
Just War To Just Peace: Jus Post Bellum For A Lasting Peace



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Mansi Rathour

ABSTRACT

As the menace of international terror grows, just war theory has been a key topic of speculation in politics, international relations as well as philosophy. While the theory has been framed by the debate between “traditionalists” and “revisionists”, recent discussions seem to have a concern over the integration of *jus post bellum*. As a result, there has been a neglect towards this necessary third branch of the just war theory. The objective and the desired outcome of just wars is peace. But the lack of established laws for war termination has led to much vagueness and disagreements upon the content of *jus post bellum*. Consequently, it leads to messy and unrestrained war endings and mere ad-hoc solutions. By bringing together contemporary political philosophers addressing the normative issues concerning war, the work here aims to defend an extensive and maximalist account of *jus post bellum* thereby contributing to its development.

INTRODUCTION

The firmest security of peace is the preparation during peace of the defenses of war.

-John Quincy Adams

There has been a sudden interest in the ethics of war and peace propelled by the aftermath in Kosovo and Iraq. Such disastrous impacts demonstrate the importance and complexities involved with post war peace building. And while efforts are being taken to remedy the situations, there have been instances where the post-war actions don't live up to the standard that contemporary times demand.¹ Most wars today don't necessarily have a clear beginning or an end, meaning that "wars can drag on for a long time."² The blurring of lines between war and peace as well as the changing political landscape poses a serious challenges to the just war theory in terms of its applicability.

War has three major strands, viz. pacifism, realism and the just war theory. Pacifism is the theory that categorically prohibits war. It holds that war and all forms of violence, regardless of the reason is unjustifiable. Then how is it that conflicts should be resolves? Under such an understanding all conflicts can be settled by means that don't necessarily involve violence like, through arbitration or dialogues and discourses. The realist position on the other hand claims for the non-morality of war as it is beneficial to the national interest. Pacifists and the realists take the two extreme positions against each other and the just war theory which attempts to restrict war and warfare, takes a sensible middle position between political realism and pacifist idealism. The just war theory is a body of norms that regulates the different phases of war. It justifies wars under extreme circumstances and only to bring about a state of just and long- lasting peace. As has been said by Steven Lee: "In its most general form, the basic moral issue lying behind just war theory is: what is a state permitted to do through the use of military force to those outside its borders?"³

¹ The Iraq Inquiry Report, 2016, p.122 finds that the UK preparation for post-war Iraq were "wholly inadequate".

² Herfried Münkler, 2005, *The New Wars* p. 19-20.

³ Steven Lee, 'Ethics and War. An Introduction', 2012, p. 290.

A war has three phases-beginning, the situation prior to war where the participation in war is considered, the middle, situation while and during a war, and an end, situation identified by absence of violence which is immediate to the termination of war. We thus need rules in connection with all three respectively. Having norms for the first two phases while overlooking the third phase is not justified making the just war theory inadequate. The just war theory has carved out the provisions for the beginning (*jus ad bellum*) and middle (*jus in bello*) phases of war, but now we are faced with the question whether the just war theory is relevant for the current political climate.⁴ If we are to be consistent, then we need to consider the end (*jus post bellum*) of a conflict. It is the best way to transition from a state of violence into a state of lasting and durable peace. This historical just war theory has been revived in the contemporary times by Michael Walzer's influential work *Just and Unjust Wars* in 1977.

The thesis I want to defend is that the current scope of the just war doctrine with its meagre and limited notion of *jus post bellum* is insufficient to justify wars especially in recent times. While the just war theory may have leading position on the morality of war where its criteria appeals to the moral intuitions held by many people, it isn't without limitations nonetheless. It is struggling to keep up with the changing international reality in light of asymmetrical contemporary wars. As we progress, I will show that with changing times, when means of war and warfare have changed, it calls for greater development of the third branch of the theory, viz. the *jus post bellum*.

There should be a comprehensive plan for justice after 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 based on mutual trust and cooperation.

In order to demonstrate why and how a such a notion of *jus post bellum* necessarily leads to peace, I will draw an analysis on the Kantian Peace. Kant reflected extensively on post-war phase and what might be needed to secure a long-term peace between nations. There needs to be moral and legal completion of the post-war phase, for a failure to construct the principles of *jus*

⁴ C. A. J. Coady, 2008, *Morality and Political Violence*, argues for the claim that the just war theory provides a systematic framework for the ethical analysis of contemporary war.

post bellum allow unconstrained war termination. Can all the actions and rights violations observed during a war be warranted by just the norms governing the conduct in wartime? Who is to share the responsibilities for the ill-effects of war and work towards the better peaceful future of a defeated state where the members have nothing left to contribute due to war?

To resolve the above-mentioned challenges, the Just War Theory must integrate a comprehensive account of its third branch, viz. *jus post bellum* or justice after war. This third branch is a necessary approach to provide the moral guidance for the realization of just peace. *Jus Post Bellum* looks into some of the deepest and interesting issues in contemporary political theory which is why its norms involve a broad set of affirmative duties.

Such a conception of post-war justice is in alignment with the Kantian peace, who is among the first few philosophers to write on the justification of war. He was in favor of a pro-rights society which he felt could come together in the form of a prosperous federation of free states. He firmly believed that there isn't any 'victor's justice' nor do they have any claims for entitlements. Instead, the victors must respect the rights of the vanquished. Only when the victorious regime has fought a just and lawful war, as defined by just war theory, can we speak meaningfully of rights and duties at the conclusion of the armed conflict. This brings out the interconnectedness of the first two branches of the theory to its significant third post war branch of justice after war.

This paper is an ethical inquiry arguing for the value of duties and responsibilities in a shared manner after war for the end that everyone wills for, i.e. peace. Even though nobody necessarily wills the evil of war upon themselves, it may be opted for under exceptional circumstances. This can be justified only once we have clarity regarding not just the right reasons and conduct in war, but also what it is that will be done after war towards the fulfillment of its objective.

Chapter - 1

Perspectives on the Just War Theory

Whenever a violent conflict ends, the question regarding what should be done next is extremely difficult to answer. 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 conduct in war, and paid very little attention to *jus post bellum*, justice after 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. And hence, consider *jus post bellum*, justice after 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. Today's armed conflicts, such as in Iraq and Afghanistan, show the need for a branch of norms governing the aftermath of war.⁵ This third branch of the Just War Theory, however is not a new branch and has its roots in the historical Just War Theory, but its contemporary emergence, requires it to be more expansive in nature contrary to its limited nature up till now.

We will explore the historical roots of the *Jus Post Bellum* in the Just War Theory, with first an outline of the principles of the first two branches of *jus ad bellum* and *jus in bello*, followed by the debate between the two camps of the just war theory, the traditionalists and the revisionists. The traditional account of the war theory provides the moral foundations and laws for armed conflict and the revisionists, exposing the shortcomings of the traditionalists argue that the traditional account is too pragmatic with its best being close to international law but lacks the deeper moral foundations. Both accounts overlook the significance of the *jus post bellum*. Though limited in nature traditionally, it is not some modern branch that should be completely independent of the Just War Theory tenets. Though contemporary times demand for a much more expansive notion of the *jus post bellum*, which some also call as the maximalist position of the *jus post bellum*,⁶ it

⁵ See e.g. Louis Iasiello, 'Jus Post Bellum. The moral responsibilities of Victors in War', *Naval War College Review* 2004, LVII/ (3-4), p. 39; Alex Bellamy, 'The Responsibilities of Victory: *Jus Post Bellum* and the Just War', *Review of International Studies* 2008, 34/4, p. 601

⁶ A maximalist position holds that victors acquire additional responsibilities. Also see, 'Jus Post Bellum: Mapping the Normative Foundations', edited by Carsten Stahn, Jennifer S. Easterday and Jens Iverson, 2014, p.6, where a

still originates and is yet a part having its conceptual roots in the larger theory of the ethics of war, namely, the just war theory.

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

Before we dive deep into the existing gap on the post war justice in the just war theory let us go over the principles of the first two branches. The criteria of both these branches have attained legal status by the International Humanitarian Law (IHL) which is part of International Law. IHL seeks to create legal constraints on waging war and governing the conduct of warfare. According to the International Committee of Red Cross (ICRC), “International Humanitarian Law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.”⁷ It comprises of treaties and conventions such as the Geneva Conventions and additional protocols which is agreed by the states and is legally binding on them. In the attempt to refrain states from resorting to violence, they have been codified by the United Nations (UN) under its charter, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”⁸ The only exception to this principle is self- defense in response to an attack or if the UN Security Council authorizes it.⁹

Jus ad bellum: *Jus ad bellum* translates into ‘right to war’ or justice to go into 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 the resort 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 the political leaders. Meaning, it is the political leaders of a state that first decide whether to resort to war. Consequently, it is them who

maximalist conception of jus post bellum forms a body of norms, providing a coherent and predictable framework to be applicable as a minimum standard.

⁷ The definition of International Humanitarian Law (IHL) by the International Committee of Red Cross (ICRC), https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf

⁸ As mentioned in Article 2, paragraph 4 of the United Nations Charter, <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁹ Chapter VII of the UN Charter for Action with respect to threats to the peace, breaches of the peace, and acts of aggression, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

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. Either self-defense for a danger to a state territory or in defense of humans in another state (intervention). A war waged against a regime that is blatantly violating these essential human rights of people in a state becomes a just cause/reason for armed conflict.

(2) *Right Intention*: The state that is resorting to war must do so only in response to the reasons above, to vindicate those rights whose violation ground it's just cause in fighting.¹⁰

(3) *Legitimate Authority*: There should be a complete and appropriate declaration of war, one that is done by a legitimate authority as a representative government in power of a state. This is to avoid public/civilian furor as a legitimate authority is one that must have deliberated over and sought the involvement and acceptance of its people with compelling moral considerations.

(4) *Last Resort*: Only after all the other means and alternatives have deemed unsuccessful towards resolving of the conflict can the use of force be justified.

(5) *Proportionality (macro)*: This is closely related to the previous principle of *Last Resort*. Prior to 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.

¹⁰ 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*.

(6) *Reasonable Hope of Success*: This principle prevents states from initiating wars which 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 a just and fair conduct and behavior in a war after it has begun. It follows then the primary responsibility burden falls under the scope of military commanders, combatants who execute the war policy of the state and is military in nature. It consists of two central principles-

(1) *Discrimination*: There should be a clear distinction between legitimate targets and civilian population. The latter has non-combatant immunity and is not to be considered a target. Only military personnel who engage in war and harm are to be liable for being attacked with force.

(2) *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 judged against the final outcome.

1.2 Traditionalists vs Revisionists

The polarizing debate between ‘traditionalist’ and ‘revisionist’ approaches to Just War Theory has largely focused around the disagreement on 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 too limited a nature 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 which the individuals and groups can then follow. Only states are 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”.¹¹ Their view on the morality of war is led by the international laws for armed conflict substantially and so they aim to provide these laws with morally defensible foundations.

Michael Walzer, in his book, *Just and Unjust Wars*, brought the traditional theory of just war to the forefront in contemporary analytical debate. Walzer gives two criteria for judging wars, the first being the reason or just cause for the war, and the second being the right conduct or behavior during war. But he also says that though the “two sorts of judgement are logically independent, this independence is nevertheless puzzling because of the connectedness and disconnectedness of its parts.”¹² There is a duality at the heart of this moral reality of war. Where on the one hand we view an act of aggression to be a crime, but an aggressive war is an activity governed by rules, and on the other hand, although it is right to resist aggression, it is nonetheless subject to restraint.

How is it then, that we can justify the act of killing, which is deemed to be a crime, in wars where the killing is at a large and widespread scale and who may or may not be killed during war? The traditional just war theory states that war, while terrible, is not always the worst option. It is lesser evil of the two in comparison to the state of affairs (threat to sovereignty and violence). Necessary responsibilities and efforts to prevent future atrocities may justify war.¹³ They argue for this by providing an account of the moral equality of combatants on either side which makes them liable to be the direct target. On the rules regarding who may or may not be killed during war, Walzer says that though the standards of permissibility rest on the rights of individuals, they are not precisely defined by individual rights.¹⁴ It may not be against the rules of war to kill people doing ordinary tasks of their life, if they happen to be in proximal distance and a conscious effort 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.¹⁵

¹¹ Michael Walzer, 2006, p. 107.

¹² Michael Walzer, ‘Just and Unjust Wars’, 1977, p. 21.

¹³ Guthrie, Charles; Quinlan, Michael, “III: The Structure of the Tradition”. *Just War: The Just War Tradition: Ethics in Modern Warfare*, 2007, p. 11–15.

¹⁴ Michael Walzer, ‘Just and Unjust Wars’, 1977, p. 87.

¹⁵ The term ‘civilian’ is used interchangeably for ‘non-combatants’ and ‘soldiers’ for ‘combatants’ though they aren’t logically equivalent.

A non-combatant is one who is not threatening and whose activities have the intention of peace, he thus has a right to life. While a combatant of an unjust army, or an enemy must be described differently to a non-combatant. Combatants on the unjust side are on the same moral footing as the combatants on the just side of the war and are liable to be killed. Civilians may not be targeted in war, but all combatants, whatever they are fighting for, are morally permitted to target one another.¹⁶ Walzer agrees that civilians should not be attacked in principle, but in reality, they are still endangered due to their proximity. He then suggests that measures should be taken to avoid any excessive harm to them.

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 the 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 good is proportionally greater than the costs incurred by loss of lives.¹⁷

Henry Shue, another prominent traditionalist, highlights the complex nature of war in contrast to ordinary life and believes that an account of the norms for before and during phases of war seem to make war acceptable even though it is otherwise deemed morally impermissible. In the book, *Just and Unjust Warriors*, he says,

“as long as either wars are sometimes justified or excused, perhaps in defense of the otherwise defenseless, or wars simply do in fact continue, wrongly or even inexcusably, to be fought, some account of what is permissible and impermissible in war ought to be formulated, especially if such an account might reduce, although obviously not eliminate, the savagery of war.”¹⁸

The standards for ordinary daily life are disturbingly distinct from the standards that apply to wars. Since war inevitably and conscientiously involves the acts of wounding and killing, we

¹⁶ Seth Lazar, *Stanford Encyclopedia of Philosophy*, 'War', 2016.

¹⁷ Michael Walzer, 'Just and Unjust Wars', 1977, p. 153.

¹⁸ David Rodin, Henry Shue, 'Just and Unjust Warriors', 2008, p. 87.

must have a different set of normative standards to judge wars different from the moral and normative constraints that order our ordinary lives.

The critics of the traditional just war theory, called the revisionists, offer an individualist, reductionist account of the ‘deep morality of war’ and claim that it is aptly incoherent with the moral judgements of individual self-defense. 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 to be 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 applicable directly to individual and group actions, without the institutions. It follows then, that the individuals and groups are to behave and act in accordance to the dictates of their moral reasons.

Jeff McMahan 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, who particularly makes a distinction between morality of war and the law of war. Her ideal version is grounded and originates from the morality about war in contrast to the traditional and non-ideal account of war.

They form an argument denying the traditionalist stance on when states may go to war in national defense to be grounded in individual rights. For McMahan, the moral equality of combatants (MEC) is what is quite problematic. According to the traditionalists, civilian deaths are justified only by the just goal and cause of the whole “good” worthy of their deaths. But combatants fighting in pursuit of an unjust cause achieve nothing that can outweigh the violated rights of their victims since they are fighting for an unjust cause to begin with.¹⁹ He further argues for the falsity of the combatant equality by grounding the liability to be killed in responsibility. The responsibility for wrongful threats and not just in being posed as a threat. The unjust combatants are responsible for wrongful threats and hence liable to be killed. While the just combatants are not responsible and not liable to be killed. According to him there is the possibility to pose an unjust threat without becoming liable to defensive force or losing one’s right not to be attacked.²⁰ And it is also possible to be morally liable to self- defense force without posing an unjust threat. How could it be that one could pose an unjust threat to another

¹⁹ Jeff McMahan, 1994.

²⁰ Jeff McMahan, ‘Unjust Wars’.

and yet not lose one's right not to be attacked and becoming permissible towards the potential victim's attack in self-defense? For a person who defends himself against an unjust attack does not become liable to be attacked just because he is now the posing threat to his attacker. The implications may be counter-intuitive, but he admits that "one does not lose one's right not to be attacked by posing an unjust threat in one is in no way morally responsible for this fact."²¹ All and only unjust combatants are liable to be killed for they are morally responsible for the unjust threat and only the just combatants can thus kill legitimately. The just and unjust combatants have different rights on permissibility and thus, the claim for the equality of combatants which is the central pillar for the traditional theory, for the independence thesis of the *jus ad bellum* and *jus in bello*, cannot be correct.

McMahan also believes that, a war consists and is made up of individual acts of those who fight it, it follows then how can a war as a whole be impermissible or unjust when all the individual acts of which it is composed are permissible or just. This is further explained on by him in an example of the force by the initiator in a surprise attack. What if a regime decides to throw a surprise attack on their adversary not giving them time to mobilize their military and the surprise attack kills innocent people. Under the traditionalist account, the surprise attack, however unjust, lets the unjust combatants have a right to defend themselves even if it involves killing people. Can the unjust combatants have the right to defensive force when they are the ones to initiate the unjust surprise attack on their adversary? The individual acts are judged on the cause for the war that will be constituted by these acts. The moral permissibility to participate in an initial surprise attack depends upon whether the war initiated by the surprise attack has a just cause, i.e. *jus ad bellum*. In this context, when the attack is by surprise without the just cause, it is then inconsistent with the traditional just war theory's insistence on the independence of the two tenets.

Fabre sees her account in Cosmopolitan War as war being about individuals maiming and killing each other, and yet, it seems that is also irreducibly collective.²² Her revisionist approach is "[u]nearthing first-best principles" which would need to be supplemented by an account of

²¹ Jeff McMahan, Unjust War, *The Pelican Record*, p. 16.

²² Cecile Fabre, 'Cosmopolitan War'.

“second-best principles”.²³ In this way, she restates the supposed dichotomy between the deep morality of war and the laws of war where deep morality of war are the first, ideal principles 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. The requirement of a legitimate authority as one of the principles of the *Jus ad bellum* partly depends on the view that war is the exercise of force in defense of national sovereignty, and consequently that poses a threat to the fundamental human rights of its citizens.²⁴ The right to wage a war can be vested in groups of individuals as well as individuals acting alone and not purely political institutions with enforcing authority to criticize the legitimate authority provision. The principle for legitimate authority becomes weaker with the particular reinterpretation, as being threatening to its sovereignty and territorial integrity of the just cause requirement. 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 in defense of others’²⁵ and feels that the founding premise of the traditional account of moral equality does not hold true.

As has been mentioned earlier, both the positions (traditionalists and revisionists) may not necessarily be quite contrary.²⁶ Especially the claim by the revisionists that the principle of non-combatant immunity and moral equality of soldiers is unable to sufficiently track liability being 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 his mental health) but still poses a threat. They both reluctantly agree about preserving the existing laws of war and attempt to find firmer moral foundations for them.

²³ Cecile Fabre, ‘Cosmopolitan War’, p. 12.

²⁴ Cecile Fabre, ‘Cosmopolitanism, just war theory and legitimate authority’, *International Affairs*, 2006, p. 968-967.

²⁵ Cecile Fabre, ‘Cosmopolitan War’, p. 55.

²⁶ A non-ideal, applied ethics of war that is proposed by James Patisson in, ‘The Case for Non-Ideal Morality of War: Beyond Revisionism and Traditionalism in Just War Theory’, *Political Theory*, 2016, argues for an applied and non-ideal account of the Just War Theory and that doing so it makes it clear that the Revisionists and Traditionalists are much closer than presumed.

Irrespective of the fact if there are any differences between the two or not, the primary aim here is to show how in both the non-ideal or traditionalist, ideal or revisionists account on the ethics of war seem to concentrate and focus on the first two tenets of the theory. The traditionalists based on an empirical and historical study of the nature of wars over the years place more weightage on the just cause and the right conduct within war with minimal responsibilities for post war reconstruction and peacebuilding. Focus is on the moral responsibility, blameworthiness for the immoral acts rather than being liable for definite laws and procedures. Under their conception of war, combatants or victors of the war are only entitled to stop wrongdoing and must not undertake extensive responsibilities for longer periods for it could lead be a costly affair without any clarity as to when to stop. Just cause may give a right for avenging a wrong²⁷ but no new rights or entitlements are given by expansive post war duties and responsibilities.

The revisionists think that post war responsibilities for reconstruction and peacebuilding should be an entirely separate category independent of the just war theory. Based on a more forward-looking approach, they don't want to assign any responsibility on the combatants or the just victors. They place limited trust upon the combatants and victors to be responsible for post war reconstruction for who is to say they would not exploit this power?

As such 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 justness of what happens after war. The justness of 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 a better theorizing of the 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 exploring into in contemporary times.

War is undertaken with the objective of peace, peace is the end which is consistent with the just cause for which war is the means, for instance, in helping a region become more stable and

²⁷ Stephen Neff, 2005, p. 57-58.

secure. And *jus post bellum* draws its conceptual roots from the traditional doctrine of just war. Even Augustine links war with the goal of peace, “it is an established fact that peace is the desired end of war. For every man in quest of peace, even in waging war, whereas no one is in quest of war when making peace.”²⁸ This validates that even traditionally, a peaceful state is the end result which demands clarity on the principles and compelling moral arguments for the *jus post bellum*. Many point out that Walzer being one of the most compelling traditionalist defender of the Just War Theory does not specifically write about *jus post bellum*. To which 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 judgement 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*.”²⁹

Walzer emphasizes the sovereignty and integrity of political communities, which may even lead to a situation of tolerating some non-liberal societies as well.³⁰ 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 a political conquest. This clarifies that though for Walzer, his theory places significant importance for *jus*

²⁸ St. Augustine, ‘Concerning the City of God Against the Pagans’, trans. Henry Bettenson, 1984, Ch-12, p. 866.

²⁹ Michael Walzer, ‘Just and Unjust Wars: A Moral Argument with Historical Illustrations’, 1977, p. 123.

³⁰ A similar defense of tolerating non-liberal societies is also advocated by Chandran Kukathas in his book ‘Liberal Archipelago’.

ad bellum and *jus in bello*, it also seeks to expand upon his approach by incorporating *jus post bellum*.

The *jus post bellum* is a crucial to the just war theory and related to both the categories 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) imposes certain obligation on the combatants to bring about the desired outcome after the conclusion of 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 victorious state during 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.³¹ The termination phase of war involves many rich and complex questions to be dealt with individually. Hence, we need the separate category of *jus post bellum* worthy of its own special status but is still linked with the other two branches.

In the classic just war theory, *jus post bellum* depended heavily on *jus ad bellum* and was thus limited in nature. Today this limited *jus post bellum* calls for broader and extensive postwar duties with a commitment to a just and durable peace. This needs to be done by clarifying and enumerating its various principles and norms. As it has been rightly put forward by Brian Orend, “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?”³² The morality of justice after war, having its roots in the historical account thus needs to be developed further in respect to the traditional just war theory.

³¹ Brian Orend in ‘Jus Post Bellum’, edited by Carsten Stahn, Jann K. Kleffner, 2014, Ch-2 has provided with arguments for the rejection of *jus post bellum* in the traditional account of Just War Theory.

³² Brian Orend, ‘Justice After War’, *Ethics and International Affairs*, 2012.

Chapter - 2

Nature of Peace

One of the pillars of the just war theory is the instrumental conception of war. Just wars are waged with the objective of bringing about peace. Peace that is justified and has the stability to endure over a long time. In this respect, the nature of peace is then two-fold and desires a balance between the two ambitious goals of a just peace on the one hand and a long-term peace on the other. The former notion of ‘just peace’ seems to be a demanding one since the terms justice and peace often conflict with each other as has been argued by Mark Evans in the book *Ethics Beyond War’s End*³³ and is based on negotiations requiring significant sacrifices by all parties, but it also opens the path for settlement between the parties engaged in conflict. This peace is then a negative character of peace signified by the absence of war or violence. Many hold that the terms peace and justice are in conflict with each other. Based on their sequencing in the dichotomous “peace versus justice” debate for in many instances to achieve justice, we need to forgo the commitment to peace, and it thus becomes necessary to clarify the two terms. Peace meaning a state of affairs where there is more inclusiveness and mutual relations of trust and cooperation with protection of human rights (accepted by all states as the most basic and fundamental) and greater human freedom and autonomy. Let’s call this a positive peace as it looks to the future and wants to broaden its scope and there aren’t any elements that look back and are retributive in nature. While justice on the other hand is mostly a backward- looking concept that aims to seek either a punishment or reform to a wrong in the past. Because of this looking back nature, of righting a wrong and seeking justice for a crime, justice can be thought to be in conflict with peace. But we cannot have without the other, attainment of peace may be a continuous process with lesser clarity of if and when we achieve it, unless we have the enabling peaceful environment, our attempts at justice wouldn’t bear much fruit. More will be discussed as we progress along in this chapter and how to achieve a balance between the two.

It is rather quite strange, that peace being the reason for which just wars are waged, quite little conceptual thinking has gone into the issue of peace.³⁴ Peace is the end for which a just war is the

³³ Eric Patterson, *Ethics Beyond War’s End*, 2012.

³⁴ Pierre Allan and Alexis Keller, *What is a Just Peace?* 2006, p. 1.

means. It is central to the just war theory, but with the lack of inspection of what is a just and lasting peace, it remains rather vague. Due to multi-faceted nature of peace, it is difficult to define it in a straightforward manner, since it can be understood in a variety of ways. What is argued for here is a hybrid conception of peace, a transition from a negative to a positive conception of peace in the context of just war theory.³⁵ Where the negative peace is merely the absence of wars and violence and positive peace being a state of no threat to human rights and inclusivity of larger people and states in political contexts. Since just war theory is primarily an action-guiding non-ideal theory, this shift towards a positive peace is limited in nature subject to the actors involved in bringing about this peace in the backdrop of a war. It aims at ending hostilities and bringing about favorable conditions for the potential of a continuous and virtuous peace.

Traditionally, the just war theorists have ascribed to a negative character of peace for the fear of moral imperialism. Nonetheless among them there has been a move from a negative to a positive peace with Walzer defending a kind of negative peace, to Brian Orend arguing for a more comprehensive conceptualization of peace which further paves the way for *jus post bellum* responsibilities. Allman and Winright take it a step further and present a fully comprehensive positive peace. The shift in the nature and character of peace to a more positive conception of peace is a step in the direction of the Kantian notion of Perpetual Peace³⁶ who is taken to be the pioneer of liberal peace. Kant's liberal peace is similar to his perpetual peace that especially focuses on the effects of trade and democracy to bring about peace. Kant also identified peace into two ways. A negative one, achieved by lack of aggression when in a state of potential hostilities. The other being a positive peace that is capable of ending all future hostilities. The question we are faced with is, what kind of peace should be the normative goal of a just war theory and the implications it will bear on the necessary exposition of *jus post bellum*. This brings us to the tension between desirability and feasibility. While a fully advanced positive peace is what may be desired, is it really feasible in the post-conflict scenario?

³⁵ Given the real, non-ideal nature of wars, this peace is towards the positive end on the negative-positive continuum of peace.

³⁶ Immanuel Kant, *Towards Perpetual Peace*, 1795.

This chapter consists of two main parts. The first part addresses the distinction between a positive and negative conception of peace and answers the question: what should be the nature of peace in the context of just war theory? The second part of this chapter builds toward the positive peace founded on the Kantian notion of perpetual peace marked by its three principles of republicanism, the role of international organizations and economic interdependence between states. Given that war may be necessary and justified in extreme circumstances, allowing for essential moral principles to be set aside in wartime, just war theory is pre-eminently a theory of ethical restraint, and morality does apply to the theory. It sets a moral standard to limit the negative consequences of war. And this section argues towards a positive Kantian Peace as the goal of a just war which will be just as well as lasting. It further directs the way towards a comprehensive *jus post bellum* (to be dealt with in the subsequent chapter) regulating the transition from war back to peace.

2.1 The Transition from Negative to Positive Peace

Peace can have various dimensions ranging from temporary or eternal to inner (individual) peace or outer (political) peace, but since we are dealing with the theory of a just war, we primarily focus on political peace. The peace between states after a particular war. Due to this very limited scope of just war theory as being designed only to regulate wars, many believe that it shouldn't have anything to do with an internal or personal peace and be purely political in nature. But the nature of wars is changing now with many asymmetrical wars and wars undertaken as humanitarian interventions ascribing to a nature of peace wherein certain human rights are non-negotiables. Despite the focus on political peace, such wars indicate a shift towards a more positive understanding of peace. In the context of political peace, Johan Galtung, one of the most credible theorists in the field of peace studies holds that positive political peace is not only the absence of direct violence, but also indirect violence that can be embedded in the society.³⁷ This indirect violence takes the form of structural violence and injustices in a society. Positive political peace is characterized by desirable values of harmony, solidarity and economic equity as well as the presence of conditions favorable for a sustainable peace.

³⁷ Johan Galtung, 1969, p.71.

War is integral to the understanding of peace, and its negative consequences creates the conceptual space for peace with the transformation of policies internally within a state. As has been mentioned by Orend, according to Kant, human beings are rational agents, but they also possess an animalistic instinct as well as free rationality.³⁸ This is why, though a continuous perpetual peace may be desired, there will still be instances of war. However tragic and evil war may be, due to the rational nature of humanity, elimination of war is a duty that must be complied by. After starting and fighting a war, a nation still has an obligation to end it well for it to be wholly just. It is precisely the negative consequences of war that motivate us to design rules for restraint, moving from first those governing hostile relations to later peaceful ones.

In the previous chapter we discussed the permissibility of wars in extreme circumstances wherein they have a just cause, for instance of threat to the political sovereignty. As has been discussed in the first Chapter with the Revisionists account, there has been more flexibility towards the permissibility factor with wars being waged on grounds of humanitarian intervention. When the basic human rights of people are under threat, then intervention (by a third country) by means of war is justified for the protection of the people of that state. The first case highlights the well-being of the state (protection of political sovereignty) to be the primary aim and the second case illustrates human rights to be of paramount significance. This leads to the confusion of the stark distinction between the two as promoting state rights as opposed to individual rights. They both are essentially grounded in the protection of rights, and indeed human rights. What we can derive from the threat to political sovereignty is that it aims for the well-being of the state which is essentially constituted by its people. So, a threat to the state is a threat to its people. And it's in the protection of the rights of its people that the state participates in war. It is the state's right which is based on its function of being a protector to its citizens. To clarify this further, the distinction between a just and an unjust cause is essential. The former engages in war either to protect its own people, within its state borders or to protect the people of another state from their own ill regime, while the latter looks to initiate war for self-interest and takes action and decisions unilaterally. A just nation then enters into a just war with the objective of bringing about peace that is deeply rooted in the protection of human rights. For security and peace may seem different, they frequently coincide with each other. This is a positive

³⁸ Brian Orend, Kant's Just War Theory, 1999, *Journal of the History of Philosophy*, p. 326.

understanding of peace and the one that is desired by a just war. Where the human rights of individuals are protected and promoted. States are analogous to individuals and can be treated as moral entities. Even though state well-being and security is of priority, this priority is grounded on the moral worth of the individuals it intends to protect. And, in either of the cases under a just war, we see that the objective is to bring about peace that is based on human rights and autonomy.

More often than not the just war limits the scope of peace after war to be negative i.e. a state marked by no aggression and violence as it is what is feasible in the immediate post-war situation. While the negative peace is surely what is needed and necessary immediately post-war it is not a sufficient condition for a lasting peace. This is premised on the just war theory being primarily a regulatory framework to minimize the horrors of war. If this is the case, then the negative peace is unable to live up to its function of regulating future and potential wars. Mere absence of war or violence without the necessary common goal of a better future may still lead to conflicts. Peace treaties and armistices with both parties consenting for cease fire may only be successful in the short term and may only serve to put a temporary end to violence, but until the differences are reconciled and institutions set up in place to promote the common peace, the long-term and sustainable peace seems to be a far-off reality. There can still be dissatisfaction breeding among the involved parties by this fragile negative peace if the root cause of the conflict isn't resolved. In such situations, to avoid chances of violence starting anew we need to have a positive approach to peace.

The positive peace understood here is characterized by just institutions and fuller range of human rights. The goal of a just war is just peace, not merely the regulation of wars. And a just peace requires a certain political system which will protect and guarantee the human rights. The goal is to balance the ideal principles of perfect justice and prudential considerations. Even though there are limits to what can be achieved (feasible) and that which is desired, a transition to the positive notion of peace does not compromise our moral ideals, rather it sets an even more critical standard to assess current practices and the conduct of wars.

While the positive peace may seem an ambitious goal to be achieved but limiting ourselves only to a thinner and negative peace just because just war theory deals with the real political world without the positive peace makes the entire framework of just war theory come crumbling down

with no moral ground to stand on. Siding with positive peace may be increasing the gap between desirability and feasibility but it is applicable in the real-world scenario nonetheless. Take the case of two children, first one wants to be a scientist but may not have the necessary means and resources to become one and the second one wants to just be a lab technician as that is what he/she believes is achievable by him/her given the circumstances. Amongst the two children, there is a higher probability that the second child will achieve his goal. What is of significance here is the goal towards which you set out and direct your actions. The second child set his goal after the careful assessment of his circumstances while the first child set his irrespective of his situation. In the case of wars, we don't take and initiate actions (such as a theory on just wars) and form a goal along the way after we assess the situation we are in. We have the goal in mind prior to entering into a war, which is to bring about a just and lasting peace.

Peace is the axiomatic goal of the theory for which wars are permissible. What this peace is has multiple meanings depending upon who seeks it and for what purpose. In the context of just wars, the purpose is to regulate further wars and to help the states reach a peaceful state of co-existence. If we only side with the negative peace after the termination of war marked just by absence of violence and force, we are not necessarily regulating all potential future wars. And the peaceful state of co-existence implies a notion of a common understanding of peace marked by the realization and promotion of human rights and not just the negation of violence.

The peace between states i.e. political peace is best attained by a combination of establishment of a system of order which restricts the use of force but one that also incorporates a strong element of justice. This justice applies not only to states, but groups and individuals too and should encompass human rights and humanitarian norms. This positive peace favors the creation of systems where violence is unlikely to arise. This idea of positive peace should not be conflated with an ideal notion of peace that is imposed upon all the states by something like a world government, but instead something that is worked for by a mutual cooperation of all states.

As mentioned before there is a paradigm shift of viewing just war to be purely for 'national defense' to a 'human rights' one. Human security is of utmost importance under this paradigm and it is essentially what constitutes the national security too. State or political sovereignty is

only instrumentally valuable, wherein it serves the purpose of protecting and promoting human rights.

Does this then imply that with such a positive conception of peace, wars become more and more permissible in pursuit of this peace? And we fail at the task of reducing and regulating wars when we make them more permissible, how is it that we are promoting peace while allowing for more wars to take place then? The answer to this question lies in the clear identification of the principles of *jus ad bellum* where the just cause is something that is accepted by all. For instance, interventionist wars for humanitarian purposes like genocide have a strong case on their end since the basic rights of people at a certain place were in threat that is agreed by everyone as simply not acceptable. By choosing not to intervene in such instance, is then turning a blind eye, and that surely isn't peaceful.

2.2 Kantian Peace Triangle

Immanuel Kant built his vision of peace on the three principles of republican constitution, economic interdependence and international community in his 'Perpetual Peace'. These three pillars for a universal peace expressed by Kant over two centuries ago has had a significant contribution in the spreading of liberal ideas compatible with peaceful relations. As has been the case over the years following World War II, adoption of his ideas has fostered harmonious relations between the different countries within Europe which represents a historic achievement and reason for the credibility of his ideas. Furthermore, according to Bruce Russett, John R. Oneal and David R. Davis,³⁹ who equate these three principle to the three legs of a tripod believe that this historic achievement by Europe can be the demonstration of the liberal institutionalist response to conflicts that can be extended even beyond the European borders, and this has led us to believe in the compatibility of positive peace with liberal values.

In Kant's view, the three legs of the tripod aren't just useful but rather the essential and a necessary requirement to maintain the structure of a stable peace.⁴⁰ Based on an understanding of the legitimate rights of all people, they provide the moral and legal edifice for the peaceful

³⁹ Bruce Russett, John R. Oneal and David R. Davis, The third Leg of the Kantian Tripod for Peace: International Organizations and Militarized Disputes, 1950-85, *International Organization*, p. 1.

⁴⁰ Kant, 1795, 1991; and Doyle, 1992.

resolution of conflicts to attain a just and lasting peace. They need to be complementary to each other and move in tandem in the same direction of a sustainable peace. Since they each play a substantial role independently and collectively by mutually reinforcing each other, their representation by a triangle has been put forth by Russett and Oneal wherein all corners contribute to the triangulated peace and the sides of the triangle being the complementary feature amongst the corners. Let us then look at each of these legs of a tripod or corners of a figurative triangle in more depth and its consistency with a long-term peace.

2.2.1 Republican constitution

A republican constitution holds a crucial value for Kant. In modern understanding it takes the form of a representative democracy. He derives a broader widespread peace to be originating from smaller domestic fronts.

“The emphasis on republicanism is key for Kant: he believes that when power is dispersed, when the people are sovereign, and when they have their human rights fulfilled on the domestic front, states will face dramatically reduced incentives to resort to war. A just and lasting peace, for Kant, begins at home with respect for human rights and is to be aided and abetted, on the international plane, by gradual and voluntary confidence-building measures and joint covenants on the pacific resolution of disputes.”⁴¹

But this is also the one approach that is met with much criticism when it pleads for a regime change in any state as that conflicts with the liberal ideology of autonomy and freedom. It is commonly understood that such constitutions like democracies do not enter into wars with each other and have lesser reasons for wars amongst a similar regime. Both are true to the underlying values of their constitutions and constrain any autocratic caprice in waging wars.

Since a democratic government would be the one wherein the basic human rights of its citizens are protected and secured, then there seems to be no reason or a just cause for any other state to intervene on grounds of human rights. This rules out the tendency for just wars for humanitarian intervention, but what about wars waged for the protection of one’s own state, if there is a threat to its sovereignty. Is it always the case that democracies do not pose a threat to each other?

⁴¹ Brian Orend, 2004, Kant’s Ethics of War and Peace, *Journal of Military Ethics*, p. 175.

The answer to the above question is dependent upon the relationship of the regime to its core values of protecting and representing human interests. They wouldn't necessarily pose a threat to their own citizens by entering into a war (as war always brings upon destruction and despair for one and all) unless they have a justified reason, that also promotes or protects human interests. It is also the type of constitution which believes in and works towards the flourishing of human life, not just within its own boundaries but even internationally and with due respect to their neighbors around as well. There ought to be systems in place within a state that promote the interests of its citizens wherein people can have the requisite means to achieve a good life and also conceptualize what that good life means for them.

Whether this principle of a Republican Constitution a necessary condition for a just and lasting peace is connected to the principle of regime change in the *jus post bellum*. The premise of just wars is that they have a justified reason, meaning the other state is unjust either to the just state or to its own unjust state. War then becomes a means of correcting this unjust state, and the correction implies change. Change in the regime that was responsible for the unjust threats and violations of human rights. But instances have shown that attempts at this are faced by many obstacles as has been the case with trying to democratize Afghanistan. A commitment to the execution of plan for a regime change must be worked out prior to the war. It is crucial to understand the context of the state which is to be democratized better gauge its people's preferences. Many times, such efforts are met with resistance by the people of the defeated state who refuse to be democratized. In such cases, the just state must have identified and involved some local organizations and people in their process for a change in the government to better earn the trust and cooperation of the people.

2.2.1 (a) Lesser conflicts due to similarities

The challenge for democracy is whether or not being a democratic state helps to attain that peaceful state. Relying on the assumption that most states that are democratic, will have similar goals and objectives and hence not a sufficient enough reason for conflict. Most of the conflicts only arise due to differences, and similarity brings people or states together either in response to a common enemy or towards a similar goal. Without much differences, there will be no cause for conflicts leading to peace amongst the states.

But many are susceptible to this feature of democracies as having some kind of a silent agreement and not being in conflict with each other as clearly there have been cases of violations of such agreement. As mentioned by Lilach Gilady the effect can be contrary to what is expected. She quotes Gartzke and Weisiger stating how they “demonstrate that an increase in the number democratic states in the world is associated with a decline in the pacifying effect of democracy.”⁴² With the decline in pacifying effect of democracy there is then the possibility of tensions within the Kantian triangle. This may be true at times, but in these instances, unless the initiator has the valid sufficient cause for engaging in war and putting everyone in danger, it will be viewed to be an unjust war and held liable for its unjust actions. Our primary concern here is the peace that is the objective of a just war and the Kantian peace that is founded on the interconnected relations of its three principles.

This does not mean that we necessarily impose or force upon a regime change each time a state is defeated after a just war. If the just victor state chose to wage a war to protect their own, then only depending upon the current situation of realization of human rights in the defeated unjust state should there be a change to promote democracy.

2.2.2 Economic interdependence

The sense of commerce and trade by economic interdependence reinforces liberal norms and structural constraints on structural injustices in a state. There is the creation of ties transnationally that encourages open exchange and accommodation. But with many illiberal states engaging in the free global market like China or Russia, it may seem somewhat less plausible in contemporary times. As many liberal states enter into exchanges with illiberal states. There is a subtlety in the way the injustices in such illiberal states are constrained. With greater exchanges and trade relations, there is a revelation and openness of the market system of both sides of the exchange. Individuals (consumers) become aware of the structural injustices taking place in the illiberal states and in however small scope try to constrain them. Whether that is by protests banning the purchase of products from such unjust state or having an additional cost associated with sale of those products to restrain people from buying or engaging in an exchange that involves illiberal ideas and injustices. After a just war, the just state is in-charge of the

⁴² Lilach Gilady, 2017, Triangle or ‘trilemma’: Rousseau and the Kantian Peace, *Journal of International Relations and Development*, p. 137.

defeated state post the war. However unjust the defeated state may have been before and while the war, the victorious state now with its justified reasons can help remove the structural injustices.

It goes beyond the mere statist benefits in an attempt to bring the world closer together by means of trade. Because of the economic and financial gains in such exchange, it is believed to be a kind of a 'capitalist peace' where peace is promoted by advancing capitalism. It should however be noted that in the Kantian figurative triangle, there isn't just one corner that brings about the peace in a significant manner as compared to the other two. Rather, all the three must maintain a positive enforcing relationship with each other and no single one is the ultimate solution.

2.2.2 (a) Peace by development

With economic interdependence comes the development and betterment of the citizens of the states involved in the process. It is more forward looking for with development, the people in a state are better equipped and capable to make rational choices for themselves (where the freedom to do so is a core liberal value). And when the citizens in a state are satisfied and on the path towards their advancement, they are less prone to feeling threatened by any other state, since they themselves are in a better situation. Feelings of distrust and insecurity are bred by lack of one's sufficient basic needs. It consists of setting up of institutions that facilitate smooth and open exchanges across borders with the focus on having more involvement with people from far and wide in an attempt to know them better. When a state has good economic ties with another state that may be much advanced in comparison, the former state will think hard before attempting to sever its ties with such a state as the relation must have helped the former state to develop economically. Many states do not want to lose this incentive of a boost in their economy thereby leading to much more balanced and peaceful relations among the states.

When it comes to the situation of post-conflict, it becomes all the more necessary to build up the economy of the defeated state if its people shouldn't suffer anymore and they fall back into a state where there isn't any protection and security of human rights. The victorious state should increase their trade regulations with the defeated state especially after a conflict to help in reestablishing their economy. They owe some responsibilities towards their dismal situation since they caused it, even if justified.

2.2.3 International Organizations

In examining the conditions promoting peace after a conflict we have previously looked at democratic constitutions and economic interdependence. We now come to the final and a substantial part of Kant's virtuous triangle to a stable peace, viz. the role of the international community or intergovernmental organizations (IGO's) in pacifying the effects after a war to help promote peace. The international organizations play a constraining role for the decision makers in a member state in various ways, such as the United Nations (UN) that regulates and assigns responsibilities by holding states accountable or communicating information and facilitating bargaining. An international organization is a formal institution based on the treaties between governments, it is decentralized and quasi-universal in nature. Since it serves a variety of purposes and functions ranging from economic to socio-cultural to political and human security matters, the role of such non-hierarchical institutions helps in promoting a much more positive peace by means of dialogue and regulatory sanctions.

Many people think, that IGO's may have a relation to peace but not necessarily cause it: "at the systemic level of analysis, previous research indicates that numerous IGOs are set up during the peaceful periods immediately following major wars; hence, one would see a correlation between IGOs and peace but not necessarily a causal relationship linking IGOs to peace."⁴³ So, let us examine how such IGO's and the international community play a causal role in bringing about peace as well.

2.2.3 (a) *Accepting multiple perspectives and shared norms*

"International organizations may provide arenas within which actors learn to alter perceptions of interest and beliefs."⁴⁴ Institutions set up expectations with congruent interests such as in the case of a common interest in promoting economic interdependence that may have not existed previously. Similar can be the case with institutions establishing a shared interest between democracies by way of an agreement of non-aggression towards each other leading to long-term

⁴³ Bruce Russett, John R. Oneal and David R. Davis, *Third Leg of the Kantian Tripod for Peace: International Organizations and Militarized Disputes, 1950-85*, *International Organization*, 1998, p. 444. See also Vasquez 1993; Jacobson, Resinger and Mathers 1986.

⁴⁴ John Capraso, 1992, p. 602.

prosperity. These shared interests take the form of norms and the adherence to these norms is emphasized by the deliberative and communicative feature of these norms. The member states often debate and justify their stand on a specific issue where the international institute works as the mediator and facilitator to derive certain common interests that become norms. This discussion and deliberation legitimizes collective action which in turn promotes adherence to the norms. When there is greater adherence, the scope of conflicts arising is reduced.

After any war or conflict, it becomes pertinent for states to seek membership and abide by the guidelines set out by such international organizations. With its universal and decentralized nature, they are the genuine third-party amongst the two warring states with no conflicting self-interest of theirs as primary concern. Their main objective is to regulate these instances of war and conflict by promoting peace and shared mutual benefits.

2.3 Summary

As we have seen, all three legs of the tripod complement each other and share a relationship of positive mutual reinforcement. It is all the three taken together that carve out the outline of the positive peace we should aim for in post conflict times. This positive peace is understood to be obligatory for states aim to realize and not purely ideal in nature. For Kant too, our duty to work for peaceful relations balances the ideal with the real with some elements of realism indeed. Making this peace strike a balance between the desirable and that which is feasible as well. The economic interdependence promotes an individual's self-interests by trickle-down effect of a state's benefits (when a state progresses economically, it also benefits the individuals of that state however minimally) and international organizations are primarily devoted to the protection of human rights all across the world catering to the basic needs of human beings. All combined together would eventually produce a just and lasting peace. As Oneal and Russett describe for Kant, "he was convinced that a genuine, positive peace could be developed within a 'federation' of liberal republics that rested more on the three Kantian supports- democracy, interdependence, and international law and organizations, than on power politics."⁴⁵

Consequently, Kant declared, we have a duty to work for peaceful international relations. He was no idealist; rather, he believed that natural processes originating out of self-interest will urge

⁴⁵ John R. Oneal and Bruce Russett, 1999, p. 4.

individuals to act in ways that would eventually produce a lasting and just peace. Kant was also realistic. He acknowledged wars as inherent under the anarchic international system. He thus cautioned states to act prudently, arguing for a cosmopolitan league of nations.

Coming to the goal of a just war theory, the theory is designed to regulate and prevent wars because we wish for a peaceful world. It is then somewhat a theory wherein we take steps to realize this peaceful state, which isn't purely ideal in nature, but an attempt to reach that ideal, whatever that may be. From a purely negative peace that follows immediately after war, we have to transition out to the positive peace outlined above if the theory is to limit the awfulness of wars. Only then can there be a critical enough standard for states to be assessed on their justification for wars. For there may be wars that are initially just complying by the *jus ad bellum* and *jus in bello*, but the neglect of post war duties aimed at bringing about the peace makes them unjust war. A very clear example of this is the war in Iraq, which may have had the right reasons but is now deemed an unjustified war since there has been no lasting peace. The duties and responsibilities for the execution of such a peace are delegated involving various actors (like political leaders of a just state, combatants of the just state and the international community) leading to greater cooperation and adherence and isn't too demanding on any specific agent. This will be discussed in the next chapter in detail. The positive peace which is to be realized at the end of the war is forward looking and shapes the content for the much neglected yet significant branch of just war theory, namely *jus post bellum*. As the goal is of a transitioning peace towards positive peace, the contents of *jus post bellum* would also be largely positive and forward looking.

Chapter - 3

Jus Post Bellum: Justice After War

With the aftermath of the Iraq war there has been renewed interest in the ethics of war and peace. There are rules and principles governing the first two branches, i.e. the *jus ad bellum* and *jus in bello* but sadly much less attention to the process of termination of wars. Due to the pragmatic difficulties in post-war peacebuilding and disagreements regarding the nature of peace that should be the goal of a just war, this 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 treaty's or laws, *jus post bellum*, remains in a confused abstract state with unethical termination of wars and no accountability for such disastrous impact.

In the previous chapter, we saw that the ultimate goal of a just war is peace. The peace identified by a negative character immediately after the war followed by a positive peace. Just because there may be varying conceptions of what this positive peace looks like should not hinder our attempt to work out the principles leading to the lasting peace. The Kantian peace founded on the three principles seem to be the next step in the direction of the peace for which just wars are fought. And the three principles combined aptly constitute the most basic and fundamental needs of what is required for in a post war defeated state based on human security and interests. A state that is pro-rights and where there is secure possession of those rights, both individual and collective. "The aim of a just and lawful war is the resistance of aggression and vindication of the fundamental rights of political communities, ultimately on behalf of the human rights of their individual citizens."⁴⁶

A significant contribution to the field of *jus post bellum* has been made by Brian Orend who is heavily influenced by Michael Walzer. Koeman in following Orend defends his criteria for *jus post bellum* that requires pre-commitment to *jus in bello* and *jus post bellum* as part of the *jus ad*

⁴⁶ Brian Orend, 2007, Justice Post Bellum: The Perspective of a Just War Theorist, *Leiden Journal of International Law*, p. 578.

bellum criteria of right intention.⁴⁷ Both feel that this commitment with a revision of the right intention will disincline states to go into wars. “Consideration of the justice of the end of a particular war can only begin from a firm grasp of the just aims of a just war.”⁴⁸ Orend bases this right intention on an interpretation of Kant, according to whom the original decision of going to wars should be based on a commitment to not only to the rules of conduct but also to the appropriate means of war termination.⁴⁹ Without this commitment, the states should then refrain from going down the path of using force. In this chapter, I will argue for and defend a comprehensive *jus post bellum* to overcome the neglect towards 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* towards a lasting and durable peace.

3.1 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 afterwards involving ‘full assistance with recovery, reconstruction and reconciliation, addressing the causes of harm the intervention was designed to halt or avert.’⁵⁰ This report is a clear indication that there should be a duty to rebuild war-torn political communities, but doesn’t necessarily specify which agents are responsible. 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

⁴⁷ Annalisa Koeman, 2007, A Realistic and Effective Constraint on the Resort to Force? Pre-commitment to *Jus in Bello* and *Jus Post Bellum* as Part of the Criterion of Right Intention, *Journal of Military Ethics*, p. 198-220.

⁴⁸ Brian Orend, 2000, War and International Justice: A Kantian Perspective, p. 223.

⁴⁹ Brian Orend, 2000, Michael Walzer on War and Justice, p. 94.

⁵⁰ ICISS, 2001, XI

the ‘maximalists’. A closer look on 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, the type of peace that is needed in today’s circumstances of just wars. While many argue for the extension of the just war theory to include *jus post bellum*, its integration into the just war theory is by no means unproblematic.⁵¹

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 stemming from the fear of victors acting purely for their self- interest. With a restricted view based on the achievement of a minimal justice for the minimalists, “post war activities would be restricted to redressing the worst effects of military action, ensuring that enough resources and capability remain in place for the country to reconstruct itself, and in some cases meting out punishment (for example, to the leaders of a genocidal regime).”⁵² The restricted understanding of *jus post bellum* then is applicable only for a short time period: to the end of war and its immediate aftermath.

One of the most prominent advocates of the minimal approach has been Michael Walzer. In his *Just and Unjust Wars*, he did not pay much attention to the third branch of *jus post bellum*, but over the years there has been a gradual evolvement of his ideas due to world developments. He now accepts *jus post bellum* as the third branch of the just war theory.⁵³ In addition to him, Garry Bass also argues for a presumption against political reconstruction stressing on the importance of restraining conquest.⁵⁴ Both place considerable value to state sovereignty and self-determination of the people in determining the *jus post bellum* thereby making the just wars conservative in character.⁵⁵ Under their view, there must be a repair of the chaos after a war, and restoration in terms of the situation that existed prior to 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.

⁵¹ There are few who criticize the integration of *jus post bellum* into just war theory either because it is unnecessary for the *jus ad bellum* already covers the post war norms, or because it is a premature attempt to draw out post war responsibilities.

⁵² Gheciu and Welsh, 2009, *Ethics and International Affairs*, p. 119.

⁵³ Michael Walzer, 2004, xiii

⁵⁴ Garry Bass, 2004, p. 396.

⁵⁵ Michael Walzer, 2000, p. 121.

The most contested of the *jus post bellum* principles is that of political reconstruction. For the minimalists, in cases of wars for self- defense, post war justice doesn't allow for political reconstruction because there aren't any justifications for reconstruction. The victor state has no right to reconstruct for any personal gain or interest nor any right for cultural reconstruction.

But over time, given that wars today are more permissible, like humanitarian intervention entails political reconstruction in combination with provision for basic necessities like law and order, food, shelter, schools, etc. to prevent future aggression. This broadening of the *jus post bellum* among the minimalists is owed to the political reality of today, where there are lesser of self- defense wars and more of the interventionist wars. While they do ascribe a great value to state sovereignty, but an extreme regime violating human rights loses its right to such a sovereignty. For instance, Bass 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.⁵⁶ A central feature of the minimalist approach is the distinction between occupation and government. They refrain from having any additional responsibilities for they don't 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 listed below:

- Restrained conquest: Permitted to push back aggression and take measures to ensure it doesn't happen in the near future.
- Political reconstruction: in cases where the war is with inherently aggressive and rights violating regimes
- Criminal justice: by means of 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

⁵⁶ Garry Bass, 2004, p. 398-399.

to exact more than what is necessary to secure the rights.⁵⁷ Mark Evans 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*.⁵⁸ For when there is a just occupation, it may last over a long time involving being drawn to the occupied states social, political and economic affairs for that duration which definitely needs some moral direction. Evans state that, “a just occupation can draw the just occupiers into the fate of the occupied state far more profoundly than the restricted conceptions may fully acknowledge.”⁵⁹ The general point is, 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 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.

Furthermore, Mark Allman and Tobias Winright 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.⁶⁰ They favor additional duties based on a Christian tradition involving not only individual human rights but pursuing of a ‘common good’ which is the victor state’s responsibility. They state,

“[...] a Christian understanding of post bellum regime change would aim for a just and lasting peace, inclusive of robust human rights, political sovereignty, and territorial integrity as well as social, political, economic, religious, and cultural conditions that allow citizens to flourish, to pursue lives that are meaningful and worthy of creatures made in the image and likeness of God”⁶¹

⁵⁷ Michael J. Schuck, 1994, *When the Shooting Stops: Missing Elements in Just War Theory*, The Christian Century.

⁵⁸ Mark Evans, *Balancing peace, justice and sovereignty in jus post bellum: the case of ‘just occupation’*, *Millennium: Journal of International Studies*, 2008, p. 540-541.

⁵⁹ *Ibid*, p. 540.

⁶⁰ Mark Allman and Tobias Winright, 2010, p. 152-160.

⁶¹ *Ibid*, p. 159.

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 collapse of their government) or long-term economic and political reconstruction.

3.1.1 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 version who has written extensively on *jus post bellum* and 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 with 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 changes along with it. This will lead to the formulation of a 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 Brian Orend is as follows:

(1) *Rights Vindication*: The peace settlement after a war should secure the basic rights whose violation triggered the justified war.⁶² The rights of the people in the vanquished state must be respected and secured. Rights like the right to life, liberty and community entitlements of territory and sovereignty. In order to have an improving effect after the war, the just combatants must not seek a 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 that 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 by means of war crime trials to those guilty of war crimes. A distinction should be made between political leaders, soldiers and civilians as they then must be tried accordingly because civilians are then excused from any punitive punishment for they have the non-combatant immunity. But political

⁶² Brian Orend in *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace*, p. 40.

leaders can be responsible for if they were a rights-violating aggressor and soldiers too can commit undue acts while in war. So, soldiers on both sides of the conflict must be treated equally with respect to investigation and trials.

(4) *Compensation*: The defeat of a state in a war is most necessarily followed by 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. Compensation to provide for sufficient resources for its reconstruction. Since it is proportional, it may follow that the defeated state must also compensate for the heavy costs borne by the intervening state on behalf of the aggressor state but not for any selfish interests. The defeated state is in any case paying by the loss in war and detrimental condition followed by the incapability to pay further.

(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. Walzer suggests that one can, 'legitimately aim not merely at a successful resistance but also at some reasonable security against future attack.'⁶³ And hence, for minimalists, for wars with regimes including and worse off than the Nazi type regime must be reconstructed in combination with some basic provisions for sustenance.

Even though Brian Orend is considered to be offering a middle ground between the restricted and the extended positions of *jus post bellum*, he is 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 to make for a maximalist *jus post bellum*.

For 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 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 own voice, expression and political participation and not repressing them until there isn't any threat to the rights of the citizens. Under (2) Proportionality

⁶³ Michael Walzer, 1977, *Just and Unjust Wars*, p. 118.

and Publicity, in the event if one does not hold true 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, it is the duty of the just combatants to submit themselves to inquiry and help in setting up war crime tribunals for the respective defeated state and let an unbiased third party investigate them and suggest reasonable punishment. Punishment is definitely a backward- looking principle, but it does serve some fundamental interests. It can be an effective reformative tool for the aggressor wherein the appropriate punishment makes them realize the depravity of their actions as well as 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 with respect to the material reconstruction of the defeated state, especially in contribution to what would make the peace 'just' and 'stable'." ⁶⁴

Such a conception focuses on just terms of cessation of hostilities and fair treatment of the unjust defeated aggressor, but it is clearly 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 the supplementary principles:

(6) *Conflict Prevention*: efforts for conflict containment and prevention recognizes that securing a just peace may require political reforms beyond mere reconstruction especially in respect to 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 up its economy. Economic ties can be mutually beneficial for both the states and no one would necessarily hamper their economic development. Accepting treaties requiring efforts like demilitarization builds confidence among the other states for their resort to peace. After demilitarization, a state doesn't 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 reestablishment of socio-cultural institution which are central to the construction of a just and

⁶⁴ Mark Evans, 2008, p. 541.

stable peace. This is to be understood as a thin conception with respect to how former enemies overcome their differences belongs to the socio-cultural domain and developing means for them to live without fighting with each other.⁶⁵ 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, 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 inherent 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 be having 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 are in the best position to judge the propriety of their sovereignty's restoration.

This reconstruction requires just occupations to be administered by, an outside international organization such as the UN where at least in part overseen and undertaken by the new Peacebuilding Commission.⁶⁶ This tries to ensure that the occupation doesn't undermine the sovereign interests of the people occupied.

3.2 The case for a maximalist *jus post bellum*

The aftermath of wars in places like Iraq have brought about a renewed interest for post-war considerations. In the case of Iraq, Kosovo or Afghanistan, who has the responsibility to rebuild them? Should it be US or UK in the context of Iraq since they fought the war or some other states who may not have anything to do with the war but are still obliged to rebuild? As discussed, there are broadly two ways of looking at these questions to understand the moral requirements after war: minimalist and maximalist. Let us now see why the latter is better suited to the current political scenario of just wars.

⁶⁵ Mark Evans, 2012, p. 211.

⁶⁶ For further merit see, <www.un.org/peace/peacebuilding/index.html>

Take for instance the case of Iraq, US was the major intervening state to protect its people from Saddam's tyranny. Looking back even after five years post 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, no stable government resulting in continued duress and disappointment.

William Shawcross, for instance argues that the coalition led by US was morally responsible to overthrow and remove Saddam in 1991 two reasons, one to remove the threat of regional security and second to protect the rights of Iraqi citizens.⁶⁷ In interventionist wars, working with the presumption that just state is the victorious one, the victor has chosen the path of war that brings about great harm and hence owes them additional responsibilities in terms of ensuring security, rebuilding and reconstruction towards a peaceful state. This goes beyond the mere ousting of the terrible regime until there is a reasonable form of sovereignty that respects the human rights. Without this, there can be increased circumstances of prolonged war.

Even if the resort to force is only in response to territorial threat then once the war is over, if the just victor state does nothing to improve or change the situation in the defeated state, it will leave open the gateway for future conflict. Such wars usually take place between neighboring states sharing a boundary having quite similar cultures and lifestyle, yet conflicts arise over issues of an attack/conquest, differing religious ideologies or territorial ownership. Whether the force is in response to another's unjustified use of force, we cannot exclude the fact that violence and wars bring with it brutality and death. Under the reasonable success criteria, a state is permitted to enter war or resort to violence for self-defense once it has analyzed and assured itself of its probability to take over the aggressor state. So, whether in self-defense, the just state must be having the costs to cover the expenses of war. This criteria is satisfied by having the means and resources to win the war such as a strong and expansive military, weapons, equipment and other financial aid available to the just state for use at their disposal. The additional responsibilities aren't then too demanding since the victor state is able to cover the costs. Promoting and protecting the life of

⁶⁷ William Shawcross, 2003, *After Iraq: America and Europe*.

people of defeated state also benefits the victor state in the long run, for people of the other state develop more respect towards them for taking on the additional role even when violence wasn't their first choice.

With the changing nature of wars and more and more asymmetrical wars being fought today, it becomes even more imperative to have 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 nonetheless 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 prior to the war further reinforces the right motivation and justness of this state to enter into war.

3.2.1 Current political reality

With more permissibility to wars waged for humanitarian intervention in contemporary times, there is the presumption that force is being used only in protection of people from mass atrocities which have been deemed unacceptable universally such as genocide or ethnic cleansing. Just recently in March 2018, 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 of rape, killings and arson by the security forces. Even after months of the attack, widespread and systemic violence against the Rohingya persists.⁶⁸ The injustice transitions from rape and killings initially to a state of terror and starvation. People suffering at the hands of a regime that promotes such 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's first look at the reasons to enter into war for an intervention.

⁶⁸ See more at <https://www.reuters.com/article/us-myanmar-rohingya/myanmars-ethnic-cleansing-of-rohingya-continues-u-n-rights-official-says-idUSKCN1GI0C2>

For *jus ad bellum*, it follows then, that another state does have a just cause for resorting to violence viz. to protect the rights of the people. For 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 expanding their duties further.

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 replaced by one that promotes human rights then the intervening state, it lands itself into 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 (actors and agents are political leaders, beyond merely the combatants) as opposed to *jus in bello* being primarily of military domain (where the actors are only those in the military). The commitment to upholding the principles of *jus post bellum* prior to war reinforces the right intention with an action plan towards the successful realization of human rights and state sovereignty.

3.2.2 Limitations of the minimalistic account

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

The problem with the minimalist approach is that it misrepresents the just outcome of just war viz, is 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 progressing to a positive peace that is durable. Whether for self-defense or intervention, merely a more safe and secure position is no guarantee for that situation to be long-lasting. To illustrate this further, a conflict arises due to an individual's intervention into their neighbor's house on the grounds of there being evidence for domestic violence. The purpose for the intervention is to prevent such domestic violence in the future which then the just outcome of the intervention should also be. Post the intervention, efforts may be taken to control and simmer the situation which will be safer than what it was before. But until the root cause for domestic violence is dealt with, it can still be a possibility in the future. For wars that are in self-defense, the aggressor

state may continue to be violent even after the conclusion of war for in such contexts the aggressor state wars with the intention of conquering another state and may not stop until it manages to do so. This is also evident by the ongoing conflict between India and Pakistan for around seventy years over the territorial conquest of Kashmir. Kashmir's accession into India was provisional 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 for the majority of Muslim population. Unless the root cause of the provisional status is dealt with, there doesn't seem to be a peaceful scenario.

Another limitation with the minimalistic perspective is that it predicates itself on the assumption that the victorious state will seek to exploit the defeated state for their own benefit. This seems reasonable given that historically there have been cases of conquered states where riches have been acquired forcibly. But this becomes obsolete now when the costs associated with an occupation and exploitation does not override the potential benefits in the long run. Occupations that are just are never permanent conquests and the just occupiers have a duty to restore its 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 clearly 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 it is more liable to achieve a secure peace by 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 comprises of non-state agents as well. The result of wars can thus be varied with a just war ending with no occupation, or defeat and occupation of 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 to the minimalist account in light of empirical evidence of contemporary political scenario.

3.3 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

Just War theory is essentially ‘action- guiding’ and it must be feasible so that the states can comply with it. By having an extensive or maximalist account of *jus post bellum* makes it vulnerable to be 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 are targeted and the assistance of other agents makes the task more achievable and accountable, like, just combatants to ensure security and protect human rights, leaders of the just state to take reign of the control and the government until the defeated state has an appropriate one and role of the larger international community in overseeing the trials and reconciliation and in negotiating that both states hold true to the peace settlement. One may however argue that the responsibilities still fall upon the shoulders of the just state mostly 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 by such efforts of rebuilding and maintaining peace.

Objection 2: Potter’s Barn Principle

One of the main reasons for the responsibilities upon the just state is due to the ill-effects of war and that 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 towards its own people and the people there follow such a regime. The just state, even though they chose war for the protection of the devastated people have brought the people of their own and the other state into the harm's way and are thus liable for the reconstruction responsibilities. If they have chosen to resort to violence since it 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 post the war. The worry with this is that this will prevent many states from entering intervening when there is a threat to human rights. The demandingness of post war responsibilities play a curtailing role for wars, even if interventionist.

CONCLUSION

The disastrous impact of the Iraq war has brought to the forefront the necessity of post war peacebuilding. It was a rushed war, wherein the actors had not considered properly what was to be done once the war is over. Without an adequate exit plan, it has become a feeding frenzy for continued conflicts highlighting the significance for the development of *jus post bellum* with comprehensive and concrete principles. These principles are the ones that are aligned to the objective of a positive peace for which the wars are waged. Although the principles are what is desired, meaning there will be some difficulty in their applicability and achievement but that should not deter us from the ultimate goal and the completion of the war theory. Fear is, without such a *jus post bellum*, there will be unrestrained wars and unethical post war exit strategy.

The aim here was to reduce the vagueness and lack of clarity associated with the concept of *jus post bellum*. We began in the first chapter by identifying the limited presence of this third branch, *jus post bellum* in the just war theory by shedding a light on the debate between the traditionalists and revisionists. 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 the wars were of a different nature then, mostly for the reason of political conquest, the third branch of justice after wars was kept to a minimum. The integration of the *jus post bellum* can make the just war theory better equipped to maintain peace between conflicting states and to face contemporary challenges.

The second chapter focused on the objective of any just war, i.e. peace. What nature of peace do we ascribe to from the context of just war theory. After much deliberation and looking at the broadness of the concept from being internal or external to personal or political, we move to a positive outlook on the concept of peace. This is based on the three fundamental principles republican constitution, greater economic interdependence and the role of international community. This chapter argued how such a notion of positive peace is much more stable and durable than the mere negative peace. It also led us into the direction of a broader *jus post bellum* to achieve the objective of the positive peace.

The third and final chapter mapped the debate between a minimalist and a maximalist position for *jus post bellum*. Moral arguments and reasoning for both positions were presented culminating in

the maximalist account having a firmer moral ground. The second half of this chapter then listed out the principles for a maximalist *jus post bellum*. These principles taken together are applicable across various war scenarios and with the involvement of 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. 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 post the war, thus helping in regulating wars. If just wars are to achieve the goal of the peace identified in the second chapter, then there must be additional responsibilities borne by the just state as well. Without the commitment to the post war responsibilities, the war loses its justificatory reason.

A theory of just war must most definitely take the issue of post war justice into account. This is a crucial topic, which must be considered for the lack of it means there are no expectations of state behavior in a fragile time after a war resulting in patchwork solutions. This research aims to have contributed to the development of *jus post bellum* for it to be codified under the international law like the other two branches of the just war theory. War, however evil can be justified for a better outcome, viz. peace. This justification of war should indeed be looked at from the perspective of peace. The hope is to achieve the lasting peace by integrating this *jus post bellum* into the just war theory. It is capable of being a curtailment on wars, limit its negative effects as well as reestablish peace after wars.

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