POLICY

_Jus Post Bellum: Just War Theory and the Principles of Just Peace_

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What happens following a war is important to the moral judgments we make concerning warfare, just as the intentions going in and the means used are. There has, however, been inadequate attention paid to considerations of _jus post bellum_ in the just war tradition. This essay seeks to contribute to recent efforts to develop _jus post bellum_ principles by first noting some of the ways that _jus ad bellum_ and _jus in bello_ considerations serve to constrain what can legitimately be done after war. We argue, however, that the constraints grounded in traditional just war theory do not offer sufficient guidance for judging postwar behavior and that principles grounded in the concept of human rights are needed to complete our understanding of what constitutes a just war. A just peace exists when the human rights of those involved in the war, on both sides, are more secure than they were before the war.

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The just war tradition is based on the paradox that killing may be necessary to save lives, that the devastation of war may be required to prevent the destruction of deeply held values. Pacifists think the paradox is in reality a contradiction. Their position is understandable when we think of the consequences of modern warfare. How could the deaths of millions—some estimates put the number of people killed in the wars of the twentieth century alone at 90 million—possibly be justified in the name of saving lives? In fact, there are enormous numbers of war-related deaths that cannot be justified even in terms of the just war idea of waging war in order to save lives. There have been, after all, unjust wars and, within those wars that were just, unjustifiable killings. But the principle, and the paradox it engenders, is well illustrated by those cases in which a military response almost certainly did save lives (as in Kosovo) or would have if it had been forthcoming (as in Rwanda).

Over time, philosophers have divided just war thinking into two parts, _jus ad bellum_ and _jus in bello_—the before and after considerations separated by the point of

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entry into war. The first has to do with the moral reasoning that justifies the resort to war—proper authority, just cause, last resort, right intention, and perhaps other concerns—while the second has to do with the legitimacy of the means used to wage war. These considerations relate to why and how a war is fought. But this conventional division sometimes obscures the fundamental inseparability of motive and means. If war can only be justified by a concern for the lives and dignity—in essence, the human rights—of those we seek to defend (whether our own citizens or the victims of attack or oppression elsewhere), then how we wage that war will matter a great deal. It is inconsistent to go to war for the defense of human rights if such a war is likely to result in the deaths of extraordinary numbers of the civilians we seek to save or, on balance, increase their misery. Likewise, it is inconsistent to claim to be waging a war for the defense of lives from future terrorist attacks if such a war is likely to increase those attacks or result, on balance, in less security. Of course, such consequentialist judgments are difficult to make, but a concern for justice requires that we make them to the best of our ability. More to the point, however, is the understanding that how a war is fought is integrally related to its rationale. Reconciling means and ends is, indeed, a matter of integrity.

A just war is one that seeks to right a wrong, and, not incidentally, at a cost that will not leave us wondering whether or not the wrong that has been righted might have been preferable to the wrongs we have left behind. War is never a good thing, but we consider it justified if a persuasive case has been made that it is the lesser of two (or ten or a hundred) evils. It must be expected to produce less evil than a reliance on diplomacy, less evil than economic sanctions, less evil than passive resistance, less evil than doing nothing—less evil, that is, than anything we can plausibly offer as an alternative. Thus we must, to be moral, concern ourselves with the evils that war produces and that raises questions about how we fight and what we do after we have fought. Likewise, it means that how we intend to fight and what we intend to do after we have fought must be part of the moral calculus in determining whether or not we may justly go to war.

We begin to see, then, why retrospection is so important to moral judgment in the sense of evaluation and why intention is so important to moral judgment in the sense of discernment. World War II is called “the good war” not just because of the defeat of fascism and the liberation of captive peoples. Perhaps it was “the good war” not even primarily for these reasons. After all, the liberation brought by Allied armies came too late for many, including two-thirds of Europe’s pre-war Jewish population. World War II is judged favorably by so many in large measure because of the postwar order it established. Notwithstanding the Cold War and scores of civil wars and ethnic conflicts that followed, World War II led, in many parts of the world, to decolonization, democratization, and development. It produced, in other words, significant improvements in human rights.

Of course, here we must recognize that the postwar order may have been judged quite differently by, for example, the Poles and the French. It may be only a slight exaggeration to say that World War II was fully justified only when the United States began to reconstruct Western Europe and to rehabilitate and reform Germany and Japan. Would it even be controversial to suggest that the Soviets’ war of self-defense against German aggression was morally tainted by Stalin’s postwar policy of carting off to Russia economic assets from the parts of Europe occupied by the Red Army or to claim that the Soviet Union fought a just war up to the point at which the Nazis were expelled from Soviet territory, but that its “liberation” of Eastern Europe proved to be unjust because it merely replaced one alien dictatorship with another?

What happens after the shooting stops and the surrender is signed is important to the moral justification of warfare, just as the means employed is. And yet there has always been inadequate attention paid to considerations of jus post bellum in the just war tradition.
The Need for Jus Post Bellum Criteria

Since the late medieval period when questions concerning the morality of warfare came to be divided into the jus ad bellum and the jus in bello, theologians, philosophers, and lawyers have separated the principles by which entry into war is judged from those used to judge the conduct of war. Michael Walzer (2000:21) has stated the distinction particularly well:

The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgment is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly. ¹

Jus ad bellum considerations offer moral guidance up to the point at which the fighting begins; the principles associated with jus in bello apply as long as the fighting continues. But what happens after the fighting stops? As the example of World War II suggests, replete as it is with postwar occupations, regime changes, boundary shifts, war crimes trials, repatriations, reconstruction efforts, and many other activities, the aftermath of war inevitably raises deep and difficult questions of justice. Where are the principles that can guide policy makers, as well as individual soldiers, through the postwar moral thicket?

Recently, a few scholars have attempted to address this question,² but it remains the case that jus post bellum is “the least developed part of just war theory,” as Walzer (2004:161) notes. In spite of the many studies that have appeared concerning war crimes tribunals, truth commissions, and other strategies for achieving justice in the aftermath of conflict, general principles of justice such as those embodied in the just war tradition are absent. As political scientists Charles Kegley and Gregory Raymond (1999:243) have stated, “While scholars have argued for centuries about the conditions under which it is just to wage war, far less thought has gone into how to craft a just peace.”

To be fair, the classical sources of the just war tradition always demonstrated some concern for the aftermath of war, especially insofar as those sources related the end of war to the ends of war. It has been widely acknowledged that only some just purpose could give meaning to the death and destruction caused by war. Grotius (1949:375) approvingly quoted Aristotle’s view that “the purpose of war is to remove the things that disturb peace.” Augustine (1958:452) believed that peace “is the purpose of waging war. . . . What, then, men want in war is that it should end in peace.” This view of the ends of war is also held by more recent commentators. Even the one whom we remember for his declaration that “war is hell,” William Tecumseh Sherman, in a speech delivered in St. Louis in 1865, said, “The legitimate object of war is a more perfect peace” (quoted in Shelton 1999). Echoing this tradition, the British military strategist B. H. Liddell-Hart (1974:339) wrote, “The object in war is a better state of peace.” Clearly there has been a consistent acknowledgment of the importance of securing in war “a more perfect peace.”

Before we attempt to determine what a set of jus post bellum principles might look like, it is important to consider the argument that no such effort is necessary since the other parts of the just war tradition—especially the right intention principle as it relates to both jus ad bellum and jus in bello—imply the existence of norms applicable to the end, and the aftermath, of war. James Turner Johnson (1999:208)

¹The addition of jus post bellum principles would mean, of course, that war is always judged three times. In fact, this is what happens. We invariably evaluate, in both political and moral terms, war’s outcome.

has pointed out that “the way a war is fought and the purpose at which it aims, including the peace that is sought for the end of the conflict, are not unrelated, whether in practical or in moral terms.” To the medieval just war theorists, the view that war is justified only by the peace it seeks to restore served as a restraint on both the resort to war and the means employed in waging war. It is also possible, however, to invert the relationship and argue that the restraint of war—that is, the traditional just war stance itself—implies something about the “end of peace.” The fundamental problem with this position is that just war theorists rarely discuss the “end of peace” and what such an objective implies. We can concede that there is an important link between why and how a war is fought and how it concludes, but this no more eliminates the need for principles to insure a just peace than the existence of jus ad bellum principles eliminates the need for principles to insure that war is fought justly.

Aquinas (1916:II:2, Q. 40, Art. 1) maintained that a just war is one that is waged with proper authority, just cause, and right intention. While an assessment of whether proper authority and just cause exist must be based on circumstances prevailing at the time the decision is made to go to war, right intention involves a state of mind related to future conditions. Those who fight in a just war must “intend the advancement of good, or the avoidance of evil” so that the justification derived from legitimate authority and just cause is not undone by “a wicked intention.” It is not enough, in other words, to have justifiable reasons for going to war if, having entered the war, the justified side intends to fight in violation of jus in bello norms or to pursue unjust ends.

The right intention principle prohibits the pursuit of unjust ends. Therefore, it may be argued, jus ad bellum considerations look to the end of the war and tacitly, if not explicitly, establish certain general requirements for postwar justice. Augustine, Aquinas, and their successors (at least among the ethicists if not also among the lawyers) failed to develop jus post bellum principles, according to this argument, because their assumptions about the just war subsumed the major postwar concerns.

This argument, although appealing for the way it seeks to preserve the simplicity of the just war theory, fails on several counts. First, right intention is subject to diverse interpretations, none of which has ever assumed a clearly preeminent position among theorists and policy makers. Consequently, an argument that the right intention component of jus ad bellum obviates the need to define jus post bellum principles runs immediately into a thicket of tangled interpretations. James F. Childress (1982:77, 78) has suggested that “for the war as a whole, right intention is shaped by the pursuit of a just cause, but it also encompasses motives.” Having impure motives (such as hatred for the enemy) would not, however, vitiate the justification of a war in which the other jus ad bellum requirements were met. Furthermore, to the extent that improper motives might lead combatants to act dishonorably in the war, jus in bello principles are available to address the wrongs.3

Childress (1982:78, 79) notes that an alternative understanding of right intention links the concept to the pursuit of peace that all just wars must embrace. To go to war with right intention, therefore, is to fight for a just peace. This, in turn, requires eschewing methods of warfare (assassination, torture, and acts of treachery, for example) that would make it difficult to establish a just peace at the end of the war. Again, it is difficult to see what is gained from this understanding of right intention that is not already available via the jus in bello principles.

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3Notwithstanding these points, Childress (1982:78) believes “this criterion of right intention, understood not merely as pursuit of a just cause but also as proper motives, remains significant in part because war is conducted between public, not private, enemies. Furthermore, an attitude of regret, if not remorse, is appropriate when a prima facie obligation is overridden.”
In our view, the principle of right intention has a limited, although not inconsequential, purpose. It seeks to insure that the stated reasons for the resort to war, reasons that must provide a just cause, are in fact the actual reasons. In other words, ulterior motives are excluded. The state must have a legitimate reason for going to war and it must confine itself to the pursuit of ends linked to that reason. Just cause cannot be transformed into license for unjust pursuits.

A second objection to the argument that *jus post bellum* concerns are adequately addressed by *jus ad bellum* principles relates to the potential for changes in the moral landscape in the course of a war. *Jus ad bellum* principles require those who make the decision to go to war to deal first and foremost with matters of fact, with the “situation on the ground,” as it were. Has an act of aggression occurred? Is an attack imminent? Is the use of force necessary to save innocent lives? These are the kinds of questions just war theory asks decision makers to answer. Only with respect to the question of whether fighting offers a reasonable chance of success does the just war theory ask leaders to peer into the future.

What Clausewitz called the “fog of war” obscures events not only for the individual soldier but for those who make policy as well. Neither the course of a war nor its outcome is entirely predictable. It seems reasonable, therefore, to look to a different set of principles to guide policy in the aftermath of a war than those that were employed to determine whether to go to war in the first place. The articulation of *jus post bellum* principles simply acknowledges the fact that we know different things and are confronted with different challenges before, during, and after a war. As Douglas Lackey (1989:43) puts it in opening his discussion of just peace, “There is room [in just war theory] for one further rule, a rule that takes into consideration facts available to moral judges after the war ends.”

**Human Rights as the Foundation of *Jus Post Bellum* Principles**

The effort to develop *jus post bellum* principles is necessary precisely because the theologians, philosophers, and lawyers who developed and refined the just war tradition gave insufficient attention to the aftermath of war. Consequently, the needed principles are not to be found merely by digging more deeply into the work of Augustine, Aquinas, Suarez, or Grotius. Even Paul Ramsey, Michael Walzer, James Turner Johnson, and other modern expositors of just war theory have only touched upon *jus post bellum* principles.

It is important, because there is so little prior guidance, to begin with this question: What ought to be the foundations of *jus post bellum* principles? Because our intent is to build on existing just war theory rather than to begin anew, *jus post bellum* principles must have the same foundations as those principles underlying *jus ad bellum* and *jus in bello*. Our first task, then, is to provide a reasonable account of the basis for existing just war theory.

Unfortunately, this is not a simple matter. Just war theory is commonly regarded as an artifact of Christian ethics—with good reason—but to leave the argument there is to ignore major differences between Augustine and Grotius, to name but two. It is also to smooth over profound differences in the medieval world and the modern world. Furthermore, it overlooks both the differences among Christian thinkers and the contributions to the theory from non-Christian (or at least less explicitly Christian) sources, as, for example, with the role that chivalric codes played in the elaboration of the *jus in bello* principles that are now so important to the just war tradition (Johnson 1975:64–75).

An appeal to Scripture, while fundamental to many of the most important contributors of just war theory, has historically failed to settle the issue of how war is to be regarded. Hebrew Scripture, particularly in its texts recounting the history of the Israelites’ conquest of Canaan, seems to sanction holy wars waged without restraint. Christian Scripture, on the other hand, points in a pacifist direction and,
Indeed, the available historical evidence suggests that the Christian community uniformly adopted a pacifist stance until the conversion of Constantine. Those appealing to Scripture have, consequently, been divided. Of course, others in the world are entirely unmoved—in any direction—by appeals to Scripture.

Natural law was to have offered a broader foundation for just war theory, one that would appeal both to Christians and to astute non-Christians. Francisco de Vitoria famously employed natural law to argue for the rights of the native peoples encountered by Spanish conquistadors in the New World.4 There are now, however, only a few philosophers who continue to base just war theories on some concept of natural law (see, e.g., Finnis 1996 and Boyle 1996).

The just war tradition, it seems, has flourished for centuries as a slowly evolving but always recognizable set of principles resting on various theoretical foundations. Today, the concept of human rights offers the broadest possible base for the just war tradition, thanks in part to Walzer’s *Just and Unjust Wars*.

As anyone who has read the opening pages of *Just and Unjust Wars* is aware, Walzer’s revision of the just war theory attempts to steer clear of the endless debates over the foundations of morality. In a well-known metaphor, Walzer (2000:xxi) promises a “tour of the rooms” and a “discussion of architectural principles” of the ethical superstructure in which we live while leaving others to examine the controversial “substructure of the ethical world.” Nevertheless, as Walzer is quick to point out, a “doctrine of human rights” is central to his understanding of just war theory. Without attempting to ground the theory of human rights in natural law or utilitarianism or various accounts of human qualities, Walzer (2000:xxi–xxii) asserts that “the arguments we make about war are most fully understood . . . as efforts to recognize and respect the rights of individual and associated men and women.”

The human rights doctrine underlying Walzer’s view of just war is only sporadically brought into full view in *Just and Unjust Wars*, but it informs almost every case and every conclusion. And, at times, Walzer is explicit about his human rights substructure as he conducts his “tour of the rooms.” For example, in an early discussion of the legalist paradigm, which Walzer (2000:72) takes as his starting point, he states, “The defense of rights is a reason for fighting. I want now to stress again, and finally, that it is the only reason.” In justifying limited grounds for intervention, he argues that his exceptions to the general rule of non-intervention are based on standards that “reflect deep and valuable, though in their applications difficult and problematic, commitments to human rights” (2000:108).

The commitment to a human rights doctrine is even more apparent when Walzer takes up *jus in bello* considerations. The case of the rape of Italian women by Moroccan soldiers during World War II is the occasion for a more extensive discussion of how just war theory conforms to the requirements of human rights (2000:133–137). Later, in his discussion of war crimes, Walzer (2000:304) asserts that “it is the doctrine of rights that makes the most effective limit on military activity.” Human rights is at the heart of *Just and Unjust Wars*, and the case Walzer makes has influenced other scholars to treat just war theory in the same way (see, e.g., Luban 1980).

In spite of the centrality of human rights in Walzer’s account of the war convention, his just war theory, like traditional accounts, is fundamentally centered on the state (Smith 1997:8). His concern, to put it differently, is more with the ethics of national security than with the ethics of what has more recently come to be called human security. However, as Walzer acknowledged in the preface to the third edition of *Just and Unjust Wars*, states are often the violators rather than the defenders of the human rights of their citizens. “It isn’t too much of an exaggeration,” Walzer (2000:xii) writes, “to say that the greatest danger most people face in the world today comes from their own states.” Far from undermining Walzer’s work,

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4Paul Gordon Lauren (2003:29) places Vitoria within the broader context of the development of human rights.
this observation suggests the significance of the steps he took to ground just war theory in a doctrine of human rights. Given the ability of states to both protect and threaten security, a modern account of just war theory, including one that proposes *jus post bellum* principles, would do well to proceed from a foundation of human rights.

### Jus Post Bellum Principles

Every war is different. This fact—or truism—is worth noting as we seek to develop *jus post bellum* principles. Some wars end with a surrender, some with an armistice. Some wars end with the victors occupying the territory of the vanquished, some without a foreign occupation. Some wars end with regime change, some without. Some wars are followed by continued resistance or unconventional war, some are followed by a complete cessation of violence. Some wars end with the commitment of international organizations to build peace, some end without international interest. Each of these conditions bears on the question of how justice is to be done in the aftermath of war.

Of course, it is not only the situation that exists after the war that affects the quest for a just peace. Much that happened during the war will be significant. Were noncombatants generally spared or not? Were economic assets—farms, factories, and infrastructure—generally destroyed or preserved? Were populations displaced? Were atrocities committed? Were limits—the laws of armed conflict—observed?

Finally, as we work backward from the aftermath of the war to its origins, we must acknowledge that *jus ad bellum* considerations will inevitably affect the prospects for a just peace. When the winner is perceived to have waged an unjust war, a host of considerations may make postwar justice more difficult to obtain. International organizations may be less likely to support postwar stabilization efforts. Insurgencies may be more likely. Allies may be less willing to assist in peacekeeping and reconstruction efforts. After major combat operations in the Iraq War ended, many of America’s European allies cited what Secretary of State Colin Powell called the “Pottery Barn rule”: “You break it, you own it” (Woodward 2004:150).

The variability of war may be a problem for those seeking to build descriptive theory, but normative theorists seem quite capable of developing—and applying—principles that work regardless of the particular characteristics of a war. The just war tradition, after all, is a set of standards for moral reasoning concerning means and ends in the use of force. It is not a checklist or a decision tree capable of producing definitive conclusions. Principles merely assist us in doing the difficult work of moral reasoning; they do not absolve us of responsibility for that work.

In addition to looking at the way the differences among wars affect our views of postwar justice, it is important to consider which aspects of the moral situation change and which do not when wars end. There are, after all, many aspects of what Walzer calls the “war convention” that remain unchanged. The principle of command responsibility, for example, persists as long as there are soldiers present to command. That soldiers’ primary responsibility may have shifted from fighting battles to patrolling the streets or guarding prisoners does not alter the commander’s ultimate responsibility for their actions. Likewise, the inadmissibility of superior orders as a defense against charges of violations of the rules of war, a principle established definitively at Nuremberg, is unaffected by the transition from war to peace.

But some elements of the war convention are affected by a surrender or an armistice. When the fighting is over, no more exceptions based on military necessity

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5This ambivalence is addressed in Caldwell and Williams (2006:118–20).

6The literature on war termination is rich and varied. In addition to Kegley and Raymond (1999), see Kecskeméti (1958), Iklé (1971), Taylor (1985), and Pillar (1988).
are possible since the concept pertains specifically to actions taken in war. The concept of noncombatant immunity is also profoundly affected by the termination of war. When hostilities end, all become noncombatants and have (or ought to have) their peace-time right to life restored. As a result, those who continue to kill are murderers, even if their victims are soldiers. This is because the status of soldiers changes with the onset of peace. Soldiers become, for as long as their presence is necessary, the moral (and sometimes the functional) equivalents of policemen. The rules concerning peacekeeping, consequently, must be based on jus post bellum principles rather than the other aspects of the just war tradition.

Proportionality is a principle associated with both jus ad bellum and jus in bello that appears applicable to the aftermath of war, although perhaps in ways that are different from its wartime applications. In assessing postwar efforts to promote justice—particularly retributive justice—a sense of proportionality seems essential. If punishment for crimes against peace or war crimes is appropriate at all, the punishment must fit the crime.

To provide a sound basis for a set of jus post bellum principles, we must return to the linkage between just war theory and human rights. A just war is one fought in defense of human rights when those rights—at least the fundamental rights to life and liberty—cannot be secured in any other way. Likewise, a war is fought justly if it is fought with respect for the human rights of noncombatants, including the rights of soldiers who have become noncombatants by virtue of surrender or capture. A war is concluded justly—that is, a just peace exists—when the human rights of those involved in the war—both winners and losers—are more secure than they were before the war. In other words, a successful war (and a just peace) is characterized first and foremost by the vindication of the rights for which the war was fought. While such a principle does not preclude punishment (indeed, punishment for the violation of human rights may be essential if those rights are to be vindicated), it does require that a state, having waged war and made peace to vindicate human rights, respect in the aftermath of war the rights even of those who were most responsible for the war. Victors may punish crimes, but they must neither abuse criminals nor punish those who are guilty of no crime.

A focus on the human rights foundation of just war theory suggests, too, that a just peace may well be impossible if the war is won by those who initiated it in violation of the human rights of others. When people’s lives, liberty, property, and security are taken away through an act of aggression, only the defeat of the aggressor can vindicate those rights. When a humanitarian catastrophe necessitates intervention, only the defeat of those whose human rights abuses caused the catastrophe can secure justice. To put it simply, an unjust war cannot produce a just peace.

Here it may be useful to clarify what it means to say that a war—or a peace—is just. A just war, that is, one that conforms to the jus ad bellum principles, is one that is


9This self-evident proposition was challenged by lawyers advising the Department of Defense concerning torture and interrogation. In a classified memorandum leaked to the Wall Street Journal, an argument was advanced that “necessity” might be used as a defense against an allegation of a violation of the U.S. Torture Act (18 U.S.C. §2340). See “Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations,” March 6, 2003, in Greenberg and Dratel (2005:260–261). It should be noted, of course, that a war without end, such as the “war on terrorism,” might be construed as making exceptions based on military necessity available indefinitely. However, the clear language of the Convention Against Torture and Other Cruel, Inhuman or Other Degrading Treatment or Punishment (Art. 2, Sec. 2: “No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”) rules out a necessity defense where torture is concerned even in the context of war.
justifiable. Since the time of Aquinas, who held that a just war was one waged in response to a fault, it has generally been thought that only one side in a war can be justified (with the possibility that neither side might be). This means that, with respect to a particular party’s involvement in a war, we can pronounce it just or unjust (i.e., justifiable or unjustifiable). The evaluation of jus in bello, however, is not so simple. When we ask whether a war is being fought justly or unjustly, we must evaluate many different aspects of the conduct of the war. One military operation may have been conducted with exemplary respect for the lives of noncombatants while another may have involved enormous “collateral damage.” Justice (or injustice) in war is, depending on one’s purpose in making the judgment, either a vast cumulative judgment about how the war was fought or a series of judgments about individual acts in the war. Either way, an all-or-nothing judgment must be considered a gross oversimplification.

Jus post bellum is more complicated still. In some respects, postwar justice must be evaluated in a manner akin to the way we evaluate the jus ad bellum: either the just purposes for which the war was fought are achieved (in which case the peace is just) or they are not. In other respects, however, postwar justice is like justice in war: some actions taken after the war will be just and some will be unjust. Both the transcendent policies, planned and implemented by the state, and the individual acts of decency or depravity committed by soldiers and civilians in the occupied territory must be taken into account in assessments of jus post bellum. Consequently, rather than being able to conclude that a particular postwar situation is just or unjust, we may have to acknowledge that there are only degrees of justice and injustice in the aftermath of war.  

It should be obvious that winning a just war does not guarantee a just peace. Taking advantage of a victory to subjugate a people and to violate human rights is a grave injustice no matter which side, aggressor or defender, is responsible. The aftermath of World War II provides a dramatic case in point. The Soviets removed roughly a third of the industrial capacity located in their zone of occupation in Europe. Russian troops in the eastern part of Germany raped as many as two million women (Gaddis 1997:45). And in most states occupied by the Red Army at the end of the war, the right of self-determination was effectively denied for a generation.

Are there any jus post bellum principles that emerge from these observations? There is, arguably, one fundamental principle supported by a series of more specific prescriptions. The basic principle is this: A just peace is one that vindicates the human rights of all parties to the conflict. Jus post bellum, in other words, requires in the case of a war against aggression the restoration of the status quo ante bellum with respect to the rights of the victims of aggression. It requires, in the case of humanitarian intervention, the securing of the rights of those whom the intervention was intended to assist. It requires respect for the rights of those in the aggressor state. It permits, subject to limitations imposed by a fundamental respect for human rights and the concept of proportionality, both the punishment of those

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9Johnson (1975:185–195) discusses the views of Vitoria and Suarez on this issue along with the possibility of “simultaneous ostensible justice.”

10Michael Walzer (2004:162–168), examining the situation in Iraq roughly eight months after the United States’ invasion in March 2003, argued for the possibility of a just settlement of an unjust war. If one accepts, as Walzer does, that the invasion was unjust, however, it would be more accurate to suggest that the settlement can only be more or less unjust. To claim that a just peace can come from an unjust war is, from a theoretical perspective, to concede more to consequentialism than a rights-based just war theory ought to concede. From a practical perspective, it is almost certain to under-value the costs imposed by the side initiating the unjust war.

11In stating the principle in this form, we endorse the primary assertion of Orend (2002:46), who suggests that “the proper aim of a just war is the vindication of those rights whose violation grounded the resort to war in the first place.” Where we differ from Orend’s analysis is in the articulation of the prescriptions that are derived from this basic principle.
adjudged responsible for human rights abuses (including crimes against peace, war crimes, and crimes against humanity) and the imposition of reasonable measures intended to prevent future human rights abuses. Finally, it points in the direction of several specific policies.

The victor must, in the first place, restore order. Without order, a society can descend into a Hobbesian state of nature in which even the right to life may be impossible to secure. The need to establish order is often cited as an excuse for denying rights, and this is an authoritarian temptation that must be resisted, but the fact remains that public order is an essential foundation for the restoration of human rights. The widespread violence that has plagued Iraq since the end of U.S. combat operations in May 2003 has jeopardized the ability of both the occupation forces and the Iraqi government to secure the human rights of Iraq’s people. Postwar chaos consequently represents a significant U.S. failure with respect to *jus post belnum*.

The second necessity derived from the principle of the vindication of human rights is economic reconstruction. Without the rehabilitation in some small measure of war-torn economies, it may be difficult to secure the most basic of human rights, the right to basic subsistence. How much responsibility a state that has been the victim of aggression must bear for the economic reconstruction of its enemy is a difficult question. What seems clear is that winning a war and administering a state as an occupying power confers a certain responsibility for the welfare of the people of that state. Not even those who were responsible for the war should be allowed to starve to death.

A third requirement derived from the *jus post bellum* principle mandating the vindication of human rights is the restoration of sovereignty, or self-determination. Surrender and occupation suspend sovereignty, but only temporarily if the surrender leads to a just peace. Self-determination is a fundamental human right articulated in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Its restoration must be an urgent objective of the occupying power.

Finally, *jus post bellum* permits (and some would argue that it requires) the punishment of human rights violations related to the war and its origins. This postwar prescription is supported by the practices instituted by the Allies in the Nuremberg and Tokyo war crimes trials after World War II and, more recently, by the examples of the United Nations tribunals established to address human rights violations in the former Yugoslavia and in Rwanda. Much has been written about war crimes trials and transitional justice that need not be recapitulated here (see, e.g., the works by Howard Ball 1999, Gary Jonathan Bass 2000, and Martha Minow 1998).

What is important for our purposes is that the vindication of human rights requires a commitment to equal justice, not a show of what Hermann Goering at Nuremberg dismissed as “victors’ justice.” To put the point in contemporarily relevant terms, human rights can be vindicated in Iraq and Afghanistan only if American violations of the laws of war are prosecuted along with our enemies’ crimes.

**Conclusion**

James Turner Johnson (1999:191) has suggested that “perhaps the most difficult problem posed by contemporary warfare, all in all, is the difficulty of achieving a stable, secure ending to it.” The difficulty is both strategic and moral, a matter of what can be done and what ought to be done to conclude a war successfully. On the strategic side, the possibilities for postwar settlement have evolved rapidly along with the international system itself. Since the beginning of the twentieth century the world has seen, at the conclusion of wars, plebiscites and partitions, disarmament and de-Nazification, peacekeeping and peace enforcement, reparations and regime change, nation-building and neutralization, to name just a few of the means em-
ployed to secure peace. While these strategies have often been rooted in moral principles (such as the Wilsonian commitment to self-determination), modern theorists have not done an adequate job of articulating the fundamental principles underlying what ought to be done in the aftermath of war, nor have we received adequate guidance from the ancients.

The great philosophers of the just war tradition did recognize an important point that modern leaders sometimes forget (or, more accurately, hope their democratic polities will forget): Waging a just war involves facing ethical challenges before, during, and after—sometimes long after—the war itself. Before the war, justice requires that all reasonable means to resolve the conflict or protect the lives and dignity of those being oppressed be tried and found wanting. It also requires that a just cause be articulated (and not a range of potentially just causes from which a credulous public may choose). During the war, justice requires respect for the human rights of noncombatants, even to the point of imposing limits on the conduct of warfare that may be inconvenient or worse. After the war, justice requires the vindication of human rights—vindication in the sense of defense, restoration, and, at times, punishment of past violations. Only when the ethical obligations attending each phase of a war are met is it possible to argue that the war was just.

Writing in the sixteenth century, the Lord de la Noue offered a vigorous defense of *jus in bello* principles, arguing that just wars must be fought with restraint (Johnson 1975:106–107). To make the point, he described a peasant who confronted a soldier with an account of the current war’s devastation and a question: “Who will believe that your cause is just when your behaviors are so unjust?” This question reminds us that judgments concerning the justice of the ends are inextricably linked to the justice of the means. A similar point can be made regarding consequences. Because what happens once the fighting stops is also critical to the moral evaluation of war, a concept of *jus post bellum* is important to inform both our postwar policies and the final judgments we make concerning wars.

References


