

UC Santa Barbara

UC Santa Barbara Electronic Theses and Dissertations

Title

Banat al-Yaman: The Empowerment and Disenfranchisement of Yemeni Women Pre and Post Unification

Permalink

<https://escholarship.org/uc/item/0pz7p2dm>

Author

Alshaif, Gokh Amin

Publication Date

2017

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA

Santa Barbara

*Banat al Yaman**: The Empowerment and Disenfranchisement of Yemeni Women Pre and
Post Unification

A thesis submitted in partial satisfaction of the
requirements for the degree Master of Arts
in Global and International Studies

by

Gokh Amin Alshaif

Committee in charge:

Professor Aashish Mehta, Co-Chair

Professor Esther Lezra, Co-Chair

Professor Sherene Seikaly

December 2017

* Daughters of Yemen

The thesis of Gokh Amin Alshaif is approved.

Sherene Seikaly

Esther Lezra, Committee Co-Chair

Aashish Mehta, Committee Co-Chair

September 2017

*Banat al Yaman**: The Empowerment and Disenfranchisement of Yemeni Women Pre and
Post Unification

Copyright © 2017

by

Gokh Amin Alshaif

ACKNOWLEDGEMENTS

This thesis would not have been possible had it not been for the support, guidance, and mentorship I received from the incredible people I met during this process. I am especially indebted to my amazing committee members: Professor Aashish Mehta who spent *countless* hours guiding me through the labyrinth that is STATA as well as ensured my methodology was both rigorous and honest; Professor Esther Lezra whose helpful and thorough feedback on drafts and unwavering willingness to listen to my concerns helped reassure me that a completed thesis was indeed possible; Professor Sherene Seikaly whose insightful feedback always pushed me to improve the quality of my research and the clarity of my writing ultimately helping me produce a thesis of which I am proud.

I want to also thank Professor Amit Ahuja and Professor Bridget Coggins for their generosity with their time and the multiple conversations they were willing to have about the project of a student who was not their own. Thank you also to Pat and Rick for your generosity and financial support through the incredible Kendra Chiota Payne Memorial Fund that made this thesis possible.

I also want to thank my friends and family who shared my moments of happiness and excitement in the process of writing this thesis as well as those moments of frustration and disappointment when it became hard to see the finish line. To list them all would span longer than this thesis. Thank you all for keeping me sane.

Finally, my graduate education—let alone my thesis—would not have been possible had it not been for the support of my parents Amin and Zaina. My father made a lot of enemies when he fought for the education of his daughters and their ability to make their own decisions. His passion for education and social justice continues to drive my own passions, dreams, and ambitions. Therefore, I dedicate this thesis to the memory of my father who raised his daughters to believe they were more than what the patriarchy taught them they ‘ought to be’ and to my mother who safeguards his legacy by continuing to support her daughters’ dreams despite the immense stress and familial backlash it produces. Baba and mama, this is for you.

ABSTRACT

*Banat al Yaman**: The Empowerment and Disenfranchisement of Yemeni Women Pre and Post Unification

by

Gokh Amin Alshaif

In May of 1990, the Marxist state of the People's Democratic Republic of Yemen (PDRY) and the tribal-military polity of the Yemen Arab Republic (YAR) unified to form the Republic of Yemen. However, this unification of physical borders also engendered the clash of legal and ideological borderlands of the two states. Soon, questions over the proper allocation of resources and distribution of power throughout the former regions emerged as well as questions over the role of non-government actors in the decision-making processes and the role of women in the newly unified Yemeni state. The unification period of Yemen (1989-1995) thus became a period of great change, struggle, and compromise. This study focuses on the story of Yemeni women before, during, and after this period.

It attempts to do this by focusing on two dimensions of Yemeni women's experience during this period: (1) the evolution of their legal rights and their consequential de jure marginalization and (2) women's de facto (dis)empowerment as experience on the ground throughout the country's twenty governorates and capital city Sana'a. In order to explore these dimensions thoroughly, this study uses a multi-methodological approach. It is rooted in both qualitative (legal analysis) and quantitative (regression analysis) methodologies.

This thesis explores the first of these dimensions by analyzing the constitutions and family laws of the former YAR, the former PDRY, the unified Republic of Yemen, and the amended legal codes of the unified Republic of Yemen post the 1994 Civil War. I argue that after the victory of the former YAR in the 1994 Civil War, the YAR's patriarchal legal

vision of family law prevailed. This ultimately contributed to the deterioration of the legal rights of Yemeni women, particularly those women coming from the poorer and lower class of Yemeni society.

The study investigates the second dimension by using the 2013 Yemen's National Demographic and Health Survey (DHS) to (1) measure the well-being of women in the country's twenty governorates and capital city and (2) understand the effects the varying levels of state presence in each of these governorates has on the welfare of the women living there. Through a regression analysis, this approach allows us to better understand the relationship between state presence and women's well-being. This, as well as the rich dataset and sample size of the DHS, gives us a glimpse of the de facto (dis)empowerment of Yemeni women throughout the country. The study finds that in almost all dimensions of 'well-being,' those women living in regions with greater state presence enjoy greater levels of well-being than those living in regions with less state presence.

Today, Yemen continues to be the poorest country in the Middle East, and the ongoing war has pushed the country to the brink of famine. We know through many studies on gender and development that women and children make up the poorest segment of societies and that women and children often bear the greatest casualties in conflicts and humanitarian crises. Yet, the current literature on Yemen often focuses on issues of counter-terrorism, security, or tribal conflict with little focus on gender. Thus, it is imperative that we expand the literature further to include the stories and experiences of *banat al Yaman*.¹ This thesis serves as an invitation to further explore the stories of these women.

¹ *Banat al Yaman*, loosely translates to "the daughters of Yemen." It is a phrase Yemenis, and Yemeni women in particular, commonly use to refer to Yemeni women.

TABLE OF CONTENTS

List of Abbreviations and Glossary viii

List of Figures and Tables ix

CHAPTER 1: A TALE OF TWO YEMENS: TRADITIONALISTS IN THE NORTH AND MARXISTS IN THE SOUTH..... 1

1.1 The Yemen Arab Republic (YAR): Former North Yemen 3

1.2 The People’s Democratic Republic of Yemen (PDRY): Former South Yemen 12

1.3 Lessons from the Passive North and Aggressive South 22

CHAPTER 2: UNIFICATION, CIVIL WAR, AND THE EVOLUTION OF THE IDEAL YEMENI ‘WOMAN’ 23

2.1 Shari’a and the Family 24

2.2 Unification and Civil War 41

2.3 Evolution of Legal Framework 44

2.4 Conclusion: Shari’a and the Yemens’ Construction of ‘Woman’ 64

CHAPTER 3: THE EFFECT OF STATE PRESENCE ON THE WELL-BEING OF WOMEN IN YEMEN 66

3.1 Theoretical Framework: Weak Sates and Weak Well-Being 66

3.2 Methodology 76

3.3 Results 84

3.4 Discussions and Conclusion 94

CHAPTER 4: CONCLUSION 96

References 98

LIST OF ABBREVIATIONS

GUYW	General Union of Yemeni Women
GPC	General Popular Congress
NLF	National Liberation Front
PDRY	People's Democratic Republic of Yemen (South Yemen)
RoY	Republic of Yemen (unified Yemen post 1990)
YAR	Yemen Arab Republic (North Yemen)
YSP	Yemeni Socialist Party

GLOSSARY

<i>ijab</i>	the offer of marriage
<i>ijma</i>	legal consensus in Islamic law
<i>Mufti</i>	Muslim legal expert who is empowered to give rulings on religious matters
<i>Qabayil</i>	Tribes (plural)
<i>Qabilah</i>	Tribe (singular)
<i>Qabili</i>	Tribesman
<i>qabul</i>	acceptance of the offer of marriage
<i>Qadi</i>	Judge in a Muslim community who bases decisions on Islamic religious law
<i>qiyas</i>	analogical reasoning in Islamic law
Republicans	Those loyal to the 1962 Revolution that established YAR and ousted Imam Mohammed al-Badr. They were backed by Egypt.
Royalists	Those loyal to the ousted Imam during the 1962 Revolution. They were backed by Saudi Arabia.
<i>Saayid (sada)</i>	A group within Yemeni society who claims ancestral links with the prophet. The Imam during the Mutawakkilite Kingdom was required to come from the Saayid.
<i>Shari'a</i>	Islamic Law
<i>Shaykhs</i>	Tribal leaders
<i>Ulema</i>	Men learned in Muslim law and traditions
<i>Wali</i>	guardian (usually male)
<i>Khiyar al-bulugh</i>	The "option of puberty" which refers to a minor's right to sue for divorce upon reaching puberty
<i>talaq</i>	repudiated divorce
<i>fask</i>	a divorce granted through a judicial order of separation often initiated by the wife
<i>khula</i>	divorce through the mutual agreement of both the husband and wife

LIST OF FIGURES

Figure 1. Map of North Yemen and South Yemen	3
Figure 2. Map of North Yemen (Yemen Arab Republic).....	4
Figure 3. Map of South Yemen (Peoples Democratic Republic of Yemen)	18

LIST OF TABLES

Table 1. Variation in State Presence Across Regions	85
Table 2. Distribution of Regions and State Presence	86
Table 3. Summary of Regression Results	88

CHAPTER 1

A TALE OF TWO YEMENS: TRADITIONALISTS IN THE NORTH AND MARXISTS IN THE SOUTH

Long ago, well before the start of the Common Era, the foot of the Arabian Peninsula where modern Yemen resides was dubbed *Arabia Felix* or “Happy Arabia.” The name referred to the fertility and green valleys the region enjoyed which contrasted sharply with the harsh deserts of *Arabia Deserta* found north of it.² While this name arguably reflects an orientalist romanticization of the strange and mysterious lands of oriental Arabia, many Arabs, and Yemenis in particular, adopted this name referring to Yemen as *Yemen al Sa'id* or again “Happy Yemen.” With the violence and instability plaguing current day Yemen, many Arabs now give this label sorrowfully, with individuals often adding the prayer “*inshallah yarja' al Yemen sa'id*,” or “God willing, Yemen will become happy again.”

However, even during the “happy” chapters in its history, segments of Yemen’s population faced unhappy circumstances. This study focuses on women. It explores Yemeni women’s empowerment and disenfranchisement before, during, and after the country’s unification period of 1989 to 1995. I attempt to do this by focusing on two dimensions of Yemeni women’s experience during this period: (1) the evolution of their legal rights and their consequential de jure marginalization and (2) women’s de facto (dis)empowerment as experienced on the ground in the country’s 20 governorates and capital city Sana’a.

The first of these dimensions is explored in chapter 2, “Unification, Civil War, and the Evolution of the Ideal Yemeni ‘Woman.’” In this chapter, I explore the deterioration of women’s legal rights during the unification period. I do this by analyzing the constitutions and family laws of the former Yemen Arab Republic (YAR or North Yemen), the former People’s Democratic Republic of Yemen (PDRY or South Yemen), the unified Republic of

² Jan Retso, “Where and What Was ‘Arabia Felix’?” (paper presented at the Seminar for Arabian Studies, London, 1999), 34; Manfred W. Wenner, *The Yemen Arab Republic : Development and Change in an Ancient Land*, Westview Profiles Nations of the Contemporary Middle East (Boulder: Westview Press, 1991).

Yemen, and the amended legal codes of the unified Republic of Yemen after the 1994 Civil War. First, the chapter provides a discussion on the foundations of Islamic law and the attempts by modern-nation states to codify it. I do this in order to contextualize the evolution of Yemeni family law. The chapter then traces this evolution throughout pre and post-unified Yemen. It argues that prior to former North Yemen's victory in the 1994 Civil War, there was a conscious effort to reach a compromise between the Northern and Southern visions of family laws and, in extension, between each state's image of the 'ideal' Yemeni Woman. However, after the North's victory in the war, the North's legal vision prevailed. This ultimately contributed to the deterioration of Yemeni women's legal rights, particularly those women coming from the poorer and lower class of Yemeni society.

I explore the second dimension of Yemeni women's experience in chapter 3, "The Effect of State Presence on the Well-Being of Women in Yemen." This chapter uses the 2013 Yemen's National Demographic and Health Survey (DHS) to (1) measure women's well-being in rural and urban regions of the country's 20 governorates and capital city and (2) understand the effects of varying levels of state presence across these regions on the welfare of the women living there. Through a regression analysis, this approach allows us to better understand the relationship between state presence and women's well-being. This as well as the rich dataset and sample size of the DHS allows us to glimpse and analyze the proximate sources of the de facto (dis)empowerment of Yemeni women across the country.

However, before we explore these dimensions, we must first understand the earlier chapters of Yemen's story. Before May of 1990, the Yemen of today was two separate countries, each with its own tale of revolution and path to unification (figure 1). Thus, the following sections briefly retell both of these chapters in Yemen's long and rich history. The first is the tale of the Yemen Arab Republic in the north where a weak, decentralized, and arguably absent central government strengthened northern tribes' historical influence as these tribes sought to provide the stability and order that the state failed to deliver. The second is that of the People's Democratic Republic of Yemen in the south where a newly

formed Marxists government was eager to form a strong central government that moved away from the country's tribal and customary influence. It stressed loyalty to the state over one's tribe and attempted to bring top-down radical social changes. The most prominent of these changes was an attempt to transform women's rights and their expected role in society. This top-down state feminist approach had its own drawbacks as will be discussed below.

How each of these Yemens constructed and imagined the role of their female citizenry is the subject of the following chapter. For now, the following sections provide a concise overview of the historical, social, and political backdrops of each of these Yemens in order to better situate the conversation of this thesis.³



Figure 1: Map of North Yemen (Yemen Arab Republic) and South Yemen (Peoples Democratic Republic of Yemen) (Source: A. Lewis, *Security, Clans and Tribes.*)

1.1 The Yemen Arab Republic (YAR): Former North Yemen

BACKGROUND AND SOCIAL STRATIFICATION

The Yemen Arab Republic (YAR) declared its independence with the 1962 Revolution. During this revolution, a military coup, with the support of Egyptian President Gamal Abdel Nasser, overthrew the last ruler of the Mutawakkilite Kingdom of Yemen, Imam Mohammed al-Badr. An arduous civil war followed the coup as Saudi-backed

royalists, those loyal to the Imam, and Egyptian-backed republicans, those loyal to the revolution, battled for power. However, it was not until 1970 after both sides reached reconciliation that the international community formally recognized the state and Yemeni state officials moved to finally draft a constitution.

YAR (figure 2) was a rural but heavily populated country, with the majority of Yemenis residing in North Yemen, outnumbering their Southern counterparts approximately five to one.³ It was located in the northeastern quadrants of what is today known as the Republic of Yemen and was made up of mountainous terrain and green valleys. This served the agricultural sector well, but made difficult any attempt to establish a centralized government. After its formation, urban centers began to grow; yet, the distribution of the country's population remained extremely decentralized. The YAR was made up of 50,000

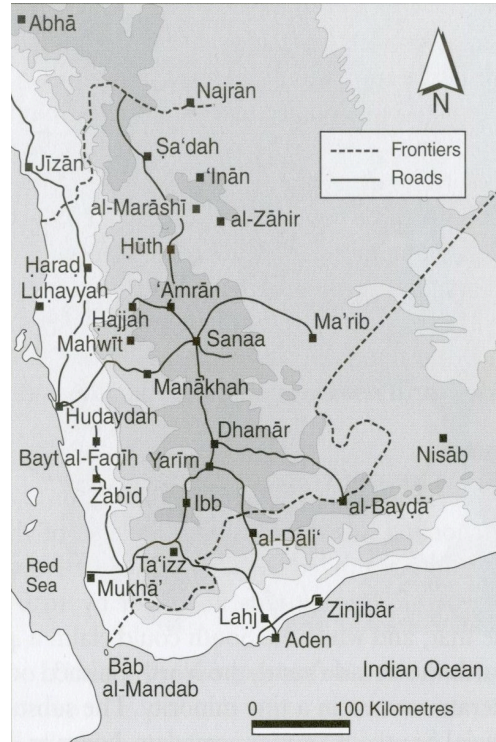


Figure 2: Map of North Yemen, above dotted line (Source: P. Dresch *Modern History of Yemen*)

distinct settlements (towns and villages). Thus North Yemen was characterized by a level of “decentralization on a scale unmatched anywhere else in the modern world.”⁴ Additionally, more than 86 percent of North Yemenis lived in villages with fewer than 1,000 inhabitants, and only 11 percent lived in settlements of over 2,000 inhabitants.⁵ This, amongst many other factors, contributed to the weakness of the central government as it struggled to exert its domain of influence over a decentralized populace.

³ While I hoped I could provide a more thorough and complete discussion on each of these Yemen's historiographies, to do so would constitute an entire thesis in and of itself; however, many historians have taken on this task.

⁴ Alexandra Lewis, *Security, Clans and Tribes: Unstable Governance in Somaliland, Yemen and the Gulf of Aden*, Palgrave Pivot (Basingstoke: Palgrave Macmillan, 2015), 68.

⁵ Wenner, *The Yemen Arab Republic: Development and Change in an Ancient Land*, 21.

Perhaps the most important characteristic of the YAR was its strict social stratification, which was in place well before the Mutawakkilite Kingdom formed in 1918. This social stratification survived the 1962 Revolution, and is still present in modern Yemen. It is vital to understand this social stratification given the strong role it plays in the social and political realities of Yemenis within former North Yemen and present unified Yemen.

Yemeni society was, and continues to be, divided into three broad categories: tribes (*qabayil*), the Sayyids (*sada*), and the commercial class (*nuqqas* or *awlad al-suq*). This stratification occurs along genealogical lines; the tribes claimed pre-Islamic ancestral links to Himyar and biblical Sheba while the Sayyids claimed to be decedents of the prophet Mohammed. The commercial group, however, referred to the segment of society known as “those without ancestry” or no genealogy of which to be proud. This group included the *khadama* (or *dawasheen*), those belonging to the service sector, the *abid*, who are believed to be descended of slaves, and the *akhdam*, detribalized individuals characterized by their darker skin, social roles, and residence in slums at the edge of large towns or cities.⁷

Before the 1962 Revolution, the Sayyids stood at the apex of the social pyramid given that the ruling Imam was exclusively selected from this group. By contrast, the commercial class occupied the very lowest rung of the social ladder as they do to this day.⁸ Because such social stratification stressed the importance of ancestry, it was nearly impossible to move out of one’s category. The stress on familial roots over socioeconomic status additionally guaranteed that regardless of the economic success (or failure) of an individual, there was no changing the group of your ancestors. Thus, one can find a poor

⁶ Ibid.

⁷ Ibid., 34.

⁸ John Peterson, *Yemen, the Search for a Modern State* (Baltimore: Johns Hopkins University Press, 1982), 23.

member of a tribe and rich member of the commercial class.⁹ Additionally, one's family name and ancestral line revealed the category to which a person belonged.¹⁰

With the demise of the Imamate system in 1962, the *qabayil* took the place of the Sayyids at the head of the social pyramid. Tribes have historically been an integral part of Yemeni society, but after the 1962 Revolution the *qabayil* have entrenched themselves in national politics. The mountainous topography and decentralization of the country already made tribes a necessary entity in the lives of the predominantly rural population.¹¹ This was due to the tribes' ability to provide what the Imamate state, and later the Yemeni republic, failed to provide (security, resources, rule of law, conflict mitigation, etc.).¹² However, as we will see below, the solidification of tribe and state relations proved to be an important development that held repercussion for YAR and later the Republic of Yemen.

CHALLENGING THE TRADITIONAL IMAGE OF 'TRIBALISM'

It is important to note that when I use the term 'tribe' (or *qabayil*, the Arabic word for the term and the term used in the region), I am not using it in the same way that many

⁹ However, it is important to note that the prestige attached to coming from strong ancestry, as well as the preference given to tribes, often ensured that those not belonging to a tribe also belonged to the poorest class. This was made especially the case after the state and the tribes' relationship grew closer, ensuring that governmental positions (often the best paying and most steady job post available in the country) went to tribal members over those from the commerce class. It is only recently, with the increase number of immigrants to places such as Saudi Arabia, the UK, and the US, that some from the commerce group have found economic success. However, even with this success, their influence within Yemeni society remains minimal and their lack of strong ancestry still plays a strong role in their marriage prospects, the governmental positions they could hold, and the role in society they play.

¹⁰ There is also a widespread practice in Yemen of reciting one's ancestral line (through the father's side) until it reaches one of the great tribes of Yemen. This practice (or one's inability to participate in it) makes it even easier to identify which category someone belongs and reflects the pride and emphasis Yemeni society places on one's genealogy.

¹¹ A Yemeni invariably belongs to one of the three groups These groups cohabit and the tribes are responsible for the wellbeing of not only their tribe members in the community, but those belonging to the "lower classes" living in their village/area. This includes the wellbeing of the akhdam and commerce group. Many in these groups will also go to the local tribal shaykh to resolve any conflicts, seek assistance, or request resources. When it comes to resolving to a conflict between tribes, a respected member from the Sayyids class is sometimes asked to serve as mediator between the two parties.

scholars use it or have used it in the past.¹³ While it may conjure the image of a nomadic and lawless people frozen in time who refuse to interact with the modern world in an effort to conserve their ‘backward’ way of living, *qabayil* hold a very different meaning in Yemen and in particular within (former) North Yemen. *Qabayil* refers to a collation of families who claim to be able to trace their genealogies back to the pre-Islamic times. A tribe, as Sheila Carapico defines, is “a decentralized socio-political organization that present[s] itself as an alternative to the authority of the state.”¹⁴ Through a system of customary laws and traditions, these tribes are able to mitigate conflict, control the distribution of resources,¹⁵ organize production, guarantee the sanctity of the market,¹⁶ and generally provide for the day-to-day needs of their people with little interaction from the state.

Yemen’s tribes still reside throughout the northern and eastern quadrants where the majority of the country’s population lives. These tribes are organized under two major tribal confederations, Hashid and Bakil, and today over 70 percent of Yemenis self-identify as

¹² Nadwa al-Dawsari, "Tribal Governance and Stability in Yemen," *Carnegie Endowment for International Peace* 2012.

¹³ In his 2013 work *Of Virgins and Martyrs: Women and Sexuality in Global Conflict* for example, David Jacobson operates under the popular, and problematic, image of the violent and lawless tribe. In his attempt to reduce the various and complex tribes of the world into a single and simple definition, Jacobson creates a “Tribalism Index.” To create it, he claims to “bring together critical factors that characterizes tribes and tribal qualities that often extend into urban and even diasporic environments.” Such characteristics include: gender inequalities, corruption (which he calls “endemic in tribalistic environments), and group grievances. (116) Jacobson goes on to claim that his “Tribalism Index” is “able, on its own, to explain a remarkable 68 percent of rates of religiously motivated violence. . . simply put, as tribalism increases, so does violence.”(117) However, Jacobson is only a new example in a very long and old tradition. Other scholars have resorted to a similar image and understanding of “tribes.” This unfortunately has also included some Arab scholars who grew up in the region. For example Adeed Dawisha, who is a well-respected scholar on the Middle East, repeatedly refers to Yemen and Yemen’s tribal system as “backwards” in his book *Arab Nationalism: In the Twentieth Century*. He describes 1960s Yemen in it as “one of the most backward countries in the Arab world” (page 234 and again verbatim in page 235). When discussing Egypt’s disastrous war in Yemen, Dawisha explains that Egypt’s failure was due in part to the Imam’s ability to garner the support of Yemen’s “warlike northern tribes” (309) who fought to preserve the very “archaic and absolutist monarchy” the revolution sought to topple (308).

¹⁴ Sheila Carapico, *Civil Society in Yemen : The Political Economy of Activism in Modern Arabia*, Cambridge Middle East Studies (Cambridge, UK ; New York: Cambridge University Press, 1998), 63.

¹⁵ Daniel Egel, "Tribal Heterogeneity and the Allocation of Development Resources: Evidence from Yemen," in *Topics in Middle Eastern and African Economics* (University of California, Institute on Global Conflict and Cooperation, 2011).

tribal members.¹⁷ The majority of the other 30 percent live in rural areas where a tribal network is responsible for allocating resources, providing protection, and mitigating conflicts in the area.

Additionally, Yemeni tribes are not nomadic but have been predominately farmers since late pre-Islamic times.¹⁸ This continued to be the case for the majority of YAR tribes as many remained in rural areas surrounded by family and neighboring tribes. With the (admittedly limited) urbanization of the unified Republic of Yemen, many tribesmen, particularly wealthy shaykhs from prominent tribes, migrated to the capital San'a or other large cities such as Taiz and Ibb. Although these tribesmen no longer lived in the close-knit communities surrounded by family members, they remained loyal to their tribe and identified first and foremost as *qabiyli*, or tribesman, while simultaneously maintaining strong ties to their fellow tribe members regardless of distance.

Yemenis view tribes as an integral part of their culture, history, and state. This is because tribes have a long history of filling the gaps between social needs and government infrastructures (be it a Imamate system or a state). In fact, these tribal networks “wield power and material resources rivaling those of the state,” and since the early twentieth-century, “most schools, water supplies, and other services were filled by semi-public, semi-private initiatives rooted in tribal and/or religious mechanisms.”¹⁹ This challenges the notion that Yemen's tribal system impedes development and state-building efforts leaving it a “lawless country” and instead demonstrates the important role tribes play in maintaining order and stability within an unstable and corrupt state.²⁰ Thus, contrary to the common argument that the Yemeni state's weakness is tied to the tribes' resistance to state

¹⁶ Carapico, *Civil Society in Yemen*, 63.

¹⁷ It is important to note that this number, because it is based on self-identification, is possibly higher than the true number of tribal members. This is because given the prestige and social advantages attached to tribal membership, it is in the advantage of individuals to claim tribal heritage.

¹⁸ Paul Dresch, *Tribes, Government, and History in Yemen* (Oxford England Clarendon Press, 1989), 3.

¹⁹ Carapico, *Civil Society in Yemen*, 63.

²⁰ al-Dawsari, "Tribal Governance and Stability in Yemen," 6.

dominance,²¹ the continual strength of tribes in Yemen “is due to the corruption and weakness of the state institutions.”²² That is, tribes provide stability and order where a weak and decentralized state could not; thus, the tribal system and its customary law became the “second-best substitutes for an absent or weak state.”²³

THE STATE AND THE TRIBE

These tribes, especially in the days of the YAR, were powerful with an immense influence in national government. In fact, the YAR and the Republic of Yemen’s former president, Ali Abdullah Saleh, is a tribesman from the Hashid confederation. This understanding of tribes’ influence and role in a ‘Yemeni state’ is apparent in President Saleh’s response in a 1986 interview where the interviewer posed the question, “To what extent has Yemen succeeded in moving from the stage of tribalism to that of the state?”²⁴ While the interviewer, like others observing the YAR’s efforts towards reaching ‘statehood,’ viewed this as a reasonable question and natural step in nation state formation, President Saleh and many YAR Yemenis viewed it as a strange question ignorant to Yemen’s traditions. President Saleh thus responded, “The state is part of the tribes and our Yemeni people is a collection of tribes.”²⁵ ²⁶ Unlike the interviewer, Saleh rejected the notion that state and tribe were somehow mutually exclusive. He understood the state’s dependence on tribes’ loyalty and learned from his predecessor’s failed attempt to disentangle the state from the tribes and dismantle the tribal system.

This dependent relationship between the state and the tribes, however, dates back to a time well before a ‘state’ existed in Yemen. Recognizing the tenacity of tribesmen’s

²¹ Daniel Corstange, "Tribes and the Rule of Law in Yemen," in *Annual Conference of the Middle East Studies Association* (Washington, D.C.2008), 13.

²² al-Dawsari, "Tribal Governance and Stability in Yemen," 4.

²³ Corstange, "Tribes and the Rule of Law in Yemen," 13.

²⁴ *al-Majallah* 347, 1-7 as quoted in Dresch, Paul *Tribes, Government, and History in Yemen*. 3.

²⁵ Ibid.

²⁶ Such a statement is also reflective of the state’s policy to ignore the other categories of society, particularly the *akhdam*.

loyalty to their tribes as well as the tenuous nature of the Imams' authority, the Imams relied on tribes for military support; thus, in place of a standing army, the Imamate system depended on the "levy of tribal forces in times of needs."²⁷ Additionally, given that the Imamate rule was not necessarily based on heredity, Imamic candidates depended on a network of tribal support to secure their rule, consequently solidifying rather than subordinating tribes' political role.²⁸ Because of their political and military role in the Imamate system, tribal leaders became "more the allies than the subjects of imams, trading arms and allegiance for virtual autonomy in their lands."²⁹ Historian Robert Burrowes discusses in many of his work on Yemen this tactic of trading support for autonomy and its continual use after the fall of the Imam.

In the early years of the Yemeni kingdom, Imam Ahmad recognized the power and importance tribes played in the country and sought to bring them under his control and under the *shari'a* (Islamic) law with which he ruled. His attempts included, amongst others, setting up shari'a courts to substitute the customary law and rulings of tribal councils and holding hostage young sons of prominent tribal shaykhs as a way to ensure their tribe's loyalty.³⁰ This hostage tactic remained in practice until the Revolution of 1962; however, this extreme tactic failed to sway tribal leaders' loyalty towards the Imam and away from their tribe. Recognizing the futility of attempting to replace Yemen's tribalism, Imam Ahmad began working alongside the system and implementing pragmatic tribal policies in the mid 1950s. The shari'a courts he set up evolved to become an annex to tribal customary law that provide an official 'seal of the Imam' to the decisions tribal leaders reached.

During the 1962-1970 civil war that followed the revolution, tribes again provided their support to those who promised them autonomy. This attempt to assert autonomy made

²⁷ Robert D. Burrowes, "The Yemen Arab Republic's Legacy and Yemeni Unification," *Arab Studies Quarterly* 14, no. 4 (1992): 43.

²⁸ Peterson, *Yemen, the Search for a Modern State*. 21.

²⁹ Burrowes, "The Yemen Arab Republic's Legacy and Yemeni Unification." 43.

³⁰ Laila al-Zwaini, "State and Non-State Justice in Yemen," in *Relationship Between State and Non-State Justice System in Afghanistan* (Kabul, Afghanistan: United States Institute of Peace, 2006).

it difficult for the newly formed state to establish itself as a legitimate sovereign state with the “capacity to maintain public security and provide a minimal level of services.” Given that its Imamate predecessors lacked the traditional makeup of a state (government offices, bureaucracy with ability to distribute resources, regulate citizens’ behavior, extract resources, etc.), the YAR was left to navigate the first stages of nation state formation whilst fighting a civil war with foreign patrons and corruption within the state. These early difficulties of the new state would tip the balance of power from the state to the tribal periphery. As royalists and republicans battled for control, the tribes recognized the importance of their own support; thus, they soon played the two sides against each other, pledging support to those who promised them the greatest autonomy. Consequently, when the republicans finally won the civil war, their pledge to maintain tribal autonomy greatly limited the new state’s reach, concentrating it to towns on the sides of very defined lines along the roads that linked San’a, Taiz, and al-Hudaydah.³¹

The reconciliation between republicans and royalists also included the “first-time granting of high office and influence in the state to leading tribal shaykhs in exchange for their allegiance to the republic.”³² YAR leaders incorporated the tribes in the hopes of extending the state’s influence to the tribal heartlands of the north and east where the majority of Yemenis lived; however, while the state’s influence did spread, it did so only nominally and the real power and influence remained with the tribes. Instead, what this incorporation *did* do was solidify the tribes and state’s relationship and place tribes in a position to ensure that the state’s power never exceeded their own. It allowed tribes not only to block any efforts to impede traditional structures, but also to block any attempts to pass progressive legislation that would contradict customary law. This influence and control of state government and legislation ensured that tribes were in control of the country’s direction. Tribal shaykhs held seats in the Consultative Council as the new state’s

³¹ Burrowes, "The Yemen Arab Republic's Legacy and Yemeni Unification," 43.

³² Ibid.

constitution was drafted in 1970, thus playing a large role in the conservative rhetoric of the bylaws and penal codes of the country so that they better reflected their customary laws. I will explore these laws and penal codes further in chapter two.

This pattern of tribal negotiation for autonomy and influence in the central government would continue in the unified Republic of Yemen. When the Civil War of 1994 broke out between the former PDRY and former YAR, President Saleh relied on tribes' loyalty, particularly those from the Hashid tribal confederation of which he belonged, to secure the North's victory, and in exchange, the tribes again exercised a large influence over the formation of the new state. This would have drastic implications for social customs and women's rights as the victorious (and tribal) North implemented its customs and social views throughout greater Yemen. These customs were often imbedded in traditional understandings of gender roles, viewing men as the head of the household and women as the homemaker. Tribal influence and its implications for women are evident in the amended constitution and revised family laws introduced following the 1994 Civil War. I will discuss this more closely in chapter two.

1.2 The People's Democratic Republic of Yemen (PDRY): Former South Yemen

BRITISH COLONIALISM IN SOUTHERN ARABIA

In 1835, Britain invaded and occupied the portal city of Aden in southern Yemen. The British did so in their effort to protect the security and prosperity of British India from what they perceived to be Muhammad Ali of Egypt's aspiration to control the Arabian Peninsula, the Red Sea, and the Persian Gulf.³³ However, British opinion was divided on whether or not the outright acquisition of Aden was necessary to meet Britain's needs. The East India Company's Court of Directors and others in the commercial community, for

³³ Robert W. Stookey, *South Yemen, a Marxist Republic in Arabia*, Profiles Nations of the Contemporary Middle East (London: Westview Press, 1982). 32

instance, believed a peaceful negotiation with the city's then owner, the Abdali sultan, for a coaling station on Aden's Back Bay, "would answer Britain's essential needs and obviate a confrontation with Egypt."³⁴ The Whig government in power, on the other hand, had expansionist leanings and thus strongly advocated for British sovereignty over the Aden Peninsula.

Ultimately, however, the British assumed sovereignty over Aden, and in 1937, Britain reorganized Aden as a Crown Colony. This reorganization meant that the British Crown enacted only the basic legislation of the colony while ordinary legislation was enacted locally through "Ordinances enacted by the Governor of the Colony of Aden."³⁵ However, such 'local' governance referred not to the governing by local Yemeni representatives, but to that by Crown appointed British administrators. Aden's Governor in charge of enacting 'local ordinances' and members of the Executive Council and Legislative Council who assisted him, were all appointed by either the Crown itself or the Governor. Additionally, British administrators ignored Yemenis' demand for greater indigenous representation and the election of members to the Legislative Council. The lack of such representation made Aden even by the 1950s one of the few British Crown Colonies still 'purely appointive.'³⁶

It is important to note, however, that while British occupation of southern Yemen included Aden Colony and the British 'Protectorate' area in the hinterlands west of it, British officials concentrated their administrative and development efforts towards the Aden Colony. This was because Aden's shore was an important port on the route to India, and therefore the city was "tied more closely into the fabric of the British Empire" and thus "developed more rapidly than its hinterland."³⁷ By 1937, Aden became home to one of the busiest ports in the world. Meanwhile, British efforts in the hinterlands concentrated on

³⁴ Ibid., 32

³⁵ Herbert Liebesny, "Administration and Legal Development in Arabia: Aden Colony and Protectorate," *Middle East Journal* 9, no. 4 (1955): 385.

³⁶ Ibid., 386.

renovating “the existing structure rather than its replacement by Western institutions.”³⁸ This created a disconnect between the developed cosmopolitan city of Aden and the western hinterlands which experienced a more distant British rule. Such disconnect survived well past the years of British colonialism in Yemen, into the years of Yemeni Marxism. As we will see below, even in the years of the PDRY, the western hinterlands of South Yemen remained outside of the state’s control when compared to Aden despite the best efforts of Yemeni socialist leaders.

REVOLUTION AND THE PURSUIT OF A TRUE MARXIST STATE

Britain’s hesitation to introduce larger measures of self-government in Aden and its Protectorate surrounds was met with local animosity. Soon, Yemenis began calling for the overthrow of the colonial power and the return of Yemeni land to the Yemeni people. After five years of armed struggles and guerilla fighting, the 128 years of British colonial occupation of South Yemen ended in 1967. In November of that year, Yemen’s National Liberation Front (NLF), the prominent party leading the struggle, came to power and declared the People’s Democratic Republic of Yemen. Motivated by a deep loyalty to Marxist-Leninist teachings, the Party sought to create a ‘true’ socialist state in the region.³⁹

The NLF’s deep commitment to Marxist-Leninist teachings set the Yemeni socialist state apart from other Arab states which had embraced a different interpretations of the ideology. The ideology of these Arab states came be known as ‘Arab Socialism.’ Conceived in the context of Cold War politics and responding to the imperatives of the post-colonial moral economy, Arab Socialism could be best understood as an ideological amalgam consisting of seeming irreconcilable tenets of Marxist ideals, Arab nationalism, and Islamic

³⁷ Ibid., 385.

³⁸ Ibid., 388.

³⁹ Stookey, *South Yemen, a Marxist Republic in Arabia*.

principles.⁴⁰ Thus, those Arab countries adopting Arab socialism—most notably Egypt during Gamal Abdel Nasser’s presidency—ascribed to a very specific kind of socialism. Maxine Molyneux argues in her article *The Law, the State and Socialist Policies with Regard to Women: the Case of the PDRY. 1967–1990*, that unlike the PDRY, such countries did not espouse Marxist doctrine nor its economic policies. Instead, these states adopted selected elements of socialism that their leaders viewed necessary for the successful economic development of their country. William Cleveland and Martin Bunton describe this phenomenon using Nasser’s Egypt—a country that historians often view as the champion of Arab Socialism in the region.⁴¹ The Egyptian government, they explain, “adopted socialism for pragmatic reasons, not out of any longstanding ideological commitment.” Therefore the supposedly socialist economic policy of the Egyptian regime, which included the nationalization of many of Egypt’s enterprises, “was more a form of state capitalism than Marxists socialism; it was based on the need to raise money, not on the dynamic of class conflict.”⁴²

Additionally, while Egypt’s Arab Socialism extended an egalitarian rhetoric on gender, declaring women equal to men in the charter of 1962 as well as increasing the proportion of professional women in the workplace by 31 percent from 1961 to 1968, the Egyptian regime remained exceptionally cautious in its attitude towards family law.⁴³ Thus, it avoided introducing reformist legislation on matters such as men’s rights to unilateral divorce and polygamy.⁴⁴ Furthermore, unlike Ataturk’s Turkish nationalist revolution, Nasser’s regime did not seek to diminish the role of religion in society. Instead, Nasser recognized the appeal of Egypt’s Islamic institutions and sought to bring them under the

⁴⁰ Rami Ginat, *Egypt's Incomplete Revolution : Lutfi Al-Khuli and Nasser's Socialism in the 1960s*, The Cummings Center Series (London ; Portland, OR: Frank Cass, 1997), 9.

⁴¹ William L. Cleveland and Martin P. Bunton, *A History of the Modern Middle East*, Fifth edition. ed. (Boulder, CO: Westview Press, a member of the Perseus Books Group, 2013).

⁴² *Ibid.*, 294.

⁴³ Laura Bier, *Revolutionary Womanhood : Feminisms, Modernity, and the State in Nasser's Egypt*, Stanford Studies in Middle Eastern and Islamic Societies and Cultures (Stanford, California: Stanford University Press, 2011).

state's control and "then to use them in the services of the revolution."⁴⁵ This included utilizing Islamic institutions to legitimize the policies of the regime and even persuading religious leaders to issue decrees and publish articles on the "harmony between Islam and Arab socialism."⁴⁶

This conscious use of religion to justify socialism as well as Nasser's appeal to nationalism in order to avoid what he called 'class strife,' Molyneux argues, are two features of Arab socialism that the PDRY's socialism stubbornly defied. Rather than cite Islamic doctrine and teachings, the NLF, and later the Yemeni Socialist Party (YSP), looked to the writings of Marx, Engels, and Lenin. Yemeni socialism also did not sidestep family law as Egypt had, and instead introduced the PDRY's 1967 Family Law that essentially outlawed polygamy and unilateral divorces as well as granted women greater rights in divorce and custody cases. Additionally, the party openly declared itself "the vanguard of the Yemeni working class," and sought to implement a social revolution to dismantle the old class structures and relationships.⁴⁷ It thus marked a clear distinction between its social revolution and Arab socialism.

During the 1968 Fourth Congress of the NLF, the party announced its policies and guidelines for fulfilling its main objective of dismantling the old state apparatus so that 'people's power' could instead be developed. These policies included carrying out radical land reforms, adopting an anti-imperialist foreign policy, and executing measures against foreign capital amongst other reforms.⁴⁸ However, the leftist faction in the party felt that these guidelines did not go far enough nor translate into real policies. Instead they sought

⁴⁴ Ibid.

⁴⁵ Cleveland and Bunton, *A History of the Modern Middle East*, 298.

⁴⁶ Ibid., 299. To demonstrate this, Cleveland and Bunton quote from a book published in 1962 that states "Arab socialism is guided by the *Shari'a* of justice and the *Shari'a* of god."

⁴⁷ Maxine Molyneux, "The Law, the State and Socialist Policies with Regard to Women: The Case of the Pdry. 1967—1990," in *Women, Islam, and the State*, ed. Deniz Kandiyoti (Philadelphia: Temple University Press, 1991), 242.

⁴⁸ Ibid., 243.

more drastic resolutions that would usher in a “popular democratic liberation” phase of the country’s revolution. This phase called for:

Collective decision-making at all levels; confiscation without compensation of land uncultivated or owned by the religious endowments, ‘kulaks,’ or ‘feudalists;’ a thorough purge of the civil service, army, and police; nationalization of residential property in the towns; and extension of state control over all sectors of the economy⁴⁹

The leaders of the party, President Qahtan and his supporters, strongly opposed these resolutions; however, on June 22, 1968, the leftist faction of the Party lead the ‘22 June Corrective Movement.’ This movement renamed the party the Yemeni Socialist Party (YSP) and ousted, imprisoned, or shot the leading party figures forcing those who could to flee, often to North Yemen. The YSP ushered in a new era of radical economic and social measures and dedicated the following years to effectively purging all traces of the previous colonial regime.

SOCIAL REFORM IN THE SOUTHERN STATE

One of the social reforms the YSP sought to implement was the dissolution of the social division of Yemeni society such as the Sayyids, tribes, and commercial class described above. However, YSP officials especially sought to dismantle the tribal system and curb tribal sheikhs’ political and social influence. Party leaders did this in several ways. First, they regrouped the former protectorate states into six numbered governorates (figure 3). Secondly, the party sought to regroup society according to economic functions rather than along tribal and ancestral lines as they had been in the old society. Finally, the new leadership was now composed of “men of lower-middle-class origin,” effectively pushing out the ‘old tribal guards’ that once lead the country.⁵⁰

The Corrective Movement in particular sought to dismantle tribalism in the south, as Imam Yahya had previously attempted to do in the north, with arguably much more success.

⁴⁹ Stookey, *South Yemen, a Marxist Republic in Arabia*, 64.

⁵⁰ Ibid.

Soon after the Corrective Movement, local activists expelled tribal sheikhs condemning them as “feudalist and agents of foreign powers.”⁵¹ As a consequence of these radical social and economic reforms, a quarter of South Yemen’s already small population (1.6 million in 1967⁵²) fled the country, and the North soon sheltered the majority of southern refugees from the South’s tribal areas.⁵³

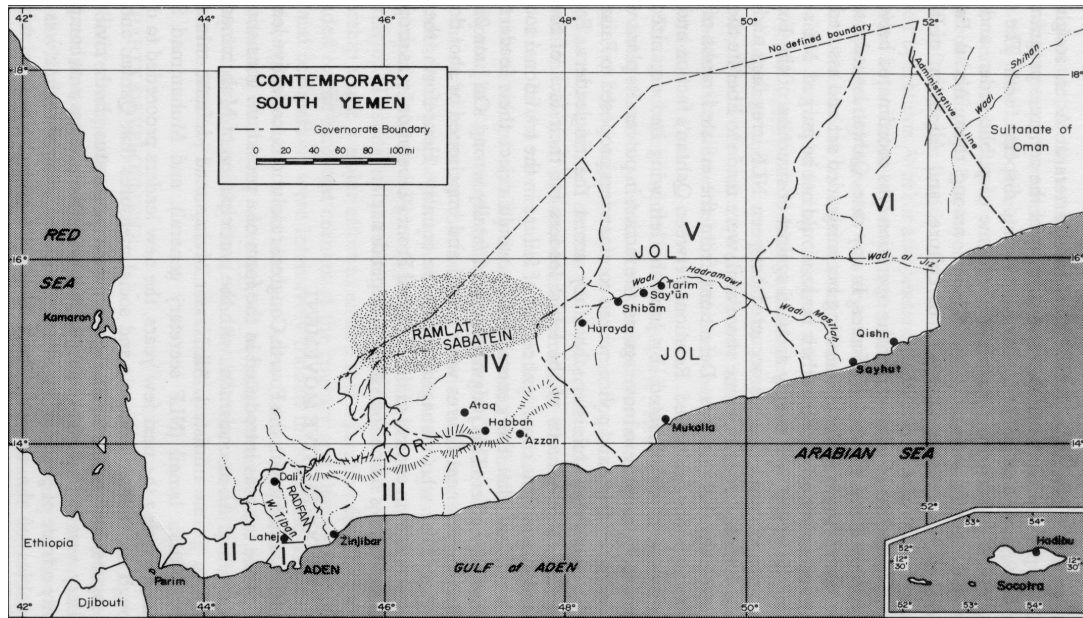


Figure 3: Map of South Yemen (Source: R. Stookey, *South Yemen: A Marxist*

Arguably the most radical social change that challenged the traditional structure of the old society was the transformation of women’s role in South Yemen. While the North’s weak central government took a passive approach towards women’s rights—only symbolically supporting women’s empowerment while allowing tribes and local customs to dictate gender norms—the South’s radical Marxist government took a strong interventionist stance. It actively worked towards incorporating women into the labor force, public society, and even government in the hopes of establishing an economically productive and more

⁵¹ Paul Dresch, *A History of Modern Yemen* (Cambridge ; New York: Cambridge University Press, 2000), 121.

⁵² Molyneux, "The Law, the State and Socialist Policies with Regard to Women." 244.

progressive society. In 1974, this effort included passing arguably one of the most progressive family and personal status laws in the region. These laws, which I further discuss and analyze in the following chapter, granted women greater rights and autonomy in marriage, divorce, and the family, declaring them an equal partner to their husband and a second head of the household. Additionally, in an effort to ensure that women were aware of their new rights, the state printed and distributed pamphlets to women throughout the PDRY, thus demonstrating again its more proactive approach to social reforms relative to the passivity of the North.⁵⁴

To further their efforts to implement radical change in social attitude and their departure from traditional society's expectations, state officials assigned female judges to family courts and gave its female government employees military training.⁵⁵ It aggressively sought female education, viewing it, and the incorporation of women into the labor force, as the best way to achieve the economic goals it had set. Thus, in the 1970s, the state began a campaign for universal literacy. During this campaign, female schoolteachers and government employees temporarily left their regular posts to teach illiterate women how to read and write.⁵⁶

A MIXED WELCOME TO SOCIAL REFORM

Yemenis living in the cosmopolitan port city of Aden, welcomed the social changes the state implemented, and many Adeni women prized their increase autonomy and legal standing. Many prominent Adeni families had educated their daughters in British-run schools during the colonial period, and thus embraced state educational policies and the

⁵³ Dresch, *A History of Modern Yemen*, 123.

⁵⁴ Linda Boxberger, "From Two States to One: Women's Lives in the Transformation of Yemen " in *Women in Muslim Societies : Diversity within Unity* ed. Herbert L. Bodman and Nayyirah Tawḥīdī (Boulder, Colo.: Lynne Rienner Publishers, 1998), 130.

⁵⁵ One of the first regressions in rights Southern Yemeni women witnessed when Yemen unified was the dismissal of these female judges from family courts. Legal authority in issues such as marriage, divorce, and child custody, was instead returned to male judges, thus effectively silencing women's voice in the legal system.

participation of women in the labor force. Girls were encouraged to study, and families did not view females' public participation without family supervision as a social taboo.

This was not the case in the western hinterlands of South Yemen. Many Yemenis living in these areas, well outside of the Adeni cosmopolitan sphere, detested the social changes and state meddling in 'private' matters. Many areas were used to a distant state presence even during British colonialism and wished to guard the social status quo. Many in these areas, for instance, shared the view of northern Yemenis: tribes were integral to Yemeni society and a proud element of Yemeni heritage. They therefore abhorred the efforts of the Yemeni Marxist state to dismantle the tribal structure and by extension the state's desire to reform the traditional gender roles that came with the system.

Many families living in the hinterlands, attempted to simply ignore the state mandate for gender role transformation. For instance, due to the lack of family supervision present in state schools, families resisted the state's coeducation curriculum and pulled their daughters out of school at an early age. Many more retreated into their close-knit community in an effort to preserve their traditional family system. These families resisted the top-down approach to social reform and attempted to hold on to what they perceived to be the 'genuine' and traditional family values and social structure of Yemen. Thus, in these areas "identification of family honor with female respectability proved stronger than the mandates of the radical social reformist government of the PDRY."⁵⁷

The failure of the state mandate to penetrate the hinterlands' 'tribal bedrock' demonstrated the Marxist state's inability to extend its influence outside of Aden.⁵⁸ Yet, this is not to say state policies had no effect on women in these areas. Even in rural and remote areas, women took advantage of the state's reformed family laws and the rate of divorces increased significantly as women filed for divorce from husbands who had abandoned them.

⁵⁶ Boxberger, "From Two States to One: Women's Lives in the Transformation of Yemen " 122.

⁵⁷ Ibid., 127.

⁵⁸ Magrot Badran, "Unifying Women: Feminist Past and Presents in Yemen," *Gender & History* 10, no. 3 (1998): 503.

This rate further increased after new laws were introduced granting women with children ownership of the family home in cases of divorce.⁵⁹

In those areas with strong state influence, the PDRY's radical social and economic reforms had great consequences for Yemeni women. These policies effectively enlarged the female labor force, increased the number of women politicians and those in government posts, and expanded females' educational opportunities. It took a strong stance on gender equality, and in 1968, it formed the General Union of Yemeni Women (GUYW). It is important to keep in mind, however, that while these gains were important for Yemeni women, the state viewed social transformation and the dissolution of traditional tribal society as vital to obtaining the social, economic, and political goals set out during the revolution. Thus, it was these goals rather than an ideological commitment to the wellbeing of women that motivated the state's social policies.

Perhaps it was this unilateral motivation behind state's advocacy for women's rights as well as the top-down methodology for implementing them that ultimately ensured these rights would not survive the country's unification with North Yemen. When South and North Yemen unified in 1990, the unified state's 'goals' had shifted, and the former socialist state did little to advocate keeping the gains it made in women's rights. Even the GUYW, with its state connections and position in the government, did little to advocate for the protection of women's rights, demonstrating the organization's coopted role as a political tool of the state rather than a vocal ally of local women.⁶⁰

The fragility of the recently gained women's rights was also due to the PDRY's failure to gain the support of Yemenis residing in the hinterlands of the country. The state had instead relied on a strong and aggressive campaign towards the creation of a progressive and 'modern' society. It sought to radically alter traditions and customs from the top down

⁵⁹ Molyneux, "The Law, the State and Socialist Policies with Regard to Women."

⁶⁰ Maxine Molyneux, "Women's Right and Political Conflict in Yemen 1990-1994," in *Women, Ethnicity and Nationalism: The Politics of Divided Societies*, ed. Rick Wilford and Robert L. Miller (London ; New York: Routledge, 1998), 144.

without attempting to consult or listen to the voices of these traditions—be it woman or tribesman. Thus, when the socialist state collapsed and the Civil War of 1994 permanently reversed the social changes of the old regime, many Yemenis outside of Aden welcomed the return of the ‘genuine’ Yemeni family values and traditions, particularly those concerning the role of women.⁶¹

1.3 Lessons from the Passive North and Aggressive South

The failure of a weak and almost nonexistent Northern state to protect the rights of its female citizenry and the inability of a strong centralized Southern state to ensure enduring gender role transformation holds important lessons for modern Yemen. It demonstrates that while a weak and decentralized government does strengthen the traditional customary laws and practices of a country that may negatively impact women, it is not enough to have a strong centralized government that implements radical social change from the top down. Instead, the solution lies somewhere in the middle between the North’s passive approach of accepting patriarchal customs and the South’s aggressiveness that unilaterally sought to overthrow patriarchal traditions.

Most importantly this cautionary tale demonstrates that the solution must include not a state feminism, but a Yemeni feminism that grants women the space to develop gender policies without having to be dependent on the strength of the central government. Yemeni women must have the opportunity to be part of finding this solution, which would give them the power to transform for themselves their status and role in society. The following chapters further explore the consequence of not doing this. They do so by first exploring the consequences of women's absence from the formation of a state’s legal system and then exploring the consequences of an absent state on women’s welfare.

⁶¹ Molyneux, "Women's Right and Political Conflict in Yemen 1990-1994," 144

CHAPTER 2

UNIFICATION, CIVIL WAR, AND THE EVOLUTION OF THE IDEAL YEMENI 'WOMAN'

In May of 1990, the People's Democratic Republic of Yemen (PDRY) and the Yemen Arab Republic (YAR) unified to form the Republic of Yemen. With this unification, two very different states with two very different visions of 'Yemen', as demonstrated in the previous chapter, clashed. Perhaps the most apparent differences came in the form of each state's vision for the ideal Yemeni family and Yemeni woman. The YAR's family law strictly adhered to a patriarchal family model where the man was expected to provide for and 'maintain' his family while the woman supports him through caring for the children and maintaining the household. The PDRY's family law, on the other hand, reflected the state's communist ideology. The state recognized men and women as equal partners in the household and community with both bearing the responsibility for providing for the family and caring for the children. After the unification, this chapter argues, the family law of the YAR prevailed as the national policy of the unified state leading to a deterioration of the legal status of Yemeni women.

This legal deterioration did not happen gradually. Within the span of five years, 1990 to 1995, women witnessed clear forms of de jure marginalization reflected in the new country's constitution, family laws, and penal codes. After the 1994 Civil War in particular, Northern leaders, who had emerged victorious, and the new Islamist party Islah, that a sect of Northern leaders formed during this period, amended the unity constitution of 1990 and other laws to better reflect those of former YAR's constitution and adhere more closely to what the new Islamist party viewed to be a 'truer' representation of Islamic law (shari'a).

This chapter focuses on the deterioration of the legal rights of women during the unification period and the consequences it held for the state's construction of the image of the ideal Yemeni Woman. I do this through an analysis of the constitutions and legal codes of PDRY, YAR, and the unified Republic of Yemen. I focus specifically on how these 'three' codes legislated marriage contracts and stipulated the age of consent, spousal duties and responsibilities, polygamy, and divorce in each of the Yemens. I do this in the effort to understand if and how the increased Northern influence after the civil war is reflected in the 1994 legal codes and state legislative constructions of the Yemeni Woman. In order to better contextualize the evolution of Yemeni family laws, I first discuss in section 2.1 the foundations of Islamic law and modern nation-states' attempts to codify shari'a family law in the nineteenth and mid-twentieth century. I then provide a brief background of the unification process and the 1994 Civil War in section 2.2. These sections help to provide a framework and foundation for the analysis found in section 2.3 on the evolution of Yemeni family law. Finally, section 2.4 provides a brief conclusion and discussion on shari'a and the Yemens' construction of the image of the 'Yemeni Woman.'

It is important to note that due to the lack of access to Yemen's legal archives, this chapter cannot say much about the application of Yemeni law. Instead, it must focus its analysis on the evolution of family law as promulgated in the legal codes. However, this chapter does rely on the few court cases analyzed in secondary sources to provide a glimpse into how courts applied Yemen's codified family law.

2.1 Shari'a and the Family

Before the nineteenth century, Islamic law was not an affixed legal code; that is to say there was no single written 'shari'a legal code book.' Instead, decisions reached in

shari'a courts relied on a complex process of interpreting sacred text and drawing on consensus and analogies from various legal schools. Thus, the reliance of shari'a on an open-ended legal discourse amongst jurists attributed to the vitality and indeed flexibility that, Judith Tucker argues, once characterized shari'a law.⁶² However, in the nineteenth century, with the ascendancy of modern-nation states in the Muslim region, some states codified Islamic law into singular shari'a-based legal codes.⁶³ State officials did this in their effort to "take control of the rump Islamic judicial system, [and] to centralize, standardize, and otherwise assert full authority over all judicial processes."⁶⁴ In their effort to do this, state law stipulated that state officials in state courts would now enforce the newly reformed and standardized Islamic laws, effectively replacing a shari'a of great textual complexity interpreted and applied by a mufti⁶⁵ and qadi.⁶⁶

This codification of Islamic law had a dubious impact on Islamic family law and, in particular, Muslim women. However, before we can discuss these impacts, it is important to first understand what shari'a is, how classical Islamic jurisprudence understood gender relations, and finally, Muslim states' various motivations for codifying Islamic law. The following subsections seek to address these issues

⁶² Judith E. Tucker, *Women, Family, and Gender in Islamic Law*, 1st ed., Themes in Islamic Law (Cambridge, UK ; New York: Cambridge University Press, 2008), 14.

⁶³ J. N. D. Anderson, *Law Reform in the Muslim World*, University of London Legal Series (London: Athlone Press, 1976), 14-19. Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared* (London ; New York: I.B. Tauris, 1993), 7-8. Tucker, *Women, Family, and Gender in Islamic Law*, 19-20. Additionally, these authors often refer to those states in the greater Middle East with a predominantly Muslim population as the "Muslim region." This includes the Arab states of the Middle East, as well as Iran and some Asian countries (notably Pakistan).

⁶⁴ Tucker, *Women, Family, and Gender in Islamic Law*, 20.

⁶⁵ A mufti is a Muslim legal expert who is empowered to give rulings on religious matters.

SHARI'A AND ITS SOURCES

The term “shari’a” comes from the Arabic word for “path” or “way”⁶⁷ and refers to the Islamic law that Muslims believe to be divinely ordained. Although the divinity of shari’a is not disputed amongst Muslims, the terms of these divine commands are. This is because Islamic law does not simply rely on sacred text to reach a verdict on an issue; rather, Muslim legal scholars use various sources such as analogical reasoning and the Sunna⁶⁸ to do this. This process, Ziba Mir-Hosseini argues, affords shari’a the feature of being both sacred and temporal. She explains that shari’a is sacred in the sense that Muslims view it as a source of divine revelation with the prime purpose of mapping the ‘way’ or ‘path’ to salvation; yet, it is temporal because Islamic jurisprudence is the product of centuries of juristic interpretation.⁶⁹ For centuries, scholars used four sources to develop Islamic jurisprudence; yet, the majority of Muslims consider only one, the Qur’an, to be divinely revealed and thus infallible.⁷⁰ Muslim scholars viewed the other three sources—hadith, *ijma* (consensus), and *qiyas* (analogical reasoning)—as secondary but still important sources in developing shari’a.⁷¹

The first, and least disputed, source legal scholars used to develop Islamic jurisprudence was the Qur’an, Islam’s sacred text; however, only about 10% of the Qur’an

⁶⁶ A qadi is a judge in a Muslim community, who bases decisions on Islamic religious law.

⁶⁷ Shari’a literally means ‘the way to a watering hole.’

⁶⁸ The sunna are the teachings and sayings of the prophet Mohammed.

⁶⁹ Mir-Hossen, *Marriage on Trial*, 1.

⁷⁰ While Muslims also consider hadith an important and debatably divine source of teaching, its dependence on other’s recollections of the prophet’s sayings and teachings has lead to disagreements on the authenticity of some of these hadith. This will be further discussed in the section on hadith. Thus, the Quran is the only source that majority of Muslims agree to be the direct and divine revelation of God.

⁷¹ John Esposito’s book *Women in Muslim Family Law* (Syracuse: Syracuse University Press, 2001), as well as Norman Anderson’s *Law Reform in the Muslim World* (London: University of London Athlone Press, 1976) and Noel J. Coulson’s *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964) provide a more thorough and standard discussion on the sources of Islamic Law.

legislates human behavior, and the majority of this 10% concerns marriage, divorce, inheritance, and general family relations.⁷² The second source scholars used were the hadith. The hadith are the various reports on the practices or sayings of the prophet Mohammed as reported by his close companions. Given their reliance on the others reporting of Mohammed's practices, the authenticity of some hadith are disputed amongst *ulema* (Muslim scholars); thus, scholars often separate the different collections of hadith into 'weak' and 'strong.' Yet, despite these disputes, hadith still prove to be an important source of authority when it comes to interpreting opaque verses of the Qur'an as well as filling the text's silence on issues of legal importance.⁷³

The third source *ulema* used was *ijma* (consensus). Initially, *ulema* understood this to mean the consensus of the 'Companions of the Prophet;' over time, however, they soon defined it as "agreement among the great jurisconsults of an age as to the implications of the Qur'an or hadith for a given legal doctrine, or even their consensus on matters that were not explicitly discussed in either texts."⁷⁴ In order to come to understand such matters not explicitly found in the Qur'an or hadith, jurists used *qiyas*, or analogical reasoning. This was the fourth source they used to develop Islamic jurisprudence. *Qiyas*, Tucker explains, "allowed jurists to address 'new' situations not covered explicitly by the Qur'an, hadith, or a pre-existing consensus by deducing a legal rule by way of analogy to an existing point of law or principle found in any of the three prior sources."⁷⁵ This source became increasingly important as jurists soon faced problems unique to modern society and thus not explicitly addressed in either the Qur'an or hadith.

⁷² We will see later when we discuss motivations of legal reform, how the Qur'an's focus on such areas possibly contributed to Muslim states unwillingness to separate Islamic law from family law.

⁷³ Tucker, *Women, Family, and Gender in Islamic Law*, 12.

⁷⁴ *Ibid.*, 13.

⁷⁵ *Ibid.*

The process in which ulema came to use qiyas, interpret verses, or understand the implications of the Qur'an and hadith for a given legal doctrine is called *ijtihad*, or independent thinking.⁷⁶ The term *ijtihad* itself stems from the Arabic root for 'struggle,' capturing the intended spirit of the interpretation process. Ulema using *ijtihad* were meant to be embarking on a difficult process of understanding God's divine command. Because of the understood difficulty of this task, *ijtihad* influenced the emergence of a rich and wide legal discourse that spanned generations of ulema. However, by the beginning of the tenth century, many ulema from the Sunni legal schools declared the "door of *ijtihad*" closed, because they believed shari'a had reached its perfection, and "all that could be deduced from the Qur'an and the *sunna* [teachings] of the prophet had already been worked out."⁷⁷ While many Sunni scholars, and Western Islamic scholars such as Norman Anderson and Noel Coulson, accepted this claim, the Shi'a schools rejected this claim. Yet, even in the schools that accepted the closing of the door, its closure was only theoretical and in reality, *ijtihad* remained a much more complex and fluid door in the centuries to follow.

Using these sources, many legal schools emerged throughout the development of Islamic jurisprudence though ultimately, only four Sunni legal schools survived—Hanafi, Maliki, Shafi'i, and Hanabali—and fewer still of the Shia schools.⁷⁸ Although these schools differed in interpretations, postulations, and occasionally religious sect, it is important to

⁷⁶ Mir-Hosseni, *Marriage on Trial*, 7. Anderson, *Law Reform in the Muslim World*, 7.

⁷⁷ Mir-Hosseni, *Marriage on Trial*, 7. Tucker, *Women, Family, and Gender in Islamic Law*, 13. Anderson, *Law Reform in the Muslim World*. and Noel J. Coulson, *A History of Islamic Law*, Islamic Surveys (Edinburgh: University Press, 1964). provide further discussion on the closure of "the door of *ijtihad*." Both are also of the opinion that this door was effectively closed at the end of the ninth century.

⁷⁸ The four Sunni sub-schools are the Hanafi, the Maliki, the Shafi'i, and the Hanbali. Each of the Sunni legal school is named after its jurist founder. The three prominent Shi'ah sub-schools are the Ithna-Asharis, the Ismailis, and the Zaydites. The majority of Yemenis are sunni and belong to the Shafi'i although there is a large Shia population in the northern hinterlands that belong to the Zaydi school.

stress that each of them respect and recognize the orthodoxy of the other.⁷⁹ These schools become important, as we will discuss, during the codification of Islamic law, because state officials began selecting from the major and minor legal opinions of the various legal schools in their attempt to draft a singular and standardized legal code.

WOMEN, THE NATION STATE, AND CODIFYING ISLAMIC FAMILY LAW

The unprecedented attempt to codify Islamic law first occurred in the final years of the Ottoman Empire and continued with the emergence of modern-nation states in the Muslim region. Before the nineteenth century, Ottoman officials did not assert direct state control over law and legal institutions when it came to religious law. Instead, they developed legal codes that dealt with tax collection and public safety and left matters of personal disputes, family law (marriage, divorce, etc.), and a great deal of other issues to local courts. These courts varied greatly with some following shari'a law while others, formally set up for "non-Muslim" Ottoman citizens, adhered to local legal customs and ecclesiastical authority.⁸⁰

This multifaceted legal approach soon changed as Ottoman officials faced increasing pressure from Western powers demanding that the empire 'modernize' its legal codes. The primary objective of such pressures was to facilitate trade more easily; however, Ottoman officials sought legal reforms so they could additionally deflect Western criticism that the empire was no longer viable in the 'modern era.'⁸¹ Thus, in the early years of legal and social

⁷⁹ Mir-Hosseini, *Marriage on Trial*, 6. Tucker, *Women, Family, and Gender in Islamic Law*, 14. Thus, Muslims from each branch were free to seek the opinion from whichever legal school they identified with.

⁸⁰ Interestingly enough though, many non-Muslims brought their cases to shari'a courts even when not legally required. This is because in certain areas, such as property and inheritance, individuals received greater protection under shari'a.

⁸¹ Anderson, *Law Reform in the Muslim World*, 15; Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 10.

reforms, or *tanzimat*, Ottoman officials made an effort to implement secular legal codes that were sometimes inspired by Western codes, specifically French, in areas such as commercial, administrative, and tax laws. .⁸² Many reformists, and even some jurists, supported the modernization efforts of officials and agreed that it was best to draw on an alien and secular source for legal reform rather than force shari'a to fit the needs of a 'modern society.' Sharia, they reasoned, should be left untainted and set aside as an example of an all-encompassing authoritative legal code that might someday be reintroduced in its unreformed entirety.⁸³

The state's modernization efforts, though, soon faced a dilemma as the pressure to extend legal reform to areas of family law grew. Until then, reforms had drawn inspiration from European legal models and theories; however, reformists, jurists, and state officials had been hesitant to set aside Islamic law completely when it came to matters of the family. After all, they reasoned, the family is the foundation of an Islamic society, and it was difficult to ignore the fact that the majority of the Qur'an's already limited legislations centered on issues of the family making family laws traditionally the most developed areas of Islamic law.⁸⁴ Thus, officials were faced with the dilemma of either abandoning shari'a in its reform of family law as they had been doing in other legal areas, or face the challenge of standardizing a legal tradition characterized by its openness and diversity in legal opinions. Ottoman state officials would choose the latter.

The first attempt to codify Islamic family law, or 'Personal Status Laws' as many Muslim states came to call them, was the 1917 Ottoman Law of Family Rights (OLFR). In

⁸² Cleveland and Bunton, *A History of the Modern Middle East*.

⁸³ *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 10, 12; Anderson, *Law Reform in the Muslim World*, 35-36.

⁸⁴ Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," in *Social History of the Modern Middle East* ed. Margaret Lee Meriwether and Judith E. Tucker (Boulder,

drafting the law, Ottoman officials engaged in the method known as *takhayyur* (selection). This method allows a state to select from the minority and majority opinions from one or several of the dominant legal schools in order to draft a legal code that officials deem to best suit the needs and concerns of a modern society. Given that the Hanafi legal school was the preferred school in the Ottoman Empire, officials drew largely from Hanafi jurists' opinions to draft the OLF. ⁸⁵ This method of *takhayyur*, Norman Anderson argues in his work on shari'a reform, "represented a complete reversal of the position previously occupied by the shari'a—as an uncodified, divine law which had an authority, inherent in itself, over every Muslim, from Caliph to slave."⁸⁶ Although the family law stayed in effect for only two years, it had set a precedent for the new nation states in the Muslim region. One after the other, these states began promulgating their own Islamic family laws.⁸⁷

Tucker argues that the "modern 'reforms' of Islamic law [in the nineteenth century] constituted an epistemological break" as the state "took upon itself the task of codifying Islamic law in a striking departure from [the] previous practice"⁸⁸ explained in Anderson's statement above. This epistemological break, she goes on to say, was a "watershed period that had far-reaching effects, for better and worse, on women and gender issues."⁸⁹ These effects become apparent when we explore the various paths for legal reform nation states took as well as their motivations behind codifying Islamic Family Law.

Colo: Westview Press, 1999), 150; Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 10.

⁸⁵ Although the Hanafi school was the Ottoman's preferred legal school, state officials allowed shari'a courts to use whatever legal school they desired.

⁸⁶ Anderson, *Law Reform in the Muslim World*, 17.

⁸⁷ In fact, some of these states, such as Syria and Jordan, continued to apply a version of the OLF for many years even after the fall of the empire. Others followed the Ottoman's example of *takhayyur* and codified their own Islamic family law. Some of these states included: Egypt (1920 and 1929), Sudan (1915), Syria (1953), Tunisia (1956), Iraq (1959-selected from both Sunni and Shiite principles), Pakistan (1961), Iran (1967), South Yemen (1974), and North Yemen (1978).

⁸⁸ Tucker, *Women, Family, and Gender in Islamic Law*, 19.

⁸⁹ *Ibid.*, 37.

The reforms to Islamic law that states undertook varied from country to country; however, Ziba Mir-Hosseini argues that states followed one of three paths. They either (1) abandoned “classical Islamic law in every sphere and replac[ed] it by Western-inspired codes” (2) retained “Islamic law in respect to family, inheritance, and religious endowments, while abandoning it in other areas of the law,” or (3) preserved “Islamic law as the fundamental law and attempt[ed] to apply it to the whole range of human relationships.”⁹⁰ The Ottoman Empire, as explained above, initially took the first path to legal reform, setting aside shari’a in favor of a secular legal source. However, when faced with the challenge of reforming family law, Ottoman officials, like the majority of Muslim states, Mir-Hosseneni argues, took the second path; they abandoned shari’a in all spheres but that of the family. But why was this the case? Why were states so willing to set aside shari’a when it came to important areas such as trade and taxes, but hesitant to strip it from the laws of the family?

THE MOTIVATION BEHIND CODIFICATION

The standard narrative concerning the motivation of the codification of Islamic family law in Muslim states is arguably best represented in Norman Anderson’s work on shari’a reform. In his 1976 work *Law Reform in the Muslim World*, Anderson argues that state motives were varied and complex; however, they fell under two broad categories: top-down and bottom-up reform. The first referred to reforms imposed on citizens by the government—hence they were given from the top and applied downward. State officials implemented such reforms, Anderson explains, in an effort to resist the encroachment of Western powers and to “disarm European criticisms of those aspects of the shari’a which

⁹⁰Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 8.

were considered savage or crude, and thus avert the danger of further interference.”⁹¹This explains, he goes on to say, why the earliest legal reforms state officials implemented were codes such as the Commercial Code, Penal Code, Code of Maritime Commerce, and Code of Commercial Procedure.

Yet, it seems that the fears of Western encroachment and criticisms was not enough to convince Ottoman officials to reform family law. It was only several years after the first reforms were introduced and state officials felt the pressure from their citizens did they venture into codifying Islamic family law. Thus, Anderson argues, the pressure to reform family law “came from below, from the needs of society, rather than from above, from administrative convenience and national interest.”⁹² Anderson and other scholars like him attributed the spark for this bottom-up reform to the “unhappy lots of certain Muslim wives.”⁹³ To demonstrate this, these scholars often point to the example of divorce regulations under the dominant Hanafi School in the Ottoman Empire. Under the Hanafi School, they explain, it was common for courts to deny divorce for a Muslim woman who claimed her husband had abandoned her, because the courts could not be certain the husband would not return someday seeking his lawful wife. Thus, Hanafi practice often legislated that an abandoned wife must wait 99 years, when the husband can be safely presumed dead, before jurists grant her a divorce.

Injustices such as these motivated the state to reform family law and institute more just laws that state officials have standardized and codified from the various legal schools. Anderson is not alone in this assessment of the ‘admirable’ state efforts to readdress the hardships of its female citizenry. Noel J. Coulson and Joseph Schacht argue that the modern legal reforms in shari’a were representative of a “resurgence of legal moralism” that sought

⁹¹ Anderson, *Law Reform in the Muslim World*, 15.

to correct the harmful consequences of legal formalism.⁹⁴ These reforms, they believed, greatly enhanced women's position in Islamic society. However, Annelies Moor's work "Debating Islamic Family Law: Legal Texts and Social Practices" critiques this standard narrative stating that until the early 1970s, the academic study of the history of Islamic family law reforms, such as those of Anderson, Coulson, and Schacht, "was largely the privileged terrain of Orientalists."⁹⁵ Scholars, such as Anderson and Coulson, she argues, concentrated heavily on the newly codified twentieth-century laws and the classical texts of the prominent jurists of the major legal schools. This limited methodology allowed these scholars to view Islamic legal reforms as the result of the state's sincere efforts to aid women and these reforms thus signaled "the eclipse of the patriarchal family."⁹⁶

The problem with such an approach, Moor explains, is that it wrongfully constructs an Islamic family that "remained monolithic, static, and rigidly patriarchal until the promulgation of the twentieth-century legal reforms."⁹⁷ Instead, Moor advocates for a much different approach to studying Islamic legal reform, one that looks past the standard narrative of a savior state and resists the temptation to view Muslim women as a homogenous category. She advocates for an approach that understands the complex relationship between gender and other distinctions like class. Such an approach, she argues, "subvert[s] the Orientalist construct of the monolithic patriarchal family of classical Islamic law and questions assumptions that family reforms have greatly enhanced women's position

⁹² Ibid., 39.

⁹³ Ibid.

⁹⁴ Noel James Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, Publications of the Center for Middle Eastern Studies, (Chicago,: University of Chicago Press, 1969), 95. Also see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 106-07.

⁹⁵ Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 142.

⁹⁶ Ibid. It is important to note that this phrase is in direct reference to Anderson's 1968 article titled "The Eclipse of the Patriarchal Family Law in Contemporary Islamic Law."

⁹⁷ Ibid.

and capacity to act.”⁹⁸ Since the later 1970s, scholars such as Judith Tucker, Marie-Aimee Helie-Lucas, and Hanan Kholoussy, take such an approach.

Unlike Anderson, Tucker does not assume that legal reforms greatly enhance women’s position in society or agency, nor does she accept that the motivations behind reform can be divided into the top-down and bottom-up categories that Anderson presents. Instead, Tucker argues that there is a third category for these motives: the attempts of states to address the legitimacy crisis they faced. In the late twentieth century, the failing social and economic policies of many of the states in the Muslim region called into question many of these states’ strategies of modernization and ‘westernization.’ Thus, Tucker argues, many of these states “embarked on a campaign to ‘restore’ Islamic society;” however, state legislators primarily focused on restoring a very specific element of Islamic society: the family and penal codes.⁹⁹ Tucker explains that focusing on such aspects allowed state officials to address the “showier” and arguably easier areas of penal law and personal status law. They were ‘showier’ because the harsh ‘Islamic’ penalties of certain crimes (such as stoning adulterers and amputating the hands of thieves) allowed states “to display cultural legitimacy and punitive power.” They were ‘easier’ in the sense that such reforms were less disruptive to the basic economic and political interest.¹⁰⁰ Additionally, the introduction of restrictions on women via these reforms had the “virtues of high visibility and minimum

⁹⁸ Ibid., 143.

⁹⁹ Tucker, *Women, Family, and Gender in Islamic Law*, 22.

¹⁰⁰ We can see this for example in the case of Saudi Arabia. Many of these harsh Islamic penalties had not been used for centuries; however, the Saudi state reintroduced them into their legal codes around the 1970s to demonstrate their ‘commitment’ to ‘Islamic law’ and their ‘refusal’ to embrace western law. Adopting these kind of Islamic laws was an easier way to establish the Saudi state’s legitimacy, because they effected the politically powerless (women, thieves, poor, etc) and therefore provided the least amount of disruption to the state’s economy or political structure unlike the disruption adopting other ‘Islamic law’ would cause (such as Islamic trade policies, or poverty reduction laws)

when we look for instance at Saudi Arabia’s legal codes.

threat of serious opposition” since those most impacted tended to be poor females with little political agency.¹⁰¹

Mir-Hosseini agrees with Tucker and adds that by removing shari’a from other legal areas but leaving it in family laws, “the modernization governments paid lip service to the shari’a and avoided an open confrontation with its guardians.”¹⁰² In fact, it was arguably because states stripped shari’a in other areas that its presence in family law became a sensitive topic that officials were not willing to touch.¹⁰³ These laws were the “last bastion of the Islamic ideal of social relations.”¹⁰⁴ Thus, not only did keeping Islamic family laws help the state in the legitimating process it also allowed leading officials to avoid provoking political adversaries. This was the case, as we will later discuss, in communist South Yemen. While its family law was arguably one of the most progressive in the region, South Yemeni legislators did not dare strip the Islamic influence from the laws. Instead, the laws continued to employ some Islamic rhetoric and guidelines, but often only vaguely so.

Legislators seemed to understand the increased sensitivity of keeping shari’a in the family and paying some homage to the Islamic heritage of the state. Marie-Aimee Helie-Lucas explains that Islamic family law, and specifically the gender relation they legislate, has become “the preferential symbol for Islamic identity.” Meanwhile, she explains, the women affected by these laws became the “*monnaie d’échange* [state officials] use to remain in power” and pacify fundamentalist opponents who associate women’s subordination with

¹⁰¹ Ibid., 23. We will see how this class dynamic plays an important role in Yemeni family courts particularly in the area of granting women divorce.

¹⁰² Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 10.

¹⁰³ Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 150.

¹⁰⁴ Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, 13.

Islamic identity.¹⁰⁵ However, state officials were not alone in their hesitation to remove Islamic influence from family laws. Hanan Kholoussy writes that even during the Egyptian women's movement in the 1920s, modernists, and even feminists such as Huda Sha'rawi, were "careful not to criticize Islam" or "challenge Islamic conception of unequal complementary gender norms" during their campaign to reform personal status laws. This is because they not only held a deep respect for Islamic law, but they also did not "want to be seen as advocating the abandonment of Egypt's Islamic heritage."¹⁰⁶ Thus, it became essential for actors on any side of the family law debate to recognize, or at least appear to recognize, the importance of their society's Islamic heritage, lest they risk being shunned by others as an agent of Western encroachment.

The family and women's role in the family, however, has not only been important in the realm of symbolizing 'Islamic identity' and 'Islamic heritage' of states. There is a prevalent theme throughout nationalist literatures concerning the importance of family metaphors in nationalists' efforts to 'invent,' 'imagine,' and 'construct' the nation. In particular, such nationalists often employ the maternal imagery of 'motherhood,' 'motherland,' and more importantly, the image of the nation as 'woman' in these efforts. Thus, in this manner, nationalists "ascribed [women] the role of biologically and culturally reproducing the nation."¹⁰⁷ Scholars such as Nira Yuval-Davis and Floya Anthias have written extensively on the 'gendering of nationalism' in various context and regions, demonstrating the crucial role of women and the image of 'woman' play in the national

¹⁰⁵ Marie Heilie-Lucas, "The Preferential Symbol for Islamic Identity: Women in Muslim Personal Laws," in *Identity Politics and Women : Cultural Reassertions and Feminisms in International Perspective*, ed. Valentine M. Moghadam (Boulder: Westview Press, 1994), 396.

¹⁰⁶ Hanan Kholoussy, *For Better, for Worse : The Marriage Crisis That Made Modern Egypt* (Stanford, Calif.: Stanford University Press, 2010), 12.

¹⁰⁷ Beth Baron, *Egypt as a Woman : Nationalism, Gender, and Politics* (Berkeley: University of California Press, 2005), 5.

symbols and myths of a society and in the reproduction of an ‘ideal’ society.¹⁰⁸ This role helps further explain the investment if states in family law, and in extension, the regulation of women’s social role. Deniz Kandiyoti writes in the introduction to her edited volume *Women, Islam, and the State* where she and others explore similar themes, “The objective of such intervention [by the state in family legislation] is to expand the control of the state over the socialization of its citizens” in order to pursue “social progress and development.”¹⁰⁹ Additionally, the added dimension of the attempt of state officials to encompass a state’s ‘Islamic heritage’ as discussed above, provides an additional motive behind their direct involvement in codifying Islamic family law. However, it is the struggle over which image of which woman the state should employ as a national symbol that became crucial.

In her work, *Egypt as a Woman: Nationalism Gender and Politics*, Beth Baron argues that in the case of Egypt maternal symbolism “the spread of women as symbols of the nation corresponded with the efforts of nationalists to broaden their movement;” and while “artists, intellectuals, and others came to agree that Egypt should be represented as woman,” they disagreed over which ‘Egyptian woman’ should symbolize Egypt.¹¹⁰ Should she—Egypt—be depicted as a *fallaha* (peasant woman), a pious and veiled Islamic woman, a Pharaonic queen, or a bareheaded ‘modern’ and fair-skinned “new woman” wrapped in fur

¹⁰⁸ As mentioned, the literature on gendering nationalism is extensive and cannot be sufficiently surveyed in a single chapter. To explore such literature would be a project in and of itself. However, it includes Nira Yuval-Davis’ book *Gender & Nation* (1997) and her and Floya Anthias’ edited volume *Woman-Nation-State* (1989) which include work from Francesca Klug on England, Deniz Kandiyoti on Turkey, Haleh Afshar on Iran, amongst others. Also, Beth Baron’s “Mothers, Morality, and Nationalism in Pre-1919 Egypt” in *The Origins of Arab Nationalism*, ed. Rashid Khalidi (New York, 1991) and Wendy Bracewell, “Women, Motherhood, and Contemporary Serbian Nationalism,” in *Women’s Studies International Forum* 19 (1996) provide important contributions to this growing literature.

¹⁰⁹ Deniz Kandiyoti, *Women, Islam, and the State*, Women in the Political Economy (Philadelphia: Temple University Press, 1991), 9.

¹¹⁰ Baron, *Egypt as a Woman : Nationalism, Gender, and Politics*, 81.

and at the driver seat of a car?¹¹¹ These drastically different images of a female Egypt, Baron argues, “reflects the struggle for power on behalf of different parties and their debates over Egyptian culture.”¹¹²

This struggle over ‘which woman,’ that is by extension a struggle for power, is not unique to Egypt. The unification of Yemen seemed to have introduced a similar struggle; however, admittedly one less overt than the struggles Baron and others present. In the late 1980s, state officials from two different Yemeni states with two different ideologies and vision for an ‘ideal Yemeni society’ sought to unify what they understood to be the ‘historic Yemeni homeland.’ In the midst of their state-building effort, this chapter argues, the silent debate over which image of ‘Yemeni woman’ the state should cultivate became one of the many fault lines state legislators navigated. Prior to the unification, the Yemeni states fostered two drastically different images. Both images drew on elements of shari’a family law, but at various degrees and with contrasting results. In the north, as we will see in the second half of the chapter, the YAR legal codes attempted to construct woman as obedient, dependent, and silent. In the south, the PDRY legal codes attempted to construct her as an equal and necessary partner in implementing the social revolution the communist state sought.¹¹³

¹¹¹ In “Chapter 3: Nationalist Iconography,” Beth Baron uses newspaper images and political cartoons to explore how the image of a female ‘Egypt’ varied through the years and social background of its illustrator.

¹¹² Baron, *Egypt as a Woman : Nationalism, Gender, and Politics*, 81.

¹¹³ The preamble to the PDRY’s family law reads: “...And whereas the State has regard for the need to organize family relationships in a way which is in conformity with the principles and objectives of the program of the National Democratic Revolution and which precludes forever all the old relationships which used to govern the ties of the Yemeni family and prevent it from playing a positive role in the rebuilding up of society. And whereas *the ties of the family, in all their forms, were not subject to any unified structure except those feudal relationships which made the noblest of human ties a matter of bargaining and put the fate of the Yemeni woman in pledge to the one who would pay the highest price. And whereas the working classes among our people have given expression to their discontent and disapproval that family ties should remain in this evil state*, it is incumbent on the revolutionary authority of the National Democratic Yemen to support the struggle of the Yemeni masses by this law, *the Family Law, which regulates Yemeni family relationships for*

During the 1990 unification, these contrasting images of ‘woman’ clashed as each side sought to implement their own vision for a Yemeni state and, by extension, their own image of the Yemeni woman. The clash between the former powers’ mutually exclusive visions for the new Yemeni state’s political organization and social order reached its breaking point in the form of the 1994 Civil War. When the dust settled and the former North emerged victorious, northern leaders amended the constitution and legal codes paying particular attention to the Yemeni family law. The exact motives behind these amendments to family law are unclear. Did the Civil War force the newly founded state to face a legitimacy crisis similar to the one Tucker describes? And if so, did their effort to avert this crisis push state legislators to amend family law in a way that better demonstrated the state’s commitment to its ‘Islamic heritage’ unlike the ‘godless communists’ of the former south?¹¹⁴ Or was it an attempt to pacify an emerging Islamist party (Islah) as Mir-Hosseini suggests so that Yemeni women, like those Helie-Lucas spoke of, became, “exchange money” for the appeasement of the leading party’s potential political adversaries? Perhaps it was a combination of these and other unexplored motives; nonetheless, what is clear is that the amendments made to the family law, penal codes, and even constitutional references to gender after the 1994 Civil War reconstructed the image of the Yemeni woman into one that resembled that of North Yemen: obedient, dependent, and silent.

the first time in a way that opens wide horizons for creative activity and equal revolutionary relationships which will result in increased production, development and inventiveness. (italics added)

¹¹⁴ Even after the unification and Civil War, Northern and Southern animosity continued to run deep. The stereotype of Southern Yemenis commitment to communism rather than God was a popular one and is well illustrated by a dispute during one of Yemen’s parliament sessions that ended with an outburst from a Northern MP towards Southern MP, Muna Basharahil, stating ““You are a communist and I speak for God.”(Sheila Carapico, *Civil Society in Yemen : The Political Economy of Activism in Modern Arabia*, Cambridge Middle East Studies (Cambridge, UK ; New York: Cambridge University Press, 1998), 162.)

2.2 Unification and Civil War¹¹⁵

Long before the 1990 Unification, both North and South Yemen declared their hopes for a unified Yemen. The preambles of the YAR and PDRY's constitutions condemned the "false division of Yemeni land and people," and called for a return to the historic, and single, Yemeni homeland.¹¹⁶ How much of this was simply rhetoric romanticizing the notion of an indivisible Yemeni identity is difficult to say; however, the call for unification continued to surface in multiple instances throughout the history of the two Yemens' relationship. We can see this most notably following both the 1972 and the 1979 Border War that broke out between the YAR and PDRY. In both cases, hostility ended with a treaty that reaffirmed both sides' desire for a unified Yemen in the 'near future.'

While both sides were hesitant to set a date to this 'future,' the discovery of oil along the borders of YAR and PDRY in the late 1980s quickly defined the timeline. Leaders of the two Yemens declared that the countries will be unified by 1990, and in 1988-1989 they began drafting a unity constitution. On May of 1990, the Republic of Yemen was formed.

Although the North had almost four times the population of the South (approximately 11 million Yemenis residing in the North and about 2.5 millions in the South), the 1990 Unity Accords divided political power and most governmental posts evenly between the two former states. The ruling bodies of the former Yemens, the General Popular

¹¹⁵ Scholars have extensively written on Yemen's unification and 1994 Civil War. In the interest of brevity, the following section summarizes the general discussion and consensus surrounding this period as found in the literature. Readers can find a more thorough discussion of the unification period in Paul Dresch *A History of Modern Yemen* (2000), Jamal Al-Suwaidi *The Yemeni War of 1994: Causes and Consequences* (1995) Steven Caton *Yemen* (2013), Kamil Mahdi, Anna Wurth, and Helen Lackner *Yemen into the Twenty-First Century: Continuity and Change* (2007).

¹¹⁶ Please see the preambles to the 1970 YAR constitution and the 1978 PDRY constitution, which state "We should, by all possible means, regain Yemeni unity in order to withstand any foreign influences aimed at blocking or fragmenting such unity." (YAR, 1970) and "All this affirms that despite the unnatural situations of false division of the Yemeni land and people its struggle in the two parts is dialectically correlated in its unity not only against the imperialist and reactionary cabals

Congress (GPC) in YAR and the Yemeni Socialist Party (YSP) in PDRY, became political parties in the new state. Additionally, the accord declared the former YAR's president, Ali Abdullah Salih, as the general secretary of the GPC and the President of the new state, and the former PDRY's president, Ali Salim al-Baid, as the general secretary of the YSP and the Vice-President of the country. As for the division of the 301 parliamentary seats the country held elections and Southern officials expected that the seats would be divided somewhat evenly between the two parties. This, however, was not the case.

Islamists had begun gaining support in North Yemen and during the unification period, a third party formed: the Islah Party. The leading figure of Islah, Shaykh Abdullah of Hashid tribe, had enormous influence in northern Yemen and the party's secretary, Abdel al-Wahhab al-Ansisi, had close and positive relations with President Salih. Thus, the Islah party was often difficult to distinguish from the GPC with one prominent member of the GPC, Ali Muhsin al-Ahmar declaring, "there's no difference" between the two parties.¹¹⁷ Additionally, while the Islah party was predominantly established by northerners, party leaders sought to expand their influence beyond the former northern borders. The party soon began aligning itself with the Southern poor who felt the consequences of the YSP's inefficient bureaucracy and its 1970s land reforms. As Paul Dresch argues, "aligning itself conspicuously with the poor, Islah built on Southern disputes while basing itself within the North."

The YSP failed to gain enough support in the North to replace the support it was losing in the south to Islah. The results of the 1993 parliamentary elections reflected this loss of support. YSP secured only 56 of the 301 seats, coming in third after the 62 seats to Islah and the 123 seats to GPC, effectively weakening the party's claim to a half-share in power.

against the Yemeni homeland but also for the purpose of finally getting rid of the division and restoring the natural situation for the democratic unity of Yemen." (PDRY, 1978)

A parliamentary vote deciding the membership for the five-member Presidential Council further weakened YSP's claim: two seats went to the GPC, two to Islah, and one to YSP. Given that many viewed Islah and the GPC as essentially one and the same, YSP members were angry with the parliamentary election results. They additionally claimed that the GPC was persecuting the YSPs members and not disclosing the country's full oil revenues that both countries now owned and that northern leaders promised in the 1990 negotiations would be equally distributed amongst both halves of the country. This marginalization of the YSP in the unity government, lead Vice President Ali Salim al-Baid to withdraw south to the former PDRY's capital, and calls for southern secession grew stronger.

A "Dialogue Committee" set up to ease the growing hostility between the parties failed. On 27 April, the 1994 Civil War broke out, and YSP leaders called for secession. This war between the parties did not last long as the YSP proved to be no match for the Northern army units, tribal groups, and Islamists who claimed that fighting the socialists was *jihad* or holy war.¹¹⁸ The Northern-controlled military dominated the South long after the war, and Southerners continued to feel the North's presence as GPC-supported governors ruled many of the former South's governorates. In the capital, the GPC stripped the YSP of its remaining resources and political power. Additionally, the GPC regularly persecuted and arrested the YSP members that remained in Sanaa after the war. In protest to this treatment, the YSP boycotted the 1997 parliamentary election effectively ensuring that they secure no parliamentary seats and giving up what little influence they could have exercised in drafting the new legal codes of the Republic of Yemen. Instead, the election divided political power

¹¹⁷ Dresch, *A History of Modern Yemen*.

¹¹⁸ Given the use of the word 'jihad' in current debates, it is important to clarify the various definitions of the word. Jihad literally translates to mean "struggle." In Islamic scholarship, particularly in the sunna (sayings of the prophet), there is understood to be two types of jihads: a lesser jihad and greater jihad. The first (the lesser jihad) refers to holy war, or fighting in God's

between the GPC and the Islah party.¹¹⁹ The two worked closely after the 1994 Civil War to amend the unity constitution and legal codes so that they better reflected the YAR legal system and a very specific codification of shari'a law. The following section demonstrates the evolution of these legal codes and the influence of former North Yemen ideals throughout the process.

2.3 Evolution of Legal Framework

When the two Yemens came together in the late 1980s to draft a unity constitution, they claimed their determination to draft a constitution that encapsulated the spirit of both the North and the South. To this end, the unity constitution drew inspiration from both countries' constitutions particularly the South's social policies and the North's political structures. After the 1994 Civil War, Northern leaders and the Islah party, who together exercised unchallenged power, amended the unity constitution so that it better reflected that of former YAR's constitution and its vision of Islamic family law. Thus, arguably the new leaders abandoned any pretense of constitutional compromise.

By the end of the 1994 Civil War, the legal frameworks of the YAR superseded those of the PDRY that had influenced the original 1990 unity constitution. In general, the post war legal frameworks leaned towards its YAR antecedents in several dimensions such as the type of government the state viewed itself to be¹²⁰ and the role of Islam in society as the state religion.¹²¹ However, the legal evolution was particularly acute within the area of

name. This is the kind Northern leaders were invoking. The latter (the greater jihad) refers to an "internal struggle" to better oneself.

¹¹⁹ Dresch, *A History of Modern Yemen*. Jamal Al-Suwaidi *The Yemeni War of 1994: Causes and Consequences* (1995)

¹²⁰ Please see the constitutions' opening statements (articles 1) for the YAR, PDRY, 1990 Republic of Yemen, and post-war 1994 Republic of Yemen.

¹²¹ Like the YAR's and the Republic of Yemen's constitutions, PDRY 's constitution (article 47) recognizes that "Islam is the state religion;" however, unlike these constitutions, the PDRY goes on

women's rights. The changes are evident through a comparison of previous and current constitutional and legal codes on anti-discrimination and family laws. The following section will focus on the legal evolutions in these areas and will present the laws from the YAR, the PDRY, the Republic of Yemen before the Civil War, and the Republic of Yemen after the Civil War in order to demonstrate the dominance of the North's legal articulation of gender norms after its Civil War victory.

ANTI-DISCRIMINATION AND THE ROLE OF THE FAMILY

How each of the Yemens worded or silenced its anti-discrimination clause and how each constitution lay out the role of the family is an important indicator of how each Yemen's legislators constructed 'woman and the family' and how the legal codes accompanying the constitutions of each of them legislated its female citizenry. In the case of the PDRY, its anti-discrimination clause stated:

All citizens are equal in their rights and duties irrespective of their sex, origin, religion, language, standard of education or social status. All persons are equal before the law. The state shall do whatever it can to realize this equality by means of providing equal political, economical, social and cultural opportunities. (Article 35)

Additionally, the third chapter in PDRY's constitution titled "The Social and Cultural Foundations [of the State]" discusses the importance of the family and sketches the state's

to state that, "freedom of belief in other religions is guaranteed." Additionally, the opening sentence of North and South's preamble arguably provide the clearest contrast between the two states' view on the role of religion. The North's constitution opened with "Bismillah," or "in the name of God," whilst the South's opened with, "in the name of the people." The attempt to compromise between these two views of religions during the initial unification can be seen throughout the 1990 unity constitution, specifically in the oath of elected officials (article 131) which replaced all mentions of a Muslim deity with simply "God." The 1994 constitution amended this (article 159) so that it was almost identical to that found in YAR's constitution (article 55). It now referred to not only God, but to "the Quran, and [God's] Prophet's Sunnah (traditions)."

image for the ideal Southern Yemeni family relations as well as the state's duty in achieving this ideal. Article 27 states:

The State shall encourage marriage and the constitution of the family. The law shall regulate the family relations on the basis of equality between man and woman in the rights and duties. The State shall ensure, by means of the laws and measures, continuous improvement in realizing social stability for the family and extensive care for the children, and for this purpose, shall establish mother and child care centers throughout the Republic.

On the other hand, the anti-discrimination clause of the YAR stated:

The State has no right to impose distinction in human rights due to religion or color or sex or language or natural origin or profession. (Article 43)

As for the ideal Northern family relations, the YAR's constitution like the PDRY's, recognizes that "the family is the basis of society," however, it adds, "The fundamentals (of the family) are its religion, customs, and patriotism."¹²² In terms of the state's obligation to the family, article 35 of "Chapter 3: Public Rights and Obligations" of the YAR constitution states, "in accordance with the law, the State guarantees to consolidate the family, protect motherhood, and sponsor welfare for children, the disabled and the aged."

These articles demonstrate that, like North Yemen, South Yemen guaranteed the state could not discriminate based on sex; however, unlike the North, the South's anti-discrimination clause demanded that the state play an active role in ensuring citizens' equality. The state, it declared, should do "whatever it can to realize this equality" by providing "equal political, economical, social and cultural opportunities." This insistence on the state's active role in realizing the ideal 'equal' society extended to the Southern State's obligation to the family as demonstrated in Article 27. The PDRY's constitution required that the state take active steps to ensure "continuous improvement in realizing social

¹²² Yemen Arab Republic Constitution, Article 7.

stability for the family.” The North’s anti-discrimination clause, on the other hand, simply stated that the state had “no right” to discriminate and the state’s obligation to the family and women was as a passive ‘protector’ of motherhood and ‘sponsor’ of children’s welfare.

When the two countries unified, the 1990 Unity Constitution’s anti-discrimination clause was a compromise.¹²³ It did not recognize the State as an active actor in ensuring equality however, the 1990 Unity Constitution did expand the categories under the clause’s protection. The 1990 anti-discrimination clause stated:

Equal treatment in the eyes of the law is guaranteed for all citizens who are equal in rights and duties, and no discrimination shall be practiced due to sex, color, racial origin, language, occupation, social status, or religious beliefs.¹²⁴

Interestingly, state officials omitted any reference to the family as the social foundation of the Yemeni state in the 1990 unification constitution. They reintroduced the family, however, in Article 26 of the amended 1994 constitution stating, “The family is the basis of society; its pillars are religion, customs and love of the homeland. The law shall maintain the integrity of the family and strengthen its ties;” this reference to the ‘pillars of the family’ is eerily similar to YAR’s Article 7. Additionally, after the North’s 1994 Civil War victory, legislators omitted the anti-discrimination clause of the 1990 constitution completely adding instead another article discussing the State’s view on women. This new article, Article 31, stated, “Women are the sisters of men. They have rights and duties, which are guaranteed and assigned by shari’a and stipulated by law.”

While Article 31 or similar wording is not found anywhere in the 1990 unity constitution, it is a verbatim copy of Article 34 in the former YAR’s constitution. Rather

¹²³ Additionally, state officials omitted any reference to the family as the social foundation of the Yemeni state in the 1990 unification constitution. They reintroduced it in Article 26 of the amended 1994 constitution stating, “The family is the basis of society; its pillars are religion, customs and love of the homeland. The law shall maintain the integrity of the family and strengthen its ties.”

¹²⁴ Republic of Yemen. 1990 Unity Constitution. Article 27.

than guaranteeing women equal protection under the law, this article patronizes and infantilizes women as subjects in need of not the state's protection but men's. The reappearance of this article and the constitution's deference to a traditionalists shari'a view of gender relations hints at the reemergence of YAR's ideals and construction of the 'Yemeni woman and family.' The emergence of these YAR elements additionally primes the amendments legislators would make in 1998 to the country's family laws, or new 'Personal Status Law.' These amendments mandated women to receive their husbands' permission before traveling as well as criminalized spousal disobedience and regulated a wife's sexual 'duties.' Ultimately, this conscious omission of an anti-discrimination clause and the addition of Article 31 signaled the reconstruction of the 'Yemeni woman and family' in the image of the former North.

FAMILY LAWS AND THE PERSONAL STATUS LAW

Arguably one of the greatest legal differences between former North and South Yemen was in family law.¹²⁵ The North relied on a strict adherence to classical Islamic text while the South used a radical interpretation that sometimes had little basis in Islamic jurisprudence. In his extensive survey of the various Muslim states' reform of Islamic law, Anderson writes "Saudi Arabia and North Yemen provide the outstanding examples of independent Muslim countries which, in different degrees, have virtually retained the shari'a as a whole, with only minimal modifications in its scope and method of administration."¹²⁶ He adds that both these state permitted "only what seem[ed] to be necessary concessions to contemporary conditions."¹²⁷ On the other hand, he writes, the family laws of South Yemen

¹²⁵ PDRY's Law no. 1 of 1974 "Law of the Family" and YAR's Law no. 3 of 1978 "Law of the Family."

¹²⁶ Anderson, *Law Reform in the Muslim World*, 26.

¹²⁷ *Ibid.*, 188.

and the Republic of Somalia “include a number of provisions for which no authority whatever can be found in the classical texts” in their efforts to “enhance the status of women.”¹²⁸ These provisions included, as we will see, those in South Yemen’s Family Law concerning spousal duties and responsibilities.

After the unification, the 1992 Personal Status Law replaced the family laws of the former Yemens.¹²⁹ Unlike the Unity Constitution, the Personal Status Law was not amended immediately after the 1994 Civil War, but rather a few years later in 1998. The following explores the YAR Family Law, the PDRY Family Law, and the amended Personal Status Law of the Republic of Yemen to understand how each country governed marriage contracts and the age of consent, spousal duties and responsibilities, polygamy, and divorce. However, given that all ‘three Yemens’ used shari’a to some degree in drafting these codes, it is important to first understand, even briefly, the areas of consensus and divergence in Islamic legal scholarship on these areas of Islamic family law. This will allow us to then more thoroughly explore the limitations and rights each Yemens’ legal codes prescribes its gendered subjects as well as point to how closely each Yemen adhered to, or how far they strayed from, classical Islamic jurisprudence. Additionally, this will help us better contextualize the evolution of legal codes and family law and understand those that ultimately prevailed in unified Yemen. Thus, each of the following subsections on an element of family law will first present a brief survey of Islamic jurisprudence on those issues.

Marriage Contracts and the Age of Consent

Classic shari’a jurisprudence stipulates that there are five essential elements to a marriage contract. The first and most basic of these is the offer of marriage (*ijab*) of one

¹²⁸Ibid., 74.

contracting party and the acceptance of said offer (*qabul*) of the other.¹³⁰ These two parties do not necessarily refer to the groom and the bride; in fact, they more commonly refer to the bride and groom's families. The other elements to the marriage contract include the presence of witnesses, a marriage guardian (*wali*)¹³¹, and a dowry that is to be paid by the groom to the bride.¹³² While all the legal schools accept these as the basic elements, the legal opinions of these schools differ on the specifics of the marriage essentials (who constitutes as an appropriate witness and *wali*? Should limits be placed on the price of dowry? Etc.)

As for the age of consent and the power a *wali* has over his guardians, the general consensus amongst jurists from all the legal schools, is that a *wali* has full authority to conduct a marriage contract on behalf of his minor children without their consent.¹³³ While this refers simply to the signing of a marriage contract and often does not necessitate the immediate cohabitation of the spouses, the marriage contract is considered valid and requires a divorce to annul it. If upon reaching legal capacity a female minor wishes to annul the marriage contract, she may do so through exercising her "option of puberty" (*khiyar al-bulugh*)¹³⁴ Until then, she is legally considered a married woman. In terms of a woman of legal majority's consent,¹³⁵ almost all schools recognize it is necessary for the validity of a

¹²⁹ Republic of Yemen. Law no. 20 of 1992. "Personal Status Law."

¹³⁰ John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed., Contemporary Issues in the Middle East (Syracuse, N.Y.: Syracuse University Press, 2001), 16. Kecia Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, ed. Asifa Quraishi and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program Distributed by Harvard University Press, 2008), 13.

¹³¹ A *wali* is always a male guardian and most frequently the father.

¹³² Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 13.

¹³³ *Ibid.*, 18. Jamal J. Nasir, *The Status of Women under Islamic Law and under Modern Islamic Legislation*, Arab and Islamic Laws Series (London ; Boston: Graham & Trotman, 1990), 9. Esposito and DeLong-Bas, *Women in Muslim Family Law*, 15; Tucker, *Women, Family, and Gender in Islamic Law*, 43.

¹³⁴ Tucker, *Women, Family, and Gender in Islamic Law*, 43.

¹³⁵ An individual who is of legal majority is one who has reached puberty and who is legally recognized as being ready for marriage.

marriage contract. However, what this ‘consent’ entails is an area of disagreement.¹³⁶ When it comes to the consent of a mature virgin, some schools legislate that a father can marry her off without her consent,¹³⁷ while others hold that the silence of a virgin in response to an offer of marriage can be understood as her consent. As for the consent of a non-virgin mature woman (a divorcee or widow), jurists require her verbal consent to a marriage. When it comes to who may conduct a marriage contract, the general consensus amongst jurists is that a male may contract his own marriage while a female always requires a wali to contract it on her behalf.¹³⁸ Thus, in some cases, a bride’s signature or verbal consent is not a prerequisite for a valid marriage contract.

We can find similar understanding of a marriage contract and definitions of consent in North Yemen’s and the Republic of Yemen marriage laws, but they only linger in those of South Yemen. Such influences are most apparent when we look at whose signature each Yemeni state required on the marriage contract. In the YAR, the law recognized marriage to be an agreement between two families rather than simply two individuals. Therefore, the marriage contract is valid upon the signatures of the bridegroom and the bride’s wali (usually the father). While theoretically, the bride should give her consent to the marriage, the law did not require her to actively express it. A bride was not required to sign or even be present during the signing of the marriage contract. Additionally, the YAR did not set a minimum age for marriage and a male guardian could give consent to marriage on behalf of

¹³⁶ Tucker, *Women, Family, and Gender in Islamic Law*, 42; Esposito and DeLong-Bas, *Women in Muslim Family Law*, 15.

¹³⁷ Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 18. Maliki, Shafi’i, and some Hanabali jurists hold this opinion. However, the Shafi’i and those Hanabli hold that seeking her consent is strongly recommended.

¹³⁸ Only the Hanafi School recognizes a mature woman’s ability to conduct her own marriage contract; however, this practice is not widespread. Additionally, in the rare case that she does contract her own marriage, many jurists even from the Hanafi school view the contract as suspended until the wali approves it. A wali may also break off said contract if he disapproves of her selection in spouse.

his minor daughter. This resulted in girls as young as eight years old entering marriage.¹³⁹ Thus, the YAR laws' definition of consent (and the extent of its requirement in a valid contract) appeared to be consistent with classical Islamic jurisprudence.

The PDRY law, on the other hand, stated, "marriage is a contract between a man and a woman, equal in rights and responsibilities, made on the basis of mutual understanding and respect with the aim of creating a cohesive family which is the cornerstone of society." Thus, a valid marriage contract required the signature of both the bridegroom and the bride—not her male guardian. The law also set the minimum age of marriage at 16 for females and 18 for males. Thus, PDRY's marriage laws strayed from Islamic jurists' opinions in 1) mandating the verbal consent of all women entering a marriage and 2) setting a minimum age and thus effectively ending a wali's right to enter a marriage contract on behalf of his minor children.

Unified Yemen's Personal Status Law resorts to similar interpretations of Islamic Law found in the YAR Family Law while conceding to some of PDRY's codes. While Article 6 of the Republic of Yemen's Personal Status Law, like the PDRY law, deems marriage a partnership between couples rather than families, the bride's signature is not required. Instead, like the YAR law, only the woman's male guardian's signature and the bridegroom's signature are required. In the 1992 Personal Status Law, the Republic of Yemen adopted the minimum age requirement found in the PDRY Family Law—16 for females, 18 for males. However, the 1998 amended Personal Status Law discarded the age requirement to quell the protest of the new Islah Islamic party. Instead, it adopted consent requirements similar to those found in the YAR Family Law and Islamic jurisprudence. A

¹³⁹ However, the law did include penalties that prohibited the consummation of the marriage until the female child reached puberty. These penalties will be discussed a little later.

male guardian can consent to marriage on behalf of a minor female, but the marriage may not be consummated until the child reaches puberty. Article 15 of the 1998 law states:

The contract concluded for a minor female by her guardian is valid. The person to whom she is contracted in marriage may not consummate the marriage, nor does she move to live with him, until after she is ready for intercourse, even if she is over fifteen years old. The contract of a minor male is valid only if his interest [in this marriage] is established.

Admittedly, this article provides some protection to the female child in requiring that she not live with her husband or consummates the marriage until “after she is ready for intercourse.” However, the law strips the penalties that once existed in a similarly worded article found in the YAR Family Law that punishes those who violate this requirement. That article (Article 19) of the YAR law, states similar guidelines for the marriage of a minor female. However, it goes on to also state that if a husband consummates the marriage before the female child has reached puberty and before she “is able to sustain intercourse,” he is liable to “a jail term of not less than one year and not more than three years in addition to what may be retribution for the crime.” In this instance, the YAR Family Law provides females more protection, albeit not by much, than the Republic of Yemen’s law. Additionally, it is important to note, that it is only in those cases dealing with female minors that the state considers a marriage contract concluded by a guardian valid. In the case of male minors, a marriage contract is only valid if “his interest [in this marriage] is established.” This is similar to Article 19 of YAR’s law that states, “Marrying the male child who has not reached the age of fifteen is invalid even if his guardian accepts a contract.” This differs from Islamic Law’s position that a guardian may act on behalf of both his minor male and female child when it came to marriage. Thus, it appears that the Yemeni law considers only female minors, not males of the same age, too young to know what is best for them and therefore places their consent at the hands of their male guardians.

The Republic of Yemen's Personal Status Law, however, did include articles that provided women with some protection from non-consensual marriages. Article 10 of the law stated, "Any contract established on the basis of compulsion on the husband or wife is invalid." In terms of dissolving female minor's non-consensual marriages, Article 30 of the law stated:

Every marriage that fulfills the pillars and conditions set out above is valid even if not followed by consummation, and all the effects of marriage stipulated in this law arise from the time of its conclusion, so long as it is not suspended. A suspended marriage is one that is suspended for the consent of the person who holds the consent [...] *as for the contract concluded for the minor and the insane, the effects of this contract arise from the time of contract and they may dissolve it upon [the minor] reaching puberty and [the insane person] recovering.* (Italics added)

Thus, this article recognizes the shari'a position of *khiyar al-bulghah* discussed above. However, it is important to note that while Article 30 grants female minors the right to dissolve a marriage contract, they are only able to do so once they have reach puberty. Thus, a female minor must remain in the non-consensual marriage until she reaches this age. Only then does that law recognize her as being capable of withdrawing her guardian's consent to her marriage.

Additionally, while a bride's male guardian's approval is always required for a marriage contract to be valid, the 1998 law does make exceptions for those cases where a female's choice in husband conflicts with her male guardians' wishes. Article 18(2) states:

If the woman's guardian is vetoing [her marriage], the *qadi* [judge] shall order him to marry her, and if he refuses, the *qadi* shall order the next closest guardian in line and then the next after him to marry her, and if there are no other guardians or they all refuse to marry her, then the *qadi* shall marry her to an equal for a proper dower.

Although this law gives females some control in selecting a spouse, it demonstrates the obstacles she must overcome before doing so. Thus, even the article included to grant her

some autonomy requires that a female first exhaust her list of male guardians before the judge (who is always male) steps in to validate the marriage contract on her behalf. This demonstrates, once again, that a male is still required to validate her consent to marry.

Spousal Duties and Responsibilities

In terms of the rights and duties of each spouse, shari'a stipulates that a husband must provide for the 'maintenance' of his wife (provide food, clothing, dwelling, etc. and in general provide her with the same level of comfort she is used to). In return for such maintenance, the wife owes her husband obedience and faithfulness. This includes that she not leave the matrimonial home without his permission, except when visiting her sick parents or tending to her property, and that she renders conjugal rights to her husband.¹⁴⁰ In her survey of legal treaties and related writings from the prominent Muslim jurists of the major legal schools, Kecia Ali writes, "The husband's main right [in marriage] is to derive sexual enjoyment from his wife, and to that end, he may exercise control over her mobility."¹⁴¹ Thus, a wife's entitlement to maintenance is contingent on her obedience of "all [her husband's] lawful commands" and her willingness "to place herself in her husband's power so as to allow him free access to herself at all lawful times."¹⁴² A disobedient or rebellious wife (*nashiza*) loses this right.¹⁴³

Each of the three Yemens' family codes had very different expectations to what duties and responsibilities a husband and wife had to each other and their family. The YAR

¹⁴⁰ Esposito and DeLong-Bas, *Women in Muslim Family Law*, 25; Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 12; Nasir, *The Status of Women under Islamic Law and under Modern Islamic Legislation*, 39. Tucker, *Women, Family, and Gender in Islamic Law*, 50-58.

¹⁴¹ Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 12.

¹⁴² Nasir, *The Status of Women under Islamic Law and under Modern Islamic Legislation*, 60. Esposito and DeLong-Bas, *Women in Muslim Family Law*, 25; Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 12-13. Tucker, *Women, Family, and Gender in Islamic Law*, 50-58. also explore maintenance and its conditions.

¹⁴³ This title of *Nashiza* also includes a wife who leaves the home without permission or travels unaccompanied by her husband or male relative.

Family Law adhered to a patriarchal family structure where the husband was the sole head of the household and breadwinner while the wife was responsible for raising the children and performing domestic duties. Additionally, the YAR model accepted the ‘maintenance and obedience’ teachings found in classical Islamic jurisprudence. Article 27 of the YAR Family law lays out the duties of a wife stating:

The husband is entitled to require from the wife her obedience in any way to achieve the interest of the family, especially that she:

1) Go with him to the house of matrimony unless there is a clause in the contract to remain in her house or in the house of her parents whereby she must allow him to live with her and enter her quarters; 2) make herself available for legitimate intercourse without the presence of any person, 3) carry out his wishes and fulfill her work in the house of matrimony; 4) never leave the house of matrimony without his permission. However, the husband cannot forbid his wife to go out if she has a legitimate excuse or if custom dictates and if there is nothing to bring dishonor or disregard to her duties toward him especially when she goes out to take care of her assets or to perform her duty. Caring for her aged parents is considered a legitimate excuse when there is no one else to serve.

The PDRY’s family law,¹⁴⁴ on the other hand, broke completely from the classical shari’a model of family relations as discussed above and instead constructed one that drew on no authority whatsoever found in the classical legal texts. Instead, the PDRY law granted

¹⁴⁴ In addition to its Family Law, the PDRY’s constitution also discussed women and the family. Article 27 of the constitution stated, “The State shall encourage marriage and the constitution of the family. The law shall regulate the family relations on the basis of equality between man and woman in the rights and duties. The State shall ensure, by the means of the laws and measures, continuous improvement in realizing social stability for the family and extensive care for the children, and for this purpose, shall establish mother and child centers throughout the Republic.” The constitution also discussed the rights of the working mother with Article 36 stating, “The State shall ensure equal rights for men and women in all fields of life, the political, economical and social, and shall provide necessary conditions for the realization of that equality. *The State shall also work for the creation of the circumstances that will enable the woman to combine between participation in the productive and social work and her role within the family sphere. It shall render special care to the vocational quality of the workingwoman. The State shall, further, insure special protection for the working women and the children and shall establish kindergartens and nurseries for the children and all other such means of care as to be specified by the law.*” (Italics added)

equal partnership in marriage making both the husband and wife equally responsible for the family's financial cost and the rearing of their children. The law stated:

Both husband and wife shall participate in bearing the expenses of marriage and establishing the conjugal home according to their means.

Both husband and wife shall share in bearing the costs of their married life and where one party is unable to do so the other party shall be responsible for maintenance and the costs of married life.
Both father and mother share responsibility for the maintenance of children according to their means.

It made no mention of a contingent maintenance nor did it mandate the wife's obedience or sexual duties to her husband. This equality in duties and responsibilities is absent in the Republic of Yemen's Personal Status Law. Instead, the law provided specific outlines as to the rights a husband has over his wife that are extremely similar to those in YAR's law and echoed Islamic law. Article 40 of the Republic of Yemen's law outlines these rights stating:

The husband shall have the right that his wife be obedient to him in that which is for the benefit of the family, and in particular the following:

1) That she should move with him to the matrimonial home, provided that she has not stipulated in the [marriage] contract that she should remain in her home or in her family's home, in which case she shall be obliged to make it possible for him to live with her and to consummate the marriage; 2) that she should allow him to have lawful sexual intercourse with her; 3) that she obey his instructions and undertake her work in the matrimonial home in the manner of her peers; 4) that she should not leave the matrimonial home except with his permission.

This article not only requires a wife to "undertake" domestic duties, but also requires her to obey her husband and seek his permission before leaving the home. However, Article 40, like Article 27 of the YAR law, does go on to clarify that:

The husband shall not be entitled to prevent his wife from leaving the home for any lawful purpose or for that which is customary, provided this is not a breach of honour or of her duties towards him, in particular she may leave to attend to her property or to go to her agreed

upon employment. It shall be considered a lawful justification for a woman to help her elderly parents where they have no one else to help one or both of them other than her.

While this clarification grants women the same exceptions found in shari'a, the exceptions are carefully listed and always grant a husband control. She may leave the home for lawful or customary purposes, provided they do not breach honor or "her duties towards him." Thus, her duties to her husband still always come first. She may leave the home to care for her elderly parents, but only if they have no else who can care for them. Even in terms of her employment outside of the home, a wife must first receive her husband's agreement to work else she may not leave the home without his permission. Thus by granting a wife autonomy in the areas of property but withholding it in other areas, the clarification provides only an illusion of autonomy while continuing to limit women's mobility.

In addition to granting a husband control over his wife's actions, both Article 40 of the Republic of Yemen and Article 27 of the YAR most importantly provide a husband control over his wife's body (or wives' bodies). The first two of the four listed above 'obligations' pertain to a wife's obligations to meet her husband's sexual needs. It requires that she not refuse him intercourse, ultimately legalizing marital rape and robbing women of their sexual autonomy. The law deems women's sexuality as subservient to men's sexual needs. It frames men's sexuality as a marital entailment that women are obligated to provide upon a husband's demand.¹⁴⁵

Perhaps in an effort to curtail the harshness of Article 40, Article 41 of the Republic of Yemen lists the obligations a husband has towards his wife. It states:

The following are the obligations of the husband towards his wife:

¹⁴⁵ It is important to note however that Islamic law emphasizes that intercourse is also the obligation of a husband, so much so that a woman is entitled to a divorce if her husband does not fulfill this obligation.

1) That he prepare for her a lawful domicile which befits both of them; 2) that he provide her with maintenance and clothing which befit both of them; 3) that he maintain equity between her and his other wives if he has more than one wife; 4) that he not interfere with her personal property; 5) that he not cause her either material or moral harm.

These obligations are in line with shari'a's teaching of maintenance and duties of a husband. The first three are similar to a list of a husband's obligations found in Article 39 of the YAR Family Law; however, the last two, are not found in the YAR law and are arguably the most important additions to the Republic of Yemen's family law.¹⁴⁶ It ensures women, and their property, protection from a husband's potential transgressions.¹⁴⁷

We see from these amendments to the Republic of Yemen's Personal Status Law a return to YAR's model of family relations as sanctioned by classical Islamic texts and an intentional subversion of PDRY's 'un-Islamic' model. This pattern can also be seen in the laws governing polygamy.

Polygamy

Shari'a stipulates that a husband is allowed to have up to four wives at any given time so long as he meets two conditions. The first is that he is capable of doing justice to all of them in terms of providing equal treatment. The second requires that he provide maintenance for all of them. While all three Yemens allowed polygamy, each had radically different conditions under which they allowed polygamy. The YAR allowed polygamy setting only the basic limits that shari'a prescribes—mainly that a man may not have more than four wives and must have “the ability to do justice to all.”¹⁴⁸ The PDRY went further. It

¹⁴⁶ Article 39 of the YAR Family Law states: “The husband must provide his wife with the following: 1) a legitimate dwelling suitable for both; 2) expense and clothes for her; 3) justice between her and the other wives covering expenses and housing if they have gathered in one house.

¹⁴⁷ The third obligation, maintaining equity amongst his wives, will be discussed in the following “polygamy” section. It is also important to note that the phrase “material or moral harm” is ambiguous.

¹⁴⁸ Yemen Arab Republic, “Law of the Family.” Article 9.

set specific and difficult to meet conditions that a man must meet before taking a *second* (not third or fourth) wife, and even then, required the approval of the court. Article 11 of the PDRY Family Law set these restrictions stating:

Marriage to a second wife is not permitted except with permission in writing from the relevant summary court. Such permission shall not be granted except where one of the following circumstances is proven to the satisfaction of the court:

1) If the wife is sterile, subject to confirmation by a medical report, provided that the husband had no knowledge of the condition prior to marriage. 2) If according to medical evidence the wife is suffering from a chronic or contagious incurable disease.

When the two countries unified, the state allowed polygamy and adopted the shari'a limitations found in the YAR while setting some additional conditions—none as strict as those found in the PDRY, but nonetheless a lot more than simply the “no more than four” limitation of the YAR. Article 12 of the Republic of Yemen's Personal Status Law stated:

A man is allowed up to four wives provided the following is realized: 1) That he has the ability to be equitable and if not, then one [wife is allowed]; 2) that the husband has the capacity to provide [for the wife]; 3) that the woman is notified that the man is married to another woman.

The new law did not require a husband to prove to the court that he is capable of treating his wives equally or that he is financially capable of providing for them. Instead, he simply needs to believe that he is capable of doing both. Even when it came to the third and final requirement, the only consequence that arises from not meeting it is that the wife who is not notified of the additional marriage is entitled to a divorce. Her prior notification is not required to make any additional marriage contract valid, and therefore a woman may have a co-wife for years without ever knowing of her existence. Thus, unlike those of the PDRY, the requirements the new Yemeni state set to regulate polygamy ultimately benefits men over women and resembles those of YAR.

Divorce

Shari'a recognizes three types of divorces. The first is repudiated divorce or *talaq* where the husband needs only to tell his wife "I repudiate you" for a divorce to be valid. If he repeats the phrase three times, the divorce is irrevocable. He needs not to give any reason or report any grievances; thus, a husband can effectively attain a three-second-divorce.¹⁴⁹ The second type is *khula* or *mubaraat* and occurs when both the husband and wife come to a mutual agreement to divorce. This type of divorce involves the wife giving the husband something in return for divorce often in the form of returning part of her dowry. The final type of divorce is *fask* or a divorce granted through a judicial order of separation because of a suit presented by a wife. While all legal schools recognize a husband's right to unilateral divorce through *talaq*, there is disagreement amongst them on the qualifications for a *fask*, that is the conditions that justify a wife's suing for a divorce. For instance, all legal schools, except the Hanafi School, are of the position that if a husband fails to fulfill his spousal duty to pay maintenance to an obedient and faithful wife, the wife may turn to the court for a *fask*.¹⁵⁰ This includes those instances where a husband's failure to maintain his wife is a result of his poverty. The Hanafi School, on the other hand, holds that under such circumstances, a wife may sue for maintenance but not a divorce.¹⁵¹

When it came to the first type of divorce, each of the Yemeni states regulated, or did not regulate, them differently. In the YAR, these divorces were valid and there was no need to report the divorces to the courts. The PDRY's Family Law, however, stated "unilateral

¹⁴⁹ There is a documentary titled "3 Second Divorce" that explores this very topic in the context of Muslims in India.

¹⁵⁰ Nasir, *The Status of Women under Islamic Law and under Modern Islamic Legislation*, 91; Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," 24. Esposito and DeLong-Bas, *Women in Muslim Family Law*, 25.

¹⁵¹ Nasir, *The Status of Women under Islamic Law and under Modern Islamic Legislation*, 91. Esposito and DeLong-Bas, *Women in Muslim Family Law*, 25. Other grounds a wife may sue for

divorce is prohibited” and required all divorces to go through litigation before becoming valid. This ensured that women had equal access to representation in divorce cases and protected women against unjust divorces. Until 1988, a provision in the PDRY civil laws also guaranteed a divorced mother ownership of the matrimonial home so that she may have the support needed to raise her children.¹⁵²

The Republic of Yemen Personal Status Law took a different approach. While the law recognizes, like the YAR, unilateral divorce, it does mandate that all divorces be registered with the court, like the PDRY. Additionally, Article 47 of the law grants both partners equal rights to petition for a divorce, and goes on to require that the judge take responsibility for those cases initiated by women. Although this theoretically grants women equal access to divorce courts, the law requires that these women prove that their husbands has caused them “material or moral harm,” that he has abandoned her, or that he is incapable of providing for her and her children. Only then is a woman granted a divorce she initiates. Given that a man has access to unilateral divorce that alleviates him of the burden of proof a woman carries, the power dynamics of a marriage drastically shifts, keeping some women fearful of repudiate divorces that can force them out of the home and either back into their family’s home or onto the streets.

It is interesting to note that when it came to the reasons behind suing for divorce, a woman’s class played a crucial role. In her study surveying the legal archives of the Republic of Yemen, Anna Wurth found that women of modest origins frequented divorce courts more often than elite women. This is because, rich women were less likely to sue for divorce through the court system (that is seek a *faskh*), and instead, relied on their family to

divorce (depending on the legal school) include injury or discord, a defect on the part of the husband or impotence, absence or imprisonment of the husband, and apostasy.

¹⁵² Shamiri, Najib 'Abd al-Rahman N.d. *Huquq al-mar'a fi tashri'at al-yaman al-dimuqratiyya*. Aden: Dar al-Hamdani. 85 in Anna Wurth “A Stalled Reform.” (2003)

negotiate the divorce (a *khula*) outside of the courtroom. A poor woman's family, on the other hand, could not afford to negotiate a *khula* on her behalf; therefore, her best chance was to sue for a *faskh* through the court system. Additionally, in the rare cases that an elite woman did sue for a *faskh*, judges often quickly and easily granted one. This is often, Wurth argues, because judges came from similar elite background and thus "do not keep a woman of 'origins' and means in a marriage against her wishes."¹⁵³ They (the male judges) assume, often accurately, that her family's sincere efforts to negotiate the divorce out-of-court failed.

As for the rulings in these divorce cases, Wurth found a judge was more likely to grant a lower-class woman a divorce on the grounds of lack of maintenance but reserved those divorce rulings issued on grounds of domestic violence and hatred (*karahiya*) for upper-class women. A lower-class woman had difficulty securing divorce on similar grounds, because the judge often dismissed the case as lacking sufficient evidence. Judges scrutinized these women's reasons for *karahiya* and argued "only an act of domestic violence that would qualify as assault under criminal law is considered a sufficient grounds for divorce." However, in those cases concerning elite women, judges considered "a wife's refusal to live with their husband as sufficient grounds for divorce [and establishing *karahiya*], regardless of whether the alleged domestic violence qualified as a criminal offense."¹⁵⁴

Wurth argues "By granting a quick and easy divorce to upper-class women on grounds of domestic violence or *karahiya*, judges reinforce the current assumption—and practice—that court divorces are for the poor, whereas the wealthy solve marital problems out of court by paying for termination of marriage" through *khula* divorces.¹⁵⁵ Because of

¹⁵³ Anna Wurth, "Stalled Reform: Family Law in Post-Unification Yemen," *Islamic Law and Society* 10, no. 1 (2003): 24.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

this pattern, we find that the current divorce laws and interpretations benefit upper-class women while marginalizing those from the lower-class leaving little incentive for those in power and position of privilege to advocate for the amendment of divorce laws.

2.4 Conclusion: Shari'a and the Yemens' Construction of 'Woman'

Judith Tucker argues in her evaluation of the kinds of “linguistic constructions of Female within which much of Islamic legal discourse takes place” that many jurists have constructed Woman as silent (and “as domestic, as disruptive, as inferior”)¹⁵⁶ specifically in the areas of the family. In constructing this image, Tucker explains, jurists have stressed shari'a adherence to the notion of complementary genders and distinction of each gender in terms of their social roles. Jurists did not apologize for this and argued that the construction of 'Man' as Breadwinner and 'Woman' as Obedient and Dependent stemmed from Qur'anic teachings.¹⁵⁷ They often point to the controversial Qur'anic verse (4:34) when justifying such gender constructions. This verse reads:

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e.g. their chastity, their husband's property, etc.). As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly, if it is useful), but if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great.¹⁵⁸

This construction becomes even more problematic in the areas of marriage and the marriage contract. While, as explained above, shari'a requires the consent of the bride, the jurists reinterpreted the definition of her consent and thus “found various ways for a

¹⁵⁶ Tucker, *Women, Family, and Gender in Islamic Law*, 30.

¹⁵⁷ *Ibid.*, 25.

¹⁵⁸ Here, I use Muhsin Khan's English translation of the Qur'an.

woman's relative to speak in her name.”¹⁵⁹

This chapter's evaluation of Yemeni family law suggests that legislators in North Yemen and post-Civil War Republic of Yemen constructed the 'Yemeni Woman' in the same manner. She was to be silent in the marriage contract, obedient in the marriage, and inferior in her rights to a divorce. Additionally, the legal evolution in Yemeni family law demonstrates the failure of the South Yemeni state's efforts to construct her differently. It is difficult to know how each Yemeni state's construction of Woman translated in the courtroom. In fact, we saw that in the case of the Republic of Yemen, a woman's class was much more crucial to the outcomes of courtroom proceedings than how the state constructed her gender. Nonetheless, the history of the legal evolution of the Yemeni state's marital rights and duties tells a powerful story of how a state constructed image of the 'ideal Woman' bleeds into the country's legal codes and family laws.

¹⁵⁹ Tucker, *Women, Family, and Gender in Islamic Law*, 31. In reference to some jurists' interpretation of the silence of a virgin as consent to a marriage, Tucker adds, "In using female silence as the legal measure of her participation in what was no doubt one of the most important moments of her life, legal discourse constructed women as the passive and inert partner to masculine arrangements." (32)

CHAPTER 3

THE EFFECT OF STATE PRESENCE ON THE WELL-BEING OF WOMEN IN YEMEN

As demonstrated in the preceding chapter, the state's projection of the ideal female citizen arguably finds its way into the country's legal codes. This chapter will examine how the state's actual presence in society affect women's welfare and empowerment- jointly referred to in this study as well-being. More specifically, this chapter poses the question: how do the varying levels of state presence in each of Yemen's regions affect the well-being of the Yemeni women living in them post-unification? I answer this question using data from Yemen's 2013 National Demographic and Health Survey (DHS). Well-being is captured by women's educational attainment, access to reproductive healthcare, autonomy to make household decisions, age at first cohabitation with spouse and at first childbirth, and views on domestic violence.

3.1 Theoretical Framework: Weak States and Weak Well-Being

Before we can measure or even speak of state presence, it is crucial that we first understand the responsibilities of a state and the multi-dimensional concept of statehood. Second, given these responsibilities and understanding of statehood, we must ask what constitutes a weak or strong state and, in extension, weak or strong state presence? Third, we might ask, what is well-being and how have others 'measured' women's well-being? From this, we can begin to explore the effects of a state's presence on its female citizenry's well-being. Determinations in these regards are necessarily subjective. In what follows, I lay out the definitions and implementation of key measures explicitly.

WHAT IS WEAKNESS?

In his work *When States Fail: Causes and Consequences*, Robert Rotberg, argues “Nation-states exist to provide a decentralized method of delivering political (public) goods to persons living within designated parameters (borders.)”¹⁶⁰ While there is a hierarchy of these core governmental goods and services —with security at the apex of this hierarchy— they include, amongst others, an effective judicial system to mediate disputes and regulate the norms and mores of a polity as well as the guarantee of citizens’ ability to freely participate in politics. Additionally, these goods include tangible ones such as medical and health care, schools and educational institutions, as well as public infrastructure and a central banking system. How well a state provides these public goods, Rotberg goes on to argue, serves as a “criteria to which modern nation-states may be judged strong, weak, or failed.”¹⁶¹

Max Weber provides an alternative definition of the state and state failure. He defines the state as “a human community that (successfully) claims the monopoly of the legitimate use of force within a given territory.”¹⁶² This monopoly on violence, Weber goes on to argue, must be invested in a bureaucratic rational-legal structure of authority or else the state faces the danger of losing its legitimacy. This erosion of legitimacy and authority leads to state failure. Such failure in turn unfolds in different forms. These forms include the failure to provide the core governmental goods, as Rotberg argues, as well as the break out of violence and civil war, the state’s loss of control over parts of its territory, or any combination of these.

¹⁶⁰ Robert I. Rotberg, *When States Fail: Causes and Consequences* (Princeton, N.J.: Princeton University Press, 2004), 2.

¹⁶¹ *Ibid.*, 4.

¹⁶² Max Weber, Hans Heinrich Gerth, and C. Wright Mills, *From Max Weber : Essays in Sociology*, Routledge Classics in Sociology (Milton Park, Abingdon, Oxon ; New York: Routledge, 2009), 212.

While Rotberg, Weber, and others give us ways to *define* state failure, there is still an ongoing debate of how exactly one ought to *measure* state failure. As a response to increased academic and policy-oriented interest in state failure, or perhaps more accurately state fragility, scholars and international organizations have created a myriad of indexes that attempted to measure state fragility. These include the Index of State Weakness, the Failed State Index, the State Fragility Index, and the Political Instability Index. Additionally, other indexes that international organizations had originally created to serve other purposes were soon misapplied as a measurement of state fragility. Examples of this include the World Bank's Country Policy and Institutional Assessment (CPIA) index. World Bank officials originally used this index to assess the funding eligibility of a state; however, today, the World Bank and other donor agencies have adopted the CPIA scale as a working definition and measurement of state fragility.

Scholars have criticized the emergences of these indexes arguing that they often do not account for the diversity of failed states, and instead aggregate the complex and multi-dimensional concept of statehood into a one-dimensional scale.¹⁶³ They argue that, given the vast variation in the consequences of state failure, measurements of state fragility must disaggregate statehood into key dimensions. Additionally, any measurement of state fragility must not only consider the interactions between these key dimensions of statehood, but also consider these dimensions separately.

What these key dimensions are, however, vary depending on the scholar. Carnet, Prest, and Samy suggest in their study *Security, Development, and the Fragile State: Bridging the Gap Between Theory and Policy* for example a three-dimensional view of statehood that includes *authority*, *legitimacy*, and *capacity*. Similarly, Charles Call uses the

¹⁶³ See for instance, Sanín F. Gutiérrez, "Evaluating State Performance: A Critical View of State

overlap and interactions of the gaps in a state's *capacity*, *security*, and *legitimacy* as crucial variables in measuring said state's fragility.¹⁶⁴ While the combination of the key dimensions of statehood considered varies across studies, there seems to be a consensus in the literature that state capacity, is a vital component to understanding the concept of statehood as well as the responsibility the state holds to its citizens. How state capacity is defined, as we will see below, differs widely in the literature. Given this, and the fact that state presence is a sub category of state capacity as will be later defined, this study focuses broadly on state capacity and its relationship with the well-being of women.

THE RELATIONSHIP BETWEEN STATE CAPACITY AND WOMEN'S WELL-BEING

Recalling Rotberg's argument that the most important responsibility of a state is the deliverance of goods and that the most vital of these goods is that of security, we can come to understand that a weak state is one that fails to guarantee the security of its citizens. Consequently, due to this inability to provide security, the loss of agency, and the lack of capacity to police effectively, Neil Englehart argues, "Weak states typically have worse human rights records than strong one." This is because weak states lack the state capacity to guarantee their citizens' security. Here, Englehart defines state capacity as "the willingness and capability of the state apparatus to carry out government policy."¹⁶⁵

Englehart goes on to argue, using an ordered logistic regression, that state capacity is a robust predictor of human rights measures. He states, "State capacity has a positive impact on human rights conditions. Stronger states perform better on measures of human rights protection because they are more effective at policing abusive private actors and controlling

Failure and Fragility Indexes," *European Journal of Development Research* 23, no. 1 (2011).

¹⁶⁴ Charles Call, "Beyond the 'Failed State': Towards Conceptual Alternatives," *European Journal of International Relations* 17, no. 2 (2010).

the actions of their own agents.”¹⁶⁶ However, the impact of state capacity, he admits, varies depending on the particular right in question. It is important to note that Englehart is not suggesting that these weak states are necessarily the perpetrators of the human rights violations occurring within their borders. Rather, he is arguing that “weak states create conditions ripe for human rights abuse” because of their inability to control their territory. Thus, even if a weak state is well-intentioned, it “may not be able to prevent abuses by powerful private actors.”¹⁶⁷ Understanding this, he explains, is crucial in not only determining who is responsible for human rights violations, but also how to effectively address the violations.

While Rotberg may be correct in asserting that citizens living in weak or failed states are stripped of security and while we may accept Englehart’s argument concerning the relationship between state capacity and human rights, there is little doubt that men and women experience state failure in profoundly different ways.¹⁶⁸ In fact, in those situations where citizens’ welfare suffer, be it a result of violent conflict, poverty, human rights violations, or in this case state failure, women are disproportionately affected more than men.¹⁶⁹

Laurie Gould explores this relationship between fragile states and women’s well-being in her 2014 study where she explores the gender-based disparities in failing and

¹⁶⁵ Neil A. Englehart, "State Capacity, State Failure, and Human Rights " *Journal of Peace Research* 46, no. 2 (2009): 167.

¹⁶⁶ Ibid., 166.

¹⁶⁷ Ibid., 163.

¹⁶⁸ Laurie A. Gould, "Exploring Gender-Based Disparities in Legal Protection, Education, Health, Political Empowerment, and Employment in Failing and Fragile States," *Women & Criminal Justice* 24, no. 4 (2014). Stephen Baranyi and Kristiana Powell, "Fragile States, Gender Equality and Aid Effectiveness: A Review of Donor Perspectives," (Ottawa, Canada The North-South Institute, 2005).

¹⁶⁹ Baranyi & Powell "Fragile States, Gender Equality and Aid Effectiveness: A Review of Donor Perspectives."

fragile states.¹⁷⁰ Using bivariate correlations and generalized linear models (GLMs) in a cross-national study, Gould finds that there appears to be a statistically significant relationship between gender disparities and various dimensions of state failure, leading her to conclude, “women bear the brunt of the myriad effects of state failure.”¹⁷¹

Building on Gould’s research, as well as Englehart’s findings on state capacity and human rights, I am interested in understanding the effects that a specific dimension of state fragility—weak state capacity or state presence—has on women’s well-being. While Gould’s research explores the gender-disparities in areas such as legal protection, education, health, political empowerment, and employment, I am interested in exploring Yemeni women’s welfare and empowerment irrespective of how their male counterparts are doing. I do this for primarily two reasons. The first reason is that I want to focus exclusively on Yemeni women and their distinct experiences. Doing this allows me to explore the concepts of ‘welfare’ and ‘empowerment’ as they relate to women without having to operationalize these terms in ways that necessarily include both genders. For instance, I can use a woman’s ‘unmet need for contraception’ or her ‘age at first childbirth’ as a measurements of welfare without needing to limit my study to those measurements that relate equally to both genders. The second reason is because the data available on Yemeni women’s well-being, the 2013 DHS, does not collect the responses of Yemeni men. Rather it focuses specifically on the well-being and experiences of Yemeni women.

Additionally, while the literature surrounding state fragility and even state capacity almost exclusively measures fragility and capacity at the national level, this study is interested in measuring state presence at the sub-national level. This is primarily for three reasons. The first is that some studies have suggested that state fragility differs not only

¹⁷⁰ Gould, "Exploring Gender-Based Disparities in Legal Protection, Education, Health, Political

across national borders, but also within them. Thus, relatively ‘stable states’ may prove to be unstable in some portions of their territories. Similarly, this can be extended for the case of state capacity and state presence. Secondly, we cannot ignore the historical realities of Yemen’s path to state formation. Until 1990, Yemen was two separate states (North Yemen and South Yemen), with arguably, two different levels of state fragility, state capacity, and state presence. If state capacity has traditionally been understood as a national feature that varies across nation states, what happens when two states—with different average capacities—unify? Thus, this study demands a sub-national approach. Third, state presence varies widely within Yemen, so that by studying regional co-variation in state presence and women’s well-being, we can understand something of the relationship between them.

STATE CAPACITY AND STATE PRESENCE: MEASUREMENTS AND DISTINCTIONS

The concept of state capacity is a complex and difficult one to define. Currently, there is no consensus in the literature regarding how exactly state capacity ought to be operationalized empirically. Given its complexity Hanson and Sigman argue in their 2013 study “Leviathan’s Latent Dimensions: Measuring State Capacity for Comparative Political Research,” that, “For both theoretical and practical reasons... a minimalist approach to capture the essence of the concept is the most effective way to define and measure state capacity for use in a wide range of research.”¹⁷² This minimalist approach leads them to broadly define state capacity as “the ability of state institutions to effectively implement

Empowerment, and Employment in Failing and Fragile States.”

¹⁷¹ Ibid., 301.

¹⁷² Jonathan K Hanson and Rachel Sigman, "Leviathan's Latent Dimensions: Measuring State Capacity for Comparative Political Research," (2013): 2.

official goals.”¹⁷³ This definition Hanson and Sigman argue, allows them to “[avoid] normative conceptions about what the state ought to do or how it ought to do it.”¹⁷⁴ This paper adopts this definition.

However, while Hanson and Sigman advocate for a minimalist approach to defining state capacity, they understand the need for a multi-dimensional *measure* of state capacity. This is because the concept itself is multidimensional as the literature on state capacity and the above discussion on conceptualizing statehood argues. Thus, like Neil Englehart argues, “no single summary measure is satisfactory” in measuring state capacity.¹⁷⁵ Given this need for a multi-dimensional measure of state capacity and the desire for a minimalist approach, Hanson and Singman choose to focus on the core functions of the state when operationalizing state capacity. They do this by identifying and using the three dimensions of state capacity that they believe “are minimally necessary to carry out the functions of contemporary states.”¹⁷⁶ These include extractive capacity (ability to extract revenue), coercive capacity (military size or capacity), and administrative capacity.

Disaggregating state capacity into multiple and similar categories is relatively consistent with how state capacity is measured in other studies. For instances DeRouen and Sobek 2004 study operationalizes state capacity using a state’s military size, bureaucratic effectiveness, and political democracy.¹⁷⁷ Additionally, in his study “Measuring State Capacity: Theoretical and Empirical Implications for the Study of Civil Conflict,” Cullen Hendrix reviews the various definitions and operationalizations of state capacity. Hendrix finds that generally, definitions and operationalizations of state capacity

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Englehart, "State Capacity, State Failure, and Human Rights " 167.

¹⁷⁶ Hanson and Sigman, "Leviathan's Latent Dimensions: Measuring State Capacity for Comparative Political Research," 3.

¹⁷⁷ JR Karl R. de Rouen and David Sobek, "The Dynamics of Civil War Duration and Outcome,"

fall under three categories: military capacity, bureaucratic/administrative capacity, and the quality and coherence of political institutions.¹⁷⁸

The first of these categories, Hendrix explains, is generally operationalized using *military personnel per capita* (i.e. the size of a state's military) or the *GDP per capita*. However, as he is quick to point, this operationalization of military capacity operates under the (unfounded) assumption that GDP per capita and military capacity are highly correlated. The second general category of conceptualizing state capacity—bureaucratic/administrative capacity—is consistent with political development literature. This literature, Hendrix explains, “holds that state capacity is characterized by professionalization of the state bureaucracy.”¹⁷⁹ However, the way in which many studies operationalize the bureaucratic/administrative capacity of a state is by relying on ‘expert assessments’ of a country's *bureaucratic quality*. Others operationalize bureaucratic/administrative capacity as a state's ability to extract revenue from society be it taxes or natural resources. The final category—quality and coherence of political institutions— generally refers to the strength of democratic institutions in a state and is operationalized using indexes such as the Polity index, which ranks countries by their degree of autocracy/democracy.

While I agree with much of the definitions of state capacity found in the literature and insist that any good measurement of state capacity requires a multiple dimension operational definition, I am interested in exploring how specifically the *presence* of a state impacts women's well-being, more so than a state's capacity. In defining ‘presence,’ I fall back on Rotberg's original discussion on states' responsibility to deliver its citizenry core public goods and services as well as the discussion in state capacity literature on the

Journal of Peace Research 41, no. 3 (2004).

¹⁷⁸ Cullen S Hendrix, "Measuring State Capacity: Theoretical and Empirical Implications for the Study of Civil Conflict," *ibid.*47 (2010).

¹⁷⁹ *Ibid.*, 275.

importance of the bureaucratic capacity of a state. Doing this, I understand state presence to mean the state's ability to deliver core public goods and services within its territory. These goods do not refer to those of political rights or security that are captured in the other dimensions of state capacity; rather, it refers exclusively to the core bureaucratic functions of a state. Therefore, these public goods include things such as vaccinating children, maintaining a record of the citizenry by registering births, providing adequate sanitation facilities, and eliminating nutrient deficiency. Thus, I define state presence as not independent of state capacity, but rather a sub category of it.

MEASURING WELL-BEING

I define women's 'well being' as including both the welfare of women (i.e. their access to contraception and reproductive healthcare, education, literacy, etc.) and their empowerment (i.e. their decision making ability¹⁸⁰). As the above discussion on defining state capacity and state presence demonstrates, how one defines and operationalizes a concept matters and can reflect one's own political priors . While I acknowledge this, I believe that defining women's well-being in the way that I do as well as using the variables I use to measure well-being¹⁸¹ is justified, or at least interesting, for two reasons. First, this definition and how it is operationalized reflects those rights that are enshrined in UN declarations that the Yemeni state has signed. This includes the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Millennium

¹⁸⁰ I use the United Nation Development Programme's definition of empowerment—which understands empowerment as the expansion of choices and an increase in women's ability to exercise choice— because this is the definition used in international treaties concerning the rights of women. Many of these treaties are also those that the Yemeni state has signed and pledged to enforce.

¹⁸¹ I will expand on these variables in the methodology section, but they include women's unmet need for contraception, delivery care, literacy, education, age at first cohabitation and at first

Development Goals that includes gender equality and women's empowerment as one of eight goals. While it is true that how the UN defines women's empowerment and how it constructs what it means to be 'empowered may be heavy in Western bias, the Yemeni state signed on to these agreements. They did this with the understanding that signing meant they were committed to ensuring and protecting these rights as they were defined in these treaties. Second, these definitions focus on women's lived experiences rather than on proxy measures such as income or employment status. They include variables like a woman's age at her first childbirth and her access to contraception if she desires it. Defining women's well-being in this way thus allows me to focus on those issues directly linked to a woman's well-being rather than those that may be indicators for other hardships.

3.2 Methodology

QUESTIONS AND HYPOTHESES

I answer three questions regarding state presence and women's welfare and empowerment (well-being, for short). First, I ask whether state presence is more limited in the regions that comprise former North Yemen. I hypothesize that it should be based on previous studies that indicate that North Yemen was more decentralized with a weaker state than South Yemen (see, for example, Wenner (1991) and chapters 1 and 2 of this thesis). Thus, an initial consideration is whether the situation persists in 2013. My second question is whether state presence has a positive impact on women's welfare. I hypothesize that, controlling for a woman's age and whether she lives in a rural or an urban setting, women in regions with more state presence should enjoy greater well-being. Finding such a correlation would be consistent with state presence boosting women's well-being. Where

childbirth, ability to have a say in her own healthcare and in large household purchases, as well as

the data answer the second question in the affirmative, my third question asks why Yemeni women who live in regions with strong state presence enjoy greater welfare than those living in regions with weak state presence. Specifically, I ask whether this correlation persists even once I control for a wide range of household economic characteristics. If the relationship is observed without these controls, but becomes statistically insignificant once they are introduced, this indicates that state presence impacts women's well-being primarily by improving households' economic conditions. If it is observed with and without these controls, this is consistent with state presence having a role to play over and above simply improving economic conditions.

I answer my second and third questions by regressing measures of women's well-being on a measure of state presence (described below), and controls as just described. The type of regression model depends upon the type of dependent variable used. Thus, I used probit and linear probability regression models for yes/no variables (e.g., does the respondent have an unmet need for contraception?), ordered probit regressions for ordinal variables (e.g., the respondent's highest level of schooling), and ordinary least squares regressions for continuous variables (e.g. her age at first childbirth).

THE DATA

I use data from Yemen's 2013 National Demographic and Health Survey (DHS). The DHS data comes from a survey of 17,351 Yemeni households spread across each of the country's 20 governorates and the capital city Sana'a. DHS surveyors interviewed 25,434 Yemeni women who live in these households.

For all households interviewed, the interviewers used both a household questionnaire and a woman questionnaire. The household questionnaire collected information on not only the characteristics of each household member (age, gender, education, work status, occupation etc.) but also on household characteristics such as their source of drinking water, type of sanitation facility, ownership of specific consumer durables, and both the household size and materials used in the construction of their dwelling. Women living in these households who were between the ages of 15 and 49 were eligible for the woman questionnaire. Of these women, 16,656 were ever-married women and 8,778 were never-married women. Enumerators also measured women and children's direct physical attributes, drew blood from the interviewed women in one third of the selected households for anemia and hemoglobin tests, and tested the iodine content of the salt stocked by 95 percent of the households.

The study used a stratified two-stage clustered sample design. Yemen's twenty governorates and Sana'a were designated strata (i.e. the sampling scheme is designed to ensure that enough households are interviewed to estimate key variables accurately for each governorate and for Sana'a City). Each stratum had been further geographically divided into enumeration areas (EAs) for the 2004 Census. The DHS used these as the basis for thousands of primary sampling units. In the first stage, the DHS determined how many rural and urban PSUs were to be sampled in each stratum. Nationwide, a total of 800 PSUs were allocated in this way – 213 of them urban, and the rest rural. This was done with a view to oversampling less populous regions in order to ensure sufficient observations to accurately estimate key indicators at the stratum level. In the first sampling stage, this number of PSUs was selected at random from within each stratum. Nineteen of the 800 were not visited for security reasons. Next, a mapping and listing of all households in each PSU was made.

Then, for rural PSUs one household in each PSU was selected for inclusion, and the next 24 households on that PSUs household listing were selected as well. In urban clusters, all 25 households were randomly chosen. Of the resulting 19,525 households, 18,027 were occupied, and yielded 17,351 completed interviews.

The DHs undersamples households in some regions and oversamples others. It provides household survey weights that can be used to render results nationally representative (barring biases in sampling and non-response). I have therefore used household survey weights both when constructing state presence variables and when conducting regression analyses.

MEASURING STATE PRESENCE

As discussed above, this study understands state presence as the state's ability to deliver core public goods and services within its territory. In order to operationalize state presence, I assess four different functions that the state has traditionally been expected to fulfill for its citizens. They are: vaccinating children, maintaining a record of the citizenry by registering births, providing adequate sanitation facilities, and eliminating nutrient deficiency through the iodization of salt. By focusing on these basic functions, I am choosing to adopt a minimalist but multidimensional approach to capturing state presence.

I measure each of these variables at the level of a region, where a region is defined by the combination of governorate and urbanity. Thus, for example, rural Taiz is one region, and urban Taiz is another. Given the twenty governorates and Sana'a city, and the absence of any rural areas in Sana'a City and Aden, this leaves me with 40 regions. Thus, for example, the estimated fraction of births in the last five years that were registered with the state in rural Taiz is one measure of state presence in that region.

In order to create the first of these variables, child vaccination, I used the vaccination records gathered in the 2013 DHS. The World Health Organization (WHO) recommends that a child should receive the BCG vaccination against tuberculosis, three doses of the DPT vaccine to prevent diphtheria, pertussis, and tetanus; at least three doses of the polio vaccine; and one dose of the measles vaccine. Acting upon this recommendation, the DHS collects information on how many of these eight vaccines Yemeni children under the age of five receive. I used this information to create a Reported Vaccination Index that gave children a score of one to eight. A score of eight on the index signaled that the child received all eight of the recommended vaccines. I measure state presence by the average value of this variable across all the sampled children in this region.

The second variable of state presence, the registration of births, measures how many of the births in sampled households in the region over the last five years were registered with the state. Given that birth certificates are an official document issued only by the state, the percentage of children under the age of five with birth certificates in a region provides a valuable measurement of the level of state presence in said area. I used the DHS's variable on the type of sanitation facility a household had to create two variables of state presence: 'Good Sanitation' and 'Bad Sanitation.' The former includes those sanitation facilities that require the presence of state institutions to function effectively. This includes 'flush to piped sewer network or flush to septic tank.' The latter category, Bad Sanitation, includes those sanitation facilities not provided by a state and therefore indicates a *lack* of state presence. This includes bucket toilets or no sanitation facility at all. There exists a third category of types of sanitation facility in between the 'Good' and the 'Bad' that are facilitated by the state in some areas but not in others. These include latrines and pit toilets. Because of the difficulty to identify who provides them in which area, I have not included them in either

measures of state or non-state facilities. The fraction of households in a region with good sanitation is my third measure of state presence, and the fraction with bad sanitation is my fourth measure - capturing state absence.

Iodine is an important preventer of goiter and other iodine-deficiency induced conditions amongst children and adults. Therefore, the WHO has recommended that each individual consume about 150 to 250 micrograms of iodine a day. In 1991, after the unification of the country, both the WHO and UNICEF advocated that iodine be added to Yemeni salt in order to effectively ensure iodine is part of every Yemeni's diet. Like many governments before it, the Yemeni state began regulating the iodine content of Yemeni salt in 1996. The state mandated a minimum iodine content of 40 parts per million (ppm).¹⁸² However, between the years of 1996 and the end of 2010, the national percentage of Yemeni families consuming iodine salt never exceeded 30 percent, and the number has since only declined. Yet, at a sub-national level, the level of iodine in salt varies from region to region. Thus, given the state's assumed responsibility of regulating iodine in Yemeni salt and given the variation of iodine levels from region to region, a household's possession of iodized salt gives us a physical trace of state presence in the household and, in extension, the region. I therefore use the results of this variable as my fifth and last variable in the measurement of state presence.

Rather than creating a state presence index that simply adds these five variables together for a single score and consequently giving each variable equal weight in my measurement for state presence, I used a principal components analysis, and used the first eigenvector to determine the weights given to each of the above variables in my State Presence index. Having done this, my equation for state presence is as follows:

$$\text{StatePresence} \equiv \text{RegisteredBirths}(0.45) + \text{ReportedVaccines}(0.33) + \text{GoodSanitation}(0.52) + \text{BadSanitation}(-0.51) + \text{Iodine}(0.40)$$

To ease interpretation, I normalized the state presence variable so that it had a mean of 0 and a standard deviation of 1.

MEASURES OF WOMEN'S WELFARE AND WOMEN'S EMPOWERMENT

Given the above definition of well-being as including both the welfare and empowerment of women, I use a total of nine variables to operationalize the dependent variable. These include six measurements of welfare and three measurements of empowerment. The welfare measurements are as follows: the unmet need for birth control, the type of delivery care received during a woman's last childbirth, literacy, age at first cohabitation with spouse, and age at first childbirth. The empowerment measures follow the definition set above for empowerment and the model of previous studies measuring women's empowerment.¹⁸³ Thus, they focus on a woman's decision-making capability and her opinion on domestic violence.

I use the following variables to explore empowerment: a woman's ability to have a say in her own health care decisions, her ability to have a say in large household purchases, and whether or not she thinks domestic violence is justified in five different situations. These domestic violence situations include a wife leaving the house without her husband's permission, neglecting the children, arguing back with her husband, refusing her husband sex, and burning the food. The DHS collects information on women's opinion on domestic violence to understand to what extent violence against women is tolerated and accepted in a

¹⁸² Samar Qaed. "Only 30 Percent of Yemeni Families Consume Iodized Salt," *Yemen Times*. 2014. February. Accessed September 8, 2014. <http://www.yementimes.com/en/1758/health/3528/Only-30-percent-of-Yemeni-families-consume-iodized-salt.htm>.

society. They do this with the understanding that the more such violence is accepted and tolerated in a society, the more difficult it may be to eradicate it. Because these questions are directed at women, women's opinions on this issue may prove to be an important indicator to the level of acceptance of violence against women in Yemeni society.

CONTROL VARIABLES

I used three sets of control variables that compose a mixture of woman-level and household-level controls. These sets of controls, listed below, were added incrementally to better trace the vectors through which state presence might impact women's well-being. The first set of controls added are the basic controls controlling for a woman's age and whether she lives in a rural or an urban area. The second set of controls added controls for household socioeconomic conditions. This includes, the household's quintile in a wealth index constructed by DHS based on their ownership of livestock, consumer durables and improved housing facilities, the fraction of adults in the household who are working, whether the household ever experiences food shortage, and the occupation and education of the household head. The third set of controls added are those controlling for household demographics. This includes the household size, the number of children ages five or younger living in the household, the age of the household head, the number of adults and adult women in the household, and finally this set controls for female-headed households. State presence is the key independent variable in each of the three specifications.

¹⁸³ Thresiamma Varghese, "Women Empowerment in Oman: A Study Based on Women

3.3 Results

THE RELATIONSHIP BETWEEN STATE PRESENCE AND THE NORTH/SOUTH DIVIDE

The first question of this study asks whether state presence is more limited in those regions that once comprised North Yemen. I hypothesize that this is indeed the case. Before testing this hypothesis, I wanted to explore how well the variables selected to create the measurement for state presence captures what I was interested in. In order to do this, I ran an OLS regression of the disaggregated components of state presence across 40 regions defined by governorate and urbanity. Table 1 below displays these results. It confirms the hypothesis in the case of birth certificates, sanitation, and my state presence index. Differences in the iodine trace and recorded vaccination rates are of the hypothesized sign (the North performs worse, as do rural areas) and the point estimates are large, but are not statistically significant. This may reflect a noisier relationship or, measurement error. Nevertheless, the results do recommend the inclusion of all five variables in the construction of the state presence index, albeit with slightly less weight given to iodine and vaccination rates. The lower panel of Table 1 lists those weights. Indeed, the size of the coefficients indicate that North-South differences are of a similar magnitude to rural-urban differences. Moreover, the insignificance of the interaction between North and Urban indicates that North-South differences are of a similar size in rural areas as in urban areas.

Empowerment Index," *Far East Journal of Psychology and Business* 2, no. 2 (2011). The DHS also

Table 1: Variation in State Presence Across Regions

Region	(1)	(2)	(3)	(4)	(5)	(6)
	Birth Certificate	Iodine	Reported Vaccines	Good Sanitation	Bad Sanitation	Normalized State Presence
Urban	1.109*** (0.353)	0.579 (0.583)	0.706 (0.447)	1.168*** (0.340)	-0.963*** (0.240)	1.145*** (0.342)
North	-1.116*** (0.306)	-0.821 (0.533)	-0.418 (0.414)	-0.923** (0.341)	0.988*** (0.269)	-1.085*** (0.275)
UrbanxNorth	-0.125 (0.437)	0.485 (0.657)	0.368 (0.574)	0.189 (0.431)	-0.601 (0.370)	0.370 (0.401)
_cons	0.215 (0.260)	0.08 (-0.5)	-0.218 (0.341)	-0.0563 (0.306)	0.0488 (0.204)	0.00170 (0.253)
N	40	40	40	40	40	40
r2	0.595	0.300	0.254	0.594	0.609	0.694

Weights in State Presence

Calculation 0.45 0.40 0.33 0.52 -0.51

Correlation with State Presence

Variable 0.84*** 0.67*** 0.74*** 0.83*** -0.73***

Standard errors in parentheses

* p<0.10 ** p<0.05 *** p<0.01

uses a similar measurement of empowerment.

Table 2 shows the results in a different form to better highlight the finding. We see from it that those regions in former North Yemen do indeed appear to have weaker state presence than those of former South Yemen. We can see this same trend when we compare state presence in rural and urban regions: there appears to be greater state presence in urban areas than rural ones. While this second trend may not be a surprise, it is still important given that the majority of Yemenis not only live in former North Yemen but overwhelmingly in rural regions. Thus, understanding how weak state presence affect the lives of the women living there becomes increasingly important.

It is also important to point to the r^2 score of 0.694 in the final (State Presence) regression in Table 1. This score tells us that that the dummy variables of the North-South and the Rural-Urban divide account for 69.4 percent of the variation in state presence across regions. This is both interesting and important to note because seldom do two dummy variables capture this much variation. Additionally, the North-South divide appears to be almost as important as the rural-urban divide.

Table 2: Distribution of Regions and State Presence by Urbanity and North vs. South

	South		North		Average	<i>South-North Difference</i>
	# of Regions	Mean SP	# of Regions	Mean SP		
Rural	6	0.20	13	-0.70	-0.42	0.91
Urban	7	1.33	14	0.53	0.80	0.81
Average		0.81		-0.07	0.22	
<i>Urban-Rural Difference</i>		1.13		1.23		

Note: Unweighted Average value of state presence variable across regions within each region type.

THE RELATIONSHIP BETWEEN STATE PRESENCE AND WOMEN'S WELL-BEING

The second and third question of the study focuses on the impact of state presence on various measures of women's well-being, and whether the impact of state presence exists irrespective of the improved economic conditions of women. Because of the different dimension of well-being each of these variable measures captures, I will be presenting the results of each separately. This provides a more nuanced and clear understanding women's well-being than simply creating an index lumping all the variables into a single measure. Table 3 displays the regression results of these variables.

Table 3 provides the coefficients on the state presence variable from each of the three regression specifications of each of our well-being measures. The three regression specifications (without controlling for socioeconomic or demographic characteristics, with socioeconomic controls, and controlling for both) appear in numbered columns (1)-(3). The measures of well-being appear in the numbered columns.

State Presence and Women's Unmet Need for Contraception

The first measure of women's well-being looks at women's unmet need for contraception. By unmet need, I mean that a woman who desired to use contraception for the purpose of spacing or completely stopping future pregnancies was unable to access contraception. Women wishing neither to space nor to prevent pregnancy are excluded from the sample. The variable takes the value zero if they can access the contraceptives they pursue whichever of the above goals they wish to pursue, and one if they lack access to pursue at least one desired goal. As displayed in Table 3 (rows 1 and 2, regression 1), we see that there exists a very strong and statistically significant relationship between the level of unmet need and the level of state presence in a region ($p < 0.01$). This relationship suggests

Table 4: Summary of Regression results

Welfare measure	Controlling for woman's age and urbanity			Adding Socio- Economic Controls			Adding Demographic Controls		
	Type of Regression	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.
Unmet need for birth control?	Probit	-0.288***	(0.029)	-0.104**	(0.033)	-0.109***	(0.033)	-0.109***	(0.033)
Received professional medical care during last delivery?	Linear Probability	-0.109***	(0.011)	-0.036**	(0.012)	-0.037**	(0.012)	-0.037**	(0.012)
	Probit	0.374***	(0.028)	0.179***	(0.032)	0.167***	(0.032)	0.167***	(0.032)
Literacy	Linear Probability	0.121***	(0.009)	0.058***	(0.010)	0.053***	(0.010)	0.053***	(0.010)
Education level	Ordered Probit	0.504***	(0.018)	0.147***	(0.021)	0.096***	(0.021)	0.096***	(0.021)
Age of first cohabitation	Ordered Probit	0.484***	(0.016)	0.206***	(0.018)	0.160***	(0.018)	0.160***	(0.018)
Age at first childbirth	Linear Regression	0.709***	(0.067)	0.681***	(0.074)	0.599***	(0.073)	0.599***	(0.073)
Has a say in own health care decision?	Linear Regression	0.456***	(0.071)	0.642***	(0.079)	0.571***	(0.078)	0.571***	(0.078)
	Probit	0.274***	(0.022)	0.157***	(0.025)	0.151***	(0.025)	0.151***	(0.025)
Has a say in large household purchases?	Linear Probability	0.107***	(0.008)	0.06***	(0.009)	0.0578***	(0.009)	0.0578***	(0.009)
	Probit	0.156***	(0.022)	0.022	(0.025)	0.018	(0.025)	0.018	(0.025)
	Linear Probability	0.061***		0.009***		0.007		0.007	
Domestic violence is justified if wife...	Ordered Probit	-0.067***	(0.017)	0.064**	(0.195)	0.074***	(0.0197)	0.074***	(0.0197)
leaves the house without permission	Ordered Probit	0.03	(0.018)	0.159***	(0.02)	0.177***	(0.020)	0.177***	(0.020)
neglects the children	Ordered Probit	-0.002	(0.02)	0.144***	(0.021)	0.158***	(0.021)	0.158***	(0.021)
argues back	Ordered Probit	-0.106***	(0.017)	-0.003	(0.019)	0.012	(0.019)	0.012	(0.019)
refuses sex	Ordered Probit	-0.150***	(0.023)	0.027	(0.025)	0.034	(0.025)	0.034	(0.025)
burns the food	Ordered Probit	-0.150***	(0.023)	0.027	(0.025)	0.034	(0.025)	0.034	(0.025)

Standard errors in parentheses
* p<0.10 ** p<0.05 *** p<0.01

that as state presence in a region increases, the level of unmet need in this region decreases. Additionally, this statistically significant relationship continues to exist even when we control for a woman's household demographics and economics (column 2). This is consistent with state presence playing an important role in reducing unmet demand for contraception that goes well beyond simply improving the household's economic conditions. In the final regression (column 3), adding a rich set of controls to capture household demographics does not change that outcome. In fact, the linear probability regression of this relationship, whose coefficients are measured in percentages, suggests that a one standard deviation difference in state presence between regions, is associated with an 11 percentage point difference in the probability that a woman will have an unmet need for contraception (column 1). When we add the economic and demographic control, this difference in unmet need drops to 3.7 percentage points. This is a large number in perspective – nationwide, 29 percent of unmarried women in Yemen report unmet need to contraception, so that a one standard deviation difference in state presence is associated with a 12.6 percent decline in unmet need for contraception.

State Presence and the Type of Delivery Care Received

For this measure of well-being, I look at whether or not a woman received professional medical care during her last delivery. Given that the majority of women live in rural areas that may not have access to many medical facilities, 'professional medical care' includes seeing a doctor or nurse as well as an auxiliary midwife. The regression results displayed in table 3 (row 3 and 4) show that there exists a very strong and statistically significant relationship between state presence and whether or not a woman received professional medical care in her last delivery. In fact the linear probability regression of

these two variables show that a one standard deviation difference in state presence between regions is associated with a 12.1 percentage point difference in the probability that a woman will receive professional medical care (row 4 column 1). The relationship between state presence and professional delivery care remains extremely statistically significant ($p < 0.01$) even when we add the household economic and demographic control (column 3); however, admittedly this difference in professional delivery care drops from 12.1 percent to 5.3 percent. Again, this percentage is large when we view it with a national perspective: only 45 percent of births delivered in the past five years were delivered by a skilled professional. Given this, a one standard deviation difference in state presence is associated with an 11.8 percent increase in professional delivery.

State Presence and Women's Literacy

The next variable of woman's well-being I used is literacy. The DHS collects this variable by administering a literacy test to the women interviewed. Rather than measuring this variable as a simple yes/no variable (i.e. simply categorizing women as literate or illiterate) I leave this variable as an ordinal one. Thus, the test results of women's literacy are inputted as: not being able to read at all, able to read only parts of a sentence, or able to read a whole sentence. An ordered probit regression of state presence and literacy show a very strong positive relationship between the two variables (row 5, $p < 0.01$). When economic and demographic controls are added (column 2 and 3), this relationship remains highly statistically significant. This consequently suggests that state presence plays a role in improving the literacy of women over and above simply improving the economic conditions of a woman's household.

State Presence and Educational Level

For the fourth measurement of woman's well-being, I use a woman's education level. An ordered probit regression of state presence and a woman's education level produces a positive and very statistically significant relationship between the two (row 5, $p < 0.01$). This result suggests that women living in regions with stronger state presence are more likely to enjoy higher levels of education. Like the measures of well-being before it, this relationship remains extremely statistically significant even after economic and demographic controls are added (column 2 and 3). Thus, this relationship between education and state presence goes well beyond the economic effect of a woman's household.

State Presence and Age of First Cohabitation and First Childbirth

The next two measurements I use for well-being are the woman's age when she first began living with her spouse (row 7) and her age at her first childbirth (row 8). The linear regressions of both of these show a positive and extremely statistically significant relationship between them and state presence. When it comes to the impact of state presence on the age of first cohabitation, women's age of first cohabitation in a region increases by 0.70 years for every one standard deviation increase in state presence (row 7, column 1). When economic and demographic controls are added, the relationship continues to be extremely statistically significant; and, the impact of state presence on it diminishes only slightly. The age of cohabitation increases by 0.60 years instead of 0.70 years for every one unit of increase in state presence (row 7, column 3).

As for the relationship between state presence and a woman's age at first childbirth, the results show that for every one standard deviation of increase in state presence in a region, the age at first childbirth of the women living in this region increases by 0.456 years

(row 8, column 1). Moreover, the strength of this relationship does not diminish but increases when economic and demographic controls are added. With these controls, the age of a woman at first childbirth increases by 0.571 years instead of 0.456 years for every one unit of increase in state presence (row 8, column 3).

State Presence and Women's Decision Making Ability

For the next two measures of women's well-being, I look at women's decision making ability in two categories: her ability to have a say in her own health care decisions (row 9 and 10) and large household purchases (row 11 and 12). Using a probit and linear probability regression model I find that there exists an extremely robust relationship between both of these categories and state presence. However, when we add economic and demographic controls, the statistically significant relationship between a woman's inclusion in decisions on large household purchases and state presence disappears (column 2 and 3). This suggests that any role that state presence may have had on this decision-making category may simply be a result of improving the economic conditions of a woman's household. However, when it came to having a say in her own health care decisions, the results displayed in table 3 suggests that the probability that a one standard deviation difference in state presence between regions is associated with a 5.78 percentage point difference in the probability that a woman will have a say in her health care (column 3). This is important given the fact that this arguably has more of a direct impact on a woman's well-being than having a say in large household purchases.

State Presence and Opinions on Domestic Violence

The relationship between women's opinion on domestic violence and state presence is a bit more complex with unexpected relational directions than the previous measurements of women's well-being. As discussed in the methodology section above and as displayed in Table 3 (rows 13 through 18), women's opinion on domestic violence asks women if a husband is justified in beating his wife in the following situations: a wife leaving the house without her husband's permission, neglecting the children, arguing back with her husband, refusing her husband sex, and burning the food. Given my hypothesis, I expected that if there did exist a statistically significant relationship between women's opinions on domestic violence and state presence, it would be a negative one. That is that as state presence increases, women were less likely to justify domestic violence. While the relationship between many of these domestic violence categories and state presence operate in this direction when I do not correct for socioeconomic characteristics (see for instance leaving the house without permission, refusing sex, and burning the food) the direction of the relationship of some completely change when economic and demographic controls are added. For instance, in the case of leaving the house without permission, neglecting the children, and arguing back, a statistically significant relationship *does* exist with state presence, however, the relationship suggests that as state presence increases, women are more likely to justify domestic violence in these situations. In the other two cases, there no longer exists a robust relationship between the two variables once these controls are added.

Although, I hypothesized that there exists a relationship between women's opinion on domestic violence and state presence, the results lacked a statistically significant relationship in two out of the five categories. However, the absence of a robust relationship in these categories was less surprising than finding a robust relationship in the opposite

direction for the other three categories. We can perhaps explain the lack of a relationship in the two categories as being due to the fact that states may find it difficult to impact opinions surrounding what many Yemenis may view as private family matters. It becomes more difficult though to explain why a strong state presence would be strongly correlated with an increase in women's justification for some situations of domestic violence. Given the scope of this study, I am not able to further explore this particular relationship, but it is something I plan to do in future research.

3.4 Discussions and Conclusion

Setting aside women's opinions on domestic violence, the other measurements for women's well-being all yielded highly statistically significant relationships with state presence. Therefore, there does indeed appear to be a robust relationship between the well-being of Yemeni women and the amount of state presence that exists in the regions in which they live. This finding is consistent with those studies exploring impact of state capacity on human rights as well as those studies examining state weakness and state failure's impact on women. However, while almost all of these studies conduct cross-national comparisons that rely heavily on aggregated indexes, this study focused on an intra-national comparison. I do this given a prior that 'women's well-being' is not a singular category that can be used evenly and operationalized identically across borders. Rather, it is my convention that 'women's well-being' should be disaggregated to the best of one's ability and understood in comparison to other women who share more similar realities, histories, and cultures. When we do this, we are able to have a rich discussion on the results and implications of our research. This then allows us to begin focusing on the diverse stories and experiences of

women from a single country rather than trying to tell a single story of diverse women from many places.

CHAPTER 4: CONCLUSION

My mother lived in three different countries before immigrating to the United States, but she did so while never leaving the small village where she was born. She was born in the Mutawakkilite Kingdom of Yemen, grew up in the Yemen Arab Republic, and started her family in the unified Republic of Yemen. Given that she was illiterate, my mother often recounted to us at bedtime stories of her experience in each of these Yemens rather than reading us traditional fairytales. She spoke of the Imam of her childhood who ruled Yemen with a firm grip and who demanded that each tribe give up a son to be kept hostage at the home of the Imam in order to guarantee the loyalty of the tribe. She told us of the 1962 Revolution that brought down this Imamate kingdom and ushered in a new era of running water in villages (although not all) and electricity (although fickle even to this day). But perhaps my favorite tale she told us was that of the *Gabha* or the Border Wars. In this tale, she recounted how she fled her home with nothing but as many dresses as she could layer on and her father's land titles stuffed down her blouse. Her tales always had a similar theme: it placed Yemeni women at the center of tumultuous change. She wove historical moments through the lives of the different women she knew—each moment demonstrating the ferocity with which Yemeni women defended what was theirs and challenged injustice without fear.

My mother's experience is not anomalous. Today, there exists an entire generation of Yemeni women who have held citizenships from multiple Yemeni states and who have known as many as four Yemens in their lifetime.¹⁸⁴ Borders were drawn and redrawn around them, yet these women stood steadfast. This thesis attempts to place these women at the center of a constantly evolving Yemeni state. It explored the evolution of the legal rights

of Yemeni women and the de jure marginalization that came with unification. It argued that after the victory of the former North in the 1994 Civil War, the North's patriarchal legal vision of family law prevailed. This ultimately led to the deterioration of the legal rights of Yemeni women, particularly those women coming from the poorer and lower class of Yemeni society.

This thesis also explored Yemeni women's de facto (dis)empowerment as experienced on the ground across the country's twenty governorates and the capital city Sana'a. The study found that in almost all dimensions of 'well-being,' those Yemeni women living in regions with greater state presence enjoy greater levels of well-being than those living in regions with less state presence. This finding highlights the important effect a more present state has on the well-being of the women who live there.

Today, Yemen continues to be the poorest country in the Middle East, and the 2015 war in Yemen led by a Saudi-collation has pushed the country to the brink of famine. We know through many studies on gender and development that women and children make up the poorest segment of societies and that women and children often bear the greatest casualties in conflicts and humanitarian crises. Yet, the literature on Yemen often focuses on issues of counter-terrorism, security, or tribal conflict with little focus on gender. Thus, it is imperative that we expand the literature further to include the stories and experiences of *banat al Yaman*.¹⁸⁵ Those women who resemble the women in my mother's stories, the women who despite the chaos and change happening around them—be it state unification or civil war—remained resolute and continued to demand a leading role in the story of Yemen. This thesis serves as an invitation to further explore their stories.

¹⁸⁴ The four Yemens being: the Mutawakkilite Kingdom of Yemen, the Yemen Arab Republic, the People's Democratic Republic of Yemen, and today's Republic of Yemen.

REFERENCES

- al-Dawsari, Nadwa. "Tribal Governance and Stability in Yemen." *Carnegie Endowment for International Peace*, 2012.
- al-Zwaini, Laila. "State and Non-State Justice in Yemen." In *Relationship Between State and Non-State Justice System in Afghanistan* Kabul, Afghanistan: United States Institute of Peace, 2006.
- Ali, Kecia. "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines." In *The Islamic Marriage Contract : Case Studies in Islamic Family Law*, edited by Asifa Quraishi and Frank E. Vogel, xiii, 375 p. Cambridge, Mass.: Islamic Legal Studies Program Distributed by Harvard University Press, 2008.
- Anderson, J. N. D. *Law Reform in the Muslim World*. University of London Legal Series. London: Athlone Press, 1976.
- Ba-Obaid, Mohamed, and Catrien C.J.H. Bijleveld. "Violence against Women in Yemen: Official Statistics and an Exploratory Survey." *International Review of Victimology* 9 (2002): 331-47.
- Badran, Magrot. "Unifying Women: Feminist Pasts and Presents in Yemen." *Gender & History* 10, no. 3 (November 1998): 498-518.
- Baron, Beth. *Egypt as a Woman : Nationalism, Gender, and Politics*. Berkeley: University of California Press, 2005.
- Bier, Laura. *Revolutionary Womanhood : Feminisms, Modernity, and the State in Nasser's Egypt*. Stanford Studies in Middle Eastern and Islamic Societies and Cultures. Stanford, California: Stanford University Press, 2011.
- Boxberger, Linda. "From Two States to One: Women's Lives in the Transformation of Yemen ". In *Women in Muslim Societies : Diversity within Unity* edited by Herbert L. Bodman and Nayyirah Tawhīdī, 119-36. Boulder, Colo.: Lynne Rienner Publishers, 1998.
- Burrowes, Robert D. . "The Yemen Arab Republic's Legacy and Yemeni Unification." *Arab Studies Quarterly* 14, no. 4 (Fall 1992): 41-68.
- Call, Charles. "Beyond the 'Failed State': Towards Conceptual Alternatives." *European Journal of International Relations* 17, no. 2 (2010): 303-26.
- Carapico, Sheila. *Civil Society in Yemen : The Political Economy of Activism in Modern Arabia*. Cambridge Middle East Studies. Cambridge, UK ; New York: Cambridge University Press, 1998.
- Cleveland, William L., and Martin P. Bunton. *A History of the Modern Middle East*. Fifth edition. ed. Boulder, CO: Westview Press, a member of the Perseus Books Group, 2013.
- Corstange, Daniel "Tribes and the Rule of Law in Yemen." In *Annual Conference of the Middle East Studies Association*. Washington, D.C., 2008.
- Coulson, Noel J. *A History of Islamic Law*. Islamic Surveys. Edinburgh: University Press, 1964.
- Coulson, Noel James. *Conflicts and Tensions in Islamic Jurisprudence*. Publications of the Center for Middle Eastern Studies,. Chicago,: University of Chicago Press, 1969.
- Dawisha, Adeed. *Arab Nationalism in the Twentieth Century: From Triumph to Despair*. Princeton University Press, 2016.

¹⁸⁵ *Banat al Yaman*, loosely translates to “the daughters of Yemen.” It is a phrase Yemenis, and Yemeni women in particular, commonly use to refer to Yemeni women.

- Dresch, Paul. *A History of Modern Yemen*. Cambridge ; New York: Cambridge University Press, 2000.
- Dresch, Paul. *Tribes, Government, and History in Yemen*. Oxford England Clarendon Press, 1989.
- Egel, Daniel. "Tribal Hetrogenity and the Allocation of Development Resources: Evidence from Yemen." In *Topics in Middle Eastern and African Economics*: University of California, Institute on Global Conflict and Cooperation, 2011.
- Englehart, Neil A. "State Capacity, State Failure, and Human Rights ". *Journal of Peace Research* 46, no. 2 (2009): 163-80.
- Esposito, John L., and Natana J. DeLong-Bas. *Women in Muslim Family Law*. Contemporary Issues in the Middle East. 2nd ed. Syracuse, N.Y.: Syracuse University Press, 2001.
- Ginat, Rami. *Egypt's Incomplete Revolution : Lutfi Al-Khuli and Nasser's Socialism in the 1960s*. The Cummings Center Series. London ; Portland, OR: Frank Cass, 1997.
- Gould, Laurie A. "Exploring Gender-Based Disparities in Legal Protection, Education, Health, Political Empowerment, and Employment in Failing and Fragile States." *Women & Criminal Justice* 24, no. 4 (2014): 279-305.
- Gutiérrez, Sanín F. "Evaluating State Performance: A Critical View of State Failure and Fragility Indexes." *European Journal of Development Research* 23, no. 1 (2011): 20-42.
- Heilie-Lucas, Marie. "The Preferential Symbol for Islamic Identity: Women in Muslim Personal Laws." In *Identity Politics and Women : Cultural Reassertions and Feminisms in International Perspective*, edited by Valentine M. Moghadam, xiv, 458 p. Boulder: Westview Press, 1994.
- Hendrix, Cullen S. "Measuring State Capacity: Theoretical and Empirical Implications for the Study of Civil Conflict." *Journal of Peace Research* 47, no. 3 (2010): 273-85.
- Jacobson, David. *Of Virgins and Martyrs: Women and Sexuality in Global Conflict*. John Hopskin University Press, 2012.
- Kandiyoti, Deniz. *Women, Islam, and the State*. Women in the Political Economy. Philadelphia: Temple University Press, 1991.
- Karl R. de Rouen, JR, and David Sobek. "The Dynamics of Civil War Duration and Outcome." *Journal of Peace Research* 41, no. 3 (2004): 303-20.
- Kholoussy, Hanan. *For Better, for Worse : The Marriage Crisis That Made Modern Egypt*. Stanford, Calif.: Stanford University Press, 2010.
- Lewis, Alexandra. *Security, Clans and Tribes : Unstable Governance in Somaliland, Yemen and the Gulf of Aden*. Palgrave Pivot. Basingstoke: Palgrave Macmillan, 2015.
- Liebesny, Herbert. "Administration and Legal Development in Arabia: Aden Colony and Protectorate." *Middle East Journal* 9, no. 4 (1955): 385-96
- Mir-Hosseini, Ziba. *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*. London ; New York: I.B. Tauris, 1993.
- Molyneux, Maxine "Women's Right and Political Conflict in Yemen 1990-1994." Chap. 7 In *Women, Ethnicity and Nationalism: The Politics of Divided Societies*, edited by Rick Wilford and Robert L. Miller, 132-49. London ; New York: Routledge, 1998.
- Molyneux, Maxine. "The Law, the State and Socialist Policies with Regard to Women: The Case of the Pdry. 1967—1990." Chap. 9 In *Women, Islam, and the State*, edited by Deniz Kandiyoti, 237-71. Philadelphia: Temple University Press, 1991.

- Moors, Annelies. "Debating Islamic Family Law: Legal Texts and Social Practices." In *Social History of the Modern Middle East* edited by Margaret Lee Meriwether and Judith E. Tucker, ix, 220 p. Boulder, Colo: Westview Press, 1999.
- Nasir, Jamal J. *The Status of Women under Islamic Law and under Modern Islamic Legislation*. Arab and Islamic Laws Series. London ; Boston: Graham & Trotman, 1990.
- Peterson, John. *Yemen, the Search for a Modern State*. Baltimore: Johns Hopkins University Press, 1982.
- Powell, Stephen Baranyi and Kristiana. "Fragile States, Gender Equality and Aid Effectiveness: A Review of Donor Perspectives." Ottawa, Canada The North-South Institute, 2005.
- Qaed, Samar. "Only 30 Percent of Yemeni Families Consume Iodized Salt." *Yemeni Times*, 2014.
- Retso, Jan. "Where and What Was 'Arabia Felix'?" Paper presented at the Seminar for Arabian Studies, London, 1999.
- Rotberg, Robert I. *When States Fail: Causes and Consequences*. Princeton, N.J.: Princeton University Press, 2004.
- Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press, 1964.
- Stookey, Robert W. *South Yemen, a Marxist Republic in Arabia*. Profiles Nations of the Contemporary Middle East. London: Westview Press, 1982.
- Tucker, Judith E. *Women, Family, and Gender in Islamic Law*. Themes in Islamic Law. 1st ed. Cambridge, UK ; New York: Cambridge University Press, 2008.
- Varghese, Thresiamma. "Women Empowerment in Oman: A Study Based on Women Empowerment Index." *Far East Journal of Psychology and Business* 2, no. 2 (2011): 37-53.
- Weber, Max, Hans Heinrich Gerth, and C. Wright Mills. *From Max Weber : Essays in Sociology* [in Translated into English.]. Routledge Classics in Sociology. Milton Park, Abingdon, Oxon ; New York: Routledge, 2009.
- Wenner, Manfred W. *The Yemen Arab Republic : Development and Change in an Ancient Land*. Westview Profiles Nations of the Contemporary Middle East. Boulder: Westview Press, 1991.
- Wurth, Anna. "Stalled Reform: Family Law in Post-Unification Yemen." *Islamic Law and Society* 10, no. 1 (2003): 12-33.
- Yuval-Davis, Nira. "Gender and Nation." Chap. 2 In *Women, Ethnicity and Nationalism: The Politics of Divided Societies* edited by Rick Wilford and Robert L. Miller, 21-31. London; New York: Routledge, 1998.