of a wife. Rather, dower may be a "mark of respect for the wife." \(^{59}\) In addition to being a symbol of respect, dower may also be an important property right for a woman, balancing other rights given to the husband. \(^{60}\)

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\(^{54}\) See id. at 26. "[A] man is not free to bequeath his whole estate to whomever he chooses. He is obligated by law to give certain fixed amounts to specific heirs. These shares represent the inviolate right of such heirs to an inheritance." Esposito, supra note 21, at 45.

The Quran is silent as to the extent of a continued power of testamentary disposition. See id. However, Islamic clerics have found in the Sunnah (the stories of the prophet's life) that a person can bequeath up to one-third of his estate to parties of his own choice as long as they are not his legal heirs. See id. Afghan Muslims follow the Hanafi sect of Islam. Under Hanafi law, to grant anything above this allowable one-third, the heirs must give their permission. See id.

\(^{55}\) See MOORS, supra note 45, at 124.


\(^{57}\) See NASIR, supra note 43, at 43.

\(^{58}\) See HUSSAIN, supra note 36, at 220.

\(^{59}\) Sayeh & Morse, supra note 11, at 325.

\(^{60}\) See id. at 220.
A woman is the exclusive owner of her dower. She can dispose of the money or asset as she chooses, without her husband’s permission. A woman cannot return the dower to her husband unless she is sane and gives her free consent. In addition, a marriage cannot be conditional upon the waiver of dower. Most dower is payable to a wife upon demand. Unlike maintenance, discussed later, the dower right is enforceable in many ways. It is legally enforceable in the courts; or the wife legally can take possession of her husband’s estate until he pays her dower. In addition, if a man does not pay his wife dower, she has the right to refuse him sexually and leave his house without his permission—a right of movement rare for the Muslim wife.

There are some legal rules that limit the positive economic effects of dower law for women. If a marriage is not consummated and the wife is divorced, she receives only half. Under Hanafi law, the Islamic sect that the Taliban follow, a wife may refuse sex with her husband for failure to pay dower, but only if they have not yet consummated the marriage. Thus, to some extent, dower is still conditional upon sexual submission.

2.4. Marriage

As is true for inheritance and dower, the Shari’a also has detailed rules for marriage. The Islamic laws on marriage have many negative social implications for women. Polygamy specifically is permissible and a husband has unilateral power to divorce his wife. On the other hand, a wife’s ability to divorce is very limited. The main ways, however, in which marriage laws

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61 See NASIR, supra note 43, at 47; MOORS, supra note 45, at 86.
62 See MOORS, supra note 45, at 86.
63 See HUSSAIN, supra note 36, at 226.
64 See NASIR, supra note 43, at 44.
65 See HUSSAIN, supra note 36, at 219.
66 See id. at 228.
67 See NASIR, supra note 43, at 57.
68 See HUSSAIN, supra note 36, at 184.
69 See infra Section 2.2.
70 See NASIR, supra note 43, at 52.
71 See HUSSAIN, supra note 36, at 26.
72 See NASIR, supra note 43, at 57.
73 See id. at 24.
74 See ESPOSITO, supra note 21, at 29-30. See also Seth Mydans, Blame Men, Not
negatively affect Afghan women’s economic positions is through the doctrines of maintenance and obedience.75

2.4.1. Maintenance

The basic provision for maintenance seems to offer positive economic implications for women. The right of maintenance dictates that a man must provide for his wife at his expense.76 All Islamic countries have incorporated this religious law as the law of the state.77 Maintenance is a legal entitlement for a wife, enforceable in court78 and available regardless of her independent wealth.79 Thus, the basic Islamic rule of maintenance seems to affect women economically by providing a legal right to economic resources. The other religious laws applicable to maintenance, however, reveal that the maintenance obligation is severely limited, difficult to enforce, and easily terminated.

First, maintenance is not a lump sum of money that women receive and control. Rather, the main requirement of maintenance is for a husband to provide his wife with food, clothing, lodging, and medical care.80 Most of maintenance thus does not give a woman transferable assets that she can use as an economic actor in the market.

Second, a woman is entitled to maintenance only upon meeting certain marriage conditions. She is entitled to maintenance only if a valid marriage contract exists, she “places... herself in the

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75 The maintenance laws come from a combination of the Quran, Sunnah, and consensus, see NASIR, supra note 43, at 60, whereas the obedience law does not stem from a specific Quranic provision, see ESPOSITO, supra note 21, at 23.

76 See NASIR, supra note 43, at 59. See also Othman, supra note 51, at 6 (noting that men have the obligation to financially support family members).

77 See NASIR, supra note 43, at 59 (noting that all modern Arab laws have the basic marital maintenance provision). In particular, Nasir gives a non-exclusive list of the maintenance provisions in Iraq, Jordan, Syria, Kuwait, Algeria, Egypt, Morocco, and Lebanon. See id.

78 See ESPOSITO, supra note 21, at 27 (“If the husband refuses to pay maintenance, the wife has the right to sue for it.”).

79 See NASIR, supra note 43, at 59-60. Islamic laws do not recognize marriage as creating communal property; spouses retain ownership of what they owned before marriage. See ESPOSITO, supra note 21, at 24.

80 See ESPOSITO, supra note 21, at 26; NASIR, supra note 43, at 59-60. “If the husband provides the wife with sufficient food, clothing and other basic needs, and a decent home, there shall be no point in the wife requiring any maintenance from the court.” Id. at 66.
husband's power so as to allow him free access to herself [physically]," and she obeys all his lawful commands. The tamkeen, or the physical availability of a wife, rather than the marriage contract, is the predicate for maintenance. Thus, to gain access to these economic resources, a woman must physically and willingly submit to her husband's orders.

Third, under Hanafi law, maintenance is difficult to enforce. Even if a court finds that a man neglected his maintenance duties, his wife cannot receive past due maintenance and can only receive a prospective order of payment. Even if a man continuously refuses to pay maintenance, his wife does not have sufficient grounds for divorce under Hanafi law. Thus, the law may give no recourse to a woman facing both denial of access to basic economic provisions of maintenance and restriction in her ability to work. Therefore, maintenance does little to further a woman's economic position in Afghanistan.

2.4.2. Obedience: Restrictions on Women's Movement

An Afghan woman's duty to obey her husband is the second aspect of Islamic marriage law that affects her economic position. According to the Shari'a, a wife has a general duty of obedience to her husband. Islamic jurists, in particular, have found that a woman cannot leave her husband's home without his permission.

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81 NASIR, supra note 43, at 60-61.
82 See id. at 62.
83 If a woman works against her husband's will, he can deny her maintenance. See id. Thus, a woman sometimes gains the economic resources of maintenance only at the expense of other economic opportunities.
84 See HUSSAIN, supra note 36, at 26 (noting that Afghans generally follow the Hanafi sect).
85 See ESPOSITO, supra note 21, at 27.
86 See id. In most Muslim states it is very difficult for a woman to obtain a divorce for any reason. See Diego Ribadeneira, Questions on the Koran, BOSTON GLOBE, Jan. 15, 1997, at A12.
87 For example, Farida Ghulam, a member of the Bahrain Young Ladies Association, noted many cases where the wives were neglected or had no economic support from their husbands at all. She also noted that the Bahrainian courts would not force the men to pay, nor allow the women to divorce. See Women in Bahrain Seek Clear Guidelines on Family Issues as Defined by Sharia Law, MONEYCLIPS, Sept. 30, 1995.
88 See NASIR, supra note 43, at 39; ESPOSITO, supra note 21, at 23.
89 See NASIR, supra note 43, at 39; ESPOSITO, supra note 21, at 23; LAYISH, supra note 38, at 101. See also Behind the Chador, ECONOMIST, Jan. 18, 1997 at S9 (noting that, under Islamic Law, women do not have the same rights to travel as men).
If she leaves without her husband’s permission, he can have an Islamic court declare her rebellious and lawfully withdraw all economic support.

Similar to the Quranic laws of inheritance, Islamic countries generally have not hesitated to enforce the duty of obedience as state law. Syria, Jordan, and Kuwait have even specifically codified this law of obedience. Whether through codification or judicial enforcement, the Taliban government is likely to make obedience part of its general laws.

2.4.3. Employment

The obedience law’s limitation on a woman’s movement has significant implications for her ability to seek work outside of home. Husbands effectively possess the power to prevent their wives from working. Under the obedience doctrine, if a woman wants to work and gain access to economic resources, her husband may turn to the courts for recourse. He can stop supporting his wife and even physically punish her with little restriction.

Saudi Arabia, women are absolutely prohibited from traveling unless accompanied by a man. See Can Muslim Women Thrive Under the Veil?, supra note 54.

Jan Goodwin, in her book, Price of Honor, describes how the restrictions on movement affected one wife of an Egyptian taxi driver.

"[The] college educated wife, Wafa [was] confined to their tiny four room apartment... and forbidden to leave the house for any reason. She is not even permitted to visit other women living in their apartment building... When they were first married, [the husband] insisted that Wafa discontinue her studies. [The husband said] 'I want to control [my wife] and my daughter wherever they go... She has no permission to go anywhere without me...."


90 See LAYISH, supra note 38, at 101 (noting that the judgment of rebelliousness was one of the traditional powers of an Islamic court); Chand, supra note 91 (noting that Bahrain courts would even encourage husbands to request an order of obedience).

91 See LAYISH, supra note 38, at 101.


93 See id.

94 See LAYISH, supra note 38, at 101.

95 See id.

96 See id. at 109 ("Wife-beating ‘for the purpose of chastisement’... was considered legitimate from the shari’a point of view...").
Using the obedience doctrine to prevent a woman from working generally is acceptable in the Muslim world. "The majority of Islamic jurists [from all Islamic sects] rule that there shall be no maintenance for the wife who goes out to work without permission of her husband."\(^97\) Significantly, Muslim countries have the lowest female employment rates in non-agricultural jobs.\(^98\) The Taliban rule, with its fundamentalist focus, will be no different. The Taliban did not even wait for husbands to stop women from working; they banned women from employment from the beginning.\(^99\) Therefore, the Shari'a rules on obedience will limit an Afghan woman’s ability to be a free economic actor.

Overall, although some of the marriage laws will limit economic wealth, Islamic law itself does not dictate the economic oppression of Afghan women. Rather, the laws of inheritance and dower could give Afghan women specific rights to economic resources. An analysis of the economic situation of Afghan women, however, cannot stop with Islamic law. Studies of other Islamic countries have shown that social forces that shape the impact of inheritance, dower, and marriage law will severely limit the economic freedom of Afghan women. Thus, the Taliban’s promise to impose Islamic law has an ominous impact on women because the Taliban also bring an oppressive culture.

3. THE ECONOMIC IMPACT OF SOCIAL AND CULTURAL FACTORS

The gap between legally available options and rights and those that are actually accessible to most women is very large.\(^100\) As noted previously, Islam contains many legal rules that are meant to structure Muslim society generally and define gender roles. These rules will have a clear impact on Afghan women’s economic position. The laws, however, are not the only economic factor. This Section analyzes three studies of other Muslim communities to predict the impact of social forces on Afghan women. Moreover, this Section shows that cultural norms severely limit the technical rights to inheritance, dower, and marriage maintenance. Thus, by analyzing the social modification of the three legal rules, this

\(^97\) NASIR, supra note 43, at 62. See also Anil Noel Netto, Malaysia- Women: Discrimination in the Workplace Still Strong, INTER PRESS SERVICE, Jan. 3, 1997 (noting that husbands often are opposed to their wives’ desire to work outside the home).

\(^98\) See Smock & Youssef, supra note 38, at 57.

\(^99\) See Morning Edition: Islamic Group, supra note 7.

\(^100\) Smock & Youssef, supra note 38, at 47.
Section shows how social norms, and not the technical Islamic law, are the main factors that limit the economic power of Afghan women. Overall, when the law itself seems to give women access to property through inheritance and dower, the social reality nullifies this economic power. In the case of marriage, social forces enhance the already negative impact of the laws.

Social norms and customs are particularly relevant for a study of a Muslim society. Custom is a valid, recognized source of Islamic law. This section does not, however, focus on the customary laws separate from the more definitive laws drawn from the four chief sources: the Quran, Sunnah, the Ijmaa, and the Qiyas. Rather, this Section emphasizes how customs and social forces affect the three traditional laws discussed previously: inheritance, dower, and marriage. The information on the impact of social norms comes mainly from studies of Muslims in Israel, Egypt, and the West Bank. Clearly, these societies differ from Afghanistan in many ways. Overall, however, these studies analyze social factors that are common to Muslim societies. In particular, these factors stem from the implications of maintenance laws and from the general patriarchal nature of the societies. Maintenance is a major part of Muslim law and will be part of Afghanistan’s system. Also, the early actions of the Taliban reveal a strong patriarchal tendency. Thus, these studies offer relevant examples sufficiently analogous to predict the future economic position of Afghan women.

101 See HUSSAIN, supra note 36, at 49; Dwyer, supra note 35, at 2-3 (noting that customary law is recognized by jurists as a subsidiary, yet valid, source of Muslim law).

102 See HUSSAIN, supra note 36, at 41, 49. These four elements are the main sources of Muslim law or Shar’ā. See id. at 41. Custom is considered a supplementary source and if the custom is not expressly forbidden by the Quran, it can be a source of law. See id. at 49.

103 For example, Egypt is influenced by its history of being controlled by Great Britain. See Smock & Youssef, supra note 38, at 40-42. Women in the West Bank are influenced by the intifada. See MOORS, supra note 45, at 121. Women in Israel have the unique option of turning to the more liberal secular courts. See LAYISH, supra note 38, at 288-89.

104 See NASIR, supra note 43, at 59 (noting that all modern Arab laws have the basic marital maintenance provision).

105 The best example of Taliban’s patriarchal tendency is its prompt order to ban women from most employment. See McGirk, supra note 23, at A10.
3.1. Inheritance

Inheritance is the area of Quranic law that social norms affect most. All three countries presented in the following examples reveal that women's actual access to property through inheritance encounters severe limits under the common social practice of women giving their inheritance wealth to their patrilineal families.

3.1.1. Egypt

In a study of Egyptian women, Audrey Smock and Nadia Youssef examined how the kinship group limited women's real access to inheritance wealth.106 According to Islamic law, a woman's fathers, uncles, and brothers are economically responsible for her regardless of her marital status.107 This kinship responsibility of support is even stronger than the husband's.108 This kinship obligation affects a woman's marital relations; if a woman is more able to leave her husband if she can rely on her patrilineal family's obligation to support her.109 Similarly, this family maintenance obligation is crucial because of a husband's almost unlimited right of divorce under Hanafi law.110

Smock and Youssef found, however, that this maintenance obligation is not a free system of support for women to rely on as an economic fall-back regardless of their actions. Rather, patrilineal maintenance was a necessity. A woman had few options for supporting herself outside of marriage and was therefore dependent on family maintenance.111 To ensure that her...
patrilineal family will maintain her after divorce or widowhood, a woman would often try to appease her family. Thus, Smock and Youssef found that women frequently gave their brothers or fathers any inherited wealth to ensure that they would maintain the women after divorce or the death of a husband. The women did not usually own or have economic control over their inherited wealth. Thus, social reality restricted the actual property access that was granted by Quranic inheritance law. This phenomenon of relinquishing inherited wealth to insure familial maintenance was also prevalent in the Muslim communities in Israel.

3.1.2. Muslim Communities in Israel

Aharon Layish conducted a study of Muslim women living in Israel. Layish found that these women, as was the case in Egypt, gave their inherited wealth to the male members of their patrilineal family. Layish described the phenomenon as occurring frequently, particularly considering that many of these transfers of inherited wealth were not formalized by court order. Layish, like Smock and Youssef, also found it was the women’s dependency on family maintenance that spurred this renunciation of inheritance rights. She found that women were at risk of losing their family maintenance support if they did not relinquish their inherited wealth to male family members. For example,

See id. at 49.

112 See id. at 47.

113 See id. at 47. This study also found the males in a woman’s family often just appropriated her property without sanction on the grounds that they would have to support their sisters or daughters in the event of divorce. See id.

114 See LAYISH, supra note 38. Although the state’s regular judiciary governs the Muslim community living in Israel, separate Islamic courts that apply the Shari’a govern issues of personal status. See id. at 2. “[T]he Muslim religious community enjoyed the widest judicial autonomy of any religious community in the country.” Id. For issues of inheritance Muslim women could choose to have their cases decided by a secular court under the more favorable secular laws, but the majority chose the Shari’a courts. See id. at 287-88.

This study focused on women living in Israel proper and not the disputed West Bank areas that the Moors study focused on. See id. at xiii; MOORS, supra note 45, at 19.

115 See LAYISH, supra note 38, at 291.

116 See id.

117 “Muslim women did not as a rule inherit ... due ... to the system of kinship relations in traditional society, which is so vital to the protection and security of women that they are willing to renounce property rights for its sake.” Id. at 302.
There was a definite correlation between the extent of the son’s readiness to pay maintenance to their mothers and the state of property relations after the death of the family head: where the mother held the family property of her share in the estate, the sons were less ready to grant her economic assistance.118

Layish also found many cases in which although a court registered a woman’s inheritance to her, her brothers eventually received the wealth through sales without consideration.119 Familial pressure was often the driving force behind these transfers.120 Thus, the Muslim women in Israel are another example of how women’s economic rights under the Quran are limited by social forces. This was also true for the Palestinian women living in the occupied West Bank territory.

3.1.3. Palestinian Women in the West Bank

In 1995, Annelies Moors published a study of Palestinian women living in the Jabal Nablus region of the West Bank.121 This study adds further detail on how family maintenance limits women’s access to inheritance. Like Smock and Youssef, as well as Layish, Moors found that Muslim women let their patrilineal family take ownership of their inheritance share to ensure that the family would maintain them financially.122 Moors also found that most women depended on this familial maintenance.123

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118 Id. at 105.
119 See id. at 301.
120 See id. at 302. Layish was told of several cases where the woman had her ownership of inherited property formalized by a court, but later transferred it to her male family without consideration because “they were no longer able to withstand family sanctions.” Id.
121 See MOORS, supra note 45. This study differs from Layish’s study, which focused on Muslim women living in the undisputed areas of Israel proper. See id. at 19; LAYISH, supra note 38, at xiii. The two areas obviously have different political and economic realities. See MOORS, supra note 45, at 17-21. The Shari’a court system and Islamic personal status law, however, still govern Muslims in the occupied territory. See id. at 19. Thus, this study offers another example, with a different population, of the real effects of the Shari’a.
122 “[F]ew daughters with brothers would ever take their [inheritance] share . . . .” MOORS, supra note 45, at 53. “[B]y leaving her share to her brothers, a daughter reaffirms and strengthens her ties with her closest male kinsmen.” Id. at 54.
123 See id. at 54.
Moors' study revealed what would happen to these women if they did claim their inheritance share. "[I]f a woman demands her share... her kinship ties with her brothers are usually disrupted at once and she is no longer able to invoke their help and support." 124 Taking her inheritance, and thus weakening her familial ties, also weakened a woman's position against her husband. 125 Moors found that the inheritance a woman might gain did not generally offset the economic loss of lost familial maintenance. 126 Moors also found that even if a woman did not have brothers (the relatives most likely to get her inheritance share), she still often did not get her inherited wealth. 127 Those with control of her share often ignored her claim and her actual ability to receive it depended on the position of her husband. 128 If her patrilineal family could not stop the woman from taking her share, they would often, as her guardian 129 (and if she were single), marry her to a cousin to keep the land in the family. 130 Thus, overall, the Palestinian women of the West Bank are another example of how the need for familial maintenance led to women renouncing their inheritance rights. All three example communities showed that although the technical law of the Quran allows women to inherit wealth, social factors limit these rights.

3.2. Dower

As was the case with inheritance, social forces limit a woman's actual access to property granted to her under Quranic dower law. In particular, the common Muslim practice of a male guardian

124 Id. at 55.
125 See id.
126 See id. (noting that because of gender-specific agricultural tasks, women property owners needed men to make their land productive). Women who lost their male family members' support could not get their brothers to work for them and therefore lacked sufficient labor to put the land to use. See id.
127 See id. at 58.
128 See id.
129 Guardianship is the rule, recognized by most Islamic jurists, which states a "woman shall not conduct her own marriage contract... even when she possesses full legal capacity..." NASIR, supra note 43, at 9. Guardianship is traditionally practiced in Afghanistan. See Angela Neustatter, Homelife Love in the Time of the Taliban, DAILY TELEGRAPH (LONDON), Dec. 28, 1996, at 16.
130 See MOORS, supra note 45, at 58-59.
controlling the marriage of a woman\textsuperscript{131} often led to the guardian taking ownership of her dower. Also, the husband could often control his wife’s dower because of her economic dependence on him. These two social forces limited women’s property rights in all three example communities: Egypt, Israel, and the West Bank area.

3.2.1. Egypt

Smock and Youssef found that the dower often came to be owned by the wife’s patrilineal family.\textsuperscript{132} This was usually caused by the family’s control over whom the daughter married.\textsuperscript{133} This study also found that a woman would forego a portion of her dower that would be payable upon divorce in order to free herself from a bad marriage.\textsuperscript{134} Layish’s study of Muslim women living in Israel support these findings.

3.2.2. Israel

Layish found that it was fairly common in Israel’s Muslim communities for a wife’s family to take ownership of her dower property. “[A] woman was generally given in marriage by a marriage guardian, who might be her father or brother or another relative, and who received the dower on her behalf.”\textsuperscript{135} Shari’a court cases involving matrimonial disputes, often revealed that the

\textsuperscript{131} See id.

\textsuperscript{132} See Smock & Youssef, supra note 38, at 47.

\textsuperscript{133} See id. True stories of Muslim women reveal that a woman’s father can exert strong control over her marriage. Not surprisingly, the father often gets control of the dower. In 1996, a 21-year old Pakistani woman named Saima Waheed married the man of her choice. Her father objected because he did not choose the husband. Consequently, he petitioned the Pakistan Lahore High Court to annul the marriage. See Saeed Shah, Pakistani Woman Fights to Keep Husband, REUTERS WORLD SERVICE, May 20, 1996. Saima received so much pressure at home to annul the marriage that she fled to a shelter for women. Her father then filed a petition of habeas corpus for her removal from the shelter. See id. The father argued that “a woman may not marry without her father’s consent . . . .” Saima stated, “‘[w]hat I have seen done to the women in my family, I did not want to happen to me . . . . I’m afraid for my life . . . . I have been threatened by my family continuously since I ran away.’” Id.

Iran offers another example of the control a father can exert over his daughter’s marriage. “In 1995, an 18-year-old Iranian girl was blinded, on a court’s orders, for marrying without her father’s consent.” Mary Bryant, Danger of Tunnel Vision from Behind the Veil, DAILY TELEGRAPH (LONDON), Jan. 18, 1997, at 2.

\textsuperscript{134} See Bryant, supra note 133.

\textsuperscript{135} LAYISH, supra note 38, at 48.
dower had been given to the woman’s family and not to her. Layish also found “express evidence of husbands taking control of their wives’ dower without their consent.” Thus, in the Muslim communities of Israel, the custom of guardianship and a husband’s power limited women’s legal/Quranic right to dower.

3.2.3. West Bank

Moors’ study of the West Bank Muslim community found the clearest evidence of the dower right being limited by social and customary forces. First, Moors, like Smock/Youssef and Layish, found that a wife’s father often kept part of the dower. Second, Moors found that the stronger force behind the decline of dower property was the societal shift from extended family networks to a more nuclear family. These social factors, combined with a more industrialized economy, made women more economically dependent on their husbands. This new marital dependence made women more willing to relinquish dower.

For example, the women would generally not sue for their dower unless their husband left them with no economic support at all. Even though the wives did not receive their legal right to dower, they would not sue a husband who was generally maintaining her because that maintenance was too economically important to put at risk. When the women did sue for their dower, it was, in virtually all these claims, combined with a suit for marital maintenance. The women would then drop the dower claim once the husband agreed to the maintenance claim. Thus, these women gave up their dower rights to strengthen

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136 See id. at 49. “In several cases, a woman alleged that she had not received the whole or part of the dower, and afterward it appeared that her father had received it without her knowledge.” Id.

137 Id.

138 See MOORS, supra note 45, at 102.

139 See id. at 125 (noting that women’s economic power is declining because men are taking over wage labor positions previously held by women). Additionally, a decrease in dowers and a new emphasis on marital relations have made women increasingly dependent upon their husbands. See id.

140 See id.

141 See id. at 102.

142 See id.

143 See id.

144 See id. (noting that the main intent of these cases was to obtain the crucial marital maintenance).
their position in their marriages, particularly to protect their maintenance. Moors also found that women would relinquish their dower rights at divorce.\(^{145}\) Dower usually is given in two forms, prompt dower and deferred dower.\(^{146}\) Prompt dower is due at marriage, and deferred dower usually becomes due at divorce or the death of the husband.\(^{147}\) Although the desire to strengthen the marriage leads to women relinquishing the prompt dower, other social forces lead to relinquishing the deferred dower.

Many widows refrain from claiming their dower at the death of their husbands so that their sons might inherit more.\(^{148}\) This is probably to strengthen the son’s obligation to maintain his mother; the same reason women relinquish their inheritance share generally. Also, women eager to get out of a bad marriage and faced with limited legal divorce options often go through the khul divorce.\(^{149}\) This divorce is easier; it requires no litigation and the husband will be more willing to let the wife go because he receives monetary consideration for the loss of his wife.\(^{150}\) This consideration usually consists of the wife’s renunciation of her deferred dower.\(^{151}\) Finally, even if the husband initiates the divorce, a woman often does not get her deferred dower because she must go through time-consuming and often costly litigation to get it.\(^{152}\) Thus, social forces also limit women’s access to deferred dower. Therefore, the lives of women on the West Bank exemplify how social forces can limit women’s real access to their legal right to dower.

3.2.4. Positive Findings

The studies of dower are not universally disheartening. In particular, Layish found that some Muslim women living in Israel proper did receive their legal dower entitlement. Despite the various social limitations in this community, Layish found much evidence that some women received full ownership of their
dower. Widows and spinsters who did not have a guardian controlling their marriages (and thereby receiving the dower) got their dowers. Also, Layish found many cases where urban women would sue in court or leave their husband's home to get their dower; though this was much less common for rural women. Finally, Layish noted that when the women did sue for their dowers the Shari'a courts decided in favor of the woman in most cases. Therefore, overall, dower is limited by some social forces, but this limitation does not undermine the legal right as extensively as the social limitations on inheritance.

3.3. Marriage and Work

As noted previously, the obedience law of marriage severely hinders a woman's ability to work outside of the home. Just as social forces limited the legal rights of inheritance and dower, social forces worsen the already extensive limitations on women's ability to work. The connection between women's status in society and their perceived chastity is the main social norm that limits their employment options.

3.3.1. Egypt

Smock and Youssef offer the strongest evidence of how status and chastity norms function in Muslim society. Their study pointed to two major social forces that oppress women economically: kinship ties and the power of honor. This honor, and the social status that comes with honor is largely based on a woman's chaste behavior. Thus, "any suspicion or mistrust of [the woman's] moral conduct can stigmatize her and her family for life." For women, "[a]ctivities involving the public are...

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153 See Layish, supra note 38, at 49.
154 See id.
155 See id. at 49-50.
156 See id. at 60 (noting that these courts resisted customary practices that took control of the dower out of women's hands).
157 The power of kinship ties to limit women economically was discussed in the section on inheritance. See supra Section 3.1.
158 See Smock & Youssef, supra note 38, at 43.
159 See id. The honor of men is based on the chastity of their female family members. See id. Women's honor and status is based on their own perceived chastity. See id. at 44; see also Bryant, supra note 133, at 2 (noting that male honor rests on female behavior).
160 See Smock & Youssef, supra note 38, at 44. Women often face physical
easily linked with suspicions of promiscuous behavior..."^{161} Therefore, a woman's status in society is put at risk by her employment, which places her in continuous contact with public life.^{162}

This loss of status by working can, for women, have very harmful effects. For example, a woman who works or has worked has a much harder time marrying (a crucial way to find economic support in Muslim society).^{163} Thus, Smock and Youssef found that women's status was based on how much they met the societal expectations of chaste, reclusive behavior.^{164} They found that the status costs of working outweigh the benefits. This balance of utilities causes the low percentage of female workers in Muslim communities.^{165} Therefore, the social force for chaste behavior further limits women's ability to gain economic resources through work.

3.3.2. Israel

Layish did not extensively study the social forces acting on Muslim women's ability to work.^{166} However, she did cite one study of Muslim communities in Israel that found the severe restrictions of traditional society limited women's ability to work.^{167}

3.3.3. West Bank

Moors' study supports Smock and Youssef's findings. Moors found that in Muslim communities, working women are very controversial, particularly if they leave the West Bank and go into

injury for "unchaste" behavior. This violence is sometimes sanctioned by Islamic law. For example, the Jordanian Penal Code exempts a man from any penalty if he wounds or even kills his wife or daughter because they committed adultery. See Nicholas Kochin, Bound by Faith and Statute, FIN. TIMES, July 20, 1996, at 13.

161 See Smock & Youssef, supra note 38, at 45.
162 See id.
163 See id. at 44.
164 See id. at 48.
165 See id. at 49 ("The conspicuous absence of married women from the occupational world... could very well be caused, in part, by [women's] own assessment of the gains and losses involved.").
166 She did find some evidence that it was easier for Muslim women to work in more modernized urban areas. See Layish, supra note 38, at 7.
167 See id. (citing A. Cohen, Arab Border Villages in Israel: A Study of Continuity and Change in Social Organization (1965)).
Israel to work. \(^{168}\) The social norm viewed working women as putting themselves in great "moral danger." \(^{169}\) Thus, as was the case in Israel, a working woman risked her status as a chaste female by going out to work. \(^{170}\)

Moors did find that some women worked outside of the home. These women, however, do not undermine the basic premise that most women do not work because of social stigma. These women only worked because of dire financial need. The economic situation was so bad that it outweighed even the strict social punishments for working. \(^{171}\) The behavior is in accord with the view of many Islamic jurists, who hold that women may work only in cases of necessity. \(^{172}\)

Even for these working women, earned income did not always bring economic power. Fathers often prevented their working daughters from marrying because the family depended on her wages. \(^{173}\) Also, widows were known to give a portion of their wages to their sons. \(^{174}\) Overall, women in the West Bank did not work because working brought suspicions of promiscuity. The only exceptions were very poor women in dire financial need. Therefore, this community, as well as the Egyptian community, reveals how social norms worsen the already extensive limitations on women's employment.

### 3.4. Social Forces in Afghanistan

Studies of Muslim communities show that social forces limit women's legal rights to inheritance and dower, and can effectively prevent their employment. The Taliban government has forcibly imposed these social norms on the part of Afghanistan they control. \(^{175}\) The Taliban originate from the historically rural and

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\(^{168}\) See Moors, supra note 45, at 182.

\(^{169}\) Id. at 184. This moralistic view of working women "ties in with the cultural emphasis on the need to curtail women's freedom of movement to avoid [sexual] relations, which were seen as undermining the social order." Id.

\(^{170}\) See id.

\(^{171}\) See id. at 185, 186.

\(^{172}\) See Khaliq, supra note 21, at 25-26.

\(^{173}\) See Moors, supra note 45, at 188.

\(^{174}\) See id.

\(^{175}\) See, e.g., Christopher Thomas, Militants Bring a Veil Down on Battered Kabul, Times (London), Sept. 30, 1996, at 11 (noting that women were beaten by the militia for wearing "un-Islamic" dress and have been banned from working); John F. Burns, New Afghan Rulers Impose Harsh Mores of the Islamic Code, N.Y. Times, Oct.
conservative Kandahar area\textsuperscript{176} from which they bring the patriarchal culture which is the main culprit in suppressing Muslim women's economic opportunities.\textsuperscript{177}

Specifically, in accordance with the government’s promise to impose Islamic law,\textsuperscript{178} the Taliban will incorporate the traditional familial maintenance provisions of the Shari‘a. Thus, Taliban Afghan society will possess the factor that has been found to limit women’s real control over inheritance.\textsuperscript{179} The Taliban government is also, as part of imposing the Shari‘a, likely to incorporate both marriage guardianship and the provisions giving husbands broad divorce and maintenance power. The region will therefore possess the factors that limit women’s real access to dower.\textsuperscript{180}

Finally, the Taliban government has made its disapproval of working women very clear. One of its first acts was to ban women from all employment.\textsuperscript{181} In Afghanistan, the customary and social norms that limit women's employment opportunities have the extra force of the government's coercive power.\textsuperscript{182} Thus, the Taliban state possesses these social and customary forces that will severely limit the economic prospects of Afghan women.

\textsuperscript{1} 1996, at A1 (same).

The Taliban have established a religious police, the Office for the Propagation of Virtue and the Prohibition of Vice, who were involved in the stoning to death of a couple who had committed adultery. See John F. Burns, Stoning of Afghan Adulterers, N.Y. TIMES, Nov. 3, 1996, at 18.

\textsuperscript{176} See Burns, supra note 8, at A10.

\textsuperscript{177} The Taliban have closed all of the schools for girls while leaving the schools for boys open. See 60 Minutes: Taliban, supra note 7. The Taliban’s Deputy Foreign Minister, when asked what women should do instead of working, replied, “sewing and knitting.” Id. He went on to comment, “[t]hey should be sitting in their home[s].” Id.


\textsuperscript{178} The Deputy Foreign Minister of the Taliban government, Sher Mohammed Stanakzai, has stated, “Afghanistan is an Islamic state, and our rules and regulations will be... Islamic rules. Whatever is in Islam... will be implemented [by the Taliban]. We will be strict with that.” 60 Minutes: Taliban, supra note 7.

\textsuperscript{179} See supra Section 3.1.

\textsuperscript{180} See supra Section 3.2.

\textsuperscript{181} See supra Section 3.4.

\textsuperscript{182} See CBS Evening News (CBS television broadcast, Oct. 10, 1996).
4. **A METHODOLOGY FOR REFORM**

The new Taliban rule presents a bleak economic future for Afghan women. To improve this situation, however, women's rights advocates must go beyond the typical method of blaming Islam itself.\(^{183}\) The Taliban's main philosophy is Islamic rule.\(^{184}\) This philosophy was also the unifying force in the rebellion against the Soviets.\(^{185}\) Therefore, to be successful, any reform must come from within the bounds of Islam. "Reforms must be rooted in a consistent Islamic rationale."\(^{186}\) The best prospects for reform stem from the fact that Islam does possess a methodology for change that can improve the economic situation of women.

4.1. **Ijtihad: Islamic Methodology for Reform**

The early development of Islamic jurisprudence was at first liberal, allowing for growth and change. Until about the tenth century the doctrine of ijtihad, or individual reasoning, was accepted.\(^{187}\) This doctrine allows an individual to make his or her own interpretation of Islamic doctrine.\(^{188}\) If this interpretation becomes accepted by other jurists, it can become valid law.\(^{189}\) Two forces, however, closed this dynamic force of ijtihad.

First, customary practice of Arabia erroneously became equated with the practice of the Prophet and was thereby given an unwarranted sacrosanct character.\(^{190}\) Second, the doctrine of taqlid, or imitation of early Muslim communities, was developed. In the tenth century it was decided that Islam was fully developed and no further change was necessary. Islam was no longer open to interpretation and the early customs were meant for imitation. The doctrine of ijtihad was rejected in favor of taqlid; "the doors of ijtihad were closed."\(^{191}\) The job of the Muslim jurist was now limited to finding how Muslim society was structured in ancient

\(^{183}\) See Sayeh & Morse, supra note 11, at 312.

\(^{184}\) See 60 Minutes: Taliban, supra note 7.


\(^{186}\) ESPOSITO, supra note 21, at 102.

\(^{187}\) See id. at 103-104.

\(^{188}\) See id. at 103.

\(^{189}\) See id.

\(^{190}\) See id.

\(^{191}\) Id. at 104.
times. This began an "era of sterility" in Islam that continues to the present day. Muslim reformers as early as the twelfth century argued against the taqlid and in favor of reviving the ijtihad.

Modern Muslim feminists embrace this idea of reviving ijtihad as a methodology of reform. First, they note that the Prophet's original message was very liberating for women. In particular, Mohammed specifically changed some of the worst anti-woman practices of the very patriarchal tribal society. For example, he ended the practice of selling wives with his dower rules, imposed the rule of women's consent to marriage, and made significant strides in ending the very entrenched practice of polygamy. Mohammed even "designated his wife A'isha a religious authority[,] stating, 'take half of your religion from this ruddy-complexioned woman.'"

Second, Muslim feminists argue that Mohammed not only provided as much change for women as the times would allow, but also left the seeds for further change. Thus, they embrace the revival of a new interpretation, ijtihad, a message that should be heard by those who desire reform in Afghanistan. As stated by Leila Sayeh and Adriaen Morse in their argument for a ijtihad reform methodology:

[w]omen have fundamental freedoms within Islam, and all the goals of equality espoused by the West can be achieved

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192 See id.
193 See id. (quoting SUBHI MAHMASANI, FALSAFAT AL-TASHRI FI AL-ISLAM 39 (Farhat J. Ziadeh trans., E.J. Brill 1961)).
194 See id.
195 See Sayeh & Morse, supra note 11. Zuleikha Abu Risha, a founding member of the Islamic Women's Society, has stated that, "it is also time that educated women read the Koran for themselves and make their own interpretations of it." Pamela Goldberg, Seeing Through Women's Eyes, 11 N.Y.L. SCH. J. HUM. RTS. 603, 612 (1994) (citation omitted).
196 Jan Goodwin, in her book PRICE OF HONOR: MUSLIM WOMEN LIFT THE VEIL OF SILENCE ON THE ISLAMIC WORLD, argues that "Islam . . . is, at root, protective of women's rights and inherently pro-woman." Goldberg, supra note 199, at 612.
197 See Sayeh & Morse, supra note 11, at 324-30.
198 See id.
199 Id. at 322.
200 Sayeh and Morse describe this as the methodology of "gradualism," which they argue is inherent in Islam. See id. at 320-21.
by applying the notion of gradualism inherent in the religion. Thus, the best way to solve this problem may not lie in dictating from the outside what standards must be met by the culture, but rather in encouraging a liberalization of the interpretation of the religion by Islamic scholars themselves.  

4.2. Prospects for Reform in Afghanistan

The seeds for reform do exist in Afghanistan. Women were somewhat free under the previous rule, with many of them becoming teachers, nurses, and doctors. Afghan women do not accept the Taliban without criticism. In the Afghan city of Herat, women publicly protested the Taliban’s severe measures. As one Afghan woman stated, “I have taken up this struggle [to fight the extremists] not just because I am a woman, but because this is an injustice in the name of my religion. And this misuse of Islam is a major factor in making my religion completely misunderstood by the West . . . .” Thus, Muslim Afghan women use their own interpretation of Islam to argue against and criticize the policies of the Taliban.

In addition, Afghanistan’s influential neighbor, Pakistan, has itself embraced the ideology of reform for women. In particular,

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201 Id. at 331-32.
202 See 60 Minutes: Taliban, supra note 7.
204 Goldberg, supra note 195, at 620 (citation omitted).
205 See id. When Afghan women also protested the Taliban’s policies in Mazar-i-Sharif, one demonstrator stated that “Taliban views on women have no authority in the Koran.” Michael Dynes, Women Use Make-up in Fight Against Taliban Code, TIMES (London), Oct. 24, 1996.
206 Pakistan is more than just a neighbor to the Taliban. It supported this faction financially during the Afghan conflict, see Dahlburg, supra note 188, at A1, and was one of the first countries to welcome their rule, see Bhutto Hopes Taliban Will Safeguard Women’s Rights, AGENCE FRANCE-PRESSE, Oct. 4, 1996. See also BBC Summary of World Broadcasts: Pakistan Gives Cash, Machinery For Central Asia Road Link (BBC radio broadcast, Dec. 20, 1996) (noting that Pakistan is giving Afghanistan money to rebuild some of its roads). Thus, Pakistan might be able to exert influence on the Taliban.
207 See generally ESPOSITO, supra note 21, at 72-91 (detailing the history of reform in Pakistan).
Pakistani courts have successfully revived the ijtihad. Thus, Pakistan's courts do not feel constrained by the doctrine of taqlid which limits the ability to change the status of women. Pakistani courts exercise ijtihad to meet social needs. Thus, the best prospects for reform of the Taliban come from Pakistan's possible influence and the hope of the further revival of ijtihad in Islam.

5. CONCLUSION

This Comment establishes that social forces, and not Islamic law, are the main factors that will cause the economic oppression of Afghan women. Section 1 shows that the economic position of Afghan women is of more than academic concern; it is relevant to many international issues. Section 2 establishes the first tenet of the argument: Islamic law does not, overall, dictate a subordinate economic position for women. Rather, the technical Islamic laws on inheritance and dower give women rights to economic resources. Section 3, by analyzing studies of other Muslim communities, establishes the second tenet of the argument: social forces are the real culprits behind the economic oppression of Muslim women, and Afghanistan, under Taliban rule, will possess these limiting social forces. Thus, it is possible to predict that the cultural norms in Afghanistan will be the real cause of Afghan women's subordinate economic position. Finally, Section 4 shows that any improvement in the economic position of women in Afghanistan must come from a reinterpretation of Islamic law and not a rejection of Islam itself.

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208 See id. at 98-99. Pakistan has instituted a number of reforms for women, such as restricting child marriage. Women also have greater freedom to divorce because of laws allowing divorce for non-payment of maintenance and laws making dower rights more enforceable. See id. at 72-91.
209 See id. at 99.
210 See id.