

Pre-publication draft. The completed version appears in (2014), "Challenges of Local and Global Misogyny" in *A Companion to Rawls*, edited by Jon Mandle and David A. Reidy, 472–86. Oxford: Wiley-Blackwell

Challenges of Global and Local Misogyny

Claudia Card

Two main ideas motivate the Law of Peoples. One is that the great evils of human history – unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder – follow from political injustice, with its own cruelties and callousness. The other main idea . . . is that once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear (Rawls 1999a, pp. 6-7).

John Rawls's hypothesis that grave political injustices underlie the great social evils motivated his life's work, not just his last book. Evils discussed throughout his work include the atrocities of slavery and the Inquisition. Rawls's hypothesis implies that the worst evils that target women and girls will disappear once the gravest political injustices are gone. That idea is hard to assess. Misogynous evils are often rooted in failures of cooperation, enforcement, and perception, rather than in a political constitution, legislation, or foreign policy. Some sexism stems from background cultures not obviously incompatible with (liberal) just institutions. But the worst *evils* are not immune to institutional forces. Often women are left to defend themselves without organized help, not only within societies but in global traffic and in wars. That could change.

Perhaps Rawls was right that *if* the worst political injustices *were* eliminated, the great evils that have plagued humanity would disappear. Yet those worst injustices may not be eliminable unless people are willing to fight back using measures that include force and violence and are willing to do so in non-state organizations when states fail them, as peoples go to war against unjust aggressors after less drastic measures have failed. If such non-state organizations were understood to value reciprocity and to be capable of governing themselves by Rawlsian scruples, that thought might be less disturbing than it is otherwise apt to be.

If Rawls's ideas are to be a helpful resource for thinking about women's self-defense and mutual defense, that will probably not be through straightforward applications of his own projects. His projects were, first, what justice means in the basic structure of a society (Rawls 1999b and 1996) and second, what justice means in the foreign policy of a reasonably liberal well-ordered society (Rawls 1999a). Justice in foreign policy he divided into "ideal theory" for relations with other well-ordered peoples (governed by shared public conceptions of justice) and "non-ideal theory" for relations with states not well-ordered. In non-ideal theory we find his principles for war against outlaw states, which "refuse to comply with a reasonable Law of Peoples" (Rawls 1999a, p. 5). Rawls saw need for non-ideal theory also within society but never developed that project. Perhaps the non-ideal part of his Law of Peoples can be a resource for thinking about responding to evils when the subject is not state-centered, neither a society's basic structure nor its foreign policy. It is plausible that defense against great evils other than those of aggressive states should be governed by analogues of scruples that Rawlsian well-ordered societies observe in defending themselves against outlaw states.

This essay explores those hypotheses in relation to women's self-defense and mutual

defense against evils of misogyny. It extrapolates and adapts to this case values, concepts, and methods from Rawls's life's work, especially his writing on war.

Global and Local Misogyny

Despite its exemplary Constitution, the United States, like most societies, has laws, practices, customs, and attitudes that create environments hostile to women's and girls' development and thriving. In his later work Rawls explicitly addresses the family as a source of female oppression (Rawls 1999c, pp. 587, 595-601). In response to protest by Susan Moller Okin that making parties in the Original Position heads of families left families internally opaque to claims of justice (Okin 1989), Rawls changed that aspect of his theory. He also ventured the hypotheses that were women treated equally in the family, population growth would cease to be a major issue and that such a change would have a positive impact on unlawful immigration and the evils attendant upon current policies for dealing with it (Rawls, 1999a, p. 9).

Special attention to the family by Rawls and a majority of his feminist critics and defenders is easily justified, as Okin argued, in terms of the early formative impact of families on the child's development of a sense of justice. Yet families are not a centerpiece of my concern. Family is not the stage for many of the worst forms of misogyny. Many victims of the worst misogyny are not particularly attached to men. These victims include women who do not rear children, women with careers (not necessarily as care-givers) and economic independence, and women who are intimate with women. In "Renaissance" Europe, women not attached to men – "dispensable" women, economically independent midwives and healers – were the most vulnerable to being burnt as witches (Daly 1978, pp. 178-222). In India, widows were burnt.

Today, many women who resist traditional expectations regarding marriage are vulnerable to “honor killings.” Globally, it is very young women who are sold and enslaved for sexual service.¹

Families are often sexist without being misogynous. “Misogyny” (literally, “woman-hating”) is the term feminists apply to the most deeply hostile environments of and attitudes toward women and girls and to the cruelest wrongs to them/us, regardless whether perpetrators harbor feelings of hatred. Sexism includes misogyny but encompasses a spectrum of bad attitudes and behaviors, including male arrogance, male-centeredness (not only in men), sex discrimination, and female subordination. Not all sexism is culpable. Misogyny tends to be highly culpable and grossly oppressive.

By “misogyny,” I have in mind evils perpetrated with aggressive (often armed) use of force and violence against women: rape and domestic battering, kidnap for sexual slavery, forced prostitution, “honor killing,” stoning, simulated suicide by burning, widow burning, and horrors without special names, such as throwing acid in a woman’s face to disfigure her. Most global are the overlapping evils of rape (including forced prostitution) and domestic battering. More local are the systematic, irreversible, and disabling mutilation of girls (as in clitoridectomy and infibulation), coerced sati (widow burning, not altogether of the past); and “honor killing.”

Evils

My work on evil has been motivated by concerns to identify evils and avoid perpetrating further evils in responding to them. On what I call “the atrocity paradigm,” evils are reasonably foreseeable intolerable harms produced by inexcusable wrongs (Card 2002, pp. 3-26; Card 2010,

pp. 3-35). There is no need of malicious motives, such as sadism or spite. A practice is evil when there is morally no excuse for it and acting in accord with it foreseeably does intolerable harm.

Not all injustices are evils, only those that are inexcusable and do intolerable harm. What makes harms intolerable is not altogether subjective. A reasonable conception of intolerable harm is that it is a significant deprivation of basics ordinarily required for a life (or a death) to be decent for the person whose life (or death) it is. Such basics include non-toxic air, water, and food; sleep; the ability to move one's limbs; the ability to make choices and act on some of them; freedom from severe and unremitting pain and from debilitating humiliation; affective bonds with others; a sense of one's human worth. Although not exhaustive, that list is enough to show that intolerable harm does not totally depend on individual preferences. Intolerable harm interferes with one's ability to function decently as a human being.

A wrong can be inexcusable in two ways, which I call "metaphysical" and "moral." There is metaphysically no excuse when there was no diminished capacity for choice in the wrongdoer (no insanity or other relevant disability, for example). There is morally no excuse when no significant morally good reasons provide a partial defense. When there is some moral excuse, there are significant reasons in favor of the deed that carry moral weight, although not enough to justify it on the whole. Non-moral reasons may favor the deed. And a reason that might carry moral weight for some deeds may carry none for others. An inexcusable deed or practice is morally indefensible. On the atrocity paradigm, evils are inexcusable in both ways, metaphysically and morally.

On these understandings, rape, domestic battering, and murder (as in "honor killing," simulated suicide, and coerced sati) are generally evils, as social practices and in individual

instances. Disfiguring and disabling women or girls can be evils as well, depending on forms, contexts, and consequences. Stoning, like burning, tortures many victims to death, and is especially evil.²

Principles for individuals

What uses of force and violence are justifiable for defense by women against evils of misogyny? I ask “what is justifiable?” rather than “what is just?” because, as Rawls noted in class lectures, full justice may be unrealizable when currently available options are shaped by past wrongful choices. When no fully just options remain, it may be possible to reduce the amount or seriousness of deprivations of justice, or to contain them, prevent spreading or worsening. A best choice can be the lesser of unjust options or the creation of options that set a course for future justice. Even a best option can leave what Bernard Williams called “remainders,” including injustices that can never be adequately redressed (Williams 1974, p. 179).

Uses of force and violence include matters of individual choice and matters of policy or practices involving cooperation. Rawls’s theory of justice for society’s basic structure includes distinct principles for these different cases: two principles for social practices or institutions and one principle (fair play) for individuals. In *The Law of Peoples*, the distinction between justifying a practice or policy and justifying a particular choice seems not to figure, unless in the “supreme emergency exemption” if that exemption is understood as an unpunishable violation of policy (rather than a policy itself). Rawls’s theorizing about the Law of Peoples remains at the level of policies and practices. His principle of fair play presupposes principles at that level. And so the question arises: how are individuals to approximate fairness in the absence of relevant social

practices, institutions, or organizations for self-defense?

At the root of Rawls's idea of fair play is the idea of reciprocity. Rawls's principle of fair play, incorporating reciprocity, is borrowed from H. L. A. Hart, who described it as a "mutuality of restrictions" (Hart 1955, p. 185; compare Rawls 1999b, p. 96). According to that principle, it is *sufficient* for one's obligation to follow rules of a just practice that one freely accepted benefits of others' having done so. This principle leaves much unspecified. It does not say what is *necessary*. It does not say there is no obligation if the practice is unjust (would that depend on how unjust?), if one lacked choice about accepting benefits (would it depend on the nature of the benefits?), or if one did not benefit although it was reasonable to expect that one would, nor does it say how many must cooperate in order to generate duties to reciprocate. It is unclear how much women would be obligated by accepting (without exactly being forced to do so) benefits of existing practices and institutions.

Consider the following true stories, on which I have written elsewhere (Card 2010, pp. 141-45). One is that of Francine Hughes of the "burning bed" who in 1977 poured gasoline on her sleeping former husband and ignited it, killing him, after years of being battered by him despite her efforts to enlist law enforcement protection (McNulty 1980). The other is that of Inez García who in 1974 pursued and shot with intent to kill at two men who had just raped her. Right after the rape (but before the shooting), she received a phone call from one of them warning her to leave the area and threatening her otherwise. She killed one; the other escaped (Salter 1976; Wood 1976).

What these survivors did may have been justified but is not likely to be described as fair or just (however deserved their actions). Neither does it seem fair or just to evaluate their choices

simply by Rawls's principle of fair play, although one could apply it as follows. They had benefitted somewhat by living under the rule of law, which argues in favor of letting courts, not victims, decide perpetrators' fates. But the law also failed to protect them well against rape and battery. A more appropriate standard for evaluating their responses might be whether they chose the lesser of injustices. Would it not be a worse injustice to let such evils continue unopposed by anything more than incompetent or unwilling law enforcement agencies? Clearly, there is need for creative thinking on how, using the apparatus of law, to combat such incompetence and unwillingness. That process is slow. Women are poorly represented in it. Meanwhile, many endure irreversible harm or are at risk to be killed. Of options available to them, which represent the lesser injustices?

There are also questions of justice regarding how others should respond to what the women did. States may have no choice but to charge and try them for murder. But how should women respond? One, an attorney, responded by successfully defending García.

Hughes and García were each found guilty of murder, verdicts overturned on appeal. Hughes (in Michigan) was declared not guilty by reason of insanity. García (in California) was found justified in self-defense. None of these verdicts may be totally satisfying. If "guilty" seems unjust to the women, "not guilty" raises the question whether individuals should be allowed to execute assailants who have not been tried and are not at that moment engaged in an assault. It is tempting to adapt John Stuart Mill's observation that, "If society lets any considerable number of its members grow up mere children, . . . society has itself to blame for the consequences" (Mill 2003, p. 153). This is interesting from Mill: an argument not from utility but from fairness. Adapting his reasoning, we might argue that a society that fails to protect any considerable

number of its members has itself to blame when they do what they judge needful to protect themselves. That does not imply that they act justly. It does suggest where the greater injustice might lie.

Containing Unavoidable Injustice

In war some agents confront options none of which is fully just. *The Law of Peoples* (Rawls 1999a) contains Rawls's only extended discussion of war. Here, he invokes the idea of the social contract by way of a "second original position" (Rawls 1999a, p. 32) to yield hypothetical agreements that representatives of liberal peoples could make, first with each other, second, with non-liberal decent peoples. The agreements include principles for engaging with states that are not well-ordered, including outlaw states. These, Rawls's principles of war, might be best conceived as principles for containing injustice, principles "of" justice only because motivated by concern for justice, hope for future justice, and values underlying justice.

Rawls's approach to war seems actually to respond to these questions: in a people's defense against unjust aggression, (1) what scruples best contain, reduce, or at least do not aggravate injustice? and (2) what principles pave the way for outlaw states to become well-ordered so that relationships of justice with them are possible? Rawls uses the language of "just war" (Rawls 1999a, pp. 90 ff), which sounds as though he thinks war can be just, whether in execution or in cause. Yet that terminology may persist only because of tradition. Both "just war theory" and Rawls's principles are for the conduct of war by societies that value justice. It is consistent with Rawls's best insights to acknowledge that the most to be hoped for in the conduct of war is containment of injustice and movement toward justice. Principles of "just war" then

become scruples for managing war's inevitable injustices, identifying the lesser of unjust options and paving the way for (at least, not putting obstacles to) a future in which no states are outlaws.

Suppose we approach Rawls's thoughts on war and justice with the following two ideas. First, there is in reality no such thing as true justice in fighting a war, even if its cause is just; rather, there are degrees of injustice. Second, some wars need to be fought because the alternatives are morally worse. What is justifiable depends on alternatives in a way that what is just does not. Justice is determined more abstractly by relationships that are not always realizable. Fighting a war when alternatives are worse can be a choice of the lesser of unjust options, attempting at least to contain injustice and ideally set a stage for future justice.

So understood, Rawls's thoughts on war are suggestive for addressing a "war" on women.

"War" on Women

Mary Kaldor argues that the "new wars" – since the Cold War – "involve a blurring of distinctions between war (usually defined as violence between states or organized political groups for political motives), organized crime . . . and large-scale violations of human rights" (Kaldor 2001, p. 2). Extending her reasoning, one can argue that many ancient massive violations of human rights warrant classification as "wars" at least as much as the Cold War, drug wars, and wars on terrorism. Such classifications change (blur) the meaning of "war" – a price of the moral recognition of relevant analogies. Millennia of global misogyny bear enough analogies to hostilities, aims, and consequences of wars perpetrated by heads of state to warrant speaking of a "war" (or "wars") of aggression against women, some of it consciously organized,

some coordinated by way of norms internalized early by individuals. In these ways, sex wars resemble race wars. A decade before Kaldor's work, Harvard Medical School psychiatrist Judith Lewis Herman wrote, "There is a war between the sexes. Rape victims, battered women, and sexually abused children are its casualties. Hysteria is the combat neurosis of the sex war" (Herman 1992, p. 32). She compared female "hysteria" to "shell shock" in soldiers during World War I. Both today are recognized as post-traumatic stress disorder. "War between the sexes," however, suggests a more balanced distribution of responsibility for aggression than we find. For the most part, women have not fought back very aggressively. *War between* the sexes would be progress. What we find is better described as a war on women.

The aggression has been mainly by men (not without female support), and groups instituted by men, against females on account of their sex. As with outlaw states, this aggression is not justifiable self-defense, despite some rhetoric of "honor." It is to advance and secure prudential and other interests that lack moral grounding. Collaborating women are also victims. Some male resisters become victims. Others profit but are not aggressive. Some are bystanders. Some beneficiaries are not very aware that their profits come at women's expense. Those aware who choose to "do nothing" are collaborators; those unaware who should be are at least complicit. Many men in these categories are intimate with and feel benevolent toward women. The "war" is not by all men as hostile aggressors against all women. Aggressors, however, are mainly men and victims mainly women.

There are environments where women are less likely to be targets of aggressive violence based on their sex. Some men would not knowingly advance themselves at women's expense, let alone do so violently. Still, women court danger when they venture outside those environments.

And many men are not very aware of when they advance at women's expense.

Misogynous evils mostly lack national boundaries. With the exception of certain war crimes, such as mass rape, they tend not to victimize entire peoples. Nor are perpetrators always a people. But peoples are guilty of failing to do well at protecting women and girls. Eventually, many women, individually and in groups, confront needs to defend themselves.

Most misogynous practices do not fit the conventional model of war Rawls has in mind in his Law of Peoples. His parties to war are well-ordered peoples and outlaw states, not individuals.³ Opposing aggressive outlaw states are well-ordered peoples, whose societies are relatively compliant with a shared public conception of justice. So described, well-ordered peoples sound innocent and clearly distinct from their enemies. Women are seldom innocent. They are often sleeping with the enemy. Their loss of innocence is frequently traceable to misogynous evils they have suffered. Many inhabit something like what Primo Levi called "gray zones," in which victims become complicit in the evils from which they, too, suffer (Levi 1989, pp. 36-69; Card 2002, pp. 211-34).

Well-ordered peoples, however, are less innocent than they sound when described as above. Even "relatively well-ordered peoples" (Rawls 1999a, p. 89) contain and tolerate what are for women "outlaw environments" in which a commitment to justice for women and girls does not exist or is not very effective.

"Outlaw" here does not mean what gender critics have meant. It does not describe rebels against conventional gender practices. On the contrary, it describes conventional gender practices that are deeply unjust, "non-compliant," as Rawls would put it, with principles of justice.

If global misogyny is not unproblematically conceived as martial, neither are domestic misogynous evils unproblematic as causes for armed humanitarian intervention. What people does such a good job of protecting its females that it would be justified in militarily intervening for that purpose into the affairs of another? Such “glass houses” questions are raised about humanitarian intervention generally. In response, some propose that international bodies such as the United Nations be given sole power to authorize interventions. But glass houses questions can be asked of international bodies. At issue are long track records of failing to protect women and girls against inexcusable intolerable harms, not inevitable failures due to error or ignorance.

Ideal Contracts, Original Positions, and Hypothetical Agreements

Despite analogies between a war where parties are peoples or states and a “war” on women, there are obvious disanalogies. So, I have heretofore put the analogous “war” in scare quotes (dropped hereafter). Fighting back in a war on women is like fighting a war on terrorism in which the terrorists are not states. Some of it *is* war on terrorism that targets women. Unlike states, the sexes are not agents. The sexes might be regarded as groups in virtue of shared interests. But the sexes do not *act* as groups (although subgroups act). Peoples at war, in its conventional sense, act through representatives. Outlaw states act, although they do not represent their peoples. There are no representatives of the sexes, considered as such. Were we to employ Rawls’s imaginative device of a veil of ignorance for choosing principles to govern women’s responses to misogynous evils, the parties would have to represent individuals, as in Rawls’s first use of the idea of the “original position” (hereafter, OP). So, why not simply leave it a task of parties in Rawls’s first and second uses of the OP to propose principles for responding to

misogyny? Is it helpful to use the OP to generate principles specifically to guide women's responses to misogyny? I will suggest a way that it is.

It should, indeed, be a task of parties in both of Rawls's OPs to propose principles governing responses to misogynous crimes. The Law of Peoples includes the principle: "Peoples are to honor human rights" (Rawls 1999a, p. 37). But there is no enforcement provision other than humanitarian intervention, the particulars of which are not given. Parties in the first OP would want women protected, too. But how would their reasoning go?

When the task is non-ideal theory for within a society, parties in the OP must know that their society may be permeated even in law enforcement by misogyny and that many may in reality not be committed to principles reasonable to choose behind the veil. Do circumstances of justice, then, obtain? How should parties conceive the point of their task?

It might be thought that *well-ordered* peoples would not have that problem. But misogynous evils are not confined to outlaw states, burdened states, and benevolent dictatorships. The division of societies into those well-ordered and those not sounds simpler than the reality. Being well-ordered is a matter of degree in how well-governed a people is, how well-developed, well-applied, widely shared, and comprehensive its public conception of justice. Rawls refers to "relatively well-ordered peoples" (Rawls 1999a, p. 89). No society is thoroughly well-ordered. "Relatively" does not even imply "very." Misogynous subcultures exist within many a relatively well-ordered people as do areas of conduct in which an otherwise relatively well-ordered people is not at all well-ordered.

Individuals, too, can be inconsistent. People who try to be guided by justice toward those they respect often treat others as inferiors. This phenomenon applies to race and gender. Many

men in relatively well-ordered societies are not motivated to grant women the respect they grant other men (or, *some* other men).

So the question arises: whom would parties in the OP represent when proposing (non-ideal theoretical) principles to address such evils as those of misogyny? In what Rawls calls his second use of the OP, parties represent only well-ordered peoples, not outlaw states or burdened societies. Analogously, in Rawls's first OP, if the task were to choose principles for a *partially* compliant society, parties should represent not *all* individuals but only those of presumable compliance. They need to know roughly the collective strength of that group to estimate how much compliance to expect on the other side of the veil, in order to assess whether circumstances of justice obtain, so they can set a realistic task.

Rawls understands circumstances of justice as conditions under which cooperation is both useful and necessary: everyone is vulnerable but none so powerful as to be able to dominate the rest for long. In ideal theory, parties in the first OP know this about their society. In non-ideal theory, must parties know that non-compliance is not so widespread that cooperation is hopeless? Is that enough to give point to their task for parties who know they might turn out to be victims of well-entrenched misogyny? What if cooperation *has been* hopeless? Might the task then shift to proposing principles for coalition building, to ground hope of sufficient cooperation? In any case, victims can be justified as a matter of self-respect in fighting even hopeless battles.⁴ If they care about self-respect, presumably they care about principles for fighting even hopeless battles.

Rawls's use of the contract idea in his sketch of a Law of Peoples does not receive the elaboration of reasoning that we find in *A Theory of Justice* (Rawls 1999b). Perhaps the contract idea is less useful for non-ideal theory. More interestingly, perhaps task of the parties changes.

Something like Nietzsche's view of early justice is suggestive for non-ideal theory:

“Justice on this elementary level is the good will among parties of approximately equal power to come to terms with one another, to reach an ‘understanding’ by means of a settlement – and to *compel* parties of lesser power to reach a settlement among themselves” (Nietzsche 1967, pp. 70-71). Nietzsche, unlike Rawls, presents the compact as historical, not hypothetical, and as among those who know they are powerful, not among parties behind a veil who may know only that cooperation is not hopeless. But Nietzsche also presents his speculative compact as among parties of good will, suggesting that it may not be merely a *modus vivendi*, and as including provision for coercing others. A Rawlsian hypothetical contract for non-ideal theory might likewise be conceived as among parties of goodwill and as including principles for using force against those whose goodwill cannot be presumed. This is how Rawls does conceive it for the case of war.

Rawls admits to a certain agnosticism regarding the likelihood of success in implementing a Law of Peoples and, ultimately, bringing about a world in which all societies are members of a Society of Well-Ordered Peoples. What sustains him is the human possibility of success here. This allows him hope. His agnosticism may derive from doubts about whether circumstances of justice obtain at the global level. His hope may be more an aspect of his non-theistic religion than a sociologically grounded stance (Rawls 2010, pp. 261-69).

Rawls does not assume that the basic structure of society and relations among peoples are the only subjects of justice. But they are the only ones he addresses. Defense of women should doubtless be incorporated into justice for both subjects. Given the histories of peoples, however, that will not much encourage women. A more promising idea might be to seek circumstances of

justice among women, or groups of women, or try to cultivate circumstances in which cooperation among women would be fruitful (as it surely seems necessary).

Women and girls do not form a society. They form a kind of group, joined (if not united) across the boundaries of peoples by common and overlapping interests. This group is not yet capable of action, although subgroups are. What social units are appropriate subjects of principles for the self-defense and mutual defense of women and girls against evils of misogyny? Feminist groups have not achieved stability, let alone membership, comparable to states. An interesting approach embraced by radical feminists of the 1970s, exemplified earlier in Virginia Woolf's "society of outsiders," is separatism. Woolf was moved in her last, most radical book to have her female outsider proclaim, "in fact, as a woman I have no country. As a woman I want no country. As a woman my country is the whole world" (Woolf 1938, p. 109). Women need principles for forming social units of defense against global and local misogyny. Meanwhile, women need principles now for defending themselves and each other as individuals.

Principles for Individual Self-Defense in a War on Women

Instead of going much into the reasoning of parties in his second use of the OP (which generates the Law of Peoples) Rawls sets out a list of principles, including principles for war. Let us consider how adaptable those war principles are to the case of women, when their case is not subsumed under the basic structure of the society of a well-ordered people or its foreign relations.

Following just war theory, Rawls begins his discussion of war by first taking up justifications for going to war (*jus ad bellam*) and states a version of the principle of just cause,

in two parts. The first part is negative: “No state has a right to war in the pursuit of its *rational* as opposed to its *reasonable* interests” (Rawls 1999a, p. 91). His distinction between rational and reasonable interests roughly tracks Immanuel Kant’s distinction between merely prudential interests and morally grounded interests.⁵ Reasonable interests take others into account; merely rational interests need not. The second part of Rawls’s *jus ad bellam* principle is positive: “Any society that is non-aggressive and that honors human rights has the right of self-defense” (Rawls 1999a, p. 92). Later he mentions humanitarian intervention but does not elaborate or clarify.

Adapting Rawls’s just cause principle to the case of women requires distinguishing women’s merely prudential (rational) interests from morally grounded (reasonable) interests and altering the part about a non-aggressive society. The first part of the principle is satisfied when the interests protected are the morally grounded interests of security and freedom. Women are not justified in resorting to violence over conflicts regarding forms of discrimination that hamper their pursuit of merely rational (prudential) interests (say, merely personal ambitions) that are not at the same time reasonable interests (morally grounded). In the second part of the principle, a plausible substitute for “society that is non-aggressive” might be: “one who lacks a history of unjust aggression and whose principles would not permit it” so that the principle becomes: Anyone who lacks a history of unjust aggression, whose principles would not permit it, and who honors human rights has the right of self-defense. Thus, complicity under duress need not negate a justification for self-defense.

Next Rawls offers six principles for the conduct of war (*jus in bello*). The first states that “the aim” is “a just and lasting peace among peoples, and especially with the people’s present enemy” (Rawls 1999a, p. 94). Adapting this principle, the plausible aim would be a just and

lasting peace between (among) the sexes. But the part about peace with one's current enemies is not clearly adaptable. When the parties are not group agents, one's most obvious current enemies are the individuals one is most likely to harm deliberately in war. Perhaps the aim should be re-conceived for both the Law of Peoples and the case of women as a peace that paves the way to reducing significantly the injustices that led to war.

Rawls's second *jus in bello* principle is: "Well-ordered peoples do not wage war against each other. . . but only against non-well-ordered states whose expansionist aims threaten the security and free institutions of well-ordered regimes and bring about the war" (Rawls 1999a, p. 94). This principle seems redundant, given the *jus ad bellam* principle: well-ordered peoples are not aggressively expansionist. Here what Rawls may want to emphasize is that well-ordered peoples resolve conflicts among themselves even over *reasonable* interests without violence. An analogue for women might be that women governed by a sense of justice resolve conflicts with individuals who are not outlaws even over *reasonable* interests without violence. We need, then, to define "outlaw individuals." A plausible approximation is: "individuals who are prepared to *use violence*, in a society that fails to restrain them from doing so, in pursuit of interests that are not reasonable."

Rawls's third principle distinguishes degrees of responsibility among three groups: "the outlaw state's leaders and officials, its soldiers, and its civilian population" (Rawls 1999a, p. 94). Adapting it, we can distinguish levels of responsibility for aggressive violence against women. Parallel distinctions might be: those who have greatest control over whether, how, and what kinds of aggression are perpetrated (compare "leaders and officials"), those who are instruments of aggression but lack such control (compare "soldiers" who are not leaders or officials), and those

under the authority of members of the first group but who are not instruments of violence (compare “civilians”). Further distinctions may be needed regarding bystanders and beneficiaries.

Rawls’s fourth principle is: “Well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers” (Rawls 1999a, p. 96). This principle seems straightforwardly adaptable and even to follow from the fifth principle.⁶

Rawls’s fifth principle is that well-ordered peoples are to foreshadow during war the kind of peace they aim for and the kind of relationships they seek. This duty, he notes, falls largely on leaders and officials. Although there are no current analogues of leaders, the basic idea is important for women. What kinds of relationships with men should women aim for and foreshadow? Women have been steered into relationships that give men constant intimate access to them, often to the detriment of peace. The relationship lacking has usually been one of adequate respect. Women should try to foreshadow a peace in which men have less of that intimate access and are more respectful. This idea rules out sexual seduction by women as a war tactic.

Rawls’s sixth principle is that “practical means-end reasoning must always have a restricted role in judging the appropriateness of an action or policy” (Rawls 1999a, p. 96). His intent seems to be to emphasize that the preceding principles restrict the role of means-end reasoning in war. In his gloss on this principle Rawls invokes the exception of “supreme emergency,” discussing it only briefly, relying for illustration on Nazism’s evils to “civilized life everywhere” (Rawls 1999a, pp. 98-99). Like ticking bomb torture, “supreme emergency” is a dangerous idea, liable to gross abuse. If it has validity nevertheless, we should appreciate that it undercuts the human rights of the fourth principle and the “foreshadowing peace” of the fifth. As

applied to women's resistance, "supreme emergency" measures, which violate normal restrictions on means-end reasoning, should be not only needed quickly but reasonably judged necessary and, under the circumstances, sufficient for an objective of supreme importance transcending that of any individual and limited in severity by the severity of the evils to be prevented. Still, it is good to be skeptical of the idea of a "supreme emergency exemption."

Insofar as Rawls's principles say not what is *justifiable* but only what is not, they are scruples. Only the second part of the just cause principle and the "supreme emergency exemption" (not a principle but an exception) are explicitly about what is justifiable. The unnamed elephant in the vicinity is the use of force and violence to kill and maim. The idea is that killing and maiming can be justifiable if these principles are observed. Adapting that conclusion to women's resistance yields the idea that killing or maiming perpetrators of the evils of misogyny can likewise be justifiable if analogues of Rawls's principles are observed.

Did the actions of Hughes and García fall within those limits? Did they avoid doing evil in response to evils they faced? They inflicted harm clearly intolerable from their victims' points of view. But were they justified? And if not, had they any moral or metaphysical excuse?

Consider just cause. If the interests defended were the morally grounded interests in security and freedom, not some merely prudential interest (or, say, an interest in revenge), they satisfied the first part of this principle. If the women lacked histories of unjust aggression, were not committed to unjust aggression, and honored human rights, they satisfied the second part. Of course, what is at issue is whether their responses failed to honor human rights. Perhaps it is sufficient for this principle that they lacked histories of commitment to aggressive injustice or of failing to honor human rights.

If Hughes and García are regarded as ordinary civilians (as the courts regarded them), their acts are difficult to construe as self-defense, given how assault and battery are defined in criminal law. Hughes' batterer was asleep. García's rapists had done their deed; she was free to go. But military combat rules are reasonably more permissive. Soldiers can attack at night when the enemy might be asleep. They do not have to retreat whenever retreat is possible. Hughes and García defended against *patterns* of violence, not simply particular episodes. Neither could depend on state protection. Regarding them as more like military combatants than like civilians seems fair. Another way to look at Hughes is that she defended herself against a coerced relationship, which did not dissolve when the enforcer slept.

Were their aims a lasting peace with those who currently terrorize women? The analogy breaks down if the peace at issue is between groups at war. Hughes was not fighting batterers in general, nor was García fighting rapists generally. Each fought only her own assailant(s). Nor was either fighting as a member of a group. Yet, their deeds were potentially precedent-setting, sending the message that men cannot be confident of being able to get away with misogynous violence, a message compatible with peace. Whether that is the dominant message depends also on whether women who do likewise are exonerated. Most women who respond as they did go to prison, many for the rest of their lives. Still, the first message remains partially valid (the men killed did not get away with it) and might have a salutary effect.

Did either woman fail to make relevant distinctions regarding responsibility? Hughes tried first to enlist help from law enforcement. Although García succeeded only in killing the 300-pound man who stood guard while the other assaulted her, she tried to kill both and regretted only that she did not succeed in killing the other man. (He was never charged with a crime). Neither

woman harmed others.

Was either woman guilty of a human rights violation? Did Hughes violate the right not to be tortured? As her batterer was asleep in a drunken stupor, there may be no way to know what he felt. She should have been aware of the danger that she might be torturing him.⁷ Although she was protecting children also, her objective was, I would say, insufficiently important and transcendent to make plausible a “supreme emergency exemption,” that is (here), a violation of restrictions on means-end reasoning that proscribe torture. Further, her incendiary deed, although sufficient, may have exceeded what was needful, a conclusion calling for judgment regarding her long-range options. In any case, it appears not to have been premeditated, which enabled Michigan to find her temporarily insane.

García took advantage of the fact that her rapists would not expect her to pursue them armed. Had they expected that, they would have been armed and she would likely have been the one killed. Given women’s socialization to non-violence and failures in law enforcement, the rapists’ expectation was epistemically justified. As combatants in a war on women, they had no moral title to rely on that expectation.

Neither woman’s response seems, on these reckonings, inexcusably wrong, morally or metaphysically. In the absence of NGOs for defense of women, individuals like these survivors are all we have to consider. But the ultimately more important issue is organizing for effective use of force and violence in women’s defense.

Guerilla Feminism

In the 1970s and 1980s guerilla feminists in the U.S. carried to another level defense of women

against misogyny. Typical tactics were property assaults – public graffiti, physical destruction of pornography, trashing pornography shops. There may have been organized violence against targeted individuals. In 1989, the journal *Lesbian Ethics* carried an interesting piece titled “Guerilla Feminism,” consisting of information about actions in Massachusetts “from newspaper clippings and other material sent to *LE* anonymously” (Anonymous 1989, pp. 79-90). Reports of violence against persons appear in a concluding paragraph: “In Iowa, a huge group of women kidnapped a man who had raped dozens of women. They castrated him in a cornfield. Closer by, a man who had raped at least 10 women was captured by a band of women. They stamped ‘rapist’ all over his body. They super-glued his hands to his penis to his balls to his legs.” (Anonymous 1989, p. 90). This is vigilanteism, or freedom-fighting, depending on your perspective.

A pair of short stories by Melanie Kaye/Kantrowitz, “The Day We Didn’t Declare War” and “The Day We Did” suggests that more drastic violence against persons may have been contemplated (Kaye/Kantrowitz 1990, pp. 85-96), even implemented. The first story describes an organization calling itself “The Godmothers.” The Godmothers made services available to women who were being assaulted in their homes. This organization put new and better locks on doors, sent pairs of Godmothers to stay with women in their homes, and put up warning signs on doors that the assailant was being monitored by The Godmothers. And they did monitor assailants. The second story describes a formal meeting at which Godmothers entertained more drastic measures in response to series of rapes in a local park after police failed to arrest anyone. That story ends without revealing what the Godmothers decided. In a later collection of essays, Kaye/Kantrowitz wrote, “In Portland we formed a group called the Godmothers who would protect battered women in their own homes” (Kaye/Kantrowitz 1992, p. 48).

Women in the self-defense movement and in a group called “WAR” (Women against Rape) organized in many cities to teach women and girls martial arts through groups like *Chimera Self Defense*, which has active branches today. *Chimera* was formed in the 1970s by women with black belts in martial arts who were getting raped on Chicago streets. Physical skill, they concluded, was only part of self-defense. Their courses consist of 50% attitude training.

These are small-scale organizations compared to political states. But like the Portland Godmothers and guerilla feminists of Iowa and Massachusetts, they demonstrate sensitivity to reciprocity. When men are trained for combat and taught how to kill, is it not justifiable for women to form groups to teach those skills systematically to women, who might need them for protection against men so trained? Might it be justifiable to teach women to notice when breaking a law might save life or limb (perhaps one’s own) without endangering the innocent? Such projects might be regarded as supplements, rather than alternatives, to projects for improving the law, although tension between these kinds of projects is likely.

Yet, a serious issue remains. Civil law has trials to determine who is guilty of an offense, and states have international norms for identifying combatants. Non-state organizations have only their own relatively subjective improvisations for identifying the enemy, which can make their identifications and subsequent targetings seem to others unpredictable or indiscriminate.⁸ The difficulty of identifying enemies fairly is a general problem for terrorists, insurgents, and all who would engage them in scruple-governed combat. Rawls’s just war principles need to be supplemented with further principles and discussion to address that issue.

References

- Anonymous. 1989. "Guerilla Feminism." In *Lesbian Ethics* 3:3, pp. 79-90.
- Card, Claudia. 2002. *The Atrocity Paradigm: A Theory of Evils*. New York: Oxford University Press.
- _____. 2010. *Confronting Evils: Terrorism, Torture, Genocide*. Cambridge, Eng.: Cambridge University Press.
- Daly, Mary. 1978. *Gyn/Ecology: The Metaethics of Radical Feminism*. Boston: Beacon Press.
- Hart, H. L. A. 1955. "Are There Any Natural Rights?" *The Philosophical Review* LXIV:2, 175-91.
- Herman, Judith Lewis. 1992. *Trauma and Recovery*. New York: Basic Books.
- Kant, Immanuel. 1996. *Practical Philosophy*. Trans. and ed. Mary J. Gregor. Cambridge, Eng.: Cambridge University Press.
- Kaldor, Mary. 1999, 2001. *New and Old Wars: Organized Violence in a Global Era*. Stanford, CA: Stanford University Press.
- Kaye, Kantrowitz, Melanie. 1990. *My Jewish Face and Other Stories*. San Francisco: Spinsters/Aunt Lute Books.
- _____. 1992. *The Issue Is Power: Essays on Women, Jews, Violence and Resistance*. San Francisco: Aunt Lute Books.
- Levi, Primo. 1989. *The Drowned and the Saved*. Trans. Raymond Rosenthal. New York: Vintage.
- Martin, Rex and David Reidy, Eds. 2006. *Rawls's Law of Peoples: A Realistic Utopia?* Malden, Mass.: Wiley-Blackwell.
- McNulty, Faith. *The Burning Bed*. New York: Harcourt Brace Jovanovich.

- Mill, John Stuart. 2003. *Utilitarianism and On Liberty*, ed. Mary Warnock. 2d ed. Malden, Mass.: Blackwell.
- Mohr, Richard. 1988. *Gays/Justice*. New York: Columbia University Press.
- Nietzsche, Friedrich. 1967. *On the Genealogy of Morals*. Trans. Walter Kaufmann and R. J. Hollingdale. New York: Vintage.
- Okin, Susan Moller. 1989. *Justice, Gender, and the Family*. New York: Basic Books.
- Pettit, Philip. 2006. "Rawls's Peoples." In Martin and Reidy (above), pp. 38-55.
- Rawls, John. 2010. *A Brief Inquiry into the Meaning of Sin and Faith with "On My Religion."* Ed. Thomas Nagel. Cambridge, Mass.: Harvard University Press.
- _____. 1999a. *The Law of Peoples*. Cambridge, Mass.: Harvard University Press.
- _____. 1999b. *A Theory of Justice*, rev. ed. Cambridge, Mass.: Harvard University Press.
- _____. 1999c. *John Rawls: Collected Papers*. Ed. Samuel Freeman. Harvard University Press.
- _____. 1996. *Political Liberalism*. Paperback edition with new introduction and "Reply to Habermas." New York: Columbia University Press.
- Sahebjam, Freidoune. 1990. *The Stoning of Soraya M.* Trans. Richard Seaver. New York: Arcade Publishing.
- Salter, Kenneth. 1976. *The Trial of Inez García*. Berkeley, CA: Editorial Justa Publications Inc.
- Williams, Bernard. 1974. *Problems of the Self*. Cambridge, Eng.: Cambridge University Press.
- Wood, Jim. 1976. *The Rape of Inez García*. New York: G. P. Putnam's Sons.
- Woolf, Virginia. 1938, *Three Guineas*. New York: Harcourt, Brace & World, Inc.

Endnotes

Earlier drafts of this essay were read and commented on by my Adam Pham, Harry Brighouse, Jeffrey Reiman, Eric Senseman, Regina Schouten, and the editors of this book. I am grateful for their suggestions and also to Jeffrey Reiman for sharing with me in advance his review of my book *Confronting Evils* (2010), in which he comments on my discussion of Hughes and García.

1. “An estimated 2.5 million people are in forced labour (including sexual exploitation) at any given time as a result of trafficking”; “The majority of trafficking victims are between 18 and 24 years of age”; “43% of victims are used for forced commerce.” Pre-publication draft. The completed version appears in (2014), “Challenges of Local and Global Misogyny” in *A Companion to Rawls*, edited by Jon Mandle and David A. Reidy, 472–86. Oxford: Wiley-Blackwell. sexual exploitation, of whom 98 per cent are women and girls.” For these and more statistics on human trafficking and the proportions of victims who are women and girls, see website:

http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf

2. A detailed account of a 1986 stoning is in Sahebjam 1990.

3. On why Rawls reserves the term “peoples” for liberal and decent societies and does not apply it to outlaw states, see helpful discussion by Philip Pettit in Martin and Reidy 2006, pp. 388-55, esp. pp. 42-48.

4. I owe this thought to Richard Mohr’s work on gays and dignity (Mohr 1989, pp.315-37).

5. For Kant’s distinction between prudence and morality, see the first and second sections of his *Groundwork of the Metaphysics of Morals* (Kant 1996, pp. 49-93).

6. It is puzzling that Rawls mentions the human rights of only civilians and soldiers, apparently omitting leaders and officials. Perhaps he was subsuming leaders and officials under “soldiers”?

7. Thanks to Jeffrey Reiman for noting that the possibility that she was torturing him was something she should have known.

8. I discuss this and other issues raised by terrorism in Card 2010, pp. 123-48, which discusses Hughes and García.