

Contents

<i>List of Figures</i>	page vii
<i>List of Tables</i>	ix
<i>List of Contributors</i>	xi
<i>Acknowledgments</i>	xiii
Introduction: The Many Hands of the State <i>Kimberly J. Morgan and Ann Shola Orloff</i>	I
PART I LOCATING THE STATE: THE PROBLEM OF BOUNDARIES	
1 Reconciling Equal Treatment with Respect for Individuality: Associations in the Symbiotic State <i>Elisabeth Clemens</i>	35
2 Beyond the Hidden American State: Classification Struggles and the Politics of Recognition <i>Damon Mayrl and Sarah Quinn</i>	58
3 States as a Series of People Exchanges <i>Armando Lara-Millán</i>	81
4 State Metrology: The Rating of Sovereigns and the Judgment of Nations <i>Marion Fourcade</i>	103
PART II STRATIFICATION AND THE TRANSFORMATION OF STATES	
5 Gendered States Made and Remade: Gendered Labor Policies in the United States and Sweden, 1960–2010 <i>Ann Shola Orloff</i>	131

6	States and Gender Justice <i>Mala Htun and S. Laurel Weldon</i>	158
7	The Civil Rights State: How the American State Develops Itself <i>Desmond King and Robert C. Lieberman</i>	178
8	Disaggregating the Racial State: Activists, Diplomats, and the Partial Shift toward Racial Equality in Brazil <i>Tianna S. Paschel</i>	203
PART III DEVELOPING THE SINEWS OF POWER		
9	Democratic States of Unexception: Toward a New Genealogy of the American Political <i>William J. Novak, Stephen W. Sawyer, and James T. Sparrow</i>	229
10	Performing Order: An Examination of the Seemingly Impossible Task of Subjugating Large Numbers of People, Everywhere, All the Time <i>Christian Davenport</i>	258
11	Fiscal Forearms: Taxation as the Lifeblood of the Modern Liberal State <i>Ajay K. Mehrotra</i>	284
12	The State and the Revolution in War <i>Meyer Kestnbaum</i>	306
PART IV STATES AND EMPIRES: THE TRANSNATIONAL/GLOBAL TURN		
13	Imperial States and the Age of Discovery in Transition(s) to Modernity <i>Julia Adams and Steve Pincus</i>	333
14	Making Legibility Between Colony and Empire: Translation, Conflation, and the Making of the Muslim State <i>Iza Hussin</i>	349
15	The Octopus and the <i>Hekatonkheire</i> : On Many-Armed States and Tentacular Empires <i>George Steinmetz</i>	369
	<i>Index</i>	395

Figures

4.1a	Percentage of sovereigns rated by Moody's, 1918–1948	<i>page</i> 109
4.1b	Percentage of nation-states with sovereign ratings by agency, 1975–2013	110
4.2a	Sovereign ratings methodology, Standard and Poor's	112
4.2b	Sovereign ratings methodology, Moody's	112
6.1	Family law index, 2005	166
6.2	VAW index, 1995	170
6.3	VAW index 2005	171
10.1	Basic states versus challengers (SvC)	265
10.2	Zones of contestation in SvC	266
10.3	States versus challengers as grid	266
10.4	States versus challengers and the Hobbesian balance	268
10.5	States versus challengers and the Rashomon effect	269
10.6	States versus challengers and state control	272
15.1	Oxford University Colonial Services Club, June 1939	383
15.2	Oxford University Colonial Services Club, 1949 (close up)	383

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6

States and Gender Justice

Mala Htun and S. Laurel Weldon

Can the “many hands” of the state be a force for social justice and equal rights? Many activists and international organizations seem to think so. They lobby for public policy changes, call on states to endorse and enforce treaties, and hold state actors accountable for their normative commitments to equality and dignity. At the same time, there are many reasons to be skeptical about states. States are responsible for genocide and other massive violations of human rights, famine, and the large-scale destruction of the natural environment. Their operating procedures and institutions commit everyday violence against the complexity of human practices, cultures, and identities. The state, as Peter Evans notes, is both a source of the problem and part of the solution.¹ It is a cause of, and a remedy for, human suffering.

Our broader research project explores the conditions under which the state’s many hands can be harnessed as a force for gender justice. Specifically, we ask: what are the political, historical, and societal contexts associated with state actions to enhance equality and freedom? Which actors and conditions matter in shaping progressive policy? Democracy? Wealth? Secularization? Leftist parties? Active social movements? As Orloff puts it in Chapter 5, scholars have shifted their focus from simply mapping the stratifying and gender-differentiating state to charting the ways in which it can alter the gender (and racial) order. The central questions today, she notes, center on *how* and *through what mechanisms* states can be transformed.

The answer to this question is not one, to paraphrase Simone de Beauvoir, but many.² State transformation to promote the rights and dignity of women is far from a simple, linear, or unidimensional process.

As many scholars have pointed out, states can be both progressive and regressive. They can extend greater rights and freedoms to women and men with one hand while taking them away with the other.³ The “woman-friendly” welfare states of Northern Europe provide generous maternity and parental leave, and some, such as Norway and Sweden, pioneered the “daddy leaves” that encourage greater sharing of care-giving and income-earning between partners. But some of these countries were late to adopt the innovative policies to address violence against women (VAW) that were rapidly spreading across the world. Meanwhile, in the United States, Canada, and Australia – where governments were taking innovative action on VAW and pushing other countries to do the same – state action provided much weaker support for working mothers or even parents more generally. Support varies dramatically across Canadian provinces, Australian women lacked publicly paid parental leave until 2010, and most women in the United States still lack publicly funded parental leave.

Understanding state action vis-à-vis gender demands that we disaggregate and differentiate among the historically different ways that the state has acted to shape the gender order. State action differs across the different dimensions of gender, and follows a distinctive logic in each way that the state attempts to prop up or change this order. To analyze the diversity and contradictions of state action, we develop a typology of gender-related policy that is defined by examining the intersection of gender, class, and nation. This typology suggests fresh insights for scholars seeking to understand why states sometimes take action to combat marginalization, oppression, and exploitation, and at other times tolerate or endorse these relationships.

Like other chapters in this volume, we do not see the state as a single actor but as a constellation of institutions, functions, and purposes. Yet the state is not just *any* set of institutions, as Morgan and Orloff point out in their introductory chapter. The state’s access to legitimate coercive force, and administrative and normative power, endow it with a unique capacity and opportunity to craft alternative social relations. The state does not act in the same way with respect to all issues or all groups. Different aspects of the state developed along distinct historical pathways. Its structures simultaneously enable mobilization and access to some groups while denying it to others.⁴

Gender, for its part, is not just an attribute of individual identity or a type of performance, but a collection of institutions: a set of rules, norms, and practices, widely held and somewhat predictable – though

not contested – about what it means to be and act as a woman and a man.⁵ Gender is the mechanism through which “woman” and “man” and “masculine” and “feminine” come to be known as legitimate conceptual categories.⁶ Conceptualizing gender as an institutional phenomenon helps account for its structural and historical character: it cannot be reduced to the actions and preferences of individuals and derives much of its weight from its endurance over time. The state’s many hands, such as its civil and criminal laws, institutions of organized violence, and social welfare apparatus, help to uphold the institutions of gender (albeit in varying, and often contradictory ways), though other forces, such as the capitalist economy and religious and cultural systems, are also important.⁷

In previous work, we outlined a typology to facilitate analysis of state action to promote gender equality and gender justice.⁸ First, we distinguished between those gender issues that touch upon religious doctrine (“doctrinal” issues) and those that do not (“nondoctrinal” issues). Policy change on the former types of issues – including family law (also called personal status law), abortion, and contraception – is often shaped by the institutionalized relationship between the state, on the one hand, and religious groups, clans, and tribes, on the other. Second, we distinguished between issues that advance women’s rights as a status group and those that are inflected by class differences. We argued that feminist movements and international norms are frequently important to mobilize awareness and political will for change on “status” issues. “Class” issues touch upon the relative responsibilities of states, markets, and families for social provision, and include publicly funded maternity and parental leave and child care.⁹ Whereas feminist movements and international norms may also be important forces for change on “class issues,” the ways that left parties and labor mobilization have shaped state–market relations will also matter.

The typology distinguishes between contemporary dynamics of state action. It also differentiates historically distinct pathways through which state action has unfolded. In this chapter, we illustrate the power of analysis that disaggregates these dynamics and pathways by describing patterns of policy change on family law and violence against women. We show that global variation in family law is strongly associated with historical experiences and contemporary institutional arrangements forging certain types of state–religion relations. Yet religious factors are less important for policy development on VAW. Under the influence of autonomous feminist movements and international norms, many

countries – including non-Western and less developed ones – took early initiatives to combat VAW.

GENDER AND GENDER EQUALITY

Since institutions of gender disadvantage women in particular ways (and different women in distinct ways), state-sponsored interventions must tackle and address each of these ways in order to promote equality. Following Iris Marion Young, we see gender as comprised of distinct, irreducible subinstitutions, or what Young calls the “basic axes of gender structures”: the status hierarchy, the sexual division of labor, and normative heterosexuality.¹⁰ The *status hierarchy* refers to those institutionalized patterns of cultural value that privilege men and the masculine and devalue women and the feminine.¹¹ By virtue of their low status, women and the feminine are marginalized, rendered “other,” lesser beings less worthy of rights and dignity. The *sexual division of labor* refers to the tendency, across most societies, for women to shoulder a disproportionate burden of reproductive and care work. This pattern reinforces economic inequalities, including occupational sex segregation, gender wage gaps, and the scarcity of women in upper management.¹² *Normative heterosexuality* locates heterosexual coupling as the legitimate site of rights, reproduction, and romance. Under the regime of normative heterosexuality, deviations from gender dimorphism and heterosexuality are unintelligible,¹³ leading to lack of recognition of same-sex relationships and parenting and transgender expressions, among other phenomena.

Gender equality is one possible configuration of gender institutions, though it exists in no contemporary society.¹⁴ We define it as an ideal condition in which groups constituted by gender – such as men and women – have similar opportunities to participate in politics, the economy, and social activities; their roles and status are equally valued; none suffers from gender-based disadvantage or discrimination; and both are considered free and autonomous beings with dignity and rights.¹⁵ We define gender equality policies as those measures through which government can accelerate or obstruct progress toward this ideal. “Gender equality policy aims to dismantle hierarchies of power that privilege men and the masculine, a sexual division of labor that devalues women and the feminine, and the institutionalization of normative heterosexuality.”¹⁶ In the rest of this chapter, we analyze factors associated with progressive state action against the sexual division of labor and status hierarchy, addressing normative heterosexuality in later work.

DISAGGREGATING STATE ACTION

Policies to advance women's rights challenge prevailing patterns of social organization, but in potentially different ways. Progress toward gender justice may question not only the sexual division of labor and institutionalized patterns of cultural value privileging masculinity, but also the authority of religious institutions and the reach of markets. Each issue involves different actors, activates different cleavages, and motivates different types of political conflicts. The movement toward gender equality is varied and even contradictory. Since achieving equality involves modifications in many spheres of life, such as politics, the economy, the family, and civil society, we can better understand and categorize the diverse political conditions under which this occurs by disaggregating policies into different dimensions.

Doctrinal/Non-doctrinal

To promote equality, the state must first have legitimate jurisdiction and authority. Yet in some societies, the state's claim to regulate issues related to kinship and reproduction is recent, incomplete, and contested. Churches, clans, and tribes historically administered such rules, which include provisions on marriage, divorce, inheritance, and registries of birth and death. By regulating how, when, and with whom women and men bear children, kinship rules enabled religious and traditional leaders to control the boundaries of cultural communities.¹⁷ They continue to form a central component of most religious doctrines, as well as the codified traditions of cultural groups, and leaders of such groups are heavily invested in their content.

Other gender issues, by contrast, are not contemplated by religious doctrine and are more removed from the historical authority of ecclesiastical authorities. They concern zones of life rarely touched upon by scripture (such as government versus private provision of childcare) or more modern dilemmas that traditional religions and customs failed to anticipate (such as equality in the workplace). We call the former sets of issues, including family or personal status law and issues concerning reproduction and sexuality (such as abortion and contraception), "doctrinal" issues. We call the latter set of issues "nondoctrinal."

Doctrinal issues are often highly controversial because they are perceived to touch upon not just the position of women but also the public status of religion and cultural groups. Regimes wanting to curtail the

influence of religion and marginalize traditional cultures have used legislation on women and the family as an instrument to attack religion. By empowering women, they aimed to break down the influence of traditional authorities. By contrast, religious and cultural groups seeking to enhance their power, or emphasize and maintain their difference, often endorsed rules that subordinated women to the authority of their husbands and fathers.¹⁸ We can therefore expect that the broad context of state–religion relations will go a long way toward shaping the context for policymaking on doctrinal issues.

Status/Class

Institutionalized patterns of cultural value subordinate women as a status group.¹⁹ They deny women the recognition and dignity they merit as human beings by casting men as normative and women as inferior, “other,” and lacking in value. We call policies to remedy such harms “status policies.” They address those practices and values that render women vulnerable to violence, marginalization, exclusion, and other injustices that prevent them from participating as peers in political and social life.

Other types of injustice are more directly attributable to the reproductive work that women do by virtue of their position in the sexual division of labor, and are experienced differently by women of different class positions. Wealthier women can purchase at least some reproductive work²⁰ on the market by hiring domestic workers to serve as nannies, cooks, and cleaners, or by exiting the labor market to perform domestic duties. Poor and working-class women find this much more difficult, if not impossible. They are far more dependent on the state for help in alleviating their reproductive responsibilities. We call policies addressing class inequalities among women “class policies.” They include paid maternity or parental leave, government-funded child care, and funding for services enabling reproductive freedom, such as abortion and contraception.

Change in status policies involves altering the relationship between the state and particular kinds of bodies. At stake is the status such bodies hold in political life, the degree of autonomy they are afforded (or, conversely, the degree of regulation and invasion of privacy that is acceptable), and the degree to which their security is considered a priority. Changing the social, legal, and political status of a group often requires legal reforms, criminal justice innovations, provision of social services, and the like, but may not involve fundamentally restructuring state–market relations.

TABLE 6.1. *Typology of Policies to Promote Gender Justice/Equality*

		Do the policies challenge the doctrine of religious organizations or the codified tradition or sacred discourse of major cultural groups?	
		Doctrinal	Nondoctrinal
Does the policy advance women's rights as a status group or as a class?	Status	Family law Abortion legality Reproductive freedom	Violence against Women Gender parity/quotas Constitutional equality Workplace equality
	Class	Public funding for abortion and contraceptives	Maternity/parental/daddy leave Public funding for child care

Source: [Htun and Weldon 2010](#) (modified from its original version).

In contrast, change in class policies involves alteration of relations between the state and the market. The pattern of social provision and the degree and kind of market regulation is critical for understanding resistance and innovation in this area.

Table 6.1 depicts our typology of gender-related policy issues. Our classification of some issues as “doctrinal” and others as “nondoctrinal,” some as “class” and others as “status,” is not a scheme that is fixed for all countries and all points in time. Political struggles involve attempts by actors to reframe issues. What is more, issues that play out as “nondoctrinal” in some contexts – through a dynamic that fails to invoke or involve religion – may be heavily doctrinal in others. For example, though religious authorities failed to oppose measures to combat violence against women in North America, Latin America, and Europe, advocates of VAW policies in some countries in the Middle East and North Africa (MENA) have encountered religiously based opposition. Provisions against marital rape, for example, have provoked objections framed in religious discourse emphasizing a woman’s marital duties and a husband’s prerogatives.²¹

In the next sections of the chapter, we show how our disaggregated approach helps to account for distinctive patterns of policy development. We discuss examples from two quadrants of our typology: family law (doctrinal, status policy) and violence against women (nondoctrinal, status policy). As this brief discussion of two issue areas shows, the same factors are not associated with progress toward gender justice. As we have suggested earlier, each follows a distinct logic of change depending on the

historical context of state action and the broader set of issues and actors the policy invokes.

Institutionalized Religion and Family Law

Family law (also called personal status law) refers to rules regulating marriage, divorce, the rights and obligations of spouses, property, parenting, inheritance, and related issues. A crucial component of women's (and men's) citizenship, family law shapes private rights and relations as well as public autonomy and opportunities. It is a central way that the modern state upholds – or denies – women's rights. Family law was liberalized in most countries of the West during the latter half of the twentieth century, but remains discriminatory in much of the global South, even as international human rights norms and feminist movements have been able to make headway on other areas of women's rights.

Figure 6.1 depicts variation in family law in the seventy countries of our study (blank spaces indicate that the country was not included). Each country's score is based on an index we developed to measure the degree of sex equality in a range of areas.²² The higher the score, the more egalitarian; the lower the score, the more discriminatory. The vast majority of countries with high scores in 2005 were European (including both Western and postcommunist countries) and Latin American. Most of the lowest scoring countries in 1995 and 2005 were located in the MENA, parts of South and Southeast Asia, and Sub-Saharan Africa.

Our historical and statistical analysis of trends in family law suggests that the degree of sex equality today is strongly associated with institutionalized relations between the state and religion. In countries where political and ecclesiastical power are tightly linked, family law tends to discriminate against women. In contexts with a greater separation of secular and religious institutions, family law tends to be more egalitarian. Why? The reason is not that religions are inherently patriarchal; they are only historically so (as are most secular traditions). Religious doctrine is less likely to evolve and adapt to changing social practices in contexts where ecclesiastical doctrine is upheld by the state. Patriarchal interpretations of religion become frozen and linked to the public status of religion more generally.²³

It can be hard to reform family law in these contexts. Challenges to the religious interpretations endorsed by state law come to be seen as challenges to the entire institutional configuration binding state power and religious authority. Family law turns into a referendum on the role of religion in the polity and on the public and legitimizing character of

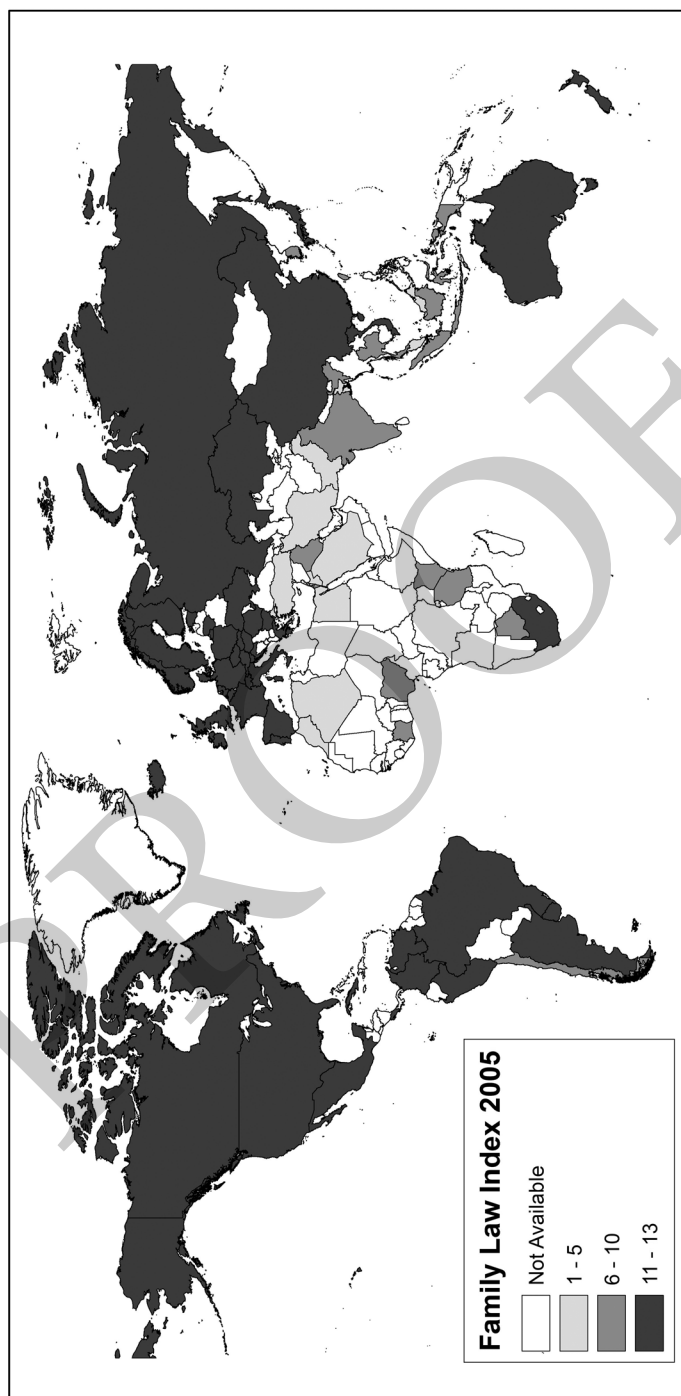


FIGURE 6.1. Family law index, 2005.

religious doctrines. To uphold patriarchal family law is to defend religion's public status; to favor egalitarian reforms is to challenge the relationship between church and state. As a result, critics of family law (and other elements of state power) are often branded as heretics. The greater the degree of political institutionalization of religion, the more likely it is that criticism will be suppressed and critics maligned, thwarting legal changes advancing equality.²⁴

Malaysia's experiences with family law reform illustrate this process. The linkage between religious power and family law was established during colonial rule. In treaties that progressively established British power over the Malaysian peninsula, the domain of indigenous Malay rulers was circumscribed to matters of "religion and custom."²⁵ With British assistance, Islamic law was codified, and bureaucracies to administer it were created. This pattern "placed local rulers at the center of Malay ethnic and Muslim religious identity during the colonial period and made legal codes and institutions a key instrument of their power. Islamic law came to occupy the center of Malay elite legitimacy, and a unified Malay ethnicity and Muslim religious identity became closely identified."²⁶

Islamicization measures adopted in the 1980s further bound Malay identity and political legitimacy to religious law.²⁷ For example, the government expanded and rationalized the Shariah court system and promulgated the Islamic Family Law (Federal Territories) Act of 1984. Though one of the more progressive Muslim personal laws in the world for imposing conditions on polygamy, the husband's right to unilateral divorce, and recognizing the wife's claim to some matrimonial assets, it discriminates against women in multiple ways. Women lack guardianship rights over children, are legally obliged to obey their husbands, and suffer unequal conditions of and consent to marriage and divorce and unequal inheritance rights.

A vocal feminist movement – headed by the group Sisters in Islam (SIS) – began to propose reforms to the discriminatory elements of family law in the 1990s and 2000s. Notably, the group framed its demands in religious discourse and justified its demands with reference to the rich history of *fiqh* (jurisprudence). Yet SIS was branded in the press and by state officials as "traitors" and accused of insulting Islam. The government's religious affairs department (JAKIM) even proposed to ban people they considered to lack adequate knowledge of Islam from speaking in public on Muslim issues.²⁸

At the core of debates over women's rights were competing interpretations of Muslim law and who is authorized to supply them. In classical

Islamic traditions, legal opinions (*fiqh*) are inherently flexible and pluralistic, and the product of human agency. *Fiqh* consists of a diverse jurisprudence applicable to changing social relations.²⁹ Yet the Malaysian state has promoted an alternative view stressing that Muslim law is fixed, uniform, divine in origin, and that only the *ulama* – or Muslim clergy – has the authority to speak on religious matters. The state's view has shaped public opinion, leading to pervasive misunderstandings of the nature of Islamic law and legal theory. As a result, it is easy to convince ordinary people that groups who question the state's laws are undermining Islam.³⁰

A similar dynamic holds in other countries where family laws justified in the name of religion continue to discriminate against women. The Sudanese Family Law, for example, codified by the Islamist authoritarian regime in 1991, discriminates against women in multiple ways. A coalition of civic groups and some religious leaders has endorsed reforms to end child marriage, grant women rights to divorce, and eradicate polygamy. As in Malaysia, these advocates frame their positions in religious discourse. Yet reformers are regularly branded as agents of the West and against Islam. The women's rights convention CEDAW has become a virtual "swear word" in public debate.³¹

Though religion – particularly when its provisions are codified and the authority of its leaders upheld by state power – is a crucial factor shaping state action on family law, religion is less important for other areas of gender and women's rights. As we show in the following, the contours of state policy on other issues is less associated with a religion–state dynamic, but turns on the mobilization of autonomous feminist movements calling attention to women's subordinate status and violations of their dignity.

AUTONOMOUS FEMINIST MOVEMENTS AND VAW

Sexual assault, intimate violence against women and girls, stalking, honor killings, sexual harassment, street harassment, and other forms of violence against women are significant barriers to their enjoyment of full rights as democratic citizens. In many contexts, VAW has prevented women from participating in public discussions, voting, and running for public office. Women modify their daily behavior to prevent violence and to feel secure: they curtail their public activities; rely on male escorts to achieve mobility, even in the most advanced democracies; and still find themselves unprotected in the most intimate areas of sexuality and the family.³²

VAW continues to be pervasive. In the United States, for example, one in six women is sexually assaulted and one in five experiences domestic

violence during the course of her lifetime, while in Europe, women are at far greater risk from violence against women than terrorism or cancer.³³ Surveys on U.S. college campuses and in the military reveal that sexual assault is widespread.³⁴ Yet most violations of women's human rights still go unreported to police or other authorities. VAW is difficult to articulate, especially for victims, as doing so often produces a sense of shame or guilt. The pervasiveness of women's subordination in many societies implies that VAW is often hidden from view, something many citizens do not even acknowledge.

In response to domestic and transnational activism, governments from some 180 countries endorsed, at the Fourth World Conference on Women held in Beijing in 1995, a set of official measures to protect women victims of violence and prevent future occurrences. These measures – such as shelters, counseling, public awareness campaigns, and legal reform – cut across several policy sectors including the administration of justice, public education, and social service provision. As this suggests, combating the scourge of violence against women demands a comprehensive, integrated governmental approach. We measured the extent of state action by developing an index covering legal changes, services, public education, and administrative reform.³⁵

State action to combat VAW has been uneven across countries and over time (see Figures 6.2 and 6.3, which depict global variation in our VAW Index for 1995 and 2005). Canada, Australia, and the United States were the earliest countries to act and also enacted the most comprehensive policies on VAW. Latin American countries were also relatively early adopters. Meanwhile, several otherwise progressive states of Europe lagged behind, even in 1995 as the global community agreed to the Declaration on the Elimination of VAW. By 2005, many more states had adopted comprehensive policies to adopt VAW, but not all. Though communist countries were some of the earliest states in the world to reduce religious influence over family law and promote sex equality, for example, they were laggards when it came to VAW.

Our research has examined these intriguing patterns of state policy change to address VAW, patterns that confound traditional ideas about the drivers of policies to advance women's rights. Countries that were the first to take action were not distinguished by having a particularly large proportion of women in the legislature, nor were they countries where left parties were particularly strong or with the most advanced welfare states. Rather, the countries that were early movers and developed the most comprehensive action on VAW were those with strong, autonomous

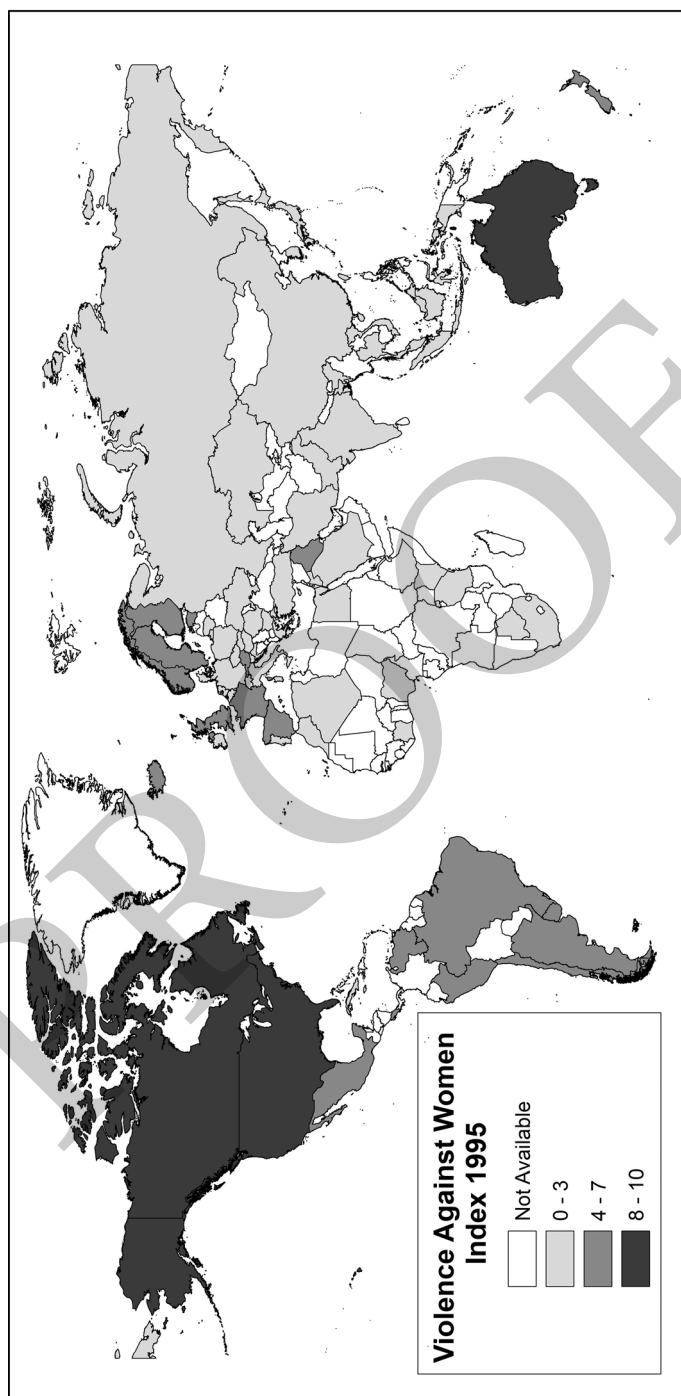


FIGURE 6.2. VAW index, 1995.

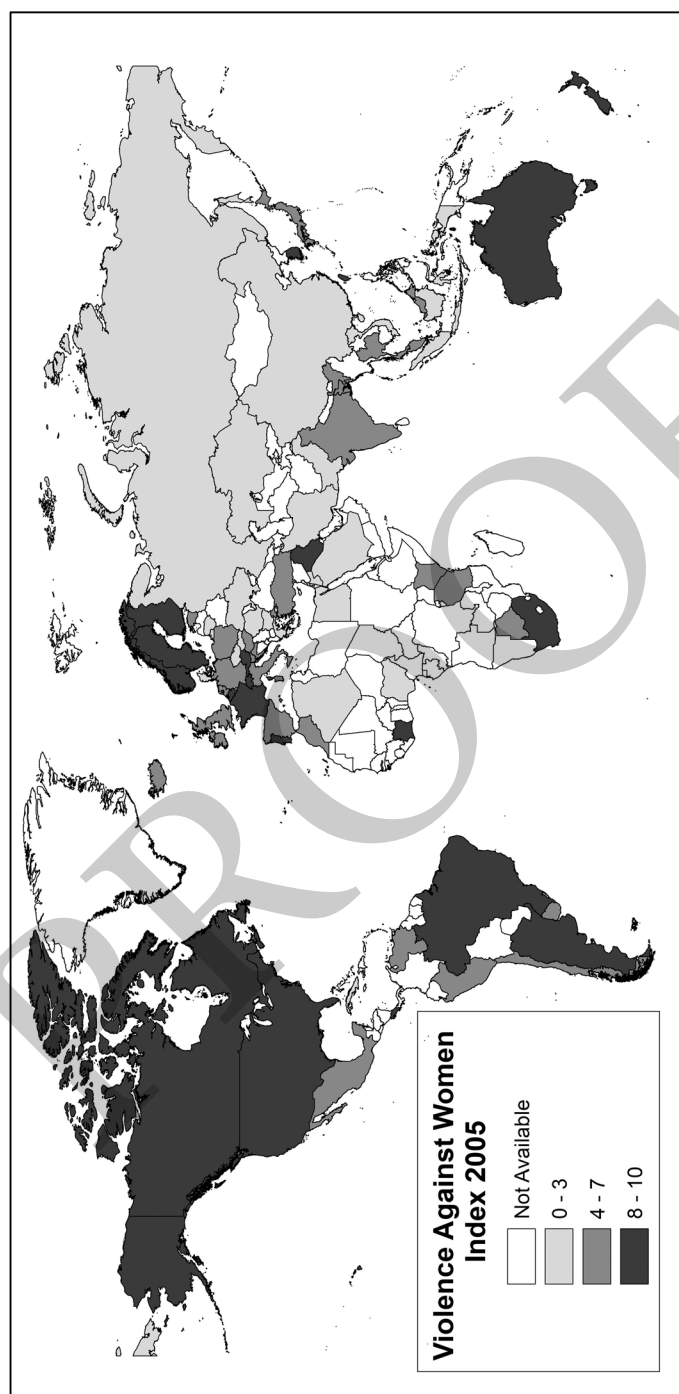


FIGURE 6.3. VAW index, 2005.

feminist movements. When these movements were able to draw on international norms – or, even more powerfully, regional norms and activist networks – state action on VAW accelerated and expanded. The roots of progressive action on women's rights, in this nondoctrinal, status-based policy area, lie in civil society, where social movements and transnational norms drive change.³⁶

In countries with less robust civil societies, state action on VAW has been slower to develop. Communist countries historically reduced the influence of religion and promoted sex equality in family law; they also expanded welfare provisions to promote women's employment. In the twenty-first century, countries with historical experiences of communism were among the most progressive in the areas of sex equality in family law and publicly funded maternity and parental leave.³⁷ Yet the postcommunist zone is a laggard when it comes to VAW, as Figures 6.2 and 6.3 show, since feminist movements autonomous from the state, political parties, and civic organizations such as labor unions have been slower to develop. Historical pathways that pave the way for action on some gender equality issues create obstacles for progressive change on others.

CONCLUSION

These results highlight the importance of treating both states and gender justice as multidimensional. Given the broad scope of challenges that equality poses, the factors that may help advance women's rights in some areas may very well be unimportant, or even inhibitive, in others. We can better understand the diverse ways the state configures the gender order by disaggregating state actions, though we do not disaggregate into traditional categories such as branches of government, functional specializations, and levels of federalism. Rather, what is important are the distinct ways that the state has historically upheld and enforced norms of gender, and the broader array of actors and issues that have been complicit in – or worked to contest – these diverse trajectories.

Promoting the changes that gender equality involves requires engaging with the particular dynamics of each trajectory of state action. In the case of family law, sex discrimination was closely tied to the development of the historical, institutionalized relations between the state and organized religion. Countries in which political authorities constructed and propped up religious power tended to have more discriminatory family laws into the late twentieth century, even as international norms endorsed equality and reformist coalitions mobilized for change. By virtue of its linkage to

the public status of religion more generally, family law proved difficult to change without calling into question the broader contours of state–religion relations and provoking opposition of actors invested in particular arrangements of ecclesiastical power.

The trajectory of state action on VAW adhered to a different logic. Women’s organizing as women publicly contested the status hierarchy of female subordination that rendered violence invisible and characterized it as an issue unworthy of concerted action by states and the international community. The power of institutionalized religion was less relevant than the autonomous mobilization of feminist movements, their linkage to international norms and networks, and the ability of local groups to bring global agreements home to matter in local contexts.

We began this [paper](#) by posing the question of whether and how the state can be induced to be part of the solution to entrenched problems of discrimination, marginalization, subordination, and deprivation. Our work suggests that enlisting the state’s assistance in a project of social change requires attention to the different historical pathways and multiple mechanisms through which it has helped uphold the gender order(s). The state has been a problem for women’s rights, but it has not been a problem in only one way. (Nor has each problem been suffered similarly by different groups of women.) The state’s relationship with organized religion, the respective roles of state and market in social provision, and the strength and autonomy of civil society each pose different constraints and opportunities for advancement on women’s rights.

Notes

- 1 Peter Evans, “The State as Problem and Solution: Predation, Embedded Autonomy and Structural Change,” in *The Politics of Economic Adjustment: International Constraints, Distributive Conflicts, and the State*, ed. Stephan Haggard and Robert Kaufman (Princeton, NJ: Princeton University Press, 1992).
- 2 Simone De Beauvoir, *Le Deuxième Sexe* (New York: Random House, 1953).
- 3 See, e.g., Julia S. O’Connor et al., *States, Markets, Families: Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the United States* (Cambridge: Cambridge University Press, 1999).
- 4 Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992).
- 5 Cf. Ridgeway, who refers to gender as an “institutionalized system of social practices for constituting males and females as different in socially significant ways and organizing inequality in terms of those differences.” Cecilia Ridgeway, “Gender, Status, and Leadership,” *Journal of Social Issues* 57, no. 4 (2001), 637. Of course, there are a wide variety of approaches to gender, which we do not review here for reasons of space. For an overview and further

- discussion, see Mary Hawkesworth, "Sex, Gender and Sexuality: From Naturalized Presumption to Analytic Categories," in *Oxford Handbook of Gender and Politics*, eds. Waylen et al. (Oxford: Oxford University Press, 2013); or the Critical Perspectives on Gender in *Politics and Gender* 1, no. 1 (2005).
- 6 Judith Butler, *Undoing Gender* (New York: Routledge, 2004).
- 7 Mala Htun and S. Laurel Weldon, "When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy," *Perspectives on Politics* 8, no. 1 (2010): 207–16.; Mala Htun, "What It Means to Study Gender and the State," *Politics & Gender* 1, no. 1 (2005): 157–66.
- 8 Htun and Weldon, "When Do Governments Promote Women's Rights?"
- 9 Ann Shola Orloff, "Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States," *American Sociological Review* 58, no. 3 (1993): 303–28.
- 10 Iris M. Young, "Lived Body vs. Gender: Reflections on Social Structure and Subjectivity," *Ratio* 15, no. 4 (2002): 422.
- 11 Nancy Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," in *Redistribution or Recognition?: A Political-Philosophical Exchange*, ed. Nancy Fraser and Axel Honneth (New York: Verso, 2003); "Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice," *Studies in Social Justice* 1, no. 1 (2007): 23–35.
- 12 See, e.g., Victor Fuchs, *Women's Quest for Economic Equality* (Cambridge, MA: Harvard University Press, 1990); Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic books, 2008).
- 13 Butler, *Undoing Gender*.
- 14 Htun and Weldon, "When Do Governments Promote Women's Rights?" 208.
- 15 Feminist scholarship offers a wide variety of approaches to understanding gender equality. For a few examples, see the special forum, entitled "Inequality Regimes: Refracting Gender, Race and Class," *Social Politics*, 7, no. 2 (2000), especially the article by Joan Acker; Diane Sainsbury, *Gender, Equality and Welfare States* (New York: Cambridge University Press, 1996); Emanuela Lombardo, Petra Meier, and Mieke Verloo, eds., *The Discursive Politics of Gender Equality: Stretching, Bending and Policy-Making* (New York: Routledge, 2013).
- 16 Htun and Weldon, "When Do Governments Promote Women's Rights?," 208.
- 17 Cf. Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, (New York: Cambridge University Press, 2001), and Ayelet Shachar, "Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law," *Theoretical Inquiries in Law* 9, no. 2 (2008): 573–607; Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ: Princeton University Press, 2002).
- 18 Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley: University of California Press, 2001); Mala Htun, *Sex and the State: Abortion, Divorce, and the Family Under Latin American Dictatorships and Democracies* (New York:

- Cambridge University Press, 2003); Gregory J. Massell, "Law as an Instrument of Revolutionary Change in a Traditional Milieu: The Case of Soviet Central Asia," *Law and Society Review* 2, no. 2 (1968): 179–228; Kandiyoti, Deniz, *Women, Islam, and the State* (Philadelphia, PA: Temple University Press, 1991); Maxine Molyneux, "Family Reform in Socialist States: The Hidden Agenda," *Feminist Review* 21 (1985): 47–64.
- 19 Fraser, "Feminist Politics in the Age of Recognition."
- 20 We refer not to gestational carriers and egg donation but to the entire range of work needed to reproduce and maintain human life – child care, food production, cleaning, care for the sick and elderly, keeping track of schedules, transportation, household expenses, and the like.
- 21 Liv Tønnessen, "When Rape Becomes Politics: Negotiating Islamic Law Reform in Sudan," *Women's Studies International Forum*, 44 (2014): 145–53. In addition, religious power was historically important in the development of welfare policies (which we classify here as class-based and nondoctrinal issues) in several European countries. See Kimberly J. Morgan, *Working Mothers and the Welfare State: Religion and the Politics of Work-Family Policies in Western Europe and the United States* (Palo Alto, CA: Stanford University Press, 2006).
- 22 For more information, see Mala Htun and S. Laurel Weldon, "State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law," *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 145–65; on the expansion of individual rights vis-à-vis family (for children and women), see also Goran Therborn, *Between Sex and Power: Family in the World 1900–2000* (New York: Routledge, 2004).
- 23 Mala Htun and S. Laurel Weldon, "Religion, the State, Women's Rights, and Family Law," *Politics & Gender* 11, no. 3 (2015): 451–77.
- 24 Ibid.
- 25 Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State," *Law & Social Inquiry* 32, no. 3 (2007): 760.
- 26 Ibid., 765.
- 27 Seyyed Vali Reza Nasr, *Islamic Leviathan: Islam and the Making of State Power* (Oxford: Oxford University Press, 2001): 121–29.
- 28 Jaclyn Ling-Chien Neo, "'Anti-God, Anti-Islam, and Anti-Quran': Expanding the Range of Participants and Parameters in Discourse over Women's Rights and Islam in Malaysia," *Pacific Basin Law Journal* 21, no. 1 (2003): 70. Ironically, few of the officials involved in codifying Malaysia's Shariah court procedures had formal training in Islamic jurisprudence. Moustafa notes that "the Islamization of law and legal institutions in Malaysia was ... more the project of state officials who lacked any formal training or in-depth knowledge of Islamic legal theory rather than the traditional '*ulama*.'" Tamir Moustafa, "Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia," *Law & Social Inquiry* 38, no. 1 (2013): 168–88. See also Kikue Hamayotsu, "Politics of Syariah Reform: the Making of the State Religio-Legal Apparatus," in *Malaysia: Islam, Society and Politics*, eds. Virginia Hooker and Norani Othman (Singapore: Institute of Southeast Asia Studies, 2003): 55–79; Maznah Mohamad, "Making Majority, Undoing Family: Law,

- Religion and the Islamization of the State in Malaysia,” *Economy and Society* 39, no. 3 (2010): 360–84.
- 29 Asifa Quraishi, “The Separation of Powers in the Tradition of Islamic Statehood,” in *Constitutionalism in Islamic Countries*, ed. Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) and Asifa Quraishi, “Who Says Shari’a Demands the Stoning of Women—A Description of Islamic Law and Constitutionalism,” *Berkeley Journal of Middle Eastern & Islamic Law* 1 (2008): 163.
 - 30 Tamir Moustafa, “Islamic Law”; Chandra Muzaffar, “Tolerance in the Malaysian Political Scene,” in *Islam & Tolerance*, ed. Syed Othman Alhabshi and Nik Mustapha Nik Hassan (Kuala Lumpur: Institute of Islamic Understanding Malaysia (IKIM), 1994); Zainah Anwar and Jana S. Rumming, “Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform,” *Washington & Lee Law Review* 64, no. 4 (2007): 1529.
 - 31 Samia al-Nagar and Liv Tønnessen, “Family Law Reform in Post-Conflict Sudan: Competing Claims for Gender Justice between Sharia and Women’s Human Rights,” Paper Presented at conference on Women’s Rights and Democratization in Asia and Africa, Bergen, November 2014.
 - 32 Lori L. Heise, Jacqueline Pitanguy, and Adrienne Germain, “Violence Against Women: The Hidden Health Burden,” *World Bank Discussion Papers* 255 (New York: World Bank, 1994); S. Laurel Weldon, *Protest, Policy, and the Problem of Violence Against Women: A Cross-National Comparison* (Pittsburgh, PA: University of Pittsburgh Press, 2002); Mona Lena Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (New York: Oxford University Press, 2009).
 - 33 R. Amy Elman, *Sexual Equality in an Integrated Europe: Virtual Equality* (New York: Palgrave Macmillan, 2007): 85; U.S. Department of Justice Violence Against Women Office, *Biennial Report to Congress 2010*. Department of Justice (2010), www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf; U.S. Department of Justice Violence Against Women Office, *2011 Roundtable on Sexual Violence*. Department of Justice (2011), www.ovw.usdoj.gov/sexual-violence-report-march.pdf.
 - 34 Carol Bohmer and Andrea Parrot, *Sexual Assault on Campus: The Problem and the Solution* (New York: Lexington Books, 1993); Heather M. Karjane, Bonnie Fisher, and Francis T. Cullen, *Sexual Assault on Campus: What Colleges and Universities are Doing About It* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2005). Recent events at the University of Virginia and Columbia University have brought this issue to the forefront of public discussion, and the *New York Times* recently reported on a survey of undergraduates at the Massachusetts Institute of Technology, showing that 17 percent of respondents had been victims of sexual assault. *New York Times*, October 27, 2014. A U.S. Department of Defense survey in 2014 found that 22 percent of active duty women and 7 percent of men reported being victims of sexual assault in the previous year. Available at www.defense.gov/News/News-Transcripts/Transcript-View/Article/607047; David Cantor, Bonnie Fisher, Susan Chibnall, Reanne

Townsend, Hyunshik Lee, Carol Bruce, and Gail Thomas, *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* (Washington, DC: The Association of American Universities, 2015).

- 35 See Weldon, "Protest, Policy and the Problem," and S. Laurel Weldon, "Women's Movements, Identity Politics, and Policy Impacts: A Study of Policies on Violence Against Women in the 50 United States," *Political Research Quarterly* 59, no. 1 (2006): 111–22; Mala Htun and S. Laurel Weldon, "The Civic Origins of Progressive Policy Change," *American Political Science Review* 106, no. 3 (August 2012): 548–69.
- 36 For more detail, see Htun and Weldon, "Civic Origins," and S. Laurel Weldon, "Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policymaking," *Journal of Politics* 64, no. 4 (2002): 1153–74.
- 37 The purpose of communist action on women's rights was less to promote their individual rights or autonomy than to facilitate national development goals, such as full employment, secularization, and fertility control. See, e.g., Maxine Molyneux, "Family Reform."