



# Endings and Aftermath in the Ethics of War\*

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## 1. Introduction

This paper defends two positions. First, that the endings and aftermath of war raise important questions for just war theory, which must be incorporated at both substantive and procedural levels. Second, that just war theory alone cannot govern our post-war conduct; we instead need a broader ethics of peacebuilding.

I begin by distinguishing between substantive and procedural reasons in the ethics of war, the former provide positive justification for fighting; the latter identify the methods by which wars may be permissibly begun, fought, and concluded—*jus ad bellum*, *jus in bello*, and *jus ex bello*.<sup>1</sup> I then explore the significance of war's endings and aftermath for substantive reasons, and for procedural reasons, in particular developing a new set of *ex bello* principles.

Having explained how war's endings and aftermath should influence just war theory, I then argue that just war theory should not be our main guide when war is over. I summarise the *prima facie* case for grounding principles of compensation, punishment and reconstruction in just war thinking, then argue that our post-war actions should be grounded in a broader ethics of peacebuilding, or even perhaps a theory of global justice. In my view, *jus post bellum* is to *jus ex bello* as *jus ante bellum* is to *jus ad bellum*. We don't need a *jus post bellum*, or *jus ante bellum*, because both war and after we must observe broader moral standards. Just war theory elucidates a specific problem: justifying killing and destruction. Its laser-like focus is crucial when this is the only way to avert grievous injustice. But when the killing has stopped, we need a less austere moral guide.

## 2. Substantive and Procedural Reasons in Just War Theory<sup>2</sup>

Much of the confusion in the *jus post bellum* debate stems from the conflation of two different types of reasons, which I'll call procedural and substantive.

Procedural reasons govern methods. They specify how we may pursue our goals. To accuse someone of libel, there are procedures you must follow—some methods are

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<sup>1</sup> The last is Darrell Mollendorf's coinage, and I can't vouch for the grammar. Darrel Mollendorf, "Jus Ex Bello," *Journal of Political Philosophy* 16:2 (2008).

<sup>2</sup> Some of the conceptual architecture that I'm using here, and its application, demands far greater substantiation than I provide. The key point is to distinguish between substantive and procedural reasons—the specific content of those two classes requires much more discussion, and this is just one attempt, and a first one at that.

acceptable; others are not. Satisfying the procedural reasons does not justify your action—for that, we need substantive reasons, which don't simply specify how to reach our goals, but rather determine whether those goals are justifiably pursued. You are justified in suing me for libel if I have, indeed libelled you (on one account).

Just war theorists should distinguish more clearly between substantive and procedural reasons. Procedural reasons govern how we may fight; substantive reasons govern whether we have sufficient positive reason to fight (in accordance with those procedural standards). Theorists are quite familiar with this distinction, but they usually overlay it onto the difference between *jus ad bellum* and *jus in bello*. This is a mistake, on two counts.

First, we need not only *in bello*, but also *ad bellum* and *ex bello* procedural standards—starting, fighting, and ending wars are distinct practices, which demand different principles of regulation: *jus ad bellum*, *jus in bello* and *jus ex bello*.<sup>3</sup> Wars should be publicly declared by the legitimate authority of a political community, which should have pursued all other reasonable diplomatic means before adopting war as a last resort. They should be fought discriminately, with the least reasonable degree of force, and in such a fashion as to cause less harm to innocents than good. They should be ended, too, by public declaration by a (preferably) legitimate authority, which must show unequivocal good faith in observing the terms of a ceasefire and peace treaty, which should create no new entitlements, but only use necessary and proportionate measures to secure those that warfare disrupted. These are all procedural standards quite distinct from the question of substantive justification.

The second mistake of assigning substantive reasons to *jus ad bellum* and procedural ones to *jus in bello* is that our substantive reasons must not only be assessed before we start fighting, but throughout the war. We are substantively justified in fighting (in accordance with the procedural standards)<sup>4</sup> if we have some prospect of achieving a just cause that is sufficiently important to make military force proportionate, and which cannot be achieved by less destructive means. These are the familiar criteria of prospects of success, just cause,

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<sup>3</sup> Gary Bass thinks that termination folds into conduct, but this seems an unnecessary conflation Gary J. Bass, "Jus Post Bellum," *Philosophy and Public Affairs* 32:4 (2004): 386.

<sup>4</sup> The relationship between substantive and procedural reasons is obviously worth a paper in itself. I'm assuming, though, that if you cannot fight in accordance with the procedural reasons, then it doesn't matter how strong your substantive reasons, you're not justified in fighting. Thus the substantive question is always whether you would be justified in fighting (in accordance with the procedural reasons). From here on I'll omit the parenthesis, but it is always implied.

macro-proportionality, and necessity.<sup>5</sup> Perhaps if starting a war were like leaping out of a building, folding these into *jus ad bellum* would make sense. Once you've jumped, you've jumped, and there is no point asking whether you're justified in falling, since you can do nothing else. And war sometimes appears an impersonal force, like gravity, with which no dispute is possible. And yet warfare is something people do, sustained through the choices of those who fight—and whose choices demand constant justification. From individual combatants, to political leaders and the communities they serve, each new decision, each order, each shot fired, demands justification.<sup>6</sup> We should be able to ask ourselves, at any point, whether fighting still meets the criteria of just cause, macro-proportionality, necessity and prospects of success.<sup>7</sup> Contra Mollendorf and Rodin, there is no principled difference

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<sup>5</sup> Most say reasonable prospects of success, but I think we're justified in fighting at least wars of national defence even when our prospects of success are slight. In general, of course, the foregoing paragraphs contain one take on these various topics in just war theory, on which there may well be extensive disagreement.

<sup>6</sup> I'm not suggesting that combatants need to enter into sustained moral reflection every time they pull the trigger, but they do need to believe, every time they pull the trigger, that they are justified in doing so.

<sup>7</sup> Rodin (like Mollendorf) thinks that we need to distinguish between the ethics of continuing fighting, and the ethics of taking up arms. He supports this conclusion with an example. Suppose a state is seeking to regain stolen territory from an enemy. It can liberate the territory at a cost of 1000 lives, which it rightly deems proportionate. Now suppose the campaign goes well, and 80% of the territory is gained, losing only 200 lives. If we ought to apply proportionality continuously throughout the campaign, Rodin notes, then gaining the remaining territory at a cost of 800 lives may not be proportionate. And yet the campaign as a whole was deemed to be proportionate at the outset. There appears to be a contradiction involved in the continuous application of the proportionality principle. David Rodin, "Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression," in *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace*, ed. Carsten Stahn and Jann K. Kleffner (The Hague: T.M.C. Asser Press, 2008), 53-76 at 55. But this objection trades on the specific numbers deployed. Suppose we successfully regain 99% of the territory without losing a single life, but correctly predict that taking the remainder will cost us the full 1000. If that remaining 1% is no more significant than the 99% we've already gained, then it would presumably be disproportionate to sacrifice 1000 lives in order to gain it. The point is simply that circumstances can change, making operations that appeared proportionate at the outset become disproportionate. In fact, I don't even think there is a contradiction between the continuous application of the proportionality principle, and its *ad bellum* application. Rodin's mistake is to suppose that when effecting the original proportionality calculation the only options available to us are A [lose 1000 lives, gain 100% of the territory] and B [lose 0 lives, gain 0% of the territory]. In fact there was a third option, albeit which only became apparent once the battle was underway, C [lose 200 lives, gain 80% of the territory]. If A and B are our only options, then perhaps A looks proportionate; but if C is also available, then A could be disproportionate. And certainly if we consider D [lose 0 lives, gain 99% of the territory]. This illustrates that proportionality calculations are always comparative.

between the two questions: ‘am I justified in taking arms?’ And ‘am I justified in not laying my arms down?’ Each reduces to the same question: is fighting justified? And this question must be asked constantly.<sup>8</sup>

### 3. *The Role of War’s Aftermath in Substantive Just War Reasons*

My next task is to explore the role of war’s aftermath in the substantive reasons that compose just war theory (war’s endings are dealt with by *jus ex bello*). This could take two forms: either accounting for aftermath requires incorporating a new substantive reason, alongside the four just noted; or it feeds into these other reasons. Larry May has argued for the first of these possibilities, suggesting that the nature of the aftermath can operate as an independent constraint, such that a war could satisfy just cause, proportionality, prospects of success and necessity, but still be unjustified, because of the nature of the aftermath. I’ll explain this view, then explain why I disagree with it.<sup>9</sup>

May’s argument begins with an analogy. Suppose we would be substantively justified in fighting, if we followed *jus ad bellum*, *jus in bello*, and *jus ex bello*, but we cannot meet the *in bello* standards. Lacking viable conventional resources, we can only defend ourselves with nuclear weapons. May thinks (in my terms) that substantive justification is defeated if we cannot fight justly—the impossibility of fighting in accordance with *jus in bello* prohibits us from fighting at all. Further, he thinks this even if those impermissible methods would be proportionate to the threat we face, for example, if it is also nuclear.

The same dynamic, May thinks, operates with war’s aftermath. We might have full substantive reason to fight, and be able to do so consistently with *ad bellum*, *in bello*, and *ex bello* standards, and yet fighting might be unjustified, if the subsequent peace is sufficiently objectionable. War’s aftermath is an independent constraint on the pursuit of just cause, distinct from proportionality, necessity, and prospects of success.

Suppose we live in Monroeland. Several fiercely antipathetic ethnic groups inhabit Fayetteia, our neighbour, a state held together by its vicious dictator. If he falls, the state will

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<sup>8</sup> Notice that substantive justification is not the same as the justification of the war as a whole—a war could be substantively justified but not justified as a whole, because *jus ad bellum*, *jus in bello* or *jus ex bello* principles were violated. Also notice that I’m saying nothing about the relationship between substantive and procedural reasons.

<sup>9</sup> I’m referring to a draft paper by Larry for my OWG workshop, presently titled ‘Responsibility to Rebuild as a Limitation of Just Cause’.

crumble into ethnic violence. He attacks us without provocation, but is overstretched, and has staked his whole authority on the attack. If he fails, he will fall, and his country will descend into civil war. Monroeland is poor, but even if we weren't, we could not quell the ensuing conflict—the Fayetteians are known for sustaining a feud. If we defend ourselves successfully, then Fayetteia will fall into a long, bloody conflict. On May's account, Monroeland may not justifiably defend itself.

So, May is making two claims: first, that the war's aftermath defeats Monroeland's permission to defend itself; second, that this reason is independent from Monroeland's other substantive reasons. I think the first claim might be true—in some cases—but the second is false. Before explaining why, it's worth addressing one mistaken objection to the first claim. One could simply deny that aftermath is relevant to Monroeland's ethical dilemma: the subsequent civil war is caused by many free people voluntarily acting wrongfully. Why should Monroeland be responsible for their voluntary wrongful choices?

We should not simply dismiss this argument: most people think the intervening wrongful agency of others can diminish our responsibility for bad outcomes, sometimes even defeat it—and if Monroeland is less responsible for the civil war, then its role in their judgments should be correspondingly reduced. However, this argument is less impressive when dealing with easily predictable wrongdoing. If Fayetteia will obviously descend into anarchy following defeat, then washing our hands of the subsequent carnage is not an option.

Suppose you ask me for directions, and I send you without warning through a neighbourhood known for street violence. That your mugger is a freely choosing agent, responsible for his own wrongful actions, does not absolve me of all responsibility. Responsibility, as is often observed, is not a finite quantum to be doled out; it is plastic. That the mugger is fully responsible for harming you does not mean I'm not also to some degree responsible.<sup>10</sup> So we should not simply deny that war's aftermath is relevant to substantive reasons, on grounds of the Fayetteian factionalists' intervening wrongful agency.

In fact, I don't want to dispute that war's aftermath can defeat our substantive reasons for fighting. I do deny, however, that aftermath is an independent constraint. On the contrary, I think it plays an interesting role in each of the four substantive reasons identified above—and in particular, proportionality.

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<sup>10</sup> Note that if I give you these instructions intending that you be hurt, then I'm just as responsible as the mugger, but if I do so out of negligence—ranging from wilful negligence to simple carelessness—then I am likely to be less responsible.

Return to Monroeland. Whether fighting is justified surely depends on how weighty our just cause is, and whether inflicting this fate on Fayetteia is proportionate. If their dictator is only attempting a marginal expansion into uninhabited territory, it would be disproportionate to respond with force that predictably leads to his state's collapse.<sup>11</sup> But if the threat is more serious—a more substantial land-grab that displaces many citizens; an attack on our poll institutions; a murderous, genocidal assault—then defence clearly can be proportionate, even taking these consequences into account. The nature of the aftermath is folded into the proportionality judgment.

At least four reasons support this conclusion. First: moral hazard. May's position would give Fayetteia's dictator a licence to invade wherever he chooses, knowing that any defence would precipitate a prohibitively destructive civil war. This clearly creates perverse incentives for tyrants. Second, most people think our duties of rescue are comparatively limited. Even if you will otherwise die, I need not save you, if doing so would mean bearing a significant cost. But May proposes that Monroeland's citizens should let themselves be killed, let their land be taken, their institutions overrun, to prevent the Fayetteians harming themselves. If the costs were low, this might plausibly be required, but not if the costs are severe.

Third, the citizens of Monroeland are justified in according greater weight to the interests of their compatriots than to those of the Fayetteians, in virtue of the special relationships that they share. This further justifies their reluctance to sacrifice themselves and their compatriots to avoid civil war in Fayetteia.

Finally, the obligation not to bring about civil war in Fayetteia is importantly different from the *in bello* obligations with which May's argument begins. Suppose using nuclear weapons would be a substantively justified, proportionate response. Many would deny that, even in this case, we may permissibly defend ourselves (personally, I'm not sure about this). Though the heavens will fall, nothing can justify using nuclear weapons. Some actions are prohibited by agent-centred restrictions, which must not be breached even if doing so averts more breaches of the same constraint. If I could prevent two murders by murdering one person, I ought not to do so. Using nuclear weapons is impermissible

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<sup>11</sup> What if Monroeland is a rich country, with a proven history of peacebuilding and peacekeeping? In this case, they might be able to mitigate the effects of defending the uninhabited territory sufficiently well to render defence proportionate. It might seem unfair that rich countries should have rights of self-defence that poor countries lack, but this is, I think, endemic to just war theory—the same goes for prospects of success.

because it breaches a profoundly important agent-centred restriction on the mass murder of innocent people, such that we ought not to do it, even if that prevents a worse mass murder.

The Monroeland case is different. Predictably causing a dreadful civil war while legitimately defending yourselves does not, on that description, involve breaching an agent-centred restriction. The aftermath is indeed a bad outcome that must not be ignored. But it does not carry the same opprobrium as the intentional mass murder of innocent people, and it cannot constitute a comparable constraint on just cause. If fighting is proportionate, it can be permissible, though the aftermath be grave indeed.

War's aftermath plays a key role in our proportionality calculations. It also seems relevant to necessity, prospects of success, and even just cause.

First, necessity. Monroeland faces a choice: A, let their cause go unsatisfied; B, satisfy it through military means. Whether B is permissible depends on two things at least: first, B must be proportionate to a. Second, there must be no less harmful alternative C (taking all harms into account), which also satisfies the just cause.<sup>12</sup> If there is a less harmful C, then B is not necessary.

Suppose that two otherwise morally identical campaigns, B1 and B2, have different post-war outcomes. Each satisfies *jus ad bellum*, *jus in bello* and *jus ex bello* to the same degree, and neither is more harmful than the other, during the war, but B1 will lead to a more severe breakdown of Fayetteia than B2. Monroelanders ought, in this case, to choose B2. B1 is unnecessary, because there is an alternative strategy that yields a less harmful aftermath.

There's another way in which aftermath could feed into necessity. I don't think it works, ultimately, but its reason for failing is instructive. Suppose a haemophiliac threatens your life; if you don't defend yourself, he'll kill you. You could thwart him with a punch, but he's a haemophiliac, and if he starts bleeding, he could die. You're hundreds of miles from the nearest hospital, and there's no way to save him. In this case, you're clearly justified in punching him in self-defence, even though that will kill him. It's proportionate, because he's threatening your life, and it's necessary, because there's no way to save yourself without killing him.

Now suppose you're both out back of a hospital and all you need do, once you've repelled his attack, is call for help. In this case, it would clearly be wrong to punch him and

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<sup>12</sup> We also have to consider their relative prospects of success, but to keep things simple I'll bracket this for now.

leave him. And now consider an intermediate case: you can save his life, but only by assuming a significant cost—you must do a self-administered blood-transfusion, which might infect you with a lethal disease.

In the first case, you can do nothing to save the haemophiliac; in the second, it's easy to do so; in the third, it involves bearing a significant cost, but is not impossible. We can analyse these cases in two ways. Is punching the haemophiliac in each case justified to the same degree, because necessary and proportionate, and should the duty to rescue be assessed separately? Or should the action of punching him, and saving or not saving his life, be evaluated together? If you don't call for help in case 2, does that make it unjustified self-defence, or justified self-defence followed by an unjustified failure to save? I'm not sure which analysis is better, but the example does demonstrate that we need an independent argument for the duty to save the haemophiliac, in each case. Clearly in case 2 you do have the duty, because it is wholly cost-free. In case 3, if you don't have the duty (suppose you'll die if you save him) then we're in the same position as case 1.

One might think that Fayetteia is similar to the haemophiliac. Suppose Monroeland has two options: B3, defend themselves, leading to the predictable civil war; B4, defend themselves, and provide security in Fayetteia to prevent civil war (supposing this were possible). Might we think B3 no longer satisfies necessity, because there is a less harmful alternative? Could this be an argument for post-war reconstruction duties, grounded in the substantive necessity principle? The haemophiliac case shows why this is a mistake: everything depends on whether, on independent grounds, you have a duty to help the haemophiliac. In case 1, helping is impossible, so necessity is clearly satisfied by killing the haemophiliac. In case 2, helping is easy, and required by duty, so it is plainly unnecessary to kill him. In case 3, helping involves undergoing a cost, so everything depends on whether you're required to assume that cost for his sake. Evidently, peacekeeping in an enemy state after war is not cost-free. If it is also not impossible, then we must show that the Monroelanders will have a duty to help the Fayetteians—on independent grounds—before the necessity principle can be satisfied. Necessity depends on an adequate account of post-war responsibilities, it cannot provide one.

Finally, just cause and prospects of success. My thoughts here are simple and inchoate, so I'll not dwell on them at length. Consider a war of humanitarian intervention, fought to stop a genocide. Winning the war, and stopping the genocide, are in a way only the beginning. The just cause is not only to stop the killing, but to genuinely protect the human rights of

the genocide's victims. To swoop in, stop the immediate killing, and swoop out again would be better than nothing, but it would be a compromised goal. Security for the victims of genocide presupposes attention to aftermath.<sup>13</sup>

And of course, if our war aims extend beyond the end of combat operations, then war's aftermath will also affect our prospects of success. Perhaps military victory could be easily achieved, but we have no prospect of securing our just cause, because of the specific nature of the aftermath. Suppose that the Fayettean dictator is perpetrating a genocide against one of the ethnic groups in Fayettea. A humanitarian intervention could successfully stop this genocide, but would precipitate so abrupt a state collapse that civil war would ensue, in which each ethnic group seeks to wipe out the others. By stopping one genocide, we facilitate two or three more, thus rendering invasion impermissible, because we have no chance of securing our goal.

The aftermath of war is clearly relevant to our substantive reasons for fighting. It informs the proportionality and necessity calculations, and plays a role in just cause and prospects of success, especially in humanitarian interventions. But it does not constitute an independent constraint on those reasons. *Contra* May, if we have just cause to fight, and doing so is proportionate, necessary, and has some prospects of success, then we have our substantive justification for fighting.

#### 4. *War's Endings and Aftermath in Procedural Just War Reasons*

The next task is to show how war's endings and aftermath affect our procedural just war reasons, specifically *ad bellum* and *in bello*—in section 5, I turn to *jus ex bello*.<sup>14</sup>

My first point should be familiar. While there are probably intrinsic, nonconsequentialist reasons behind the procedural *ad bellum* and *in bello* standards, they also draw support from their consequences—in particular, adherence is conducive to peace.<sup>15</sup>

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<sup>13</sup> Gary Bass makes a similar point at Bass, "Jus Post Bellum," 386.

<sup>14</sup> To repeat, I can't vouch for the grammar of Mollendorf's coinage. And in general, I would rather do away with the Latinisms, but they do provide a useful shorthand.

<sup>15</sup> Grotius book 3 conclusion, section II: 'In the very heat of war the greatest security and expectation of divine support must be in the unabated desire, and invariable prospect of peace, as the only end for which hostilities can be lawfully begun. So that in the prosecution of war we must never carry the rage of it so far, as to unlearn the nature and dispositions of men. 3.conclusion.' Also, 3.XV.ii: 'Aristotle has, more than once, said, that war is undertaken for the sake of peace, and toil endured in order to obtain rest. And in the same manner, Cicero has observed, that men go to war, that they may live in peace without molestation and injury. War too, as we are

Wars obviously breed resentment. However clear the facts, few people can recognise when their side fought unjustly, and defeat only makes their perception of injustice more bitter. Any means to reduce that bitterness make peace more stable. One approach is to show that we adhered to the proper procedural standards: ‘whatever you think of our reasons for fighting’, we can say, ‘at least you can see we went about things the right way’.

Of course the *ad bellum* and *in bello* standards are open to interpretation and judgment, and wilful ignorance is as common here as with respect to substantive reasons. But it is easier to determine the facts, and violations are more immediately apparent (that’s one reason why soldiers are held accountable for violating *jus in bello*, but not for fighting without sufficient substantive reason to do so).

At the very least, demonstrating our adherence to procedural standards removes one further ground for reproach. At best it can provide a positive push towards reconciliation. When we assiduously observe last resort, pursuing every reasonable alternative, we publicly demonstrate our reluctance to fight. Instead of simply striking when it is most advantageous, we forebear until there is no choice. Adhering to *jus in bello* likewise means foregoing tactics that could bring quick success, but would cost more innocent lives. By holding ourselves back, we show our adversaries that, though our states are at odds, we recognise them as members of the same moral community, human beings to whom we have duties. This recognition is vital in the moral maelstrom of warfare, when the line between murder and justified combat is painfully thin. This restraint communicates our commitment to a peaceful solution—if we thought peace impossible, we might emulate Vitoria’s attitude to ‘war against the infidel’, in which ‘peace can never be hoped for on any terms; therefore the only remedy is to eliminate all of them who are capable of bearing arms against us, given that they are already guilty’.<sup>16</sup>

There is also a more specific connection between war’s aftermath and endings, and the *jus in bello* principle of military necessity. This principle is superficially perspicuous, but actually

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instructed by the teachers of true religion, may be made, to remove every thing that interrupts, and stands in the way of peace. In the primitive ages, as we find from history, wars in general were made to preserve territories rather than to extend them. And any deviation from this rule was thought unlawful: thus the prophet Amos reproves the Ammonites for their love of making conquests.’

<sup>16</sup> Francisco de Vitoria, "Just War in the Age of Discovery," in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell, 2006), 288-332 at 329.

quite complex. To avoid dwelling on a difficult debate, suffice it to say that a tactic is not militarily necessary if there is an alternative available that has the same chance of success, at the same cost to ourselves, but at a lesser cost to our adversaries (and in particular to adversary noncombatants).

A tactic's consequences for the post-war period will therefore help shape whether it is militarily necessary. If it will inflame post-war resentment, or otherwise undermine peace, while other options won't have that result, then this could rule out the former approach. This is the same point I made at the strategic level above. It gives us grounds to exceed the other procedural *jus in bello* standards, and positively seek to foster peace while fighting wars. It could justify, for example, showing more respect to religious sites than proportionality and discrimination strictly require.

Additionally, there is an interesting link between military necessity and *jus ex bello*, which is not often observed. Any use of force after our just cause has been achieved is unnecessary, therefore impermissible.<sup>17</sup> We are therefore required to cease fighting. Likewise if our just cause becomes impossible to achieve. If we no longer have any chance of success, all our tactics are unnecessary because doomed to failure.

Belligerents must remember that their actions have implications for the aftermath of war. They can and should increase the chances of a sustainable peace, by restraining themselves in wartime. They must reject tactics that needlessly undermine that future peace, and cease fighting when their goals are secured, or no longer achievable. Though these are not insights about *jus post bellum*, strictly speaking, because they do not guide our conduct after wars, they are prompted by the *jus post bellum* debate, and the renewed attention to wars' aftermaths and endings.

### 5. Making a Start on *Jus Ex Bello*

We have now seen the role of war's aftermath and endings in the substantive and procedural reasons justifying and regulating the practice of warfighting. Evidently the most pertinent area of enquiry covers appropriate procedures for ending conflicts. Since there is little extant work on *jus ex bello*, it's worth dwelling on it at length, first asking what a theory of *jus ex bello* might look like, then making a start at building that theory.

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<sup>17</sup> Rodin makes a similar point at Rodin, "Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression," at 55.

Just war theory is normally divided into time-slices—ad, in, post and so on. One might think that *jus ex bello* should govern the time in which wars end. But these temporal divisions are problematic at best—telling when a war has begun, or when the *ad bellum* phase is replaced by the *in bello* phase, and that by the *ex bello* phase—is difficult, and probably pointless. Instead, I think we should follow my interpretation of *jus ad bellum* and *jus in bello* as principles regulating specific practices—the starting and fighting of wars. Thus *jus ex bello* regulates the practice of ending wars. *Jus ex bello* and *jus in bello* are not separated by an arbitrary timeline, but by the practices that they regulate.

Terminating wars involves two subpractices (at least): securing your war aims, and stopping the fighting. Our *ex bello* principles should guide both the victors and the vanquished in their pursuit of these goals.<sup>18</sup> Although we shouldn't expect *jus ex bello* to be wholly neutral—just and unjust war aims cannot be treated equally—there are good reasons to avoid excessive differentiation between just and unjust belligerents<sup>19</sup> In particular, there's more reason to do so in *jus ex bello* than in *jus in bello*—not only because unjust belligerents will inevitably avail themselves of the permissions to which just belligerents are entitled anyway, but also because the practice of ending wars is importantly different from that of fighting them. Unjust belligerents kill innocent people, with no overriding justification—they murder. Suggesting principles to regulate murder is inherently objectionable. But ending conflict—ending the murder—is a worthwhile goal. There's always something good about ending wars, whoever does it. Principles to guide this practice are quite different from principles regulating murder. Moreover, since wars often end through agreement, it must help if our principles apply equally to both sides, and don't mention the merits of their cases. Since they will disagree vehemently on those points, bracketing them might help end the war.

The first question that a theory of *jus ex bello* must ask is whether we ought to pursue negotiated or non-negotiated settlements. Within the latter set, we need to exclude unconditional surrender as beyond the pale. War termination is always subject to conditions—both *in bello* standards governing the continued deployment of force, and the *ex bello* standards discussed below. Additionally, war does not derogate from the ordinary

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<sup>18</sup> Throughout I'll assume a two-state conflict, but I think the principles identified are equally relevant when non-state groups are fighting, or when the conflict involves more belligerents.

<sup>19</sup> Just belligerents and combatants are states and individuals who have sufficient substantive reason to fight; unjust belligerents and combatants lack substantive justification.

rights that innocent people have against being harmed. We may not demand our adversary agree to terms short of these standards; even with agreement, such terms would be illegitimate.<sup>20</sup>

While unconditional surrender is off the table, there could be non-negotiated settlements falling short of that mark—we might seek a decisive military victory, without negotiation, while making clear that we will adhere to *in bello* and *ex bello* standards. Whether pursuing such a non-negotiated settlement is permissible depends on proportionality and necessity. Pursuing a non-negotiated settlement is only permissible if necessary, and only necessary if there is no less harmful alternative approach. Additionally, pursuing a non-negotiated settlement must be worth the costs of that pursuit. For example, perhaps the adversary political leaders have put themselves so far beyond the pale of even minimally permissible behaviour, that negotiating would degrade ourselves and disrespect their victims.

Although I'm sympathetic to this view, recall that seeking a non-negotiated settlement when a negotiated end is on the table means risking our own soldiers' lives, and taking those of our adversaries, both combatants and noncombatants, innocent and guilty, to avoid dealing with an execrable tyrant. Perhaps if we were only risking our own lives, we could justify assuming this cost. But the killing we do is not morally pure, and cannot be discounted. In my view, war is a massively duty-breaching endeavour, wrongdoing is endemic to it, and we should always bring it to an end as soon as our war aims can be achieved. Appalling as it would be to negotiate with a Hitler, if this is equally conducive to our war aims, at a cost of fewer innocent lives, then we are required to do it. We still need principles for non-negotiated victories, of course, since sometimes our adversary will refuse to negotiate, or will simply collapse before negotiations are an option.

It is now possible to ask what principles should guide *jus ex bello*. I don't know of any sustained attempt to develop such principles—though of course there are frequent discussions of peace treaties and booty in classical just war literature, and I'll often look to Grotius for guidance, but contemporary just war theorists offer little to work with. So we're starting from a pretty blank slate. On reflection, I think the following principles best reflect our ordinary moral understanding of these matters.

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<sup>20</sup> See Brian Orend, "Justice after War," *Ethics and International Affairs* 16:1 (2002): 46.

Perhaps the most important criterion of *jus ex bello* is the principle of good faith.<sup>21</sup> Unless on the annihilation of one side, peace will always be based on at least two levels of trust—between adversary political leaders, and adversary combatants. Negotiated settlements are almost always preferable to fighting to the bitter end, but are impossible without all negotiating parties being able to trust each other. And whatever their political leaders agree to, combatants will only lay down their arms if they can do so safely, without leaving themselves or their communities vulnerable to lethal threats or persecution. Without this trust, the only route to peace is through elimination of all those able to defend themselves.

Peace depends on trust, trust depends on good faith. To betray this trust is perfidious, a sign of bad faith, and a sin against peace. There are powerful consequentialist objections to perfidy—it undermines peace not only now, but also in the future. International law condemns *in bello* perfidy so roundly because it threatens to undermine the whole system of normative regulation of armed conflict.<sup>22</sup> If some people abuse these norms to their own advantage—‘inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence’<sup>23</sup>—they undermine the trust and reciprocity on which the system of regulation is based. The same goes double for perfidy in *jus ex bello*: if some states and combatants abuse the trust that defeated states and combatants show in them, others will learn their lessons, and fight until annihilated. Why accept peace terms when you can’t trust your adversary to observe them? Perfidy in *jus ex bello* undermines not only a particular peace, but the prospect of peace after war in general.

But the wrong of perfidy, and the countervailing importance of good faith, are not reducible to their bad consequences. Lying and breaking promises are ordinarily wrong, but in some cases more wrongful than in others. When one contracting party is, through their contract, especially vulnerable to the other, relying on the other’s good faith to preserve them against weighty harms, then breaching the contract is especially invidious. To expose

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<sup>21</sup> The importance of good faith in *jus ex bello* was impressed on me by reading chapters 19 and 20 of the third book of Grotius’ *Law of War and Peace*.

<sup>22</sup> Incidentally, it’s interesting that there are no discussions of the *jus in bello* prohibition on perfidy by philosophers, at least to my knowledge. It seems like this should really be at the heart of *jus in bello* alongside discrimination, proportionality and necessity.

<sup>23</sup> Article 37.1. API part III, section I. 442 in Roberts and Guelff.

themselves so severely is to make a great leap of faith, so there is a lot of trust to betray. Moreover, taking advantage of those who are especially vulnerable to our actions is generally morally objectionable.<sup>24</sup>

That explains why good faith matters, but not how it constrains *ex bello* conduct. In non-negotiated war terminations, perfidy could take many different forms—offering an amnesty to members of the defeated regime, then killing or imprisoning them, for example. I don't think it's necessary to specify the different ways in which good faith can be breached in these circumstances; we only need the injunction not to give defeated citizens, combatants and leaders, the impression that either norms, agreement, or international law protects them, and then take advantage of their trust in that protection to secure additional gains.

For negotiated settlements, however, we can be more specific. Acting with good faith in peace negotiations means at least two things: keeping your word, and negotiating reasonably. Obviously if belligerents disregard peace treaties as soon as they conclude them, they both betray their adversaries' trust, and betray the hope of securing peace in future conflicts. Negotiating in good faith means sticking to agreed terms even when you might secure an advantage by disregarding them.<sup>25</sup>

Negotiating reasonably involves at least two dimensions: first, offering fair terms to your adversary. Neither party should insist on unreasonable demands, such as wholly unconditional surrender, nor should they hold their adversaries to ransom over comparative

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<sup>24</sup> Ref Goodin.

<sup>25</sup> Grotius, discussing good faith, emphasises that 'solemn war' gives 'validity to every promise, which may be conducive to its termination, so that if either party, through an ill-grounded fear of further calamities, has, even against his will, made promises unfavourable, or acceded to terms disadvantageous to himself, such an engagement will be binding'. The reason being that if belligerent powers were not entitled to 'alarm each other... into submission upon the most unequal terms', 'wars, which are so frequent, could never have been brought to a conclusion, an object so much for the interest of mankind'. This I don't find so plausible. While I agree that even unfavourable terms must sometimes be accepted, and adhered to—good faith does demand that much—I deny Grotius' assumption that states are entitled to use military leverage to impose whatever terms they choose. But this is because I deny Grotius' further belief that warfare is a legitimate means of establishing new entitlements. Thus I think the terms that can be offered to a defeated party are constrained by this 'no new rights' principle, so they should never be in a position where they have to accede and adhere to an entirely unpalatable peace treaty. Grotius 3.IXX.xi

trivialities. In other words, they should not propose terms that, if the situation were reversed, they would refuse themselves.<sup>26</sup>

Negotiating reasonably also means not abusing the circumstances of the negotiations themselves to secure additional advantage. The very act of negotiating with the enemy involves a significant investment of trust. History is replete with tales of ostensible peace meetings ending in ambush and death for the leaders of one side. If belligerents cannot trust their adversaries to respect the special status of peace negotiations, then few wars will end short of outright defeat for one side. This would obviously be calamitous. To offer the adversary's negotiators protection, only then to kill them, is perfidy in the classic sense, and an intrinsically execrable betrayal of trust and vulnerability.

The principle of good faith, note, applies with equal force to just and unjust belligerents, to victors and vanquished. All parties to a conflict, whatever their position, ought to show good faith when it comes to terminating the war. It is especially relevant to negotiated terminations, but it is also important for the victors and vanquished when the end is not negotiated. The victors must provide the vanquished with guarantees, which must be observed. They must keep their word, and not abuse their position of power to make false promises for gain. The defeated parties too must show good faith—both in negotiated and non-negotiated settlements—in adhering to the terms of the peace. This is clearly true for political leaders, but also applies to combatants and mid-level commanders. In general, combatants are bound by the peace agreements their leaders conclude, as well as required to stop fighting once their (non-negotiated) defeat is ensured. There are some exceptions, however, to this extension of the requirement of good faith to ordinary combatants, which will become clear when we discuss the next principle, legitimate authority and public declaration.

The very possibility of terminating the conflict presupposes that some bodies on either side have the authority to stop their armed forces from fighting, and that those forces are sufficiently disciplined to obey. Obviously the authority should preferably be legitimate, and I will come to that. But even bare authority and discipline, whatever its moral content, can be enough. Even the most justified wars are massively duty-breaching endeavours, unjustified wars all the more so. If a state's leaders lack the authority to command peace, and their armed forces lack the discipline to respect that command, then there is no prospect

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<sup>26</sup> I'm thinking of Rawls' account of fair terms of cooperation here.

of peace short of annihilation or sheer exhaustion. Mere authority, then, is a prerequisite, for both just and unjust belligerents.

But should *jus ex bello* set higher standards than this? Certainly bare authority is not enough *ad bellum*. A political leader is not entitled to take her citizens to war—even if they have sufficient substantive reason to fight—unless she is legitimately entitled to exercise that authority. Wars affect whole communities, so the whole community should be at least invoked in the decision to go to war. Of course, in contemporary advanced democracies we have outsourced our battles to private contractors and a small subsection of society. But even in these cases, the financial burdens, as well as the condemnation attending an unjust invasion fall on us all. And it is right that they should; indeed, the burdens of war should be spread far more evenly than they are.

But ending wars is clearly different from starting them. *Ad bellum* principles regulate the decision to start killing people, many of whom are innocent. *Ex bello* principles regulate the return to normality, and the end of lethal violence. The constraints on ending wars should be weaker than those on starting them.<sup>27</sup> As such, it is not an absolute requirement that the negotiating parties be legitimate authorities. It is enough that they have sufficient authority to end the war.

However, legitimacy and de facto authority will in practice be closely intertwined. If the authority is not legitimate, then individual combatants are less likely to obey its commands. And if their illegitimate leaders have wrongfully sold them out, when they ought to have fought on, then they are probably entitled to disregard them in some severe cases.<sup>28</sup> Legitimate governments, by contrast, should have some leeway in this respect—combatants ought to obey orders to desist even when they conclude on unfavourable terms (though of course there are limits). To continue fighting, when your legitimate authority has declared peace, is effectively to start war anew—without legitimate authority to do so. Since their decision impacts on the whole community, it is impermissible to continue fighting under these conditions.

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<sup>27</sup> Here I disagree with Grotius, who basically argues that the same standards should apply for beginning and ending wars. ‘The person, who has authority to begin a war, is the only one to whom the right of making peace can properly belong, according to the general maxim, that every one is the best judge in the management of his own affairs. From hence it follows, that public war can be made by the sovereign power alone on each side: a right which in every kingly government is very justly vested in the crown.’ 3.20.ii

<sup>28</sup> Here I disagree with Walzer, who thinks you have to observe your government’s order to surrender, whatever its nature. Michael Walzer, *Arguing About War* (London: Yale University Press, 2004), 178.

Much depends, then, on the nature of the negotiations, and the terms that result. People are entitled to assess the judgments of their leaders, both legitimate and illegitimate. So it is crucial that at least the results of the negotiations are publicly declared, in full, so all can judge for themselves.

The next set of principles constrain the practice of using the position of strength gained through victory to secure your war aims. It might help to have some practical examples in mind. Consider, first, a state that has successfully fought a war of national defence, and having repelled its adversary and forced it to the negotiating table, is seeking insurance that the aggression will not be repeated. Or consider a state that has successfully waged a justified humanitarian intervention, and having defeated the forces protecting the genocidal government against which it is intervening, is now attempting to protect the civilians on whose behalf it invaded. Our question is: what constraints must these states observe when attempting to secure these war aims?

We could proceed in two ways: identify constraints on securing just war aims only, or war aims *tout court*. Obviously, if the unjust belligerent wins, then in fact they have no right to secure any of their war aims. However, I think it makes practical sense to adopt a more neutral posture: we can hold victorious unjust belligerent to specific procedural standards, while bracketing their substantive justification. The latter question is profoundly contentious, and will swamp all other debate once invoked. We would keep going round in circles about the substantive justification, while ignoring the more immediate question of methods. Moreover, neutral principles can still offer guidance to victorious belligerents who now recognise that their substantive justification for fighting was at best dubious, but still want to adhere to *jus in bello* and *jus ex bello* standards. Additionally, we don't lose anything significant by adopting neutrality; we can still indict the unjust belligerent for fighting unjustly.

The first constraint is that when securing their war aims, belligerents must not seek to ground any new entitlements in the war itself. There can be no new rights through war.<sup>29</sup> They may only enforce (some of) the entitlements that warfare disrupted. This principle rejects an older way of understanding *jus ex bello*, of which Grotius' account is typical. Grotius argued that 'any one whatever, engaged in regular and formal war, becomes absolute proprietor of every thing which he takes from the enemy: so that all nations respect

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<sup>29</sup> By rights I simply mean valid claims, I am not wedded to the specific terminology.

his title'.<sup>30</sup> Provided you can enclose or secure the stolen land with permanent fortifications, or hold the captured vessels in dock for 24 hours, you are entitled to keep whatever territory you can seize.<sup>31</sup> Political power comes with territorial control: 'by conquest, a prince succeeds to all the rights of the conquered sovereign or state; and if it be a commonwealth, he acquires all the rights and privileges, which the people possessed'.<sup>32</sup> And of course with territorial control and political power, come entitlements to booty, in particular to pay for the services of professional soldiers: 'as a compensation for this loss of time, and this personal danger, it is but reasonable they should have a share of the spoils'.<sup>33</sup>

This view of war termination is remarkably indifferent both to the perverse incentives it creates, and to the great moral tragedy of war. Warfare cannot create new entitlements. Wars not only involve untold suffering, but they are also imbued with wrongdoing and injustice. There is no way to fight a morally pure war, in which all the suffering we inflict is regrettable, but not wrongful. Warfare is an unavoidably and massively duty-breaching, rights-violating endeavour. These duties may only be breached when other, stronger duties override them; rights may only be violated to prevent imminent violations of proportionately serious rights. War may not be used to acquire new rights, but only to defend those we already have. This constraint on just cause necessitates a parallel constraint on *jus ex bello*. Warfare is not an appropriate way to create new entitlements; any such that arose through war would be tainted with unavoidable wrongdoing.

This principle constrains just and unjust belligerents with equal force. Even a just belligerent may not use victory to justify territorial expansion or resource extraction, or excessive interference in the political arrangements of the defeated adversary. The same applies to unjust belligerents. All belligerents, however justly they fought, must relinquish what they have captured through war—both territory and goods, as well as prisoners of war.

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<sup>30</sup> Grotius 3.VI.ii. In these chapters Grotius describes what justice permits in the termination of conflict; he later advocates moderation on grounds of charity. That said, he still affirms that bare possession of territory after war is a sufficient grounds for retaining it (3.XX.xii).

<sup>31</sup> Grotius 3.VI.iv

<sup>32</sup> Grotius 3.VIII.REF

<sup>33</sup> Grotius 3.VI.xiv

The ‘no new rights’ principle provides space to secure our war aims, by securing the rights whose violation justified us in fighting.<sup>34</sup> The measures taken to secure those aims will be, in varying degrees, harmful to the defeated state. Harmful practices in general are subject to necessity and proportionality criteria, so it seems *jus ex bello* too needs its necessity and proportionality standards. We may only make those interventions that are necessary to secure the rights warfare disrupted. If there are multiple strategies that could work equally well, we must choose the one that causes least harm. In addition to being necessary, it must also be proportionate—we must show that the gain in protecting our disrupted right is valuable enough to justify the cost that we’re imposing on our adversaries. These two concepts are familiar enough that no further elaboration is necessary.

My initial proposal for a schedule of *jus ex bello* principles, then, includes good faith, legitimate authority and public declaration, and, when it comes to securing war aims, no new rights through war, necessity and proportionality. This is just a first attempt, so is incomplete and inadequate in various ways, but it should help advance an important debate.

## 6. *Why We Don’t Need Jus Post Bellum*

The *jus post bellum* debate has highlighted some important issues. The aftermath and endings of war modify our substantive reasons for fighting, and help justify the standards governing how we initiate and prosecute wars. Moreover, a whole set of procedural reasons has been largely overlooked—the *jus post bellum* debate has alerted us to the importance of *jus ex bello*. However, none of this implies that we need a separate account of *jus post bellum*. This section asks whether such an account is necessary.

My initial scepticism derives from three structural queries about *jus post bellum*. First, scholars often suggest that *jus post bellum* is a prerequisite of a complete just war theory. We have our reasons leading to war (*ad bellum*) in war (*in bello*), and now after war (*post bellum*).<sup>35</sup> By contrast, I think just war theory is composed of substantive and procedural

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<sup>34</sup> One advantage of the principle is that it constrains unjust belligerents without specifically excluding them from its scope.

<sup>35</sup> Bass, "Jus Post Bellum," 384; Robert E. Williams Jr. and Dan Caldwell, "Jus Post Bellum: Just War Theory and the Principles of Just Peace," *International Studies Perspectives* 7(2006): 311-3; Mollendorf, "Jus Ex Bello."; Brian Orend, "Jus Post Bellum," *Journal of Social Philosophy* 31:1 (2000); Orend, "Justice after War."; Rodin,

reasons which justify and regulate a specific practice—warfighting, and subpractices thereof—starting, conducting, and terminating wars. Conceived in this way, the system is conceptually complete.

Moreover, and second, *jus post bellum* does not justify and regulate the same practice as the other aspects of just war theory. If anything, *jus post bellum* regulates and justifies the practice of peacebuilding—but for that purpose we surely need a broader ethics of peacebuilding, without the moral and conceptual blinkers that *jus post bellum* will inevitably have.

My third worry is that *jus post bellum* seems analogous, in an important respect, to the idea of *jus ante bellum* (which would be to *jus ad bellum* as *jus post bellum* is to *jus ex bello*). Warfighting involves breaching some fundamental agent-centred restrictions. It therefore polarises morality, allowing only the most fundamental moral reasons to count. Outside that emergency context, a wider range of reasons should apply. In the period before a threat is raised, we should follow the full gamut of moral reasons, not this polarised set. Similarly, we don't expect the morality of self-defence to provide principles for conduct prior to the threat of attack. The same goes for post-war: no longer engaged in massive wrongdoing, we can remove the just war blinkers and respond to the full range of moral reasons. We need an ethics of peacebuilding, or even an ethics of global justice, to guide our post-war conduct—principles grounded in just war theory are too polarised and limited.

To support this initial scepticism, I next explain why standard *jus post bellum* principles of compensation, punishment, and reconstruction should be either sidelined or incorporated into an ethics of peacebuilding—after first presenting the *prima facie* case for *jus post bellum*.

*Jus post bellum* advocates think just victors may exact compensation from their defeated foes for the damages of war. They deploy one of three arguments. Most common is a simple fault-based attribution of liability, which equates compensation with punishment, and reparations for wrongdoing.<sup>36</sup> Grotius, for example, argues that 'a nation engaging in an

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"Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression."

<sup>36</sup> See also Jr. and Caldwell, "*Jus Post Bellum: Just War Theory and the Principles of Just Peace.*"; D. McReady, "Ending the War Right: *Jus Post Bellum* and the Just War Tradition," *Journal of Military Ethics* 8(2009): 73ff; Orend, "Jus Post Bellum."; ———, "Justice after War," 47 Note that Orend directly equates reparations with punishment. And grounds them in culpability: 'Respect for discrimination entails taking a reasonable amount

unjust war, the injustice of which she knows and ought to know, becomes liable to make good all the expenses and losses incurred, because she has been guilty of occasioning them'.<sup>37</sup> Of course, reparations payments often fall on whole communities, so risks punishing innocent people. Grotius and Suarez thought this a price worth paying, either because sovereigns are entitled to expropriate their subjects' property to pay their debts (Grotius), or because 'the innocent form a part of one iniquitous commonwealth; and on account of the fault of the whole, this part may be punished even though it does not of itself share in the fault.'<sup>38</sup> Contemporary theorists are understandably sceptical about collective punishment, and insist that only the culpable should be held liable.<sup>39</sup>

Other theorists justify compensation not on retributive grounds, but through a sort of localised distributive justice.<sup>40</sup> Gary Bass in particular has suggested that since *someone* has to pay for economic restoration, it should be the aggressor.<sup>41</sup> And a final argument suggests that compensation is justified as a deterrent to other states considering aggression:

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of compensation only from those sources that can afford it and that were materially linked to the aggression in a morally culpable way.' ———, "Justice after War," 48. Also 'the commission of aggression, as a serious international crime, requires punishment in two forms: compensation to the victim for at least some of the costs incurred during the fight for its rights; and war crimes trials' ———, "Justice after War," 47..

<sup>37</sup> Grotius 3.I.iii.

<sup>38</sup> Francisco Suárez, "Justice, Charity and War," in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell, 2006), 339-70 at 364. Grotius, to be fair, does state that 'It is not sufficient that by a sort of fiction the enemy may be conceived as forming a single body.' Hugo Grotius, "The Theory of Just War Systematized," in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell, 2006), 385-438 at 432. And yet, both with respect to the voluntary law of nature, and with his principles derived from moderation, he does affirm that subjects can be made to bear the costs of remedying their leaders' wrongs: 'Although in the preceding observations there may be a great deal of truth, yet it is possible, and indeed appears actually to be the case, that the voluntary law of nations introduced the practice of rendering all the corporeal, and incorporeal property, belonging to the subjects of any state or sovereign, liable to the debts, which that state or sovereign may have incurred, either personally, or by refusing to make such reparation, as may be due for the injuries and aggressions, which they have committed.' 3.2.ii And: Grotius 3.XIII.iii: 'The goods of subjects may be taken, and a property acquired therein, not only in order to obtain payment of the ORIGINAL debt, which occasioned the war, but of OTHER debts also, to which the same war may have given birth.'

<sup>39</sup> E.g. Orend, "Justice after War," 48. Although Bass thinks that this is the price we pay for sovereignty: Bass, "Jus Post Bellum," 408.

<sup>40</sup> Stephen Perry, "The Moral Foundations of Tort Law," *Iowa Law Review* 77(1991-1992).

<sup>41</sup> Bass, "Jus Post Bellum," 408.

‘When a country wages an unjust war, it risks assuming economic restoration costs if it should lose the war.’<sup>42</sup>

Most theorists justify post-war punishment on retributivist grounds.<sup>43</sup> This makes sense, as deterrence is an unlikely justification, since punishing war criminals is less likely to deter their crimes than to deter them from accepting peace terms.<sup>44</sup> One strident advocate argues that ‘meting out of punishment for crimes against humanity and war crimes, whether in international tribunals or in our own civil courts, courts-martial, or military tribunals, is in fact the natural, logical and morally indispensable end stage of Just War’.<sup>45</sup> Gary Bass adds that war crimes trials remind us that wars are fought by people, not impersonal forces, and people must be blamed for their wrongdoing.<sup>46</sup>

Of course, to justify punishment it must be distinguished from revenge. This is difficult, when the principal agent of punishment is expected to be the war’s victor. Grotius argues that sovereigns may punish other sovereigns because they have no higher authority (besides God) to which they can appeal. They therefore regain their natural liberty to punish, which we only lose when we establish legitimate authorities to punish in our stead. States are like individuals on the high seas, ‘where no judicial remedy can be obtained’, and ‘this natural liberty continues in force’.<sup>47</sup>

Three arguments are advanced for reconstruction. The first focuses on fault-based liability. Unjust belligerents who have caused their adversary’s institutions to collapse, threatening the civilian population, are liable to rebuild those institutions and protect the population, on simple fault-based grounds.<sup>48</sup>

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<sup>42</sup> Ibid.: 411. see also Rosemary E. Libera, "Divide, Conquer, and Pay: Civil Compensation for Wartime Damages," *Boston College International and Comparative Law Review* 24(2000-2001).

<sup>43</sup> See also Jr. and Caldwell, "Jus Post Bellum: Just War Theory and the Principles of Just Peace," 318; McReady, "Ending the War Right: *Jus Post Bellum* and the Just War Tradition," 73ff; Orend, "Jus Post Bellum."; ———, "Justice after War."

<sup>44</sup> Bass, "Jus Post Bellum," 405.

<sup>45</sup> Davida E. Kellogg, "The Importance of War Crimes Trials," *Parameters* 32:3 (2002): 88.

<sup>46</sup> Bass, "Jus Post Bellum," 404.

<sup>47</sup> Grotius 2.XX.viii See also Alex J. Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," *Review of International Studies* 34(2008): 609-10.

<sup>48</sup> Walzer, *Arguing About War*, 167. Bass adds that ‘If one has not convinced the world that one was acting according to *jus ad bellum*, then impeccable behaviour in terms of *jus post bellum* is all the more critical.’ Bass, "Jus Post Bellum," 408.

A second argument deploys strict, not fault-based liability, grounded in the famous ‘Pottery Barn’ dictum ‘you break it, you own it’.<sup>49</sup> Even a just belligerent can be liable, if the institutions of its adversary collapse because of its justified fighting. Michael Walzer argues, for example, that even in morally required humanitarian interventions, the state that virtuously intervened when others did not will be burdened with the reconstruction costs, other things equal.<sup>50</sup>

Other arguments for reconstruction are, in my view, better grounded in *jus ex bello* than *jus post bellum*, since they govern the process of securing the aims of the just war. As I argued above, this can mean guaranteeing security against further aggression through intervening in political and military institutions, or in a humanitarian intervention securing the safety of the civilians whom you intervened to protect.

So, as I understand it, a theory of *jus post bellum* provides principles for post-war conduct that derive primarily from responsibilities acquired by belligerents during conflict. It will be mainly nonconsequentialist, in line with the rest of just war thinking, focusing on asserting requirements of justice—in particular compensation and punishment. The same spirit animates its approach to reconstruction: duties to reconstruct go to states that took part in the original conflict, in accordance with the nature of their participation. It assigns current benefits and burdens as rewards or punishments for past actions.

An ethics of peacebuilding, by contrast, is inherently forward-looking. It has its own standards and goals, distinct from military standards and objectives. It must draw on moral responsibilities created by the war, but is not restricted to them. In particular, it doesn’t focus only on belligerents, but casts a wider net. Instead of grounding present responsibilities in past action, it grounds them in the successful pursuit of two goals: alleviating suffering, and building a stable peace.

Of course, some might reject my characterisation of *jus post bellum*, and say that *jus post bellum* is really no different from the ethics of peacebuilding as described. Fine, but the choice of name is misleading. This theory of *jus post bellum* is consistent with some key features of just war thinking (though it remains a structural anomaly). The ethics of

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<sup>49</sup> ‘There is a broad consensus among theorists of *jus post bellum* that if a government falls as a result of a just war, then the victor acquires all the responsibilities of government.’ Bellamy, “The Responsibilities of Victory: *Jus Post Bellum* and the Just War,” 615.

<sup>50</sup> Walzer Belgrade talk.

peacebuilding, as I've described it, stands in stark contrast to just war theory. A rose by any other name would smell as sweet, but calling this *jus post bellum* does seem inappropriate.

I am least impressed by the arguments in favour of extensive principles and policies of post-war compensation, for two types of reasons. The first are specific to compensation, the second apply both to fault-based compensation, and to punishment.

My first objection is that advocates of compensation underestimate their argument's scope. Consistently deployed, it would generate crippling burdens for both unjust and just belligerents.

Unjust belligerents' extensive liabilities should already be clear: as well as infrastructural damage, on the fault-based account they must also be liable for the wrongful deaths they caused, of both combatants and noncombatants (since the combatants were fighting justifiably, killing them was impermissible). Compensating the families or estates of the deceased would be inordinately expensive; the least required would be the lost earnings the dead would have made; payments should also acknowledge the suffering of both victims and their families. This would amount to millions of dollars per victim.<sup>51</sup> Assuming there are thousands, even tens of thousands of victims to compensate for, we're immediately into the billions of dollars in additional compensation, over and above the infrastructural damage done.

And if we adopt a more plausible and familiar account of compensatory liability, these crippling costs would not fall on unjust belligerents alone. In other areas of corrective justice, compensation is owed for *pro tanto* wrongdoing, even when it is all things considered justified. Classic examples include damaging a private jetty when rescuing a sailing crew in a storm, or breaking into a log cabin to save oneself from exposure, by burning the owner's furniture. In each case the principal justifiably breaches some duty, and owes compensation as a result.

This far more popular and plausible account of liability renders just belligerents liable for significant amounts of compensation.<sup>52</sup> Their victims suffer wrongful harms that,

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<sup>51</sup> E.g. if a 20 year old soldier was killed, on a conservative estimate he has 40 working years remaining, when he could earn an average of \$25,000 per year, which amounts to \$1,000,000.

<sup>52</sup> Indeed, this is already recognised by the US military to some degree, as they make compensatory payments to the victims of collateral damage, albeit in a piecemeal way. Jonathan Tracy, "Responsibility to Pay: Compensating Civilian Casualties of War," *REF REF(REF)*.

though justified, ground a legitimate complaint.<sup>53</sup> This clearly applies to their noncombatant victims, but is also true (I think) for many of the combatants whom they kill. I've argued elsewhere that to win justified wars combatants must breach duties not to kill innocent unjust combatants.<sup>54</sup> I see little difference—at least as regards their rights—between a morally innocent noncombatant, and a morally innocent combatant. Killing each is *pro tanto* wrongful—if noncombatants' deaths must be compensated, then so must combatants' deaths.

If we're going to demand compensation, then, we must compensate for the lives taken, and we must demand it from both sides. Singling out only unjust belligerents, and only infrastructural damage, implies that these are the only relevant wrongful harms, the only liable bodies, conveying indifference to the claims of those whom we exclude, as our selection implies that they have not really been wronged.

Moreover, if each side has substantial compensatory claims against the other, they effectively cancel each other out. Assuming that liability falls on the state, rather than the individual combatants who did the damage and killing (without which assumption the position is even less plausible), if claims against both sides are so numerous, we should surely swap their liabilities, so each can rebuild their own society.

My next objection is that pursuing compensation after war directs resources away from where they are most urgently needed. This should be immediately obvious—the *jus post bellum* approach opens the floodgates to innumerable claims. Not only would paying these claims be prohibitively expensive, adjudicating and administering them is inordinately complex. This was already clear from the UN Compensation Commission, which only ceased adjudicating cases fourteen years after the first Persian Gulf War, and made its last

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<sup>53</sup> Contra McReady, "Ending the War Right: *Jus Post Bellum* and the Just War Tradition," 71., who argues that the justified side in a war has nothing to repent.

<sup>54</sup> "For, as Tacitus says, "in the leisure hours of peace the merits and demerits of every case may be examined and weighed, but, in the tumult and confusion of war, the innocent must fall with the guilty" Grotius 3.IV.vii. Evans offers a nice quotation from Kant on a similar topic: 'At the end of a war, when peace is concluded, it would not be inappropriate for a people to appoint a day of atonement after the festival of thanksgiving. Heaven would be invoked in the name of the state to forgive the human race for the great sin of which it continues to be guilty.' Quoted in Mark Evans, "Moral Responsibilities and the Conflicting Demands of *Jus Post Bellum*," *Ethics and International Affairs* 23:2 (2009): 154. See Seth Lazar, "War and Associative Duties" (D.Phil. Dissertation, University of Oxford, 2009); ———, "Responsibility, Risk, and Killing in Self-Defense," *Ethics* 119:4 (2009); ———, "The Responsibility Dilemma for *Killing in War*," *Philosophy & Public Affairs* 38:2 (2010).

payments in 2007.<sup>55</sup> It would be still more costly and time-consuming if we admitted, as consistency demands we must, all these additional claims.

This is a gross waste of resources. When everybody has suffered so much wrongful harm, we should raise everyone's condition—the neediest first—rather than retrace the events of the war in minute detail. Moreover, if people must file claims for compensation, those best equipped to file claims are most likely to be compensated. Those who lack the education to plead their own case will either be ignored, or bear additional costs and vulnerabilities in hiring representation. A complex compensation system privileges those who can work the system, who are unlikely to be the neediest.

Additionally, compensation by definition aims to restore property rights that antedate the war. If those property rights were unjustly distributed, then our principle of *jus post bellum* is devoted to restoring injustice.

More important still, the people who lost most will be those who had most to lose. An urban slum-dweller whose house was flattened by artillery has, in financial terms, lost little, while a rich landowner whose lands were destroyed has lost much. But if the slum-dweller is now homeless, at risk of starvation and disease, while the landowner retains his house, who is the more appropriate recipient of resources after war? Compensation directs resources away from where they can be most efficiently used, and away from the most vulnerable, who have the strongest claims to them.

Next worry: in implementing compensation we can be sure that resources will not only go to the wrong people, they will come from the wrong people as well. This is especially worrying if we ground liability in culpability, since imposing these burdens on the innocent amounts to collective punishment, which few think acceptable. There is no practical way to exact the relevant magnitude of compensation from a state without its costs foreseeably falling on the innocent. Political leaders are always able to pass the costs of reparations onto the innocent—thus in Iraq after the first Gulf war, Saddam Hussein allowed his population to suffer, as he refused to sell oil because of the UN Compensation Commission's 30% cut.<sup>56</sup> But even where leaders do not hold their civilians to ransom, reparations can only be exacted through direct taxation, or intercepting revenues from the sale of natural resources. Direct taxation, unless administered with an implausibly fine (and expensive) capacity for differentiation, will affect everyone to some degree, including the

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<sup>55</sup> Libera, "Divide, Conquer, and Pay: Civil Compensation for Wartime Damages."

<sup>56</sup> *Ibid.*

innocent. At the very least, it reduces the resources the guilty contribute to public goods, thereby impoverishing the innocent. Resource extraction might seem the easier option—but resources are the patrimony of all the citizens of a territory, even the children. Expropriating these is no different from taxing each individual. And recall that the levels of compensation exacted, if the principle is consistently applied, will be punitive not only in justification but also in degree. Innocent people will inevitably pay a steep price for the crimes of others. This is also the reason why compensation shouldn't be exacted as a deterrent, *contra Bass*—punishing some to deter others is paradigmatically wrong.

The next set of objections apply to both punishment and fault-based compensation: they are likely to be both unjust, and inimical to peacebuilding, at least when administered by the victorious belligerent as I assume *jus post bellum* requires.

Culpability-based attributions of liability, and impositions of punishment, raise serious questions of justice.<sup>57</sup> The process can go wrong at five points (at least): identifying the culpable, determining their degree of culpability, determining the degree of punishment/compensation, determining the method of punishment/compensation, and enforcing the punishment/compensation. Errors at each stage result in inflicting gross injustice on innocent people. Retribution is very difficult to do right.

Much then depends on process. Two types of impartiality are required. Judge, jury and executioner must have nothing to gain from the trial's outcome, and they must have no prejudices about the plaintiffs. Some also think legitimate authority a prerequisite of justified punishment—either because legitimate authorities are more likely to be impartial, or because something intrinsic about them makes them proper agents of punishment. At the very least, to punish without legitimate authority, when there is a legitimate authority available, is clearly impermissible (it's vigilante justice). Moreover, if such authorities do not presently exist, knowing our frailties as judges, we are required to establish them.

Given this description, it seems clear that if *jus post bellum* permits victorious belligerents to exact compensation and impose punishment, it invites radical injustice.<sup>58</sup> The victorious cannot be relevantly impartial—they are both judge and prospective beneficiary,

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<sup>57</sup> The following objections might be avoided if our account of compensation were based on something thinner than fault or liability—but then it would be much harder to restrict liability only to the unjust belligerent, indeed, there would be an explosion of liability that would arguably render compensation claims redundant (see above)

<sup>58</sup> Note that this also applies, indeed with even more force, to the inclusion of these demands in *jus ex bello*.

and they have just ended a bloody war with the accused, which cannot but lead to resentment and prejudice. Victors' justice will always be tainted, however noble our aspirations.

Moreover, if just victors are permitted to take these measures, it is certain that unjust belligerents will do so as well, since they will believe themselves justified. Is this cost worth bearing, to ensure that the just victorious get their winner's rights? Surely not.

As well as being conducive to radical injustice, victors' justice is inherently bad for the prospects of peace. Even if, against expectation, the victor impartially attributes liability, and fairly enforces compensation and punishment, citizens of the defeated state will almost certainly resent these additional impositions on their vulnerability. They are unlikely to believe the exactions just—either because they believe their side fought justly, or because they doubt the victorious side's implementation of justice, on the reasonable assumption that victors' justice is almost always corrupt. If peacebuilding presupposes reconciliation between the adversaries, victors' justice is a poor start.

Moreover, adequately effecting compensation, for example, means revisiting both which side fought justly overall, and the circumstances of each incident—reopening questions that victory at least quieted, if not resolved. It must lead to accusation and counter-accusation, recrimination and resentment.<sup>59</sup>

This objection targets the core of *jus post bellum*—a concept that defines the post-war period by its immediate past, not by its future. *Jus post bellum* is conceptually committed to rehashing the war, revisiting its rights and wrongs, pinpointing wounds and patching them up piecemeal. It is inherently backward-looking. Unless by coincidence peace is best established by ignoring the future—like you might play your best golf shots when you think least about them—this backward-looking approach must be inimical to realising peace.

Perhaps this shouldn't worry us, and a *post bellum* post mortem is more important than securing peace between the belligerents. But this is unlikely—warfare is a massively

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<sup>59</sup> Even Grotius recognised this danger, as he qualified his other arguments more strongly in favour of punishment and compensation, arguing that 'The right to claim lands or goods of any kind, by way of punishment, is not of equal force with the above rules. For in transactions and treaties of that kind between kings and sovereign states, all claims of that kind seem and indeed ought to be relinquished, otherwise peace would be no peace, if the old and original causes of the war were allowed to remain and be revived. And the most latent and remote causes are supposed to be included in the most general terms, in treaties of peace, whereby they are sunk in oblivion.' Grotius 3.XX.xvii

duty-breaching endeavour on all sides, and any return to war would be a grievous moral tragedy. Moreover, the suffering caused by war does not cease when the armed forces stop fighting. Remedying that suffering, and securing the peace, must surely be our goals once our war aims are secure, and the fighting has stopped. Punishment is an important subordinate goal, and we should strengthen impartial international institutions to secure punishment without victors' justice, at least insofar as that does not undermine peacebuilding (it may also contribute to peace, of course). As we saw above, compensation is not so important, and moreover is likely to conflict with the goals of alleviating suffering and securing peace. Its role in an ethics of peacebuilding should be limited. Insofar as *jus post bellum* prioritises both compensation and punishment, and permits the just victor to be plaintiff, judge, and bailiff or executioner, it is misguided.

Though I reject *jus post bellum* theorists' emphasis on compensation, I agree that belligerents have significant obligations to each other in virtue of their shared war. The *pro tanto* wrongdoing endemic to war binds each side to the other—each has inflicted grievous wrongs on the other, even though one may have been justified in doing so. Through this shared experience of reciprocal wrongdoing belligerents gain stronger obligations to one another than neutral parties have to either. The initial onus for securing peace falls on their shoulders. But the direction of transfer does not, I think, track guilt. Instead, it follows capacity. If a rich state and a poor state fight, the rich state must bear the heavier load of the peacebuilding project.

This brings us to reconstruction; again, I think reconstruction can be morally important, but it is either properly situated in *jus ex bello*, as I noted above, or should be built into an ethics of peacebuilding, not a theory of *jus post bellum*.

First, *jus post bellum* nonconsequentialism is inappropriate for reconstruction. Just war theory regulates warfighting, in which great wrongdoing is endemic. It identifies when these otherwise execrable acts can be permissible. Its logic is inherently and strongly nonconsequentialist. Warfare is justified only when these profound restrictions are either lifted or overridden. We may not simply wage war whenever an optimal outcome would result.

Peacebuilding, by contrast, is not about avoiding the greater evil, but pursuing an unambiguous good. Peace always has something to recommend it. And there is no general need, in the pursuit of peace, to violate strong agent-centred restrictions—peace is not

furthered by killing innocent people, for example. Peacebuilding is therefore an inherently consequentialist project. As such, it is best regulated by principles germane to those origins.

Second, adopting the just war logic blinds us to important areas where an ethics of peacebuilding can offer guidance. Just war theory has had little to say about the ‘new’ intra- and transnational wars of the last twenty years. Often fought by private armies, for private gain, they fail the just war standards at every substantive and procedural level. They are abominations. We neither have, nor need, principles to regulate untrammelled murderousness. But we do need principles to guide us when the murderousness ends. How can *jus post bellum* provide that guidance, when just war thinking is so dismissive of these new wars? *Jus post bellum* grounds post-war duties in the conduct and outcome of the war. It at least presupposes the continuing existence of some institutional agents during and after the war, as well as assuming their capacity to perform those duties. In the regions affected by the new wars, these institutions are often long gone. The belligerents do not continue unaltered from war to peace: their sole organising purpose is murderous violence, and when they cease fighting, they often evaporate (as institutions—of course the individuals who composed them persist). There is no one to whom these *post bellum* duties can be assigned.

Clearly we need an ethics of peacebuilding for scenarios such as these, which emphasises the universal duties—owed by us all, to all of us—to help regions recover from this systemic violence. Maybe we could keep an account of *jus post bellum* for orthodox conflicts, but I’m inclined to think the pursuit of peace and alleviation of suffering form a single practice, that raises the same problems whatever the nature of the preceding war.

Third, it is sometimes wrong to make the belligerents bear the whole cost of reconstruction, as *jus post bellum* would in its pure form mandate. *Jus post bellum* principles should, insofar as they derive from just war thinking and are distinct from a broader ethics of peacebuilding, impose the costs and duties of reconstruction on one or both of the belligerents to a given war. This is either grounded in the logic of strict liability—you break it, you own it—or fault-based liability, as when an unjust belligerent is required to reconstruct a society that it has caused to collapse.

Against this standard, there are often strong reasons to assign at least supervision of post-war reconstruction to regional and international institutions, if not to allow them full control. We should be sceptical, for example, about granting unjust belligerents power over a country whose collapse they have themselves engineered. How can they, or any domestic

government they successfully install, possibly be viewed as legitimate?<sup>60</sup> How can we trust them not to exploit this power? Perhaps they should bear the costs of reconstruction, but they cannot be allowed the attendant power.

Conversely, when a state justifiably defends itself an aggressor, causing the latter's institutions to collapse, it cannot be held accountable for reconstruction if that means imposing significant costs on its own citizens.<sup>61</sup> Of course the victor has some responsibility to the defeated state, grounded in the experience of reciprocal wrongdoing, but since fighting was proportionate in spite of this predictable collapse, the costs citizens of the victor state can be required to bear must be limited. Their duties are not that much greater than the cosmopolitan duties all people owe to the civilians in the failed state.

Finally, ought just belligerents bear the burden of reconstruction after humanitarian interventions? Again, there is the bond created by the reciprocal wrongdoing; moreover invading creates an expectation among the beneficiary population, which it may be wrong to disappoint. But I deny that other states are let off the hook by one state's decision to make the original invasion.

We can see this in two ways. First, if intervention was morally required, then the duty to intervene fell on all people, and therefore all states. The state that acted on that duty did so, therefore, on behalf of all states. They are the agent, but the international community is the principal. Any duties they acquire through their justified intervention fall on the principal, not the agent. Likewise, soldiers who defend their country are not liable for the damage they cause, rather liability falls to their state.

I find this argument persuasive, but even if the principal/agent logic is rejected, the duty to help the stricken society rebuild should still be universal. The state that intervened has already born a significant cost, and can justifiably demand others to do their part. Suppose a child is drowning, and four of us are standing on the beach. We all have a duty to help, but I am the strongest swimmer, so I go. Braving the waves I bring him towards shore, battling a furious riptide. Before long I'm exhausted, but within reach of the shore, provided you three wade out to help. You are clearly required to do so—you couldn't justifiably object: 'you voluntarily chose to save him, and raised his expectations, so you must finish the job'. That would be obviously wrong. Likewise if one state undergoes the

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<sup>60</sup> Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," REF.

<sup>61</sup> Bellamy and Bass make similar points at Bass, "Jus Post Bellum," REF; Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," 619.

struggle and risk involved in a just intervention, they can demand other states that avoided those costs to chip into reconstruction.

My final objection is that reconstruction and peacebuilding require attention to such a vast range of factors, that a restrictive just war oriented focus is unhelpful. Reconstruction and peacebuilding depend on the innumerable details that create a functioning and stable society—from food production and water supply to writing constitutions and securing the rule of law. When dealing with all these problems, we need insights from the full domain of political philosophy, not from the narrow corner of just war thinking.<sup>62</sup> Moreover, adopting a just war perspective positively blinds us to other obligations, such as those grounded in historic ties, or economic injustice. The grounds of international responsibility are diverse, but the *jus post bellum* approach excludes all but those derived from the war.<sup>63</sup> Indeed, this objection suggests that rather than an ethics of peacebuilding, we really need to situate the project of peacebuilding in a broader theory of global justice...

Ultimately I think the project of peacebuilding is too important to be left to a theory of *jus post bellum*—its backward-looking approach is distracting, even positively harmful; its confined moral toolkit too restrictive; and its focus on the belligerents in the concluded war likewise. Peacebuilding is something that should concern all of us—insofar as it affects us all, and a broad commitment is needed to make it work.<sup>64</sup>

## 7. Conclusion

This paper has sought to show that the key insights of the *jus post bellum* debate can be incorporated into two related fields—just war theory, and an ethics of peacebuilding—without needing the concept or category of *jus post bellum* itself. I've offered an alternative theorisation of how just war thinking should be organised around the split between

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<sup>62</sup> Walzer, *Arguing About War*, 164.

<sup>63</sup> David Miller, "Distributing Responsibilities," *Journal of Political Philosophy* 9:4 (2001).

<sup>64</sup> Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," 616. Also: 'The only way to legitimise the peace after an unjust war or a war whose injustice is indeterminate is to permit international institutions to either oversee and authorise a particular peace or assume responsibility for the peace themselves.' ———, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," 623; A. Gheciu and Jennifer M Welsh, "The Imperative to Rebuild: Assessing the Normative Case for Postconflict Reconstruction," *Ethics and International Affairs* 23:2 (2009). See also S. Recchia, "Just and Unjust Postwar Reconstruction: How Much External Interference Can Be Justified?," *Ethics and International Affairs* 23:2 (2009).

substantive and procedural reasons, and then shown how war's endings and aftermath matter to our substantive reasons for fighting, and our *ad bellum* and *in bello* procedural reasons. I then developed some preliminary principles for an account of the just procedures for terminating wars—*jus ex bello*—before explaining why I think our conduct after war should be guided by an ethics of peacebuilding, rather than by *jus post bellum*.