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Recommended Citation

Wexler, Lesley () "Beyond Literacy: A Response to Tom Ginsburg's an Economic Interpretation of the Pashtunwali," *University of Chicago Legal Forum*: Vol. 2011: Iss. 1, Article 7.

Available at: <http://chicagounbound.uchicago.edu/uclf/vol2011/iss1/7>

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Beyond Literacy: A Response to Tom Ginsburg's *An Economic Interpretation of the Pashtunwali*

Lesley Wexler†

INTRODUCTION

After mapping out an insightful political economy of the Pashtunwali, Tom Ginsburg asks if the West can meaningfully engage the Pashtun through this non-state-based legal code. He encourages such engagement as a tool to both reduce violence within and across Pashtun tribes and to improve the treatment of women within the Pashtun society. In so doing, Ginsburg poses a very important question about the West's strategy for approaching Pashtun governance. While some scholars suggest the goal of legalizing the Afghan state is a compelling reason for substantial "continued Western presence"¹ and Western policy makers have made the expansion of the state into Pashtun areas "a pillar of the international strategy in Afghanistan,"² the Pashtunwali, rather than the state, continues to govern millions of Pashtun in Afghanistan and Pakistan.³ In contrast to these aforementioned scholars and policy makers, Ginsburg calls for

† Professor of Law, Thomas M. Mengler Faculty Scholar, University of Illinois College of Law. Thanks to Christina Thacker and Clare Willis for excellent research assistance. Many thanks also to Tom Ginsburg, Arden Rowell, Dan Shalmon, Nina Tarr, Tom Ulen, and Cynthia Williams for comments and suggestions.

¹ Tom Ginsburg, *An Economic Interpretation of the Pashtunwali*, 2011 U Chi Legal F 89, 90 (noting that some believe that the West needs an active presence to help expand the legal control of the Afghan state into Pashtun areas).

² Thomas H. Johnson and M. Chris Mason, *No Sign until the Burst of Fire: Understanding the Pakistan-Afghanistan Frontier*, 32 Intl Sec 41, 54 (2008), citing *Afghanistan on the Brink: Where Do We Go from Here?*, Hearing before the House Committee on Foreign Affairs, 110th Cong, 1st Sess (2007) (testimony of Lt Gen David W. Barno, US Army (ret)), online at <http://foreignaffairs.house.gov/110/bar021507.htm> (visited Sept 9, 2011); Ann Scott Tyson, *General: No U.S. Troop Cuts in Afghanistan This Year*, Seattle Times (Sept 22, 2006), online at http://seattletimes.nwsources.com/html/nationworld/2003270419_troops22.html (visited Sept 9, 2011).

³ See Ginsburg, 2011 U Chi Legal F at 89–90 (cited in note 1). This is in contrast to other sources such as the state law of Afghanistan or Pakistan, or sharia.

the retention and reinforcement of the *jirga*⁴ as a local institution to resolve disputes and issue decisions in accordance with the Pashtunwali.⁵ History seems to be on Ginsburg's side as to the benefits of accepting existing legal structures in Pashtun areas,⁶ but I want to focus on the difficulties and unintended consequences of Ginsburg's complementary suggestion that the West promote literacy and education in this area. He contends that literacy and, in particular, its role in creating written *jirga* opinions, may serve as a mechanism to facilitate clearer substantive legal norms within the Pashtunwali and thus reduce the potential for future disputes. He also tentatively suggests that literacy programs might improve Pashtun women's quality of life in a variety of ways. First, it might reduce the occurrence of disagreements in which women may be bartered as a conflict-resolution mechanism. Second, literacy may hasten general economic prosperity, which often brings accompanying benefits for women and can provide them the means to improve their position within the community. Finally, literacy may allow the introduction of new, more female-friendly ideas into the general culture and, more specifically, into the Pashtunwali itself.

This response, however, introduces some significant limitations that Ginsburg's literacy proposal faces in achieving its dual aims of reducing violence and improving the treatment of women. In brief, as to be discussed in more detail in Part I, without a simultaneous source of and motivation for norm change, literacy may not ameliorate the root causes of disputes. More worryingly, attempts to promote literacy may ratchet up violence. One possibility is that the Pashtun will use written precedents to harmonize the punishments within the legal system, and in so doing embrace the harshest penalties for norm violations. In addition, such efforts may draw the ire of the Pashtun, the Taliban,

⁴ See *id.* at 97 (cited in note 1) (defining the *jirga* as "[a] central institution in village life . . . an institution common to central Asian tribes that consists of a public meeting of the notables of the community. . . . [*Jirgas* are more common at local levels where they decide disputes. *Jirgas* are formed by local notables, who are neither elected nor appointed but are seen as having the wisdom and knowledge necessary to resolve disputes.").

⁵ See generally *id.* at 97–98 (cited in note 1).

⁶ Past British efforts to work with the Baluchi *jirgas* avoided the ire of local insurgencies during the colonial period while attempts by the Pakistani government to install top-down governance structures were met with much resistance and bloodshed. Johnson and Mason, 32 *Intl Sec* at 49 (cited in note 2). See also John H. Cathell, *Human Geography in the Afghanistan-Pakistan Region: Undermining the Taliban Using Traditional Pashtun Social Structures*, Report for Joint Military Operations Dept., Naval War College 1, 19–21 (May 2009) (recommending respect for Pashtunwali and engagement with *jirga* process).

al-Qaeda, and the Pakistani government if they perceive such Western-led literacy programs as threats to their control. Relatedly, literacy programs can also stoke violence when they engender rising expectations for their beneficiaries without any concomitant economic improvements to satisfy them. Lastly, literacy alone seems unlikely to enhance the status or treatment of women because nothing about literacy inherently undermines the structure of the honor culture that promotes women's subjugation and places them at great risk of violence. That being said, as I will explain in Part II, history suggests that the coupling of literacy with a bottom-up push for norm change may transcend these limitations and make progress toward the goals of reducing violence and changing conditions for Pashtun women.

I. LIMITATIONS

Literacy and, in particular, the movement toward a written culture of dispute resolution may not reduce violence among the Pashtun. Before I explain why, it is important to first understand the various reasons that conflict emerges in communities currently governed by the Pashtunwali (which is generally administered and enforced by the mostly illiterate community *jirgas*). Ginsburg himself identifies multiple pathways for conflict escalation. One involves the coordination of Pashtun behavior in Hawk-Dove situations. When such conditions arise, people are uncertain as to whether their own aggressive behavior will elicit an undesirable aggressive response or a desirable passive response.⁷ Miscalculation can exacerbate the underlying dispute. Other pathways involve the ambiguity in either the content of the underlying behavioral norms or, relatedly, disagreements about the necessary conditions to trigger the underlying norm violations. The entrenchment of the *jirga*, without literacy, seems sufficient to address much of the potential for Hawk-Dove situations to escalate. Even without written precedents, oral cultures can convey the content of norm violations; the likelihood that violators will be punished; and the range of possible sanctions. Of

⁷ Ginsburg, 2011 U Chi Legal F at 94 (cited in note 1) (describing the Hawk-Dove game as one in which "Hawk represents the aggressive strategy, while Dove represents the passive strategy. Each player would prefer to play Hawk to the other's Dove. If both players play the aggressive Hawk strategy, however, a fight ensues. On the other hand, if both play the passive Dove strategy, neither gets the property, which is suboptimal from a social perspective. Each player's preference ordering is such that he wishes to coordinate with the other party, so as to avoid a costly fight, but the parties disagree over *how* to coordinate their behavior.").

course, as Ginsburg notes, the *jirgas* cannot prevent the emergence of “strong players [that] will not be sure whom to prey on and may make a mistake,” thus triggering a dispute.⁸ But before making a decision about their behavior, even strong players should currently expect that the community will support those who comply with existing norms and will fail to aid those who do not comply with either the Pashtunwali’s norms or the *jirga*’s ordered resolution to such a violation. This expectation increases the strong player’s incentive to take care in initiating a conflict. Moreover, it is not clear how literacy would decrease the “weak[’s] . . . incentive to signal that [he] will fight,” which arises in a Hawk-Dove situation in which the weak player hopes such a signal will encourage the stronger player to play the dove.

It bears mentioning that empirical evidence suggests the existing *jirgas* currently do pretty well at maintaining order once a dispute has arisen—at least one estimate suggests they resolve about 95 percent of the cases that come before them.⁹ Thus, Ginsburg’s point that a stable *jirga* using the Pashtunwali may do better at resolving these situations than either the promotion of a more liberal democratic judiciary that the Pashtun are loath to participate in or the use of *mullahs* and sharia is well taken. My point is merely to suggest that his literacy reforms seem unlikely to substantially dampen the potential for these specific situations to arise or escalate beyond the status quo.

Literacy may, however, help to resolve ambiguities in underlying norms and clarify the specific sanctions corresponding to different violations. Yet the burden is on Ginsburg to demonstrate that norm ambiguity is what generally drives violence in Pashtun communities, as opposed to either calculated risk to gain status or miscalculations about the likelihood of norm-violation detection. The ambiguity account is certainly plausible, but without significant data, we might worry that unifying and hardening underlying substantive norms could create new problems without addressing the root causes of violence and subjugation of women. Moreover, while Ginsburg seems concerned that “[t]he actual substantive norms that are applied may differ from place to place,”¹⁰ without simultaneous norm change, literacy runs the risk of codifying and entrenching the least progressive practices. Take, for instance, the pressure for reduced judicial

⁸ Id at 97 (cited in note 1).

⁹ See *Honour among Them*, *The Economist* (Dec 19, 2006) online at http://www.economist.com/node/8345531?story_id=8345531 (visited Sept 9, 2011).

¹⁰ Ginsburg, 2011 U Chi Legal F at 100 (cited in note 1).

discretion and enhanced harmonization in domestic federal criminal sentencing. The resulting codification, the United States Sentencing Guidelines, has provoked a continual ratcheting up of sentences.¹¹ Such unification and lack of judicial discretion would have been difficult to achieve in the absence of written guidelines. In the abstract, uniformity could have also created a lever in favor of generally reducing, rather than increasing, sentences. Yet within our political culture, politicians feel they can gain only by creating new crimes and raising sentences; countervailing political pressure has continually failed to effectively challenge the direction of criminal sentences in the United States.¹² One might worry that *jirgas* searching through written precedents about the content of norms relating to substantive violations of the Pashtunwali or about appropriate private sanctions for such violations will find themselves in a similar position and thus be most likely to adopt the harshest interpretations and support the most punitive outcomes. Such an outcome is not inevitable, but mere access to written opinions provides no reason for *jirgas* to choose less violent or more female-friendly options. That impetus must come from some other mechanism or norm. Otherwise, this new access to opinions might lead to a harmonization across *jirgas* that provides clarity and thus prevents ambiguity-driven conflicts and promotes quicker resolution, but the harmonization might also simultaneously expand the content and ratchet up the consequences of honor violations.

Second, the promotion of literacy could itself create tension and violence. At first blush, literacy appears to be an unadulterated good that provides access to knowledge and new ideas¹³ and

¹¹ See, for example, Lynn Adelman and Jon Deitrich, *Federal Sentencing Survey: Rita, District Court Discretion, and Fairness in Federal Sentencing*, 85 *Denver U L Rev* 51, 54 (2007) (describing the United States Sentencing Commission's process of creating guidelines as a "one-way ratchet" that increased sentences); Nancy J. King, *Judicial Oversight of Negotiated Sentences in a World of Bargained Punishment*, 58 *Stan L Rev* 293, 301 (2005) (describing congressional adjustments to federal sentencing rules as a "one-way ratchet").

¹² See Erik Luna, *The Overcriminalization Phenomenon*, 54 *Am U L Rev* 703, 719 (2005). See also Alice Ristroph, *Desert, Democracy, and Sentencing Reform*, 96 *J Crim L & Criminol* 1293, 1349 (2006); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 *Mich L Rev* 505, 507 (2001) (arguing that "all change in criminal law seems to push in the same direction—toward more liability"). But see Darryl K. Brown, *Democracy and Decriminalization*, 86 *Tex L Rev* 223, 225 (2007) (arguing that "[t]he ratchet of crime legislation turns both ways" and describing ongoing legislative efforts to decriminalize behavior).

¹³ "[O]ne of the most remarkable features of America" is the "universal and sincere faith that they profess here in the efficaciousness of education." A. Bartlett Giamatti, *A Free and Ordered Space: The Real World of the University* 33 (W. W. Norton & Company 1988), quoting G. W. Pierson, *Tocqueville in America* 294 (Doubleday 1959).

simultaneously reduces social isolation as students learn about the outside world. But if students learn to read from primers promoting aggression, they are likely to embrace violence-based norms.¹⁴ Past experience provides an important warning, as both Afghanistan and Pakistan have a long history of using primary school textbooks that glorified violence and martyrdom.¹⁵ Similarly, many of the madrassas across the Muslim world also demonstrate education's potential for radicalizing populations.¹⁶ While Ginsburg likely assumes that the West would promote literacy within a package of progressive education, historical evidence shows that American involvement does not preclude, and may even hasten, the use of conflict-ennobling textbooks.¹⁷ In fact, as recently as 2002, USAID printed books for an Afghanistan Back-to-School Campaign that contained religious references that "instructed true believers to kill all non-Muslims."¹⁸

Third, Western efforts to educate the Pashtun will face significant resistance from the Taliban, al-Qaeda, the Pakistani government, and perhaps the Pashtun themselves. This region has a lengthy tradition of backlash against outsider efforts to lead educational reform. For instance, in the 1970s, the Pashtun destroyed Soviet-sponsored schools that were thought to threaten Afghan culture and values.¹⁹ More recently, Al Qaeda and other forces have targeted schools, and especially those that educate girls. In fact, in 2007, these forces destroyed an "average of more than one [Afghan] girls' school a day."²⁰ Areas of Western Paki-

¹⁴ Jeaniene Spink, *Education and Politics in Afghanistan: The Importance of an Education System in Peacebuilding and Reconstruction*, 2 J Peace Educ 195, 203–05 (2007); Jeaniene Spink, *Education, Reconstruction, and State Building in Afghanistan*, Forced Migration Rev 1, 2 (2009) online at [http://www.fmreview.org/FMRpdfs/Education Supplement/09.pdf](http://www.fmreview.org/FMRpdfs/Education%20Supplement/09.pdf) (visited Sept 9, 2011) (noting that literacy programs cannot succeed when textbooks continue to extol violence).

¹⁵ Craig Davis, "A" is for Allah, "J" is for Jihad, 19 World Pol J 90, 91–93 (2002).

¹⁶ International Crisis Group, *Pakistan: Madrassas, Extremism, and the Military* 2 (July 29, 2002) (discussing their role in fomenting religious extremism); 9/11 Commission, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, online at <http://www.gpoaccess.gov/911/> at sec 12.2. (visited Sept 9, 2011); Robert W. Hefner, *Islam and Asian Security*, in *Strategic Asia 2002–03: Asian Aftershocks* 352–53, 360, 368 (National Bureau of Asian Research 2003) (Richard J. Ellings and Aaron L. Friedberg with Michael Wills, eds).

¹⁷ Davis, 19 World Pol J at 93 (cited in note 15). This includes textbooks underwritten by US grants in the late 1980s which "developed exercises around the number of dead and alive Russians." Spink, 2 J Peace Educ at 199 (cited in note 14). The Taliban then reissued these books in the 2000s.

¹⁸ Spink, 2 J Peace Educ at 201 (cited in note 14).

¹⁹ Id at 197.

²⁰ The "Taliban [also] burned down 1,089 [schools] from 2005 to 2007." Johnson and Mason, 32 Intl Sec at 65 (cited in note 2), citing Jason Straziuso, *Bush Ignores Afghan*

stan face similar threats with few qualified instructors willing to teach in threatened areas.²¹ While progressive social change is often presaged or accompanied by violence, it is worth noting that if this rate of destructiveness continues, the West simply could not build, replace, or repair schools quickly enough to produce any benefit at all. This problem seems particularly intractable if the United States is unwilling to provide the military or police support necessary to protect such schools.²² To be clear, I am not suggesting that such interventions are per se undesirable, but Ginsburg's implicit suggestion that literacy is a way of successfully and cheaply achieving Western goals without being embedded in a larger package of Western involvement is perhaps naïve.

Relatedly, the Pakistani government may resent and perhaps even block wide-scale efforts to work outside of their officially sanctioned school system.²³ Given the United States's past role in bankrolling mujahideen education, the Pakistani government is likely to be particularly wary of US efforts to engage the Pashtun through non-state-based education.²⁴ In addition, outside influence might create or harden Pashtun resistance to what might otherwise be a palatable approach. After generations of

School Violence, Seattle Times (Jan 30, 2008), online at http://seattletimes.nwsource.com/html/nationworld/2004153478_apafghanschools30.html (visited Sept 9, 2011).

²¹ See Human Rights Watch, *Their Future Is at Stake: Attacks on Teachers and Schools in Pakistan's Balochistan Province*, Pakistan 1, 1–3 (Dec 2010), online at <http://www.hrw.org/node/94653> (visited Sept 9, 2011) (noting that “[a]rmed Islamist militants have increasingly committed violence in opposition to the content and manner of local education, particularly that of girls and young women”).

²² See Human Rights Watch, *Lessons in Terror: Attacks on Education in Afghanistan*, 18 Afghanistan 1, 109 (July 2006), online at <http://www.hrw.org/reports/2006/afghanistan0706/index.htm> (visited Sept 9, 2011). One could easily argue that the United States should simply provide both schools and security, but it is worth remembering that the cost of putting one soldier in Afghanistan for one year is over \$500,000. See *Great Sacrifices, Small Rewards: Has America's Obsession with This Region Been Worth It?*, The Economist (Jan 1, 2011), online at <http://www.economist.com/node/17797714> (visited May 4, 2011). Moreover, even a massive increase in the US presence may not reduce the amount of violence directed at civilians. See generally Christian Davenport and Molly Inman, *The Puzzle of Iraqi Mortality: Surges, Civilian Deaths and Alternative Meanings*, 61 Yale J Intl Aff 57 (2010).

²³ See generally Andrew Coulson, *Education and Indoctrination in the Muslim World: Is There a Problem? What Can We Do about It?* (Cato Institute 2004), online at <http://www.cato.org/pubs/pas/pa511.pdf> (visited Sept 9, 2011). The reader should keep in mind that the United States has currently pledged support for Pakistan's Education Sector Reform strategy, which relies on the expansion of state schools. See *id.* at 19. While education need not occur outside the state system, it seems at odds with the tone of Ginsburg's piece, which suggests the Afghan and Pakistan state stay out of governing these areas and that literacy would be an alternative approach to expanding the government's reach.

²⁴ *Id.* at 16–19.

oppression and colonization, the Pashtun are wary not only of their own state but states in general.²⁵ In particular, their experiences during the post-9/11 counterinsurgency may have heightened their significant suspicion of the West.²⁶

Finally, literacy, without accompanying economic improvements, may engender the sort of deep-seated dissatisfaction that culminates in new outbreaks of violence.²⁷ Given their relatively limited exposure to the outside world, the Pashtun mostly lack the rising expectations that are usually present in people's revolutions.²⁸ In other words, as a general matter, the Pashtun generally accept their economic lot because they do not expect any better. Enhanced literacy, however, might spawn widespread discontent as it provides young men with greater skills and greater knowledge about the outside world without providing meaningful opportunities for improvement in their economic situation. Even if literacy stabilizes and reinforces the *jirga* and legal mechanisms for dispute resolution, without other mechanisms for economic improvement, literacy will not, by itself, improve the economic position of the Pashtun.²⁹ Even if literacy does improve the economic lot of the Pashtun generally, it may not necessarily herald better treatment or status for women.³⁰ If

²⁵ Anthony Hyman, *Nationalism in Afghanistan*, 34 *J Middle East Stud* 299, 312 (2002) (describing wariness of their own state after non-Pashtun elements took over the national government); id at 303–04 (describing Aghan nationalism as rooted in opposition to British involvement).

²⁶ Robert Blackwill, *Plan B in Afghanistan: Why a de facto Partition Is the Least Bad Option*, 90 *For Affs* 42, 42–43 (Jan/Feb 2011).

²⁷ See generally Ted Robert Gurr, *Why Men Rebel* (Princeton 1970) (describing problem when conditions are constant but aspirations soar due to factors such as education or exposure to more fortunate groups).

²⁸ See Johnson and Mason, 32 *Intl Sec* at 55 (cited in note 2), citing Eric R. Wolf, *Peasant Wars of the Twentieth Century* 166–75 (Harper & Row 1969).

²⁹ See Coulson, *Education and Indoctrination* at 26–27 (cited in note 23). See generally Paulo Freire, *Pedagogy of the Oppressed* (Herder and Herder 1970) (challenging the notion that literacy always leads to social and economic advancement and observing that the importance of the context in which it is embedded). Even in the United States and Canada, some evidence suggests literacy does not positively determine economic possibilities. See Harvey J. Graff, *The Labyrinths of Literacy: Reflections on Literacy Past and Present* 73–89 (Falmer 1987).

³⁰ For instance, in discussing Indian education programs, Professor Marion den Uyl observed, “The content of education is not to make critical choices. It has only one goal: to be dutiful and to be married. It is about repetition and not to think. Education doesn’t allow the women to think that the anything is possible in the world.” *Literacy Does Not Improve Status of Women*, *The Hindu* (Jan 5, 2003) online at <http://hindu.com/2003/01/05/stories/2003010502590700.htm> (visited Sept 9, 2011) (discussing the coexistence of high wealth and education which subjugates women); Siwan Anderson, *Why Dowry Payments Declined with Modernization in Europe but are Rising in India*, 111 *J Poli Econ* 269, 294 (2003) (concluding that economic growth in non-caste societies will cause dowries to decline while economic growth in caste societies will increase the practice and

women continue to be viewed as tradeable commodities, economic growth may merely change the number of women required for an exchange to resolve a dispute rather than eliminate the root cause of disputes or the mechanism by which they are settled.

Similar caution is warranted for the claim that the strengthening of the *jirga* and the introduction of literacy may improve conditions for Pashtun women and girls. *Jirgas* only rarely allow female participation³¹ and most decisions govern relationships between men.³² Ginsburg seems to argue that literacy and education could change the nature of the *jirga* by allowing greater participation by and enhanced respect for women. Yet Ginsburg is quite aware of and sensitive to the limitations and difficulties of providing women access to education in this context³³ as well as the problems created by providing only men literacy skills. The problems of disparate literacy attainment could include the entrenchment and worsened subjugation of women if men refuse to share literacy's benefits. In order for literacy to improve women's condition through any of the pathways Ginsburg identifies, the Pashtun need a simultaneous norm shift that literacy can reinforce, accelerate, and disseminate. In particular, the content of the Pashtunwali's code of honor needs a substantial overhaul. Under the current Pashtun conception of honor, men and women have inherently different capacities. Men can both enhance and degrade their families' honor.³⁴ In contrast, the actions (or inaction) of women tends only to maintain the status quo or to bring dishonor to the family; in particular, women can do little outside their home or regarding their chastity to enhance their families' honor.³⁵ For instance, a woman who is raped creates a loss of

amount of dowries).

³¹ See Jonathan Hawkins, *The Pashtun Cultural Code: Pashtunwali*, 180 Australian Defence Force J 16, 21 (2009).

³² Palwasha Kakar, *Tribal Law of Pashtunwali and Women's Legislative Authority* 6 (2002), online at <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf> (visited Sept 9, 2011) (noting that the only time a woman's fate is decided at such a council is when "her marriage is made a part of the solution to a conflict").

³³ See Ginsburg, 2011 U Chi Legal F at 108 (cited in note 1).

³⁴ Ginsburg rightly notes that "[c]ertain actions are seen as helping to build honor, while others are seen as hurting it." Ginsburg, 2011 U Chi Legal F at 96 (cited in note 1). See Dov Cohen and Joseph A. Vandello, *Male Honor and Female Fidelity: Implicit Cultural Scripts that Perpetuate Domestic Violence*, 84 J Personality & Soc Psych 997, 998 (2003) (noting that women who marry up the chain can enhance their families' status, but all of the ways they can increase status are determined within patriarchal arrangements); Janet Signal and Maureen Nally, *Cultural Perspectives on Gender*, 27, 29 in *Praeger Guide to the Psychology of Gender* (Praeger 2004) (Michele A. Paulidi, ed).

³⁵ See Kakar, *Tribal Law of Pashtunwali and Women's Legislative Authority* at 8 (cited in note 32) (explaining why, "[i]f a woman earns a bad reputation, her whole family,

honor for her family, but a woman who successfully maintains her chastity or otherwise acts consistently with prevailing sexual norms does not increase her family's honor.³⁶

All that being said, I do not mean to be too pessimistic. Despite the Pashtun's well-earned reputation for violence, such practices are not inevitable. Achieving greater order without violence and other norm change among the Pashtun is quite difficult, but I raise these limitations to Ginsburg's suggestion merely as a cautionary note to suggest that any literacy program needs to incorporate content consistent with the desired outcome and, more ambitiously, to be accompanied by mechanisms or norm changes designed to dampen these potential sources of conflict and oppression.

II. TRANSCENDENCE

The questions raised by Pashtun violence and subjugation of women have been asked and answered in many other historical contexts.³⁷ How does systemic violence end? What allows the progressive reform of an honor culture steeped in the repression of women? Some of the answers rely on aggressive and efficacious outside intervention, such as when the state dismantles organized crime units like mobs and gangs.³⁸ Since widespread resistance to the project of state building among the Pashtun is part of the underlying problem, aggressive and efficacious state intervention to criminalize and enforce punishments for violence and maltreatment of women is an unworkable option for the short term and perhaps the long term as well. While exposure to different social arrangements can stimulate indigenous desire for change, the Pashtun's long-standing suspicion of outsiders³⁹ like-

which includes the men, is sullied").

³⁶ For instance, some honor cultures are based on the belief that "women cannot be trusted to protect their chastity in the best interests of patriarchal society . . . an honorable man is someone whose women kin remain chaste." Tahire Koçtürk, *A Matter of Honor: Experience of Turkish Women Immigrants* 56 (Zed Books 1992).

³⁷ See, for example, Richard E. Nisbett and Dov Cohen, *The Culture of Honor: The Psychology of Violence in the South* (Westview 1996).

³⁸ James B. Jacobs and Lauryn P. Gouldin, *Cosa Nostra: The Final Chapter?*, 25 *Crime and Justice* 129 (1999) (suggesting surveillance and long-term campaigns can successfully eradicate gangs). But see Curtis J. Milhaup and Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 *U Chi L Rev* 41, 45 (suggesting that altering institutional incentive structures and introducing additional rights enforcement agendas is a better strategy to eliminate organized criminal activity).

³⁹ George Kruys, *Insurgency and Counterinsurgency in Afghanistan and the Role of Pakistan*, 31 *Strategic Rev* 97, 103 (2009). See also Spink, 2 *J Peace Educ* 195 at 197

ly renders direct promotion of these alternative visions incapable of displacing existing social structures and norms. Relatedly, economic growth sometimes helps groups grow out of violence⁴⁰ and can provide women with more economic and social opportunities, as it did for some in Southern India.⁴¹ More immediately, economic growth could provide resources for nonviolent settlement of Pashtun disputes without the subjugation of women. But economic growth alone, like literacy, does not necessarily provide an underlying reason to move away from existing societal norms.⁴² If the Pashtun believe that trading women to other families strengthens ties and dampens the potential for conflict to reemerge, economic growth may do little to change that practice. Similarly, if the Pashtun remain rooted in the existing honor culture, additional resources could simply exacerbate pressures on women as they did for dowry deaths in India.⁴³

Rather, as with footbinding in China⁴⁴ and female genital mutilation in parts of Africa,⁴⁵ I suggest that foreign efforts to improve conditions on the ground need to be accompanied by the emergence of internal norm entrepreneurs who can link changes to existing cultural understandings and social structures. In both the footbinding example and female genital mutilation cases, although outsiders provided encouragement for more female-friendly practices, leaders embedded within these communities provided most of the impetus for change.⁴⁶ By supporting *jirgas* and encouraging education, the hope is that the West may provide room for such indigenous reformers to emerge. In fact, liter-

(cited in note 14) (discussing Afghan communities who chased out teachers who were perceived as threatening Afghan values and culture).

⁴⁰ Edward N. Muller and Erich Weede, *Cross-National Variation in Political Violence: A Rational Action Approach*, 34 *J Conflict Resol* 624, 644 (1990).

⁴¹ Nancy Luke and Kaivan Munshi, *Women as Agents of Change, Female Income and Mobility in Developing Countries*, 94 *J Devel Econ* 1, 1 (2011).

⁴² Emily Hannum and Claudia Buchmann, *Global Educational Expansion and Socio-Economic Development: An Assessment of Findings from the Social Sciences*, 33 *World Dev* 333, 340 (2004) (noting that greater female education often fails to increase access to employment when sexist cultural norms remain embedded in the society).

⁴³ See note 30.

⁴⁴ See generally Lesley Wexler, *Allowing Girls to Hold Up Half the Sky: Combining Norm Promotion and Economic Incentives to Combat Daughter Discrimination in China*, 7 *Chi J Intl L* 79, 102–03 (2006).

⁴⁵ *Female "Circumcision" in Africa: Culture, Controversy, and Change* 51 (2000) (Bettina Shell Duncan and Ylva Hernlund, eds).

⁴⁶ Wexler, 7 *Chi J Intl L* at 86–87 (cited in note 44); *Female "Circumcision" in Africa* at 51 (cited in note 45). See also Ellen Gruenbaum, *Is Female "Circumcision" a Maladaptive Cultural Pattern?*, in Bettina Shell-Duncan and Ylva Hernlund, eds, *Female "Circumcision" in Africa: Culture, Controversy, and Change* 41 (Lynne Rienner 2000).

acy—and education more generally—can and has improved the lot of the Pashtun when tied to indigenous ideas for progressive norm change. For instance, in the 1920s through the 1940s, Abdul Ghaffar Khan developed nonviolent strategies that improved the position of women, reduced intra-Pashtun violence, and challenged British occupation. Khan viewed education as “an instrument for his social reforms,”⁴⁷ which led him to set up schools,⁴⁸ to embrace the retention of the Pashtun language, and to start the first Pashtun political journal,⁴⁹ which openly challenged the Pashtun suppression of women.⁵⁰ Relatedly, Khan’s literacy programs included women,⁵¹ and he recognized that their position in the family made them uniquely well suited to promote literacy for their children.⁵²

In tandem with education promotion, Khan also organized the Servants of God, also known as the Red Shirts,⁵³ to achieve social and political reforms.⁵⁴ This group was composed of individuals who, “consistent with their code of honor and Muslim beliefs,”⁵⁵ swore “before God to give their lives for their people”⁵⁶ and committed themselves to “using only nonviolent action to achieve political, social and economic reforms.”⁵⁷ Part of their oath obligated the Servants of God to “refrain from violence and from taking revenge,”⁵⁸ and contained a promise to abstain “from

⁴⁷ Khurshed Alam Khan, *Some Significant Aspects of Badshah Khan’s Life*, in Khan Abdul Ghaffar Khan: A Centennial Tribute 22, 27 (Har-Anand Publications 1995). Notably, Abdul Ghaffar Khan braved the stiff opposition of local mullahs to receive his early education in Western missionary school. See Girdhari Lal Puri, *Khan Abdul Ghaffar Khan: A True Servant of Humanity* 6–7 (Congress Centenary 1985).

⁴⁸ See Eknath Easwaran, *A Man to Match His Mountains: Badshah Khan, Nonviolent Soldier of Islam* 77 (Nilgiri 1984).

⁴⁹ See Rajmohan Gandhi, *Ghaffar Khan: Nonviolent Badshah of the Pakhtuns* 77–78 (Penguin Viking 2004); Attar Chand, *India, Pakistan, and Afghanistan: A Study of Freedom Struggle and Abdul Ghaffar Khan* 38–40 (Commonwealth 1989).

⁵⁰ See Easwaran, *A Man to Match His Mountains* at 105 (cited in note 48).

⁵¹ See Syed Sikander Mehdi, *Building Nonkilling Muslim Societies: Relevance of Abdul Ghaffar Khan*, in Glenn D. Paige and Joám Evans Pim, eds, *Global Nonkilling Leadership Forum Book of Proceedings* 221, 223 (Center for Global Nonviolence 2008).

⁵² See Chand, *India, Pakistan and Afghanistan* at 74–75 (cited in note 49).

⁵³ *Id.* at 49–50.

⁵⁴ See Robert C. Johansen, *Radical Islam and Nonviolence: A Case Study of Religious Empowerment and Constraint among Pashtuns*, 34 *J Peace Res* 53, 58 (1997).

⁵⁵ *Id.*

⁵⁶ S. Ayse Kadayifci-Orellana, *Religion, Violence, and the Islamic Tradition of Non Violence*, 34 *Turkish Yearbook of Intl L* 23, 58 (2003).

⁵⁷ Fred Reinhard Dallmayr, *Border Crossings: Toward a Comparative Political Theory* 153 (Lexington Books 1999).

⁵⁸ Abdul Ghaffar Khan, *My Life and Struggle* 97 (Orient 1969).

taking part in feuds and quarrels and from creating enmity."⁵⁹ While the vast majority of Servants of God were religious Muslims, Khan presented an inclusive vision of Islam and created a nonsectarian movement which acted to protect Sikhs and Hindus as well as Muslims.⁶⁰ Khan coupled this commitment to nonviolence with a larger project to emancipate women and promote more equitable land distribution.⁶¹

Khan's success⁶² in challenging destructive Pashtun practices derived at least partially from his understanding of the Pashtun religion, tradition, and social structures.⁶³ He used deeply held religious ideas to teach nonviolence, such as suggesting that a particular hadith (a report of what "Muhammad said, did, or tacitly approved")⁶⁴ indicated the superiority of nonviolence and disapproved of violence.⁶⁵ Khan also emphasized that "God makes no distinction between men and women" and, thus, their equality should follow part and parcel with independence.⁶⁶ In this way, Khan led a cultural reversal by using traditional symbols, ideas, and concepts to promote new patterns of behavior and reject old patterns as inconsistent with deeply held beliefs.⁶⁷ He also "blend[ed] the notion of absolute nonviolent discipline with the traditional value of personal courage."⁶⁸ The use of oaths to bind the Servants of God to nonviolence was particularly valuable because the honor culture dictates that, "once given, a

⁵⁹ Id.

⁶⁰ See Johansen, 34 *J Peace Res* at 70 n 23 (cited in note 54).

⁶¹ Anila Daulatzai, *A Leap of Faith: Thoughts on Secularistic Practices and Progressive Politics*, 56 *Intl Soc Sci J* 565, 573 (2004).

⁶² The transformation was a swift one, with Khan's message taking root within a decade. See Muhammad Soaleh Korejo, *The Frontier Gandhi: His Place in History* 49 (Oxford 1993). Estimates of the membership range from 100,000 to 300,000. Johansen, 34 *J Peace Res* at 70 n 17 (cited in note 54). In terms of concrete achievements, the Red Shirts are credited with influencing the British to provide the frontier full parity with other provinces. See Brad Bennett, *Arab-Muslim Cases of Nonviolent Struggle* in Ralph F. Crow, Philip Grant, and Saad E. Ibrahim, eds, *Arab Nonviolent Political Struggle in the Middle East* 41, 44 (Lynne Rienner 1990).

⁶³ Khan rejected the spirit of vengeance that informed the code of honor and the harmful customs and litigations which he felt kept the Pashtun from realizing their potential. See Chand, *India, Pakistan and Afghanistan* at 246-62 (cited in note 49).

⁶⁴ Scott C. Lucas, *Major Topics of the Hadith*, 2 *Religion Compass* 226, 226 (2008).

⁶⁵ See Kadayifci-Orellana, 34 *Turkish Yearbook of Intl L* at 52-53 (cited in note 56).

⁶⁶ Dinanath G. Tendulkar, *Abdul Ghaffar Khan: Faith Is a Battle* 101-02 (Gandhi Peace Foundation 1967).

⁶⁷ See Johansen, 34 *J Peace Res* at 66 (cited in note 54).

⁶⁸ Peter Ackerman and Christopher Kruegler, *Strategic Nonviolent Conflict: The Dynamics of People Power in the Twentieth Century* 175 (Praeger 1994).

[Pashtun]'s word cannot be broken⁶⁹ and the Pashtun must honor an oath with their lives.⁷⁰

Khan's organizing principles also bear out Ginsburg's intuition that the *jirgas* can act as a site for progressive change. In assembling and directing the Servants of God, Khan capitalized on existing structures, using *jirgas* to organize the members at the local level⁷¹ and act as an unofficial parliament.⁷² Khan's success suggests the very real possibility of blending a familiar legal system and deeply held notions of discipline and courage with a radically new approach to embodying and implementing an honor culture.

III. CONCLUSION

In sum, Ginsburg's suggestion to work within the existing Pashtun legal code and legal system is an appealing one. But in order to reform the consequences of a strictly-enforced honor code, one needs both tools and ideas for norm changes. Ginsburg suggests particular tools such as the *jirga* and literacy, whereas I want to encourage more careful attention to the ideas that those tools are used to promote. One should always be wary of drawing too much information from a single historical example, but Ghaffar Khan's Servants of God movement suggests both that the Pashtun are not inherently violent and that the Pashtun prefer their system of order to Western models.⁷³ We ought to conceptualize the West's role in reducing violence and improving the treatment of women as facilitating the emergence of the Pashtun's internal goals for change rather than imposing them from the outside.

⁶⁹ Easwaran, *A Man to Match His Mountains* at 112 (cited in note 48). In fact, while no Servants of God committed acts of violence to serve their goals, several committed suicide when the pressure of British oppression was too great. See Bennett, *Arab-Muslim Cases of Nonviolent Struggle* in Crow, Grant, and Ibrahim, eds, *Arab Nonviolent Political Struggle in the Middle East* at 44 (cited in note 62).

⁷⁰ See Johansen, 34 J Peace Res at 59 (cited in note 54).

⁷¹ Chand, *India, Pakistan and Afghanistan* at 50 (cited in note 49).

⁷² Johansen, 34 J Peace Res at 60 (cited in note 54).

⁷³ See Johnson and Mason, 32 Intl Sec at 61 (cited in note 2).