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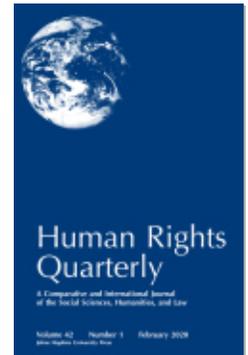
## The More the Context Changes, The More Things Stay the Same

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## The More the Context Changes, The More Things Stay the Same

***Oxford Handbook of Gender and Conflict* (Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, & Nahla Valji eds., 2018), ISBN 9780199300983, 628 pages.**

The mainstream anti-violence movement in the United States regularly addresses gender-based violence in a variety of contexts: intimate partner violence, acquaintance rape, stranger rape, campus sexual assault, domestic and international sex trafficking, even sexual assault in the armed forces. Rarely, however, are conversations about gender-based violence situated in the context of armed conflict. The United States has been perpetually at war since 2001, but, because that conflict has not occurred on US soil, the gender-based violence related to that conflict has largely been shielded from public scrutiny. The US anti-violence movement has not been terribly involved in interrogating violence connected with conflict around the world, even when the United States is a central actor in that conflict; however, *The Oxford Hand-*

*book of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji and published by Oxford University Press in 2018,<sup>1</sup> reveals that many of the conversations that US anti-violence advocates are having about gender-based violence are also taking place in the context of conflict. As a result, *The Oxford Handbook of Gender and Conflict* provides important insights on many of the issues confronting anti-violence advocates in the domestic context.

The agency and victimization binary, for example, has long been a subject of scrutiny for gender-based violence scholars. While early advocacy on behalf of battered women stressed their helplessness and victimization,<sup>2</sup> scholars soon began to challenge the notion that people subjected to abuse were immobile in the face of abuse and incapable of taking active steps to protect themselves.<sup>3</sup> A view of women subjected to abuse as meek, weak, and passive was hard to square with the extremely active step some women took of killing their partners to escape violence and also complicated the help-seeking of women who fought back against their abusers.<sup>4</sup>

The early conceptions of women in conflict settings were similarly one-dimensional. As Jo Butterfield and Elizabeth Hieneman observe in their chapter on the gendered relationship between citizenship and conflict, "women entered the framework of international humanitar-

1. THE OXFORD HANDBOOK OF GENDER AND CONFLICT (Fionnuala Ní Aoláin, et al. eds., 2018) [hereinafter OXFORD HANDBOOK].
2. See, e.g., LENORE E. WALKER, THE BATTERED WOMAN (1979). "Battered women" was the terminology in use at the time.
3. Anne Coughlin, *Excusing Women*, 82 CAL. L. REV. 1 (1994); EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1998).
4. Leigh Goodmark, *When Is a Battered Woman Not A Battered Woman? When She Fights Back*, 20 YALE J.L. & FEM. 75 (2008); Lisa Young Laranca, et al., *Understanding and Addressing Women's Use of Force in Intimate Relationships: A Retrospective*, 25 VIOLENCE AGAINST WOMEN 56 (2019).

ian law as objects of protection, not as subjects of the law.<sup>5</sup> An emerging focus on the use of sexual violence in conflict exacerbated the victimization narrative<sup>6</sup> and put international bodies “on a trajectory in tension with feminist challenges to the politics of victimhood as denying agency.”<sup>7</sup> This notion of women as needing protection reinforced already existing gender binaries that prevented women’s full political and social participation.<sup>8</sup>

The literature on conflict challenges the victim and offender binary, noting that women embody a number of roles in conflict settings. Negotiating the space between the poles of that binary is fraught, however. The ways that women exercise agency are complicated and not always intuitive; Ambika Satkunanathan describes how Sri Lankan women “enter into sexual relationships with members of the military in which they are often powerless, but which provide them security and sometimes an elevated position within the social setting they occupy.”<sup>9</sup> Women’s participation in conflict may not always involve or primarily involve combat, and women’s involvement in combat may be downplayed.<sup>10</sup> Women’s agency in engaging in conflict is questioned; “to the extent that women’s and

girls’ participation within armed groups is discussed, the emphasis is often on their forced recruitment, forced marriage with combatants, sexual slavery, sexual abuse, and other types of victimization and vulnerability within the group.”<sup>11</sup> Male commanders minimize the role of women in conflict because they do not see the women fighting with them in the same ways that they see themselves, because they want to ensure that men are able to keep women who fight as “prizes,” and because they want men to have access to the benefits of demobilization while pushing women back into traditional gender roles.<sup>12</sup> Women may also have less access to firearms in part because guns are seen as unfeminine.<sup>13</sup> When women do become combatants, they challenge prevailing cultural norms about femininity in ways that may lead to greater punishment for women who fight, which creates significant difficulty for reintegrating in their communities post-conflict.<sup>14</sup>

Rejecting simplistic conceptions of victimization undermines gendered stereotypes and recognizes that women “inhabit a space in which sometimes in the same instance they lay claim to victimhood and also exercise agency.”<sup>15</sup>

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5. Jo Butterfield & Elizabeth Heineman, *The Gendered Nexus Between Conflict and Citizenship in Historical Perspective*, in OXFORD HANDBOOK, *supra* note 1, at 68.
  6. Dianne Otto, *Women, Peace, and Security: A Critical Analysis of the Security Council’s Vision*, in OXFORD HANDBOOK, *supra* note 1, at 113.
  7. Vasuki Nesiah, *Gender and Forms of Conflict: The Moral Hazards of Dating the Security Council*, in OXFORD HANDBOOK, *supra* note 1, at 294–95.
  8. Gina Heathcote, *Humanitarian Intervention and Gender Dynamics*, in OXFORD HANDBOOK, *supra* note 1, at 201.
  9. Ambika Satkunanathan, *Sri Lanka: The Impact of Militarization on Women*, in OXFORD HANDBOOK, *supra* note 1, at 587.
  10. Dyan Mazurana, Roxanne Krystalli, & Anton Baaré, *Gender and Disarmament, Demobilization, and Reintegration: Reviewing and Advancing the Field*, in OXFORD HANDBOOK, *supra* note 1, at 447.
  11. *Id.* at 447.
  12. *Id.* at 445.
  13. Barbara A. Frey, *The Gender Implications of Small Arms and Light Weapons in Combat Situations*, in OXFORD HANDBOOK, *supra* note 1, at 369–70.
  14. Mazurana, Krystalli, & Baaré, *supra* note 10, at 449.
  15. Satkunanathan, *supra* note 9, at 588.

It also opens up opportunities for greater inclusion of women in post-conflict political processes.<sup>16</sup> *The Oxford Handbook's* authors describe how women in conflict situations and post-conflict societies are claiming agency by challenging gender norms. Pushing against traditional gender norms has consequences for men as well, who report feeling disempowered by the gains that women have made.<sup>17</sup> In Uganda, both men and women attributed high levels of intimate partner violence to men's feelings of emasculation and disempowerment in refugee camps<sup>18</sup>—an observation that echoes the US literature on the relationship between male job loss and intimate partner violence.<sup>19</sup>

The characterization of victimization as female has additional implications for men in conflict situations. The US anti-violence movement has long faced tensions about who is considered a victim. While federal statistics show that

between 75 and 80 percent of the victims of intimate partner violence are women,<sup>20</sup> anti-violence advocates have been careful to recognize that men can be the subjects of violence in both heterosexual and same-sex relationships.<sup>21</sup> Advocates are similarly sensitive to the experiences of men who have been raped, particularly in the prison and clerical contexts.<sup>22</sup> The growing attention to the experiences of transgender and non-binary individuals further complicates traditional conceptions of gender in the context of gender-based violence.<sup>23</sup> Nonetheless, advocates for men in the United States contend that men's claims of sexual and intimate partner violence are still ignored at best and ridiculed at worst and that resources have yet to follow the recognition of men's victimization.<sup>24</sup>

The victimization of men—both civilian and militarized—has largely been obscured in conflict settings.<sup>25</sup> The work

16. Naureen Chowdhury Fink & Alison Davidian, *Complementarity and Convergence? Women, Peace and Security and Counterterrorism*, in OXFORD HANDBOOK, *supra* note 1, at 160–63; Eilish Rooney, *Intersectionality: Working in Conflict*, in OXFORD HANDBOOK, *supra* note 1, at 331.
17. Patti Petesch, *Agency and Gender Norms in War Economies*, in OXFORD HANDBOOK, *supra* note 1, at 343.
18. Lucy Hovil, *Conflict, Displacement, and Refugees*, in OXFORD HANDBOOK, *supra* note 1, at 280.
19. Jacquelyn C. Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089 (2003); JAMES GILLIGAN, PREVENTING VIOLENCE (2001) 75–76; MICHAEL L. BENSON & GREER LITTON FOX, WHEN VIOLENCE HITS HOME: HOW ECONOMICS AND NEIGHBORHOOD PLAY A ROLE (2004) 2, <https://permanent.access.gpo.gov/lps57885/lps57885.pdf>; Deborah M. Weissman, *The Personal Is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 418 (2007).
20. SHANNAN CATALANO, INTIMATE PARTNER VIOLENCE, 1993–2010 (2012); JENNIFER L. TRUMAN & RACHEL E. MORGAN, NONFATAL DOMESTIC VIOLENCE, 2003–2012 (2014).
21. See, e.g., National Center on Domestic and Sexual Violence, *Male Victims*, NAT'L CENTER ON DOMESTIC AND SEXUAL VIOLENCE (19 Nov. 2018), [http://www.ncdsv.org/publications\\_malevictims.html](http://www.ncdsv.org/publications_malevictims.html).
22. According to federal statistics, men make up about 38 percent of rape victims. Conor Friedersdorf, *The Understudied Female Sexual Predator*, THE ATLANTIC (28 Nov. 2016), <https://www.theatlantic.com/science/archive/2016/11/the-understudied-female-sexual-predator/503492/>.
23. Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51 (2013).
24. See, e.g., STOP ABUSIVE AND VIOLENT ENVIRONMENTS (SAVE), DOMESTIC VIOLENCE PROGRAMS DISCRIMINATE AGAINST MALE VICTIMS (2010).
25. Chris Dolan, *Victims Who Are Men*, in OXFORD HANDBOOK, *supra* note 1, at 86; Kimberly Theidon, *1325 + 17 = ? : Filling in the Blanks of the Women, Peace, and Security Agenda*, in OXFORD HANDBOOK, *supra* note 1, at 146.

on sexual violence and conflict has centered female victims; “[a]lthough,” as Lucy Hovil explains, “there is a slow but growing realization of the realities of sexual violence suffered by boys and men, there has yet to be a significant paradigm shift in the way in which this reality is dealt with on the ground.”<sup>26</sup> The growing acknowledgment of violence against men raises a number of questions common to the US anti-violence and conflict contexts: what is the scale of the problem? What happens when the focus of anti-violence work widens to include men’s victimization? Should everyone talk about violence in gender-neutral terms? What is lost with that choice? As Julie Goldscheid has argued in the context of intimate partner violence, switching to gender-neutral language like “gender-based violence” enables us to maintain our focus on the gendered nature of the abuse without suggesting that only women are subjected to such violence.<sup>27</sup> Talking about violence using a gender-neutral frame enables us to look at the differential impacts on various categories of people. In the conflict context, for example, Hovil argues that displaced men and boys subjected to sexual violence are also “more vulnerable to arbitrary arrest and can be targeted by government agents (both host government and those from their country of origin) as a result of the negative associations of men with armed conflict.”<sup>28</sup> Understanding the differential impact of victimization

on people of all gender identities should facilitate the development of more responsive policies—both in the domestic and the international settings.

Men in conflict situations often play the role of aggressor. Joining combat groups confers “masculine status” on disempowered men.<sup>29</sup> Masculinities theory helps to explain the violence that some men perpetrate during conflict; it posits that men aspire to an idealized form of masculinity, often called hegemonic masculinity, which is achieved by distancing oneself from the feminine and those things that are considered feminized.<sup>30</sup> Military organizations foster a particularly virulent form of masculinity, often called “militarized masculinity,” that relies heavily on the ability and willingness of participants to engage in violence.<sup>31</sup> The desire to achieve hegemonic masculinity helps to explain men’s behavior in both conflict and domestic settings. Pascha Bueno-Hansen explains that men use rape and sexual violence in conflict both to establish and reinforce social hierarchies and to control the population through degradation.<sup>32</sup> Scholars have theorized that rape and sexual violence against women punishes women for challenging prevailing notions of femininity and feminizes opposing men by casting them as inadequate protectors of their people and their homeland.<sup>33</sup>

Some men are deeply ambivalent about the use of sexual violence in conflict, however, and see rape not as “an

26. Hovil, *supra* note 18, at 283.

27. Julie Goldscheid, *Gender Neutrality and the “Violence Against Women” Frame*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 307, 322 (2015).

28. Hovil, *supra* note 18, at 284.

29. Mazurana, Krystalli, & Baaré, *supra* note 10, at 449.

30. Frank Rudy Cooper, “Who’s The Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 689–90 (2009).

31. Maria Eriksson Baaz & Maria Stern, *Knowing Masculinities in Armed Conflict?: Reflections from Research in the Democratic Republic of Congo*, in OXFORD HANDBOOK, *supra* note 1, at 535.

32. Pascha Bueno-Hansen, *Decolonial Feminism, Gender, and Transitional Justice in Latin America*, in OXFORD HANDBOOK, *supra* note 1, at 464.

33. Eriksson Baaz & Stern, *supra* note 31, at 535–56.

expression of successful masculine performance” but as “an expression of failed masculinity.”<sup>34</sup> Similarly, in the context of the United States, scholars are beginning to challenge traditional narratives suggesting that intimate partner violence is always intended to assert power and control over one’s intimate partner and are questioning the utility of using shame to punish men for using such violence.<sup>35</sup> This research suggests that in both the domestic and conflict settings, the use of violence to shore up masculinity is more complicated than sometimes presented.

Men practice masculinity in their roles as enforcers of law as well as combatants. Various forms of masculinity are in tension in these settings. Protector masculinity positions men embodied with the power of the state in the role of hero relative to the less powerful, seemingly less capable women they are charged with saving.<sup>36</sup> This “gendered ‘norm of protection’” highlights male power and agency and reinforces women’s weakness and

subservience.<sup>37</sup> Peacekeeping missions also foster militarized masculinity, which values the capacity to employ violence (including sexual harassment and assault) and devalues things characterized as feminine.<sup>38</sup> Both protector and militarized masculinity are prevalent in domestic policing as well, where the myriad gendered abuses police officers perpetrate using the cover of their status as protectors have been well-documented.<sup>39</sup>

These complicated permutations of gender in conflict highlight the importance of an intersectional analysis.<sup>40</sup> Both women and men in conflict can be characterized as “political actors, refugees, colonial subjects, combatants, and victims of gender violence in various contexts.”<sup>41</sup> Race, gender, socioeconomic class, ethnicity, indigeneity, experiences of colonization, sexual orientation, language, ability, and religion shape their experiences.<sup>42</sup> US scholars have written extensively on intersectionality and gender-based violence.<sup>43</sup> The conflict

34. *Id.* at 539.

35. A. Rachel Camp, *Pursuing Accountability for Perpetrators of Intimate Partner Violence: The Peril (and Utility?) of Shame*, 98 B.U. L. REV. 1677 (2018); LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* 143–44 (2018).

36. Sabrina Karim & Marsha Henry, *Gender and Peacekeeping*, in OXFORD HANDBOOK, *supra* note 1, at 393–94.

37. *Id.* at 393.

38. *Id.* at 391.

39. Leigh Goodmark, *Hands Up At Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse*, 2015 BYU L. REV. 1183 (2015); ANDREA J. RICHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017).

40. Intersectionality describes how facets of people’s identities intersect to create and reinforce oppression. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

41. Rooney, *supra* note 16, at 330; see also Heathcote, *supra* note 8, at 205.

42. Rooney, *supra* note 16, at 335; Bueno-Hansen, *supra* note 32, at 457.

43. See, e.g., Geneva Brown, *Ain’t I a Victim? The Intersection of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 CARDOZO J. L. & GENDER 147 (2012); Michele R. Decker, et al., “You Do Not Think of Me as a Human Being”: Race and Gender Inequities Intersect to Discourage Police Reporting of Violence Against Women, J. URB. HEALTH (2019); Julie Goldscheid, *Gender Neutrality, the “Violence Against Women” Frame, and Transformative Reform*, 82 UMKC L. REV. 623 (2014); Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER, RACE & JUSTICE 531 (2013); Jennifer Nixon & Cathy Humphreys, *Marshalling the Evidence: Using Intersectionality in the Domestic Violence Frame*, 17 SOC. POL.: INT’L. STUD. IN GENDER, ST. & SOC’Y 137 (2010).

literature is similarly attentive to the ways in which identities intersect. As Kimberly Theidon notes, testimony provided to the Peruvian Truth and Reconciliation Commission revealed that “acts of sexual violence were almost always accompanied by ethnic and racial insults.”<sup>44</sup> Moreover, rape during the conflict in Peru reinforced already existing social hierarchies—lighter-skinned, upper-class women were claimed by officers and darker-skinned peasants were given to soldiers.<sup>45</sup>

Scholars in both the US and conflict contexts are struggling with the question of what an effective response to gender-based violence entails. In both worlds, the dominant focus has been on criminalization. Beginning in the late 1970s, many in the US anti-violence movement began to tout increased intervention by police and prosecutors as the answer to gender-based violence, despite the objections of some—primarily women of color—that criminalization would be destructive and ineffective.<sup>46</sup> These advocates assumed that increased criminalization would deter intimate partner and sexual violence and would change the norms that fostered such

violence.<sup>47</sup> The reality has been much more complicated. Criminalization has not been uniformly or systematically implemented, the evidence on deterrence is weak, and there have been serious unintended consequences of the choice to center criminalization.<sup>48</sup> Nonetheless, much of the international community has similarly embraced criminalization as the appropriate response to gender-based violence in conflict, resting on “an unspoken (and always unproved) assumption that deterrence will result from bringing the perpetrators to justice.”<sup>49</sup> Martina Vandenberg, for example, argues that prosecution is an essential component of any strategy to redress sexual abuse by UN peacekeepers.<sup>50</sup> Criminalization has proven to be equally problematic in the conflict context, however. As in the domestic context, the international criminal system fails to provide the “swift-and-certain sanctions”<sup>51</sup> some scholars believe necessary to deter criminal behavior.<sup>52</sup> Relatively few prosecutions, resulting in only three convictions, have been brought before the International Criminal Court.<sup>53</sup> Prosecutions are rare in the individual countries affected by conflict as well.<sup>54</sup> Criminalization can also be at

44. Theidon, *supra* note 25, at 148.

45. Bueno-Hansen, *supra* note 32, at 464. This hierarchy grew out of the colonial period, when European or white women were scarce and therefore seen as prized. *Id.* at 460, 462.

46. EMILY L. THUMA, *ALL OUR TRIALS: PRISONS, POLICING, AND THE FEMINIST FIGHT TO END VIOLENCE* 7 (2019).

47. GOODMARK, *supra* note 35, at 13–14.

48. *Id.* at 18–29.

49. Karen Engle, *The Genealogy of the Centrality of Sexual Violence to Gender and Conflict*, in *OXFORD HANDBOOK*, *supra* note 1, at 134.

50. Martina E. Vandenberg, *Peacekeeping, Human Trafficking, and Sexual Abuse and Exploitation*, in *OXFORD HANDBOOK*, *supra* note 1, at 411–13.

51. Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LIT. 5, 27 (2017).

52. *Id.* at 23–32.

53. Amrita Kapur, *Complementarity as a Catalyst for Gender Justice in National Prosecutions*, in *OXFORD HANDBOOK*, *supra* note 1, at 227; see also Engle, *supra* note 49, at 136 (“increased discourse about criminalization has not necessarily resulted in increased prosecutorial endeavors”).

54. Lejla Hadzimesic, *Consequences of Conflict-Related Sexual Violence on Post-Conflict Society: Case Study of Reparations in Bosnia and Herzegovina*, in *OXFORD HANDBOOK*,

odds with people's assertions of agency. Reporting victimization to authorities can be damaging for people subjected to gender-based violence; prosecution often requires public disclosure of harm and claims to victim status, when some who have been harmed would much rather choose "silence and obscurity."<sup>55</sup> Criminalization may not be equipped to address all of the gendered harms of conflict.<sup>56</sup>

As the US anti-violence community is coming to see, criminalization is, at best, only one part of an effective response to gender-based violence. The conflict literature understands that a comprehensive response must include reparations that directly benefit those who have been harmed.<sup>57</sup> Such a response should also acknowledge the structural factors that drive violence. Economic necessity, for example, contributes to conflict. "Participation in an armed group provides men with food and a gun, and, at times, with wages, thus offering a modicum of protection, livelihood security, and masculine status."<sup>58</sup> Changing laws without addressing the underlying structures contributing to conflict is unlikely to facilitate the kind of lasting change needed to prevent future violence.<sup>59</sup>

The conflict literature and the US anti-violence literature raise a number of common questions for scholars to continue to investigate. How do we change the persistent gender-based norms that facilitate violence and shape the responses to violence? What are the unintended consequences of our responses to gender-

based violence? How do we develop a gender-based violence jurisprudence that recognizes the complexity of women's relationships to violence? What does justice look like for people who have been subjected to gender-based harms? To answer these questions, both movements will need to continue collecting and analyzing data to understand the ways in which data can be manipulated and misunderstood.<sup>60</sup>

*The Oxford Handbook of Gender and Conflict* is overwhelming in the very best way. It is comprehensive in its consideration of gender-based violence and conflict. Its entries enable anti-violence scholars interested in breaking free of the silos within which our work is usually cabined a chance to look at the key questions that we confront through a different lens and apply the insights of the conflict context to our own work.

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*supra* note 1, at 515 (on post-conflict sexual violence prosecutions in Bosnia and Herzegovina).

55. Karima Bennouna, "That's Not My Daughter": *The Paradoxes of Documenting Jihadist Mass Rape in 1990s Algeria and Beyond*, in OXFORD HANDBOOK, *supra* note 1, at 502–03.
56. Nesiah, *supra* note 7, at 294.
57. Kristin Kalla, *Advancing Justice and Making Amends Through Reparations: Legal and Operational Considerations*, in OXFORD HANDBOOK, *supra* note 1, at 253; see also Vandenberg, *supra* note 50, at 413 (advocating for direct payments to victims of sexual harm).
58. Mazurana, Krystalli, & Baaré, *supra* note 10, at 449.
59. Deborah M. Weissman, *Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy*, 45 Sw. L. Rev. 915 (2016).
60. Amelia Hoover Green, "Mind the Gap": *Measuring and Understanding Gendered Conflict Experiences*, in OXFORD HANDBOOK, *supra* note 1, at 316.