



## ***Post War Justice: Jus Post Bellum for Just War and Peace***



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**Abstract:** This paper aims to address a key topic of speculation within political philosophy, namely the Just War Theory. The Just War Theory works to ethically restrain wars based on principles listed out in *jus ad bellum* (reasons to go to war) and *jus in bello* (conduct during war). As such, the theory dominated by the debate between the ‘traditionalists’ and ‘revisionists’ who are concerned about the integration of *jus post bellum* as the third branch of just war theory and feel it is better suited to the domain of international politics and security. This paper explores this lacunae over the neglect of *jus post bellum* (post war justice) within the just war discourse. By identifying the limitations of a minimalist *jus post bellum* and this misrepresentation of peace with security, this paper defends a maximalist account of *jus post bellum* and also situates post war justice as a necessary third branch of the Just War Theory. The challenges to taking such an extensive stance on post war justice are also addressed. As the first two branches of just war theory have been codified, the neglect of the post war stage leads to unrestrained war endings and ad-hoc solutions. Any just war theory needs to recognize the legitimacy of the third branch of post war justice as well, as only then can the Just War Theory function to restrain wars.

**Keywords:** Just War Theory; peace; *jus post bellum*; post war justice; maximalist *jus post bellum*.

### **Introduction**

War theory literature, having the three strands of pacifism, realism, and the Just War Theory, has been heavily focused on the Just War Theory due to its the justifications it offers for wars. It is a body of norms that regulates the different phases of war, i.e., the beginning, the situation before the war where participation in war is considered; the middle, the situation during a war; and the end, the situation identified by the absence of violence immediately following the termination of the war. Just war discourse has carved out the provisions for the beginning (*jus ad bellum*) and middle (*jus in bello*) phases of the war, with little exposition regarding the end (*jus post bellum*) of a conflict. This gap in the literature on the ethics of war and peace must be addressed.

The thesis I want to defend is that the current scope of the just war doctrine, with

its meager and limited notion of *jus post bellum*, is insufficient to justify wars, especially in recent times. While the Just War Theory may have a leading position on the morality of war, where its criteria appeal to the moral intuitions held by many people, it isn't without limitations, nonetheless. There should be a comprehensive plan for justice after a war that aims for the initial objective of peace but one that also does not neglect any wrongdoings. Taking a maximalist position on the *jus post bellum*, the post-war responsibilities are more positive looking and shared by responsible duty bearers aimed at a peaceful state.

To demonstrate why and how such a notion of *jus post bellum* necessarily leads to peace, I will focus on the maximalist account of the post-war phase. There needs to be moral and legal completion of the post-war phase, for a failure to construct the principles of *jus post bellum* allows unconstrained war termination. This third branch is a necessary approach to provide moral guidance for the realization of a just peace. *Jus post bellum* looks into some of the deepest and most interesting issues in contemporary political theory, which is why its norms involve a broad set of affirmative duties. This paper is an ethical inquiry arguing for the value of duties and responsibilities in a shared manner after the war, for the sake of peace.

The paper proceeds with a first section that situates *jus post bellum* in the historical just war doctrine by detailing the first two branches (*jus ad bellum* and *jus in bello*) and charting out the debate between the traditionalists' and revisionists' account of the Just War Theory. The second part of this paper presents a maximalist account of *jus post bellum* with a critical examination of the minimalist account for a just war. The following section focuses and builds on the principles for a comprehensive *jus post bellum* and also defends it against some possible objections.

## 1. Perspectives on the Just War Theory

Traditionally, the debate on the ethics of war has focused mainly on the first two tenets of the Just War Theory, viz. *jus ad bellum*, the right to resort to war, and *jus in bello*, the right kind of conduct in war, and paid very little attention to *jus post bellum*, justice after the war. Because of the limited scope of *jus post bellum* in classical theories, many theorists believe it to be a modern invention seeking integration with the Just War Theory; hence, they consider *jus post bellum*, justice after the war as a separate category better suited to Peacebuilding and Reconstruction, with little or no connection to the two branches of the Just War Theory. However limited and independent significance the category of *jus post bellum* might have had in the traditional account it is yet deeply connected to the other two branches of the Just War Theory.

### 1.1 *Jus ad bellum* and *jus in bello*

Before we dive deep into the existing gap in post-war justice in the Just War Theory, let us go over the principles of the first two branches.

***Jus ad bellum:*** *Jus ad bellum* translates as ‘right to war’, or justice to go to war, and consists of norms for states that are considering going to war that must be satisfied. All the norms under it are necessary but only jointly all together are they sufficient for resorting to war. In other words, simply having a just cause does not justify a state going to war unless all the other criteria are also satisfied. *Jus ad bellum* comes under the domain of political leaders. This means that it is the political leaders of a state that first decide whether to resort to war. Consequently, it is them who bear the primary responsibility for the choices they make in this regard. All the following principles must be considered and satisfied before a state can resort to armed conflict.

1. *Just cause:* A state may resort to violence or force against another state only when it is deemed necessary, such as in the cases of threat to political sovereignty/territory compatible with state rights or defense of fundamental human rights.

2. *Right intention:* The state that is resorting to war must do so only in response to the violation of rights<sup>1</sup>.

3. *Legitimate authority:* There should be a complete and appropriate declaration of war, one that is made by a legitimate authority as a representative government in power of a state.

4. *Last resort:* Only after all the other means and alternatives have been deemed unsuccessful in resolving the conflict can the use of force be justified.

5. *Proportionality (macro):* Before the war, the state must weigh the expected good (for which the war is sought) against the expected evil (deaths and casualties followed by lack of resources) that will necessarily arise regardless of it being a just war or not. When the benefits are proportional to the costs suffered one may proceed further with the war.

6. *Reasonable hope of success:* This principle prevents states from initiating wars that will be futile. In other words, a state may not resort to war if it can foresee with reasonable consideration that there will be no impact on the situation.

***Jus in bello:*** The norms under *jus in bello*, by contrast, are those that guide the conduct during a war. It establishes the rules for just and fair conduct and behavior in war after it has begun. It follows then that the primary burden of responsibility falls on military commanders, combatants who execute the war policy of the state. It consists of two central principles:

1. *Discrimination:* There should be a clear distinction between legitimate targets and the civilian population. The latter has non-combatant immunity and is not to be

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<sup>1</sup> According to Brian Orend, this right intention has another aspect where the state must in advance commit itself to the criteria of *jus in bello* and *jus post bellum*.

considered a target. Only military personnel who engage in war and harm are to be liable for being attacked with force.

1. *Proportionality (micro)*: This proportionality is in the micro sense, as opposed to the macro proportionality of *jus ad bellum*. Here the moral appropriateness of every tactic or move is of concern and is judged against the outcome.

## 1.2 Traditionalists vs. Revisionists

The polarizing debate between ‘traditionalist’ vs. ‘revisionist’ approaches to Just War Theory has largely been on the disagreement over what constitutes a just cause or the principles of *jus in bello*. In particular, the principles of noncombatant immunity and the moral equality of combatants. Both accounts neglect the third branch of the theory, with traditionalists offering an overly restrictive account, and revisionists wanting to completely incorporate *jus post bellum* under a separate and completely independent body of peacebuilding.

The traditional account follows an *institutionalist* approach where the primary goal is to establish the institutions that will be regulating the war. In other words, there should first be moral laws justifying wars that individuals and groups can then follow. States are only permitted to go to war for reasons of either self-defense (national defense) or to intervene on humanitarian grounds, for instance, intervening to avert “crimes that shock the moral conscience of mankind” (Walzer 2006, 107). Their view on the morality of war is substantially led by the international laws for armed conflict, and so they aim to provide these laws with morally defensible foundations.

Michael Walzer, in his book, *Just and Unjust Wars* (Walzer 1977), brought the traditional theory of just war to the forefront in contemporary analytical debate. On the rules regarding who may or may not be killed during the war, Walzer says that though the standards of permissibility rest on the rights of individuals, they are not precisely defined by individual rights (Walzer 1977, 87). It may not be against the rules of war to kill people doing ordinary tasks of their life if they happen to be at a proximal distance and a conscious effort to prevent these ordinary civilians from being targets has been taken. This is at the heart of the distinction between a combatant and a non-combatant<sup>2</sup>.

The just war doctrine is a governing regulatory doctrine, but it also includes all that it takes and must be done to win the war. Is it then losing its regulatory feature and promoting the evil act of wars? There is the argument that an evil act may be done if it brings about the whole moral good. The “good” and “evil” effects that come together, like the killing of soldiers and nearby civilians, are to be defended only insofar as they are the product of a single intention, directed at the whole moral good and when the outcome of the good is proportionally greater than the costs incurred by loss of lives (Walzer 1977, 153).

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<sup>2</sup> The term ‘civilian’ is used interchangeably for ‘non-combatants’ and ‘soldiers’ for ‘combatants’ though they aren’t semantically-logically equivalent.

The critics of the traditional just war theory, called the revisionists, offer an individualist, reductionist account of the 'deep morality of war' and problematize the idea of legitimate authority. They claim that the right to defensive killing grounded in individual self-defense does not necessarily obligate institutional support. They primarily object to the notion of the moral equality of combatants (MEC) on both sides of the war and reject the plausibility of the ethics of war with individual self-defense as incoherent, thereby calling for the revision of the otherwise statist version of the theory. According to this approach, we should first focus on morality that is applied directly to individual and group actions, without institutions. It follows then, that the individuals and groups are to behave and act per the dictates of their moral reasons.

Jeff McMahan (2004) provides quite an intriguing critique of the traditional just war theory and is joined in his attempt by other notable revisionists such as Cecile Fabre (2008), who in particular makes a distinction between the morality of war and the law of war. Her ideal version is grounded in and originates from the morality of war, in contrast to the traditional and non-ideal account of the war. They form an argument denying that the traditionalist stance on when states may go to war in national defense is grounded in individual rights. Fabre (2008) sees her account in *Cosmopolitan War* as a war about individuals maiming and killing each other, and yet it also seems that it is irreducibly collective. Her revisionist approach is "[u]nearthing first-best principles" which would need to be supplemented by an account of "second-best principles" (Fabre 2008, 12). In this way, she restates the supposed dichotomy between the deep morality of war and the laws of war where the deep morality of war is the first, ideal principle out of which the non-ideal traditional principles are generated. She argues for the broadening of the range of just causes to include individual and collective rights violations under the bar for cosmopolitan morality. In congruence with McMahan, she also feels that combatants on the 'just' and 'unjust' side do not have the same moral equality which grants them the same permissible freedom to kill each other. Her account relies heavily on the justification to kill in self-defense and defense of others and feels that the founding premise of the traditional account of moral equality does not hold (Fabre 2008).

Both the positions (traditionalists and revisionists) may not necessarily be entirely opposed<sup>3</sup>. On the one hand, the claim by the revisionists that the principle of non-combatant immunity and moral equality of soldiers is unable to sufficiently track liability is the primary cause of difference between the two camps. Merely posing an unjustified threat isn't necessary nor sufficient for liability. What matters for liability is the responsibility for posing threats that cause unjustified harm. For instance, a crazy soldier who is armed and running around the streets may not necessarily be liable, (for he is crazy and not in the best of mental health) but still poses a threat. On the other hand,

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<sup>3</sup> A non-ideal applied ethics of war is proposed by James Pattison (2016), who argues for an applied and non-ideal account of the Just War Theory and in doing so he makes it clear that the revisionists and traditionalists are much closer than presumed.

they both reluctantly agree about preserving the existing laws of war and attempt to find firmer moral foundations for them.

The debate over the morality and justness of war has been and is predominated by the justness of war (*jus ad bellum*) and the justness of the way the war is fought (*jus in bello*) and little has been said about the justness of what happens after the war. The justness of the after-war scenario is crucial to the justness of war just, like the other two branches of it. A state must demonstrate not only the just cause of war but also that its postwar conduct will be consistent with the ends for which it resorted to war in the first place. What is needed, then, is better theorizing of postwar justice for the sake of a more complete theory of just war. *Jus post bellum*, though limited in nature historically, bears its connection to both *jus ad bellum* and *jus in bello* but needs further development and exploration in contemporary times.

War is undertaken with the objective of peace, the end of which is consistent with the just cause for which war is the means. Furthermore, *jus post bellum* draws its conceptual roots from the traditional doctrine of just war. Many scholars point out that Walzer, one of the most compelling traditionalist defenders of the Just War Theory, does not specifically write about *jus post bellum*, which could be a reason for it being overlooked. However, to that objection, it can be responded that he does take note of the fact that there is justice in the goals of war, which implies that the postwar execution of those goals will weigh in the overall judgment of the war's justice. Judging the entire war by the provisions of *jus ad bellum* or *jus in bello* would be incomplete:

The theory of ends in war is shaped by the same rights that justify the fighting in the first place – most importantly, by the right of nations, even of enemy nations, to continued national existence and, except in extreme circumstances, to the political prerogatives of nationality. The theory incorporates arguments for prudence and realism; it is an effective bar to total war; and it is, I think, harmonious with other features of *jus ad bellum* (Walzer 1977, 123).

Walzer emphasizes the sovereignty and integrity of political communities, which may even lead to a situation of tolerating some non-liberal societies as well<sup>4</sup>. He further insists that states need to refrain from exercising all their sanctions and that the occupation after a war needs to be as brief as possible. He may have a limited account, but from his initial years to a pure minimal *jus post bellum* he has come to accept *jus post bellum* with the provision of regime change. For Walzer, this brief occupation is only till the time peace is secured so that the occupied society can have a reasonable regime of its own. He does not wish to be advancing a theory wherein people exercise their military sanctions to impose ideas upon another state or for political conquest. This clarifies that though Walzer's theory places significant importance on *jus ad bellum* and *jus in bello*, it also seeks to expand upon his approach by incorporating *jus post bellum*.

*Jus post bellum* is crucial to the Just War Theory and is related to both the categories

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<sup>4</sup> A similar defense of tolerating non-liberal societies is also advocated by Chandran Kukathas (2003).

of *jus ad bellum* and *jus in bello* respectively. It is connected with the former in the sense that the declared ends that justify a war (just cause) impose certain obligations on the combatants to bring about the desired outcome after the conclusion of the war. To what nature and extent are these obligations to be exercised is a matter for discussion later. For the latter, the actions and conduct of the victorious state during the war will have implications and bearing on the acceptable terms of peace, surrender, and reparations that follow after the conclusion and aftermath of war.

Due to this interconnected nature of *jus post bellum*, especially with *jus ad bellum*, just war theorists tend to neglect it by subsuming it under *jus ad bellum* which might explain the reason for the various norms under the first two categories to make armed conflict morally permissible, while the topic of *jus post bellum* has been significantly underdeveloped in comparison to the other two. The termination phase of war involves many rich and complex questions to be dealt with individually. Hence, we need a separate category of *jus post bellum* worthy of its special status but is still linked with the other two branches. As it has been rightly put forward by Brian Orend (2002, 43–56), “allowing war termination to be determined without normative restraints leads to inconsistency and confusion. How can we try to regulate the first two phases of war—the beginning and middle yet not the end?” The morality of justice after war, having its roots in the historical account thus needs to be developed further.

## 2. Jus Post Bellum: Justice After War

Due to the pragmatic difficulties in post-war peacebuilding and disagreements regarding the nature of the peace that should be the goal of a just war, the third branch of the regulatory theory for wars has been often left without clear exposition. Without clear objectives and an exit plan that can be codified into international treaties or laws, *jus post bellum*, remains in a confused abstract state with unethical termination of wars and no accountability for such disastrous impact.

A significant contribution to the field of *jus post bellum* has been made by Orend who is heavily influenced by Walzer. Koeman also (2007), in following Orend, defends the criteria for *jus post bellum* that requires pre-commitment to *jus in bello* and *jus post bellum* as part of the *jus ad bellum* criteria of right intention. Both feel that this commitment with a revision of the right intention will disincline states to go into wars. In this paper, I will argue for and defend a comprehensive *jus post bellum* to overcome the neglect of this branch by information and inclusion. The first section will be a distinction between the minimalist and maximalist accounts of *jus post bellum* followed by an outline of the principles of an extensive *jus post bellum*. The second section will deal with the difficult task of bringing it under the fold of just war tradition and defending the maximalist account by (1) showing its relevance in the current political landscape and (2) by bringing out the limitations of the minimalistic account. The final section will deal with some challenges

to be addressed to strengthen our resolve of justifying wars with a maximalist *jus post bellum* toward a lasting and durable peace.

## 2.1 The debate between minimalists and maximalists

*Jus post bellum* deals with the questions on post-war justice. Questions like, what are the responsibilities for post-war justice and who should bear them become a matter of moral concern. The International Commission on Intervention and State Sovereignty (ICISS), in their 2001 report which led to the subsequent evolution of – The ‘Responsibility to Protect’ doctrine claims that there is a responsibility not only to react to prevent mass atrocities but also the responsibility to rebuild afterward involving “full assistance with recovery, reconstruction, and reconciliation, addressing the causes of harm the intervention was designed to halt or avert” (ICISS, 2001). While this report indicates responsibility for post-war, there is little agreement over the scope and content of the post-war norms, and is often presented as the debate between the ‘minimalists’ and the ‘maximalists’. A closer look at both the positions will demonstrate why there should be a shift to the maximalist understanding of *jus post bellum* since it is better equipped at attaining a just and lasting peace.

**Minimalist account:** This approach aims to restrict the post-war responsibilities and hence mainly consists of negative duties that are backward-looking. The victorious state may only secure the cause of the just war, but nothing more stems from the fear of victors acting purely for their self-interest. The restricted understanding of *jus post bellum* then is applicable only for a short period: to the end of the war and its immediate aftermath. One of the most prominent advocates of the minimal approach has been M. Walzer. In his *Just and Unjust Wars* (1977), he did not pay much attention to the third branch of *jus post bellum*, but over the years there has been a gradual evolution of his ideas due to world developments. He now accepts *jus post bellum* as the third branch of the Just War Theory. In addition to him, G. Bass (2004, 396) also argues for a presumption against political reconstruction, stressing the importance of restraining conquest. Both place considerable value on state sovereignty and the self-determination of the people in determining the *jus post bellum*, thereby making just wars conservative. In their view, there must be a repair of the chaos after a war, and restoration to the situation that existed before the war is the just outcome. This doesn’t merely mean the exact status quo, but a safer and less vulnerable situation than what existed before the war.

While the minimalists ascribe a great value to state sovereignty, an extreme regime violating human rights loses its right to such sovereignty. For instance, Bass (2004, 398–399) argues for the duty to reconstruct the political structure of defeated genocidal states as they have lost their claim to be respected as a state and the following reconstruction does not violate the state sovereignty. A central feature of the minimalist approach is the

distinction between occupation and government. They refrain from having any additional responsibilities, for they do not want the victorious state to be imposing their ideologies onto a new state and being imperialistic.

Usually understood, this restricted approach includes different moral norms, which are as follows:

- Restrained conquest: Permitted to push back aggression and take measures to ensure it does not happen again;
- Political reconstruction: in cases where the war is with inherently aggressive and rights-violating regimes;
- Criminal justice: employing war crime trials for retribution of the violations committed and prevention of future crimes.

**Maximalist account:** The maximalists begin with the proposition that there is a 'presumption against war' but in contrast to the minimalists, they hold that the victors acquire additional responsibilities towards the vanquished state that go above and beyond the responsibility not to exact more than what is necessary to secure rights (Schuck 1994). M. Evans (2008, 540–541), who endorses this approach, believes that a 'just exit strategy' may be necessarily satisfied once the minimal reforms of the restricted or minimalistic *jus post bellum* have been carried out. But in some cases involving an occupation, we may have to extend the scope of *jus post bellum*. For when there is a just occupation, it may last for a long time, and may involve being drawn to the occupied states' social, political, and economic affairs for that duration, which needs some moral direction. The general point is that a restrictive or minimalistic *jus post bellum* falls short of realizing its goal by being limited in nature and merely restoring the situation to be slightly better than before the war. In a more maximalist account, the scope of restoration and reconstruction of the vanquished state is broadened with positive duties leading to better security of rights and a state of durable peace.

M. Allman and T. Winright (2010, 152–160) also advocate this approach, only implicitly exhibiting several characteristics of a maximalist *jus post bellum* involving rehabilitation and reconstruction. With extensive political reconstruction as one of the norms, Allman and Winright argue that the goal of a *post bellum* regime change is not merely the realization of a minimally just state. They favor additional duties based on a Christian tradition involving not only individual human rights but the pursuit of a 'common good' which is the victor state's responsibility. The maximalist position thus places additional burdens on the victors, for instance, holding war crime trials to punish war criminals, taking the responsibility of governing the vanquished (in the event of a collapse of their government), or long-term economic and political reconstruction.

## 2.2 Principles for maximalist *jus post bellum*

We now come to the difficult task of formulating a criterion for *jus post bellum* which could be applied across a range of contexts. To begin with, I will be following Orend's (2012) version, as this author has written extensively on *jus post bellum* and is considered to be in between the minimalist and maximalist camps. His account consists of all the basic principles of a restricted *jus post bellum* which gives us the groundwork to start from, and to which I will elaborate further by duration or agents for the obligations, which can then be supplemented as per the maximalist position. As the nature of war changes, the scope and context of *jus post bellum* also change along with it. This will lead to the formulation of criteria of *jus post bellum* sensitive to various contexts and to be the determinate third branch of the Just War Theory. The *jus post bellum* criterion as per Orend is as follows:

**1. Rights vindication:** The rights of the people in the vanquished state must be respected and secured. Rights like the right to life and liberty, and community entitlements of territory and sovereignty. To have an improving effect after the war, the just combatants must not seek revenge from the people but rather respect and promote their basic rights.

**2. Proportionality and publicity:** There should be a balance in the armistice between the warring nations that doesn't require comparatively greater sacrifice from any one side. It should be measured and reasonable, so that it can be accepted by both. Such a settlement must then be announced publicly to legitimize it.

**3. Discrimination in punishment:** Justice after war requires punishment to be meted out through war crime trials to those guilty of war crimes. A distinction should be made between political leaders, soldiers, and civilians, and they then must be tried accordingly because civilians are then excused from any punitive punishment as they have non-combatant immunity. So, soldiers on both sides of the conflict must be treated equally concerning investigation and trials.

**4. Compensation:** The defeat of a state in war is inevitably followed by a lack of basic resources such as money, food, and shelter. Financial restitution may be mandated by the just state subject to the proportionality of the war.

**5. Rehabilitation and reconstruction:** This is one of the most forward-looking and interesting terms for justice in settlements which may require demilitarization and political reconstruction, depending upon the severity of the just state's aggression.

The above principles demonstrate that B. Orend attempted to offer a middle ground between the restricted and the extended positions of *jus post bellum*, is still quite on the side of the minimalists. All of the above-mentioned principles then constitute the *jus post bellum* in a restricted sense. What follows is the elaboration of these principles and the supplement principles that make up a maximalist *jus post bellum*.

For the principle (1) of Rights Vindication, the just state should commit to upholding all the fundamental human rights as per the Universal Declaration of Human Rights in the

United Nations Charter of 1948 by, firstly by not violating and exploiting them, secondly by being active in identifying any local violations and reporting them to the trusted organizations and, finally, by letting the local population of the unjust state have their voice, expression and political participation, and not repressing them. Such a responsibility should be upheld and committed to until there isn't any threat to the rights of the citizens, internal or external. Under (2) Proportionality and Publicity, in the event that one side does not hold to the settlement terms, then other nations or organizations can intervene and hold them accountable. (3) Discrimination in Punishment, to avoid any discrepancy when dealing with the combatants who work on the orders of the leaders/government and both sides combatants are equal, the just combatants must submit themselves to inquiry and help in setting up war crime tribunals for the defeated state, let an unbiased third party investigate them, and suggest reasonable punishment. Punishment is a backward-looking principle, but it does serve some fundamental interests. It can be an effective reformatory tool for the aggressor whereby the appropriate punishment makes them realize the depravity of their actions and serve as a future deterrence for potential agents for conflicts. For the victims too, failing to punish the aggressor can negatively impact their worth and suffering, as they may feel that there isn't any recognition and rectification of what is morally wrong. (4) Compensation, "occupying powers may have responsibilities of their own for the war's costs and they have some duties for the material reconstruction of the defeated state, especially in contribution to what would make the peace 'just' and 'stable'" (Evans 2008, 541).

Such a conception focuses on just terms of the cessation of hostilities and fair treatment of the unjust defeated aggressor, but it is not applicable to deal with scenarios ending with the defeat and occupation of a just side as well as a state of continued hostilities. Hence, we have supplementary principles:

**6. Conflict prevention:** efforts for conflict containment and prevention recognize that securing a just peace may require political reforms beyond mere reconstruction, especially concerning transnational treaties and organizations. It can also take the form of initiating and investing in trade and economic policy relations with the aggressor state to boost its economy. Economic ties can be mutually beneficial for both states, and no one would necessarily hamper their economic development. Accepting treaties requiring efforts like demilitarization builds confidence among the other states for their submitting to peace. After demilitarization, a state does not have the requisite means to engage in war at its disposal, which can be threatening otherwise.

**7. Reconciliation:** full engagement in processes for forgiveness, reconciliation, and re-establishment of a socio-cultural institution which are central to the construction of a just and stable peace. This is to be understood as a thin conception of how former enemies overcome their differences belonging to the socio-cultural domain and develop means for them to live without fighting with each other (Evans 2012, 211). This is further reinforced by the requirement of reconciliation by post-war Germany for the crimes they

committed against humanity. This recognizes the self-worth of the victims, which helps them to truly forgive the ones responsible. Without the reconciliation of differences, the root cause may yet give rise to future conflict with the unjust state being unaware of the depravity of their past actions.

**8. Extensive reconstruction and restoration of sovereignty:** This is broader in scope than in the restricted account. It is primarily forward-looking in nature and also extends over a longer duration of time. The victor state owes affirmative duties towards the reconstruction of the unjust vanquished state due to the inherently evil nature of war and the death and suffering that comes along with it. Since the just war theorists anyways ascribe a high value to state sovereignty, it seems plausible for the just state to have this duty. While there is a fear of imperialism and imposing a conception that is peculiar to the occupiers, it is also quite possible that the unjust defeated state is in the best position to judge the propriety of the restoration of their sovereignty. This reconstruction requires just occupations to be administered by an outside international organization such as the UN, such that at least a part of the reconstruction is overseen and undertaken by the new Peacebuilding Commission. This tries to ensure that the occupation doesn't undermine the sovereign interests of the people occupied.

### 3. The Case for a Maximalist Jus Post Bellum

The aftermath of wars has brought about a renewed interest in post-war considerations. As discussed, there are broadly two ways of looking at the moral requirements after the war: minimalist and maximalist. Let us now see why the latter is better suited to the current political scenario of just wars. Take for instance the case of Iraq: US was the major intervening state to protect its people from Saddam's tyranny. Looking back even five years after the war, the condition of people in Iraq is no better than before. Some might even argue that it is worse now, with multiple extremist groups creating havoc in the state, leaving the innocent population as targets of violence and without the most basic of resources to survive, such as food and shelter. It has become a breeding ground for further conflicts and the US has also ended up spending a lot of its resources and money and yet been unable to achieve the desired outcome. There is no peace in Iraq, and no stable government, resulting in continued duress and disappointment.

With the changing nature of wars and more and more asymmetrical wars being fought today, it becomes even more imperative to have a maximalist account of *jus post bellum* that is aimed at justice after a war to secure lasting peace. Deep-rooted in this maximalist position is the relevance of *jus post bellum* as the moral justification of wars. A state that abides by the norms of *jus ad bellum* and *jus in bello* but leaves the vanquished state in a condition of despair with no political institutions in place to maintain order and peace is liable to be then termed an unjust war. By corollary, the state initiating a war by having a commitment to its principles of *jus post bellum* in place before the war further

reinforces the right motivation and justness of this state to enter into war.

**(i) Current political reality**

With more permissibility of wars waged for humanitarian intervention in contemporary times, there is the presumption that force is being used only for the protection of people from mass atrocities that have been deemed universally unacceptable, such as genocide or ethnic cleansing. In March 2018, the UN assistant secretary for human rights commented on the 'ethnic- cleansing' after the Rohingya insurgents attacked the police posts in Myanmar. Rohingya seeking shelter in Bangladesh had reported rape, killings, and arson by the security forces. Even after months of the attack, widespread and systemic violence against the Rohingya persisted (Lewis & Thu Thu 2018). The injustice transitions from rape and killings to a state of terror and starvation. People suffering at the hands of a regime that promotes the violation of human rights fear for their very basic right to life and subsistence in such an unjust state. Whether another state has a right to war with this state depends on the satisfaction of the just war criteria. Since *jus in bello* deals with conduct during war, let us first look at the reasons to enter into war for an intervention.

For *jus ad bellum*, it follows that another state does have a just cause for resorting to violence, for example to protect the rights of the people. For the right intention, we need the commitment towards *jus post bellum*. For the cause can be just, but the maximalist *jus post bellum* constrains any selfish motives by further expanding their duties. If the cause for war is to protect the rights of people in the unjust state, without the necessary overthrowing of the unjust regime and replacing it by one that promotes human rights, then the intervening state lands itself in a state of continued hostilities. There can be the possibility of the unjust regime rising to power and again violating the rights of its people. *Jus ad bellum* and *jus post bellum* are well connected and similar, in the sense that they both come under the political domain (political leaders are actors and agents, beyond the combatants themselves) as opposed to *jus in bello* being primarily of the military domain (where the actors are only those in the military). The commitment to upholding the principles of *jus post bellum* before war reinforces the right intention with an action plan toward the successful realization of human rights and state sovereignty.

**(ii) Limitations of the minimalistic account**

While the maximalists agree with the principles of the minimalist *jus post bellum* regarding what is necessarily required in the immediate phase after a war, they hold that they are not wholly sufficient and conclude that the principles need to be broader and supplemented by additional principles.

The problem with the minimalist approach is that it misrepresents the just outcome of a just war, namely peace, and equates it with a safer and more secure situation in retrospect. Their understanding is consistent with a negative peace that is necessary but

not sufficient by itself because, for just wars, we must be working towards a positive peace that is durable. Whether for self-defense or intervention, merely a more safe and secure position is no guarantee that the situation will be long-lasting. To illustrate this further, a conflict could arise due to an individual's intervention in their neighbor's house on the grounds of there being evidence of domestic violence. The purpose of the intervention is to prevent such domestic violence in the future, which is then what the just outcome of the intervention should also be. After the intervention, efforts may be taken to control and alleviate the situation, which will be safer than what it was before. But until the root cause of domestic violence is dealt with, it can still be a possibility in the future. In wars that are in self-defense, the aggressor state may continue to be violent even after the conclusion of the war, for in such contexts the aggressor state conducts war to conquer another state and may not stop until it manages to do so. This is also evident in the ongoing conflict between India and Pakistan for around seventy years over the territorial conquest of Kashmir. Kashmir's accession into India was provisional upon it retaining its princely status and limited sovereignty under the Indian Constitution after the partition of India in 1947. Accordingly, then, the outcome can be either that Kashmir becomes an independent state or accepts the Indian constitution with full sovereignty. Nonetheless, Pakistan still claims the territory of the majority of the Muslim population. Unless the root cause of the provisional status is dealt with, there doesn't seem to be a peaceful scenario.

Another limitation of the minimalistic perspective is that it predicates itself on the assumption that the victorious state will seek to exploit the defeated state for its benefit. This seems reasonable given that historically there have been cases of states being conquered and their riches being acquired forcibly. But given the heavy costs and requirements of commitment to post war justice, it is necessary to focus on justice and humanitarian purposes and not mere occupation. With minimal post war responsibilities, there is a greater risk of the defeated state falling back into the aggressive attitude that called for an intervention in the first place. If a just state intervenes for the purposes of humanity, then in accordance with international regulatory bodies such as the UN, there should not be a forced occupation. Occupations that are just are never permanent conquests: the just occupiers must restore the occupied state's sovereignty, given that the just cause for war is self-defense from an unjust attack. If it is to be applicable in the current political reality, then it must work with the legal obligations established under the 'responsibility to protect' doctrine which involves the task of repairing and rebuilding the war-torn communities by the international community in general. If it accepts this duty, it loses its short-term and limited nature and becomes broader in scope, like the maximalist position.

The maximalist account offers a way of evaluating the legitimacy of wars and peace separately, and this approach is more likely to achieve a secure peace by outlining positive duties that will continue over a longer duration of time than merely the immediate aftermath of war. Consisting of a wide array of principles and criteria, it helps to reconcile

differences between the warring states, thus resolving the root cause of the conflict. In recent times, wars aren't purely symmetrical and consist of non-state agents as well. The result of wars can thus be varied, with a just war ending with no occupation, defeat, occupation by the just state, or continued hostilities. The maximalist approach is better suited and applicable across various scenarios encompassing the diverse contingencies of wars, especially when wars are followed by occupation. The formulation of the principles of this extended criterion will further reinforce its superiority over the minimalist account in light of empirical evidence of the contemporary political scenario.

#### 4. Challenges

After framing and defending the principles for the maximalist *jus post bellum*, let us look at some of the most valid concerns with holding such a position.

##### **Objection 1: Unfeasibility of principles**

The Just War Theory is 'action-guiding' and it must be feasible so that the states can comply with it. Having an extensive or maximalist account of *jus post bellum* makes it vulnerable to being a novel tenet with desirable yet unfeasible principles with too many broad responsibilities.

The responsibilities under the maximalist account are demanding but they are justified given the harm brought about by wars. On the matter of feasibility, by the distribution of responsibilities no specific category of people is targeted and the assistance of other agents makes the task more achievable and accountable, such as just combatants to ensure security and protect human rights, leaders of the just state to take control of the government until the defeated state has an appropriate one, and the role of the larger international community in overseeing the trials and reconciliation and in negotiating to ensure that both states hold to the peace settlement. One may however argue that the responsibilities mostly still fall on the shoulders of the just state, whether it is their combatants or leaders. To respond to this, such responsibilities are not a burden upon them, as they are ensuring no further conflicts arise, by such efforts of rebuilding and maintaining peace.

##### **Objection 2: Potter's Barn Principle**

One of the main reasons for the responsibilities falling on the just state is the ill effects of war, and this poses duties on them to repair it. This is similar to the potter's barn principle, which states that if you broke it, then you fix it. The same principle can be applied by the victorious just state to the population of the unjust state, as they were unjust in the first place, they brought it upon themselves and consequently avoid taking on any reconstruction responsibility on their own.

This may be a plausible objection as it was the unjust state which drove the just state

into war, giving them a just reason by violating the rights of its people. And the just state, even if they caused harm, it is comparatively less than what would have been the case otherwise with the violation of rights. The post-war responsibilities are proportional to the share of the harm caused by them. But there is a minor difference in the application of the potter's barn principle. The unjust state, given that it was committing gross violations, nonetheless was directing such acts towards its own people, the very people who may have even elected and then support such a regime. They are not subjecting any external party or people to harm. The just state, even though they chose war for the protection of the devastated people, has not only subjected the people of another state to harm, but also their own people by way of intervention, and is thus liable for the reconstruction responsibilities. If they have chosen to resort to violence since it is deemed necessary for the protection of human rights, then must see it through entirely so that such violations don't occur again, and this is possible only with a comprehensive set of responsibilities after the war. The worry here is that this will prevent many states from entering or intervening when there is a threat to human rights. The demanding nature of post-war responsibilities plays a curtailing role in wars, even if interventionist.

## Conclusions

With the disastrous impact of the Iraq war, the necessity of post-war peacebuilding has been brought to the forefront. It was a rushed war, wherein the actors had not considered properly what was to be done once the war was over. It has demonstrated the importance and complexities involved with post-war peacebuilding. Without an adequate exit plan, it has become a feeding frenzy for continued conflicts, highlighting the significance of the development of *jus post bellum* with comprehensive and concrete principles. And while efforts are being taken to remedy the situation, there have been instances where the post-war actions don't live up to the standard that contemporary times demand (Iraq Inquiry Report 2016, 122)<sup>5</sup>. Most wars today don't necessarily have a clear beginning or an end, and, as H. Münkler (2005, 19–20) mentions, "wars can drag on for a long time." The blurring of lines between war and peace as well as the changing political landscape poses serious challenges to the Just War Theory in terms of its applicability. The fear is that without a *jus post bellum*, there will be unrestrained wars and unethical post-war exit strategies. If we are to be consistent and ensure the objective of peace, we need to address and fill the gap in the development of *jus post bellum*. Only then can we transition from a state of violence into a state of peace.

The aim here was to reduce the vagueness and lack of clarity associated with the concept of *jus post bellum*. We began by identifying the limited presence of this third

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<sup>5</sup> The Iraq Inquiry Report found that the UK's preparation for post-war Iraq was "wholly inadequate" (Iraq Inquiry Report 2016, 122). Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office. URL: [www.gov.uk/government/publications](http://www.gov.uk/government/publications).

branch, *jus post bellum* in the Just War Theory via the trajectory of the traditionalists versus revisionists debate. Both accounts are unable to flesh out the concept of post-war justice. Furthermore, it was shown that historically, though limited, *jus post bellum* is rooted in the Just War Theory. Because historically wars were primarily for political conquest, the third branch of justice after wars was kept to a minimum. But with the changing political landscape and nature of wars, the development of the *jus post bellum* can make the Just War Theory better equipped to maintain peace between conflicting states in facing contemporary challenges.

The next section mapped the debate between a minimalist and a maximalist position for *jus post bellum*. Moral arguments for both were presented, culminating in the maximalist account having a firmer moral ground. The latter part of this section listed the principles for a maximalist *jus post bellum*. These principles, taken together, are applicable across various war scenarios and with the involvement of the international community in these responsibilities, the principles become more feasible as well. A minimalist *jus post bellum* is not wholly successful in achieving a lasting peace. The maximalist *jus post bellum* on the other hand is better suited to the political reality of today. It has the flexibility to include within it additional principles for specific contexts. Furthermore, it is compatible with the other branches and principles of the Just War Theory. It reinforces the right intention for the moral justification of wars by the mere fact that they have an appropriate exit plan. The broader the *jus post bellum*, the more cautious states will be about their decision to wage wars considering the responsibilities that will have to be taken on by them after the war, thus helping in regulating wars. Without the commitment to the post-war responsibilities, the war loses its justificatory reason.

Post-war justice is a crucial topic which must be considered, for the lack of it means there are no expectations of state behavior in the fragile time after a war, resulting in patchwork solutions. This research aimed to contribute to the development of *jus post bellum* and for it to be codified under international law like the other two branches of the Just War Theory. The hope is to achieve lasting peace by integrating and recognizing *jus post bellum* as a legitimate third branch of the Just War Theory. It is capable of curtailing wars, limiting their negative effects, and reestablishing peace after wars.

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