Tribal Law of Pashtunwali and Women's Legislative Authority

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INTRODUCTION

Embedded in the legal history of Afghanistan are the tribal codes of the Pashtun or Afghan tribes, which came together under Ahmed Shah Durrani in 1747 as the confederacy that eventually shaped the modern-day state of Afghanistan. These tribal law codes are called Pashtunwali, and they are widely practiced as a component of customary law, especially in rural Pashtun majority areas. Pashtuns make up the largest ethnic group in Afghanistan.[1]

The role of women in Pashtunwali is little studied and even less understood. Much has been written about the oppression of women in Afghanistan, and it is often attributed to Pashtun tribal practices, such as male elders having say over marriages of young women; high bride prices, *walwar*, given to the father of the bride and suggesting the sale of women into marriages; honor killings of women for sexual misconduct. Among the large Pashtun landowner (*zamindar*) class and among the city-dwelling Pashtuns, the seclusion of women is prevalent and the *chaderi* or *boghra*[2] are worn when the woman leaves the confines of her household compound. Women are constrained by the Pashtunwali code in so many ways that it is difficult to understand why they participate in this system, or why, when women's rights reforms are discussed, they resist them, even those associated with health care and education. Even though there are at present few traditional practices of Pashtunwali that were able to withstand the influence of pervading religio-political ideologies, due to war, drought, and displacement, it is critical for the reconstruction of Afghanistan to understand the "ideal" Pashtunwali in the minds of Pashtun men and women, who may no longer be living in their Pashtun majority communities but yearn to return to a peaceful and "ideal" past.

While much of the legal process of customary law seems to be in the control of men, there are layers of legislative authority in Afghan rural society that function within specifically gendered networks and others that bridge those gender segregated networks. This paper is an attempt to understand women's authority to legislate and to enforce norms within Pashtunwali, while at the same time maintaining a critical eye on issues of inequality and contention.

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Pashtunwali is a tribal code, as mentioned above. "If law is a system of enforceable rules governing social relations and legislated by a political system, it might seem obvious that law is connected to ideology," writes Christine Sypnowich.[3] This paper will analyze Pashtun tribal law

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[1] Though there are no current census records, Pashtuns make up 38% of the Afghan population, according to the U.S. State Department's website on Afghanistan: http://www.state.gov/r/pa/ei/bgn/5380.htm.

[2] The *chaderi* is another name for the *boghra*, also known as *burqa* or *borga*, an all-body enveloping wrap and veil that covers the entire face, with a latticed opening for the eyes.

[3] Christine Sypnowich, "Law and Ideology," in *The Stanford Encyclopedia of Philosophy* (Winter 2001), ed. Edward N. Zalta, published on the Web : http://plato.stanford.edu/archives/win2001/entries/law-ideology/.

by focusing on the concepts that contribute to Pashtunwali's governing ideology, its legislation, and political authority.

It is necessary first to understand legislation and authority outside of their more common state-bound usage. In the context of customary and tribal law in Afghanistan, legislation occurs where adjudication takes place (by the person who judges or arbitrates), since there are no codified laws and there is only a vague sense of precedence. While there are specific laws that comprise part of the overarching concepts in Pashtunwali, they are few in number and they differ from region to region and among social classes; they are thus hard to pin down for the purposes of this paper. Therefore, in the context of this paper, legislation will be defined as the enactment of laws that are neither codified nor are part of a corpus of state or regional laws. In the legislation of customary law, community councils and leaders draw from many different legal systems, such as local customs, tribal laws, Islamic law, and state law. Communal leaders are interested in reaching a decision that is most acceptable to the mood of the community at the time the event happened, as well as one that will be in the best interests of the community as a whole. Through publicly enacting norms that fulfill the precepts of Pashtunwali, such as honor, hospitality, gender boundaries, and the institution of *jirga*, the Pashtun maintains a specific social order and furthermore sustains a religious-ethnic identity.

In the Pashtun's mind, Pashtunwali has a religious identity in Islam, which affects the tribal code's relationship with the Shari'a. For this reason, this paper will begin with a short explanation of the relationship that Pashtunwali has to Islam and the Shari'a. The paper will then delve into the core subject-matter with a critical overview of Pashtunwali and its ideological concepts that support legislation of its norms. The paper will then describe legislative authority within Pashtunwali, taking care to identify the different public spaces within which authority legislates norms, and finally, the paper will look at current trends of internal displacement and centralization of power and how they impact women's legislative authority in Pashtunwali.

PASHTUNWALI, ISLAM, AND THE SHARI'A

Pashtunwali's relationship with Islam has been a complicated one. Afghanistan first became an independent state ca. 1747, through a coalition of a number of Pashtun tribes under one leader, Ahmed Shah Durrani. He did not claim legitimacy through religious means, as many Muslim rulers of the day did.[4] Rather, his legitimacy was based on his tribal genealogical heritage and the nomination and guarantee of a Sufi leader, Sabir Shah.[5] Though the Pashtuns were Sunni Muslims of the Hanafi school of law, it was their Pashtun tribal code, Pashtunwali, which governed them before all else. Second in order of allegiance was the Shari'a, as interpreted through the Hanafi lens.[6] For this reason, Pashtunwali became the driving force behind the early Afghan state,[7] and though the divine texts were still the ultimate source of authority, this authority was passed on through the tribe to their leader, the King.[8]

Pashtunwali is so essential to the identity of the Pashtun that there is no distinction between practicing Pashtunwali and being Pashtun.[9] Furthermore, for the Pashtun there is no

[4] Asta Olesen, *Islam and Politics in Afghanistan* (Surrey: Curzon Press, 1995), 33.
[5] Ganda Singh, *Ahmad Shah Durrani: Father of Modern Afghanistan* (Bombay: Asia Publishing House, 1959), 26.
[6] Olesen, *Islam and Politics*, 33.
[7] 1747-1880.
[8] Olesen, *Islam and Politics*, 34.
[9] This was confirmed by Prof. Thomas Barfield in a personal communication. See also Olesen, *Islam and Politics*, 34.

contradiction between being Pashtun and practicing Pashtunwali and being Muslim and adhering to Islamic law.[10] Religious scholars (*'ulama*) often see conflicts between some Pashtun customs and the Shari'a, but in the minds of the Pashtun majority, Pashtunwali is not seen as an entity separate from the Shari'a.

Even though the Shari'a and Pashtunwali overlap in the Pashtun consciousness, they are seen as functioning for a different purpose. The Shari'a represents God's will for humanity on earth and is practiced because it is a moral code whereas Pashtunwali is seen as a matter of honor,[11] which to a Pashtun is defined by a person's integrity in upholding and practicing the concepts that make up Pashtunwali.

Pashtunwali: The Tribal Code of Honor

Pashtunwali, "the way of the Pashtuns," is integral to Pashtun identity. By adhering to Pashtunwali a Pashtun possesses honor (*izzat*); without honor s/he is no longer considered a Pashtun, and is not given the rights, protection, and support of the Pashtun community. Pashtunwali's honor-based society is governed by the concepts of chivalry (or bravery, courage) (*ghayrat* or *nang*), hospitality (*melmastia*), gender boundaries (*purdah* or *namus)* and council (*jirga*).[12] The council is the main legislative authority in the men's public realm. It is helpful to note that each of these concepts accentuates different norms according to the socio-economic setting within Pashtun society.

Akbar Ahmed identifies two types of socio-economic organizational settings: the *qalang* ("tax") group, or the urban and large landowning Pashtuns, and the *nang* ("chivalrous") group, or the pastoral, nomadic, hill Pashtuns. Each constitutes the meanings of the Pashtunwali concepts relevant to their social contexts.[13] The organizational distinction between the *qalang* and *nang* groups is helpful in identifying the differences in the Pashtunwali conceptual framework and forms of authority, including those concerning women.

1. *Ghayrat* and *Nang* (chivalry)

Chivalry is defined by two sets of normative practices: honorable actions in battle and proper defense of honor. Norms of battle include rules about who may be attacked, e.g., not civilians, or the proper distribution of war spoils. Honor is given to those who e.g. show fighting skills. It is not unusual for women to engage in combat, although more often their role is to support the male fighters by displaying their head shawl (*poranai*) to spur on the fight. They also spurn dishonorable fighters and reward honorable fighters, which distinction is determined differently depending on the community. The social organization of *nang* and *qalang* creates, for example, different kinds of honorable fighters. Among the former, where there is more social and economic equality, all warriors who participate equally in the fighting are ipso facto honorable. Among the *qalang* groups, on the other hand, being an honorable fighter depends on one's social and economic class: the khans are the warlords commanding the group and are considered on a par with the *nang* warriors participating in raids.[14]

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[10] As the Pashtun poet Ghani Khan writes, "Paradise in Islam is acquired though [doing] Pashtu… the countless graces of Paradise come though [doing] Pashtu to the Pashtuns." From Oleson, *Islam and Politics*, 34.
[11] Olivier Roy, *Afghanistan: From Holy War to Civil War* (Princeton: Darwin Press, 1985), 52.
[12] Cf. the works by Louis Dupree, Akbar Ahmed, and Fredrik Barth.
[13] Akbar Ahmed, *Millennium and Charisma among Pathans. A Critical Essay in Social Anthropology* (London: Routledge and Kegan Paul, 1976), 76.
[14] Ahmed, *Millennium and Charisma among Pathans*, 82.

The second form of chivalrous norms involves the defense of honor against shame by another person. An accusatory insult, act, or condition that offends the Pashtunwali norm and shames a Pashtun, requires a defense of honor. This defense "requires a show of superior force by the insulted person."[15] The norm of defense of honor is *badal*, or revenge, and as long as the revenge is not excessive the council does not interfere. Since "for every man killed the code demands compensatory *badal*," Ahmed suggests that *badal* may even be a deterrent in homicidal tendencies.[16]

2. *Melmastia* (hospitality)
A Pashtun's honor is buttressed by hospitality in that it increases the number of social networks s/he has access to. The larger the social network, the more legislative authority a Pashtun will have. Hospitality includes the feeding of strangers and friends, both in guest house and in the home, gift-giving, and defending the guest. In men's social networks hospitality has become more institutionalized among the *qalang* Pashtuns, where every village leader has a men's guest house (*hujra*) in which guests are entertained and housed and the men of the village eat together. The defense of a guest comes under the norm of *nanawati* (literally: to enter into the security of a house).[17] The guest is protected and his enemies repelled for as long as he stays. Under the norm of *nanawati* the guest can also ask for a revenge-conflict to stop. Women often will go to the house of their family's feuding enemy and ask for the conflict to stop, whereupon the host must accept.[18] By the same token, a woman can "call out" (*nariqawal*) the man she wants to marry, when she is being married to another against her wishes, by presenting herself as a guest in the house of the man she wishes to marry. He is obliged to marry her and settle the matter with her father, though she loses face by resorting to this tactic. If her father disagrees, it can lead to a revenge cycle.[19]

3. *Purdah* and *Namus* (gender boundaries)
Namus can be defined as that which is defended for honor to be upheld, instead of acted upon to achieve honor (such as hospitality). If someone offends the rules of the gendered order, then there is reason to act in defense of one's *namus*. *Namus* is thus an important institution for maintaining the gender segregated order of the society, which is often called *purdah*, Urdu for "veil," the veil or a curtain often being the boundary between men and women's physical space. In Pashtu expressions it is recommended that both men and women conceptually apply purdah, and doing so is a sign of dignity for both men and women.

Despite its applying to both genders, however, anthropologists have found that Pashtuns commonly identify *namus* as "defense of the honor of women,"[20] and men often think of purdah as a way of controlling women, even though it also controls men. In other words, men are as bound by the rules of *namus*, and are thus as restricted from stepping into space reserved for women as women are from entry into men's space. For example, if a man who is unrelated to

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[15] Fredrik Barth, *Political Leadership Among Swat Pathans.* (London: Athlone Press, 1965), 82.
[16] Ahmed, *Millennium and Charisma among Pathans*, 57.
[17] Fredrik Barth, "Pathan Identity and its Maintenance," in idem (ed.), *Ethnic Groups and Boundaries. The Social Organization of Culture Difference* (Boston: Little, Brown, 1969), 120.
[18] Muhaqiq Massoma Ismati, *The Position and Role of Afghan Women in Afghanistan* (Kabul: Center of Social Science DRA, 1987), 14-17.
[19] Erika Knabe, "Afghan Women: Does Their Role Change?" in Louis Dupree and Linette Albert (eds.), *Afghanistan in the 1970s* (New York: Praeger, 1974), 147.
[20] Louis Dupree, *Afghanistan*. (Princeton: Princeton University Press, 1978), 126.

any of the women present walks into a woman's compound, especially among the *qalang* landowning class, he will be beaten, accused of dishonor, and even perhaps expelled from the community.

The boundaries of purdah vary among the Pashtun, differing also between the *nang* and *qalang* groups. There is a full spectrum of variance on where the boundaries lie between men's and women's space. On one end are the Kuchi nomads, where women do not veil in public and are often left to care for the household while the men are out shepherding the flocks for days and weeks. When a male guest comes, he often sits separately with the men, especially separate from the young unmarried women of the family. In the middle of the spectrum are the *nang* groups who are semi-pastoral and semi-agriculturist, changing with the seasons. Women partially cover their faces when they leave the house or out of respect for elders. They visit within the neighborhood, but men and women have separate visiting quarters. Still, a male family friend might visit with the married women and female heads of the household. On the extreme opposite end are the *qalang* groups, where only elderly women and female children are allowed to leave the household compound without being completely veiled, especially among the large landowning classes of Khans. Physical space is highly segregated compared to the other groups and only the elderly, men and women, as well as male and female children are allowed to move freely between the highly segregated spaces. A daughter-in-law must cover her face for her father-in-law and brother-in-law and these men must be careful to give ample warning when about to walk through the women's space of their own compound. Extreme purdah can lead to many restrictions for women but segregated spaces also allow for freedom from male interference.

The negative impact of extreme purdah can lead, however, to women being barred from education and health care. Purdah prevents women from going on journeys alone. Gender boundaries tend to be much stricter when families live mostly among strangers rather than relatives, as those who moved to the cities do.[21] This can be observed most acutely in refugee camps for the internally displaced as well as refugee camps in Pakistan and Iran, where women who do not usually wear a *boghra* in their village will wear it in the refugee setting.[22]

While it is commonly believed that the *boghra* came from India, the concept of purdah was a much more widespread phenomenon of the cultures that surrounded and conquered Afghanistan. Byzantine, Greek, and Persian societies maintained similar boundaries, especially in their urban settings.[23] One such example, similar to Pashtunwali*'s* gender boundaries, is the classical Greek period in Athens, where free women were "secluded" and only men who were related to them could visit them. However, "some women were even too modest to be seen by men who were relatives, and for a strange man to intrude upon a free woman in the house of another man was tantamount to a criminal act."[24] Urban and *qalang* practices of Pashtunwali could have been influenced by the cultures in their region that had urbanized and become agriculturalist before the Pashtuns.[25]

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[21] Barnett R. Rubin, *Fragmentation of Afghanistan: State Formation and Collapse in the International System* (New Haven: University of Yale Press, 1995), 24.

[22] Anna Pont, *Blind Chickens and Social Animals* (Portland: Mercy Corps Printing, 2001), 31-32. See also Hanne Christensen, *The Reconstructions of Afghanistan: A Chance for Rural Afghan Women* (UNRISD Report 90.3, 1990), 35-38.

[23] Leila Ahmed, *Women and Gender in Islam* (New Haven: Yale University Press, 1992), 25-37.

[24] Ibid. 28.

[25] To understand how urban cultures in Afghanistan have influenced each other, as well as how Pashtunwali influences the existing Afghan cultures that surround it, these influences need further research.

4. *Jirga* (council)

The council, organized by Pashtuns on the village and regional levels, is the legislative authority in Pashtunwali. The councils decide matters by consensus and their decisions are binding on the parties involved. Pashtuns who sit on the council must be known for their honor, which means that they must practice Pashtunwali to the letter. In the *qalang* areas, council members belong to the landowning elite and must have wealth as well as a reputation of honor in order for their decisions to be authoritative.[26] If the honor of the council members is not at stake, this can lead to an imbalance of power and thus the abuse of power.

More often than not the councils are composed exclusively of men, called "elders," although women have been known to participate.[27] However, most decisions made by the council involve arbitration of contracts concerning objects that are mainly owned by men, such as money, water, and land. Rarely is a woman's fate decided at a council unless her marriage is made a part of the solution to a conflict. At this point the *jirga* usurps the rights of the woman and the power of women's networks and makes them a component of solving a conflict among men.

THE LEGISLATIVE AUTHORITY AND PUBLIC SPACE

Where law is a system of legal norms that govern social relations, the parameters of the social relations they govern must be identified to understand the law, the legal system, and legal authority. In the same way as the laws of one state do not apply to another, Pashtun women, especially in sedentary and semi-sedentary Pashtun societies, have their own sphere of jurisdiction and their own legal norms, only some of which parallel those applying to men. While men and women may have their own spheres of jurisdiction, men still have more control over resources and power, thus making the distribution of power unequal.

Men and women in Pashtun society inhabit separate worlds where they function and contribute to the sustenance of the whole Pashtun group. These worlds are not mutually exclusive, however, since there are areas of overlap, including duties requiring consultation. Furthermore, there is a spectrum of segregation, with the urban and landowning elite being highly segregated and the pastoral and nomadic tribes knowing little segregation. This gender segregation does not reflect distinction in terms of public and private space. However, there is a porous quality to the boundaries of these spaces that enables the young and the elderly to cross them.

A concept that more adequately describes these separate worlds is the anthropological description of space and order that is "homo-social" in nature, implying that men and women "work and socialize almost exclusively" with the same gender.[28] The Pashtun society is inherently one of homo-social order, where for the most part men do not have access to most women's space, and women do not have access to most men's space. These boundaries are

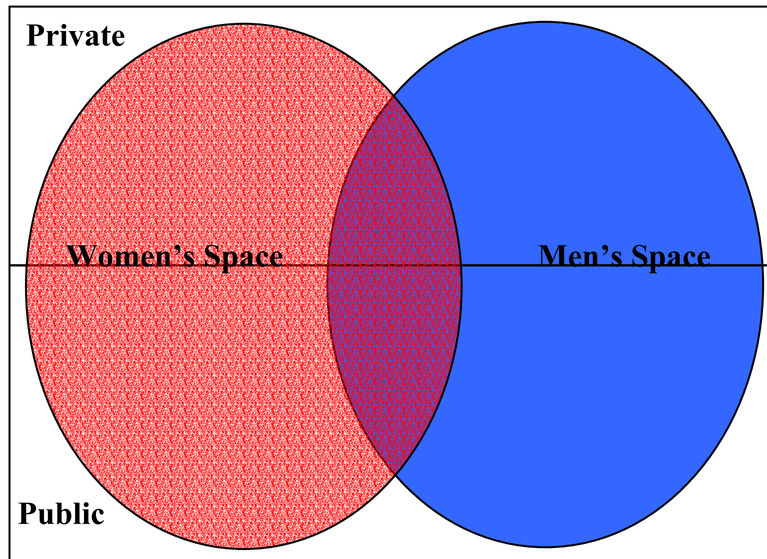
[26] Ahmed, *Millennium and Charisma among Pathans*, 83.

[27] There are few documented examples of women's participation, but there is documentation of female mediators between the government and local communities (*arbab*), part of whose job is to participate and call the *jirga* into session when particular issues with the government arose. Women have also participated in the national *jirga* council. See Hafizullah Emadi, *Repression, Resistance, and Women in Afghanistan* (Karachi: Royal Book Co, 2002, 58-59.

[28] From a class lecture on "Gendered Communities: Women, Islam and Nationalism in the Middle East and North Africa" by Afsaneh Najmabadi at Harvard (November 16, 2002).

nevertheless permeable under certain circumstances such as weddings or working in the fields. Both men and women follow the norms of Pashtunwali in the public space and furthermore obey the law's authority over public space. The maintenance of this space is achieved through the concept of purdah.

Gender boundaries serve both as an ideal for the society to attain and as a real example of how the society is organized. Among Pashtuns, the real social order is achieved where Pashtuns are the majority population; however, this "real" differs according to the economic balance in the Pashtun society. Where there is ethnic or economic diversity, the ideal is more often aspired to. The following diagram depicts both the real and the ideal of the more urbanized and *zamindar* Pashtun homo-social order. This order is most foreign to the Kuchi nomad pastoralist Pashtuns, whose organization is hetero-social and among whom there is more economic strife.



A Venn diagram of homo-social space in sedentary Pashtun society

From a comparative point of view, it is interesting to note that in Byzantine society, "strict segregation that effectively kept women apart from men other than their immediate family also created openings for women. Byzantine women were active not only as bath attendants, midwives, and doctors but also as artisans and sellers of food stuffs."[29] Whereas nomadic women are known to take matters into their own hands and to cope without their men, they have fewer resources and fewer opportunities to network with other women; therefore the luxury to specialize in a trade like women in homo-social orders might do is closed to them and they must become a jack-of-all-trades.[30]

In homo-socially ordered societies, women in positions of authority control the use of resources for the clan or extended family; women's networks derive power from their control, extending throughout marriage, and they arbiter conflicts ranging from women's contracts to the

[29] Ahmed, *Women and Gender in Islam*, 27.
[30] I.e., they must master many skills, such as midwifery, herbal medicine, business acumen, etc.

revenge cycle. In order for women to achieve authority status, they must prove, like men, that they are honorable by following the norms of Pashtunwali.

Women's Honor, Women's Space: A Family's Trust

A woman's honor is closely tied to that of a man in Pashtun society. It is often said that Pashtun men customarily see women as comprising the essence of the family. If a woman earns a bad reputation, her whole family, which includes the men, is sullied. (The same could be said for Pashtun women's perceptions of men: the men represent the stronghold of the family and if they are dishonorable, the family has no honor.) A space where men and women who are either unrelated or not married mix, opens them up to dishonor. Only the most trustworthy are allowed into women's spaces, making them semi-sacred spaces. Men and women who have access to a family's women's space thus have a privileged relationship with the whole family. Allowing such access shows a relationship of trust.[31]

Women who are chosen to become part of a family become part of its private space, which is also a vulnerable space, since what happens there is judged by Pashtunwali norms, although technically beyond the reach of the public eye. Such women, who are carefully chosen by the female leaders of the household, are trusted and given privileges within the women's networks. Access to women's public space for men and for women are exemplary of a trust that honor will be maintained. If this space is not upheld, it will cause a Pashtun dishonor and shame. In other words, if a family's woman's space is transformed into a public space, it brings shame and dishonor upon the family.

Types of Leadership and Authority

There are three levels of women's leadership and legislative authority: the national level, the village level, and the family level. Examples of leadership at the national level are women such as Nazoo Anaa and Zarghona Anaa. Nazoo Anaa was a highly respected leader of her village and the mother of the Afghan nationalist, Mir Wais Hotaki (d. 1715). She eventually became the legendary "Mother of Afghan Nationalism," and gained authority through her poetry and upholding of the Pashtunwali code. She called for Pashtunwali to be the law of the confederacy of the Afghan tribes and she arbitrated conflicts between Pashtun tribes so as to encourage their alliance against the Persian rulers. When Mir Wais was defeated and Nazo Anaa and her daughters died fighting beside him, Zarghona Anaa picked up her cause.[32] Zarghona Anaa was the mother of Ahmed Shah Durrani, who succeeded in uniting the Pashtun tribes and forming a state. Like Nazo Anaa, Zarghona Anaa was a staunch nationalist and encouraged the use of Pashtunwali. While Ahmad Shah was away from Kandahar on expeditions, she arbitrated conflicts and governed.[33]

At the village level, the female village leader, *qaryadar*, witnesses women's ceremonies, mobilizes women to practice religious festivals, prepares the female dead for burial, and performs services for deceased women. She also arranges marriages for her own family and arbitrates conflicts for men and women.[34]

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[31] Ismati, *The Position and Role of Afghan Women*, 14-17.

[32] Fahima Rahimi, *Women in Afghanistan* (Leistal: Stiftung Bibliotheca Afghanica, 1986), 28.

[33] Interview with Faizullah Kakar (June 2003.) While many of these stories are based on hagiographical accounts, what is important is that these stories preserve Pashtun memories of history and of women's places in their national history, which allows for the possibility of their influencing role models today.

[34] Nancy Tapper, *Bartered Brides: Politics, Gender and Marriage in an Afghan Tribal society* (Cambridge: Cambridge University Press, 1991). 105.

At the family level, which is one of the extended family, women create social networks of hierarchy with a leader who manages the household resources, delegates work, forms and strengthens social networks, and gains credibility and social mobility through marriage choices. She also resolves conflicts among women within the household. In the case of *nanawati*, the defense of the guest, she is the family representative who asks for the conflict to be resolved. There may be more than one female household leader. If the female leaders work together compatibly, the household will stay unified; otherwise the house must be partitioned.[35]

Married men and women may also advise each other on actions the other should take in his or her respective realm. They may also help each other by becoming intermediaries with the opposite gender group, such as by passing on advice to another man or woman in their social group, which might help solve a problem the other is dealing with.[36]

The impression is that men's authority structures are more egalitarian than those of women, since in men's space there is a council of representatives that makes the decision. This is the case at the village level but not at the family level, since in the family the hierarchical structure devolves either from women or from men, with the elder and more honorable member of the family having authority to legislate Pashtunwali within his and her family.

(a) *Authority over Resources*

Women of the landowning and sedentary Pashtun tribes have more control over the management of family resources, while women who are in pastoral semi-nomadic tribes have less control. All women have control of their personal clothes and jewelry, the livestock they raise, the dairy products they produce, and the fruits and vegetables they grow. These they can use to barter for goods or services, or they are free to pass them on as inheritance or gifts. Women in sedentary tribes who have control over flour, oil, and rice can form contracts with other women by paying them for their services. Women who are family leaders and who have resources may use them to augment their authority by withholding their goods from those who choose not to obey.

Nomadic women are customarily left in full charge of managing all of their family's resources while the men are away herding for several months at a time.

(b) *Authority over Marriage*

Among Pashtuns, though it is said that the best marriages are those between first cousins, marriage into other families does happen at a high rate.[37] The women initiate the search for the sons or male relatives of their families. Often, after a recommendation has been made, the matriarch of the household will visit the woman's house. If everyone involved at this point is in agreement, the matter is broached first with the women of that household and then with the men. Though it is usually women who find a suitable wife and a suitable member to join their household network, it is not uncommon for the male leader of the family to make a decision on his own and for his own political gain. Neither the bride nor the groom is directly involved in much of the process, unless the groom is the autonomous head of his household or the woman is a widow. It is usually the elders and leaders of the household who make the decision, and often the matriarch.[38]

[35] Ibid., 120.
[36] Ibid., 121.
[37] Ibid., 126.
[38] Barth, *Political Leadership Among Swat Pathans*, 35.

For Pashtun women marriage presents an opportunity to expand their social networks and to strengthen their already existing women's networks and family resources. "The marriage rite in many ways can be thought of as ceremony of women joining other women and an enhancement of women's solidarity."[39] Women's solidarity is best achieved in a household unit only when the groom's mother and the matriarch have been directly involved with the choice of a bride.[40] If the bride enters the mother's house without the latter's consent, the solidarity of the house is often jeopardized. This in turn may cause the distribution of resources to become unbalanced or the household and its resources to be split, which in turn would affect the sustainability of the household.

The matriarch and the household can gain more prestige and access to resources if the bride is well chosen. Hence the matriarch's power within the household and in the village can be directly affected if her son or male household member marries a woman of higher social status.[41] She also gains access to more resources if the woman joining her family network has such skills as felt-making, weaving, or embroidery. She can further expand her networks with other families by bartering the bride's work for resources other families might have. Since there is an exchange of a great deal of money in the form of a bride price (*walwar*) for the bride's family and dower (*mahr*) for the bride, the use of resources must be carefully managed to ensure the family's sustainability.

Thus, the matriarch chooses or recommends a bride, who joins her familial solidarity group and shows "deference" to her decisions. In this way, the new bride also gives the matriarch (and her household) access to resources though the skills of production she possesses. Not only the matriarch but the whole household gain social prestige and honor through marriage to a higher social status. Political bonds are reinforced through marriages aiding the family, and through marriages both the matriarch and the patriarch may gain higher authority and standing in their community.[42]

(c) *Authority of Mediation and Arbitration*

Women leaders resolve conflicts between women of their household, between different households, between men and women, and even to a certain extent between men, as in the case of *nanawati*. The scope of a matriarch's authority to arbitrate is dependent on how large her social network is and how honorable her reputation. Thus, by expanding her social networks through marriage, she gains more legislative authority. Her honor is based on how well she follows the Pashtunwali code in her decisions of mediation and arbitration as well as in her own life. At the family level she might arbitrate such matters as conflicts in women's labor contracts, domestic disputes between men and women in the family, and the theft of personal belongings, especially jewelry, and she might make pacts between mothers of children who have harmed or injured each other. At the village level she might arbitrate or mediate in conflicts between women and men of different households.

THE IMPACT OF CHANGE IN SOCIAL ORGANIZATION

[39] Audrey Shalinsky, *Long Years of Exile* (New York: University Press of America, 1994), 73.
[40] Tapper, *Bartered Brides*, 126.
[41] Barth, *Political Leadership Among Swat Pathans*, 38.
[42] Ibid., 35.

Due to the 25-year war and drought, Afghan families have been displaced both internally and externally, in particular to Iran and Pakistan. Due to this displacement, village and family networks have been destroyed and nomadic pastoralists have become sedentary. Furthermore, before the war Pashtuns, especially the landowning tribes, had to cope with centralizing governments that demanded their allegiance and took away much of their autonomy to act in accordance with Pashtunwali.[43]

For Pashtuns living in urban and large landowning areas, such as Peshawar and its surrounding areas, the definition of what it means to follow the Pashtunwali code and thus be a Pashtun has changed.[44] Hospitality (*melmastia*) and gender boundaries (*purdah*) still exemplify the act of being honorable though their contexts have changed because of the more diverse setting. Hospitality is now more limited to neighborhoods and close social acquaintances. There are few, if any, "men's houses" in the cities. Women's physical space is more exclusive and smaller, although women's social networks in these urban settings are potentially larger.

As Pashtun refugees move into urban Pashtun areas they are also confronted with changing ideas of what it means to be Pashtun and follow Pashtunwali. Some have tried to uphold their form of Pashtunwali and to keep their autonomy, which in many cases causes conflict with police officials. Others have chosen to adapt to the urban Pashtun way of life.[45]

In the refugee camps a new social organization has evolved: relatives tend to live near each other and women socialize as before but on a smaller social scale. Also, with so many different tribes and different ethnic groups living together, Pashtunwali and the practice of customary law have generally lost some of their authority. This is primarily due to the reduction of social pressures needed to ensure strict enforcement in this more segregated but diverse community. As a result, it has become necessary to establish refugee camp security forces that operate like police, jailing people who break the norms and even evicting families from the camp for disobedience.

Likewise, a woman's legislative authority is weakened in the refugee setting. There are still strong matriarchs who maintain their family networks from Afghanistan to Pakistan and expand and strengthen their ties. Surprisingly, they still aid their families economically by using their extended network ties to find jobs for family member. But while they would have been village leaders in the past, under the circumstances they can now only lead by helping their families remain connected across the borders. In other words, there are two extremes of what can happen to Pashtun displacement to cities and refugee camps: the woman's space for practicing authority is checked or women and men share more mixed spaces.

CONCLUSION

First, the Pashtunwali legal code is mainly guided by a set of concepts defining honor that allow for a variety of practice in different Pashtun social and economic environments. Gender boundaries differ, for example, creating divergent kinds of social space and social orders where women have legal authority and control of limited resources. In other words, the segregation of genders does not necessarily result in the total disempowerment of women. In Pashtunwali,

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[43] Barth, "Pathan Identity and its Maintenance," 129.
[44] Ibid., 133.
[45] Shahid Punjani, *How Ethno-Religious Identity Influences the Living Conditions of Hazara and Pashtun Refugees in Peshawar, Pakistan* (Rosemarie Rogers Working Paper Series, 14) (Cambridge.: MIT Center for International Studies), 14.

women still have influence and access to specific power structures specifically within segregated, homo-socially ordered Pashtun communities.

Second, Pashtuns have difficulty practicing Pashtunwali where there is economic disparity and especially where they are unable to act autonomously. Thomas Barfield summarizes the current problem this poses for Pashtuns:

> Pashtunwali works best in a community of political equals where differences in wealth and power are not too great. It cannot easily survive where power differences are permanent or where an individual has no capacity to demonstrate autonomy. Refugee camps [are] therefore very difficult places to make Pashtunwali work even where the inhabitants were all Pashtun.[46]

In other words, Pashtuns either need to change Pashtunwali and the identity connotations that come along with practicing it traditionally; or it will not survive when there are many social and economic differences and when autonomy is severely restricted by state and centralized governments.

Finally, because autonomy and equality are key components to the practice of all Pashtunwali concepts, the survival of the "Pashtun way" is at stake when conflicts with other systems pose a threat to these two key requisites. Urbanization, internal displacement, and the refugee setting threaten economic and social equality, and a powerful centralized government threatens the autonomy. The threat to autonomy has often been linked to Afghan governmental policies on women's rights, de-veiling, and compulsory education. Furthermore, male Pashtun autonomy is abusive to women when women are given as compensation in blood feuds, when women are killed in honor killings, when a widow is forced to marry her brother-in-law (especially if she lacks a male heir), and when women are kept from educational and health resources. In the end, for Pashtunwali to survive, it must adapt its concepts and reduce Pashtun autonomy in order to comply more with a state government system, and it must find a means of balancing power, even in socially and economically disparate conditions.

[46] Personal communication, summer 2003.