

**Consideration of Modern Variations and Assessment of  
*Jus Post Bellum* in Asymmetric and Protracted Conflict  
A Case Study of the United States Afghanistan War  
(2011-2021)**

**Anny A. Igbenabor**

MA Thesis Submitted to  
the Faculty of Philosophy, School of Public Affairs,  
Saint Paul University,  
in partial fulfilment of the requirements  
for the degree of Master of Arts in Public Ethics

Ottawa, Canada  
August, 2025

© Anny Igbenabor, Ottawa, Canada, 2025

## TABLE OF CONTENTS

|   |    |
|---|----|
| ACKNOWLEDGEMENTS .....  | iv |
| DEDICATION .....  | v  |
| ABSTRACT .....  | vi |
| CHAPTER 1 .....   | 1  |
| 1.0 Theoretical Foundation .....  | 1  |
| 1.1 Just War in Antiquity .....   | 1  |
| 1.1.1. Greek View of Just War .....   | 2  |
| 1.2. Just War in Late Antiquity and Medieval Thought .....  | 5  |
| 1.3 Secularizing the Just War Tradition .....   | 8  |
| 1.4. Contemporary Just War Theory .....   | 11 |
| 1.5. Jus Post Bellum as an Interpretive Framework .....   | 16 |
| 1.6 Conclusion .....  | 21 |
| CHAPTER 2: Legal And Ethical Challenges in the Application of <i>Jus Post Bellum</i> in<br>Asymmetric and Protracted Conflicts..... | 24 |
| 2.0 Introduction .....  | 24 |
| 2.1 Legal and Moral Justification in Just War Theory .....  | 25 |
| 2.1.1 Hugo Grotius .....  | 25 |
| 2.1.2 Brian Orend .....   | 27 |
| 2.2 The Concept of Peace in <i>Jus Post Bellum</i> .....  | 29 |
| 2.3 <i>Jus Post Bellum</i> in International Law .....   | 31 |
| 2.3.1 Minimalist and Maximalist Approach of <i>Jus Post Bellum</i> .....  | 34 |
| 2.4 Modern Asymmetric Warfare .....   | 37 |
| 2.4.1 Limitations of <i>Jus Post Bellum</i> in Modern Asymmetric Conflict .....   | 39 |
| 2.5 Conclusion .....  | 42 |
| CHAPTER 3: Modern Asymmetric Warfare: The United States Afghanistan War<br>(2011-2021) .....  | 44 |
| 3.0 Introduction .....  | 44 |
| 3.1 Warfare and Asymmetry .....   | 44 |
| 3.2 Afghanistan—The Historical Context of the Conflict .....  | 46 |
| 3.2.1 The Case for the US United States Afghanistan Conflict (2001-2011) .....  | 48 |

|                  |   |    |
|------------------|---|----|
| 3.2.2            | The Case Against the US Invasion .....  | 50 |
| 3.3              | Preliminary Conclusion: <i>Jus Post Bellum</i> in Context .....                                   | 51 |
| 3.4              | Post-War Efforts .....  | 53 |
| 3.5              | Challenges in Applying <i>Jus Post Bellum</i> .....   | 56 |
| 3.6              | Real World Applications of <i>Jus Post Bellum</i> .....   | 60 |
| 3.6.1            | The Persian Gulf War (1990 -1991) .....   | 60 |
| 3.6.2            | South African Apartheid Conflict (1948–1994) .....  | 62 |
| 3.7              | Conclusion .....  | 63 |
| Chapter 4:       | Proposition For a Contemporized <i>Jus Post Bellum</i> Framework .....                            | 65 |
| 4.0              | Case Study in Retrospect .....  | 65 |
| 4.1              | Analyzing the Ethical Framework of <i>Jus Post Bellum</i> in Modern Asymmetric<br>Conflicts ..... | 66 |
| 4.2              | Restorative Justice and Cultural Relativism .....   | 72 |
| 4.3              | Proposed Contemporized Framework .....  | 74 |
| 4.3.1.           | Hybrid Justice Mechanisms for Asymmetric Conflicts .....  | 75 |
| 4.4              | Frameworks in Abstract .....  | 78 |
| 4.5              | Conclusion .....  | 80 |
| Works Cited..... |   | 82 |

## Acknowledgements

God is good! What began as a wishful thought has blossomed into a transformative journey—one that has contributed profoundly to my academic, professional, and personal growth.

To my beloved husband and study partner, Mobolaji Olusegun Ogunnimo—thank you for being my unwavering source of motivation and strength. Your constant guidance and belief in me made this achievement possible. We did this together.

To Zemira and Jaina, thank you for your love, your “somewhat” patience, and your endless hugs. You inspire me more than you know.

To my cherished families, the Igbenabor and the Ogunnimos—thank you for your continued love and support. To my ever-youthful Parents, Roland and Veronica Igbenabor—I hope I made you proud.

My sincere gratitude goes to my supervisor, Dr. Richard Feist, whose guidance, support, and constructive insight were invaluable throughout this journey. I am also thankful to the dedicated faculty at Saint Paul University for enriching my academic experience and making it truly valuable.

## Dedication

This work is dedicated to all who strive for justice, peace, and dignity in the midst of conflict. Also, for future scholars and policymakers working to refine ‘justice after war’ so that the end of war may truly be the beginning of peace.

## Abstract

Conflict in any human society is inevitable, as the evolution of human history has witnessed various characteristics of community, societal or political antagonism. Evolving alongside societies, political structures and technological innovations, conflict has been a defining aspect of human history; from primitive tribal skirmishes to modern cyber warfare, the nature of conflict has transformed reflecting the advancement and struggles of humankind. According to Francis O. C. Njoku, “human deliberations, choices, and voluntary actions play a crucial role in shaping the realities of warfare and its consequences” (68). Like most colossal destructive activities, war raises moral questions about its justification, the process and rules of engagement and the post-effect of such activity. By its very nature, war is an exercise that seeks the destruction of lives and properties, not only of the local economy but one that can be felt on a global scale. From an ethical perspective, engagement in warfare transgresses our most fundamental moral conviction on the wrongness of destruction and inflicting harm.

Through the ages, great thinkers have grappled seemingly insensitive view of war cultivated in ancient times and the moral challenges posed by such act. While ethical perspectives on war vary, especially in reflecting on tensions between the reality of the conflict and the humanitarian aspiration for justice and peace, they demand a consistent reflection of the complexities of war in reshaping the nature of the conflict especially the conditions that allow for the justification of war, the moral responsibilities of those involved and the consequences of war. The concept of Just War principles suggests that warfare is inherently characterized by violence and destruction, leading to significant suffering for both combatants and civilians, as well as causing considerable disruption within societies.

Rather than labeling war as inherently good or bad, proponents of Just War Theory treat it as a means to pursue specific interests—used only when all diplomatic efforts have failed. They emphasize the need to avoid armed conflict whenever possible, carefully balancing moral duties with economic consequences. In doing so, Just War Theory offers a clear and defensible ethical framework for evaluating war. It not only exposes the destructive nature of warfare but also affirms the moral responsibility to act decisively when justice and human rights are under threat.

Over the years, Just War Theory has significantly influenced international and ethical discussions about war, serving as a guiding principle for policymakers and military leaders. From its two key components *jus ad bellum* (the justification for going to war) and *jus in bello* (the justice of conduct within war), to a more contemporary addition '*jus post bellum*', the principles of the just war theory have served as ethical guidelines in determining the justification and conduct in warfare, as well as the establishment to peace afterwards. Thus, helping to minimise the horrors of war, while maintaining a sense of moral responsibility to parties involved.

This thesis assesses both the significance and the notable shortcomings of post-war justice (*jus post bellum*) in contemporary asymmetric warfare and highlights the need for a more robust and effective approach to achieving justice and peace after conflict.

## Overview of Chapters

Chapter one discusses the theoretical foundation of the Just War Theory from its inception and transition being heavily indebted to metaphysical/religious notions based on the teachings of St Augustine and St Aquinas, to a more secularized ideology of Hugo Grotius, and then the move from a Judaeo-Christian perspective into a more generalized contemporary ideology based on scholars like Michael Walzer and Brian Orend. The later part of this chapter looks at *jus post bellum* as an interpretive framework and deliberates on its core features as the consideration of post war justice and the move to peace.

The term "asymmetric" can be considered one of the broadest descriptions of war, as it encompasses various perspectives, including power distribution, methods of warfare, and organizational status. In recognizing the increasingly asymmetric nature of modern warfare, Walzer notes that “while traditional warfare is characterized by large-scale, open battles between state armies, in the conditions of asymmetry, there is often only one organized, armed, and disciplined army—typically a modern state—while its opponents are insurgents who are less well-organized and less well-armed” (87). Modern warfare increasingly features asymmetric conflicts, where powerful states confront less organized non-state actors, blurring the lines between combatants and non-combatants. These dynamics strain the principles of Just War Theory and often turn civilian environments into battlegrounds.

Chapter two examines the legal and ethical challenges of applying *jus post bellum* in asymmetric and protracted conflicts, drawing from contemporary academic literatures such as: Mark Kersten’s *Justice in Conflict: The Effect of ICC Interventions on Ending Wars and Peacebuilding, Morality, Jus Post Bellum, and International Law* by Larry May, and *War and International Justice (A Kantian Perspective)* by Brian Orend. It begins by defining ‘asymmetry’

as a form of modern-day warfare; citing its various features and unique contrast to traditional conflict and climaxes by highlighting the limitations of *jus post bellum* as a post-conflict framework in today's modern warfare consideration.

Chapter three directly analyzes the limitations of *jus post bellum* in post-conflict reconstruction and peacebuilding strategies, with a specific focus on asymmetric conflict. It compares the case study of the United States-Afghanistan war (2011-2021) with the South African apartheid conflict (1948-1994), providing valuable insights through this juxtaposition. The U.S.-Afghanistan war, particularly in the years following 2011, exemplifies the challenges of contemporary asymmetric warfare, where a powerful military engages with decentralized insurgent groups like the Taliban. Despite substantial military and financial investments, the post-conflict reconstruction efforts in Afghanistan faced significant hurdles, including corruption, weak institutional development, cultural disconnection, and eventually, the return of the Taliban to power. This case underscores the critical need for external efforts at post-war justice to prioritize robust local engagement, sustainable governance frameworks, and effective reconciliation mechanisms.

In contrast, South Africa's transition from apartheid to democracy involved an internal systemic struggle marked by profound injustices, violence, and structural oppression—even without traditional military conflict. The post-apartheid reconciliation process, led notably by the Truth and Reconciliation Commission (TRC), exemplifies a locally driven restorative justice approach that prioritizes societal healing over retribution. This model teaches valuable lessons for exploring alternative approaches to post-conflict justice that emphasize collaborative national rebuilding rather than a simple division between victors and the vanquished.

The case studies, therefore, explores how factors like context, legitimacy, and inclusivity in shaping the application of *jus post bellum* principles in contemporary warfare. While the Afghanistan war highlights the difficulties of imposing external frameworks in culturally diverse settings, the South African experience illustrates the transformative potential of an internally initiated justice process aimed at fostering social cohesion and lasting peace. Furthermore, this comparative analysis of both case studies aims to reveal key strategies, challenges, and perceptions related to the implementation of *jus post bellum* principles in reconstruction, reconciliation, and peacebuilding within the landscape of modern asymmetric warfare.

Chapter four builds on the discussions from previous chapters by identifying the limitations of traditional *jus post bellum* and proposing a more modernized framework. It offers key insights for applying *jus post bellum* in future contexts, especially amid the contemporary challenges of asymmetric warfare. The chapter advocates for a flexible, context-specific approach that responds to the realities of modern conflicts. Through this exploration, it strengthens the understanding of effective practices and strategies in post-conflict environments, supporting both local and global peacebuilding efforts.

## Chapter 1

### 1.0 Theoretical Foundation

For centuries, war as a topic has created a profound philosophical debate, with thinkers from various traditions seeking to understand its causes, morality, and implications for human nature and society. The concept of a just war, regardless of its cultural origins—whether from ancient Greece, Republican Rome, or Christian Europe—shares common ideas, values, and motivations. These elements provide a moral and legal framework for justifying war and regulating conduct during warfare. Just war theory, grounded in both classical and philosophical traditions, seeks to limit the use of force and prevent excessive violence by guiding the actions of cultures and states.

This chapter presents a classical perspective on just war thinking, drawing on insights from key figures such as Cicero, St. Augustine, and Thomas Aquinas, who analyzed the ethical dimensions of justifiable conflict. It also explores the more secular just war tradition established by Hugo Grotius and contemporary viewpoints from scholars like Michael Walzer and Brian Orend, illustrating the relevance and adaptability of Just War Theory. The discussion covers the theoretical foundation of Just War Theory, tracing its evolution from metaphysical and religious notions influenced by St. Augustine and St. Aquinas to a more secular ideology as articulated by Hugo Grotius. It further examines the transition from a Judaeo-Christian perspective to a more generalized contemporary ideology as expressed by modern scholars.

### 1.1 The Just War in Antiquity

The policy of recognising just conduct of war can be traced to different cultures in history, all of which are strikingly similar to many aspects of present-day considerations of warfare. For

example, 5th century BC China recognised rules that stipulated that no war should begin without a just cause; that the opponent be notified of impending attacks; and that the rights of the wounded and innocent be respected. Ancient Egyptians thought that humanitarian actions in war were important enough to be included in their records of *glorious actions*. Hindu civilization according to the *Book of Manu* identified humanitarian rules for regulating land conflict. In ancient Christianity, before the secularisation of the principles of *bellum justum*, the central notion was that the use of force requires certain justification with the presumption always against violence and only permissible in protecting values that could not otherwise be protected.

#### 1.1.1. Greek View of Just War

Conventional foundation of just war principles dating back to ancient Greek and Roman ideology such as the teachings of Plato and Aristotle were deeply ingrained in virtue ethics, concerned mainly with the moral development of an individual, the state and the maintenance of a political order. For example, “Plato’s concern for a well-ordered city—which values education, virtue and rule of the best men (and, in the republic women)—is a concern for peace and the cessation of war” (Reichberg et al, 18). Plato’s literature within the context of city-state warfare, offers an insight that while not entirely formalized into a theory of “just war” as later thinkers would develop, he nevertheless laid significant groundwork for ethical considerations in the conduct and initiation of war.

Although a regrettable endeavor, Plato perceived war as a necessary instrument in the pursuit of justice and harmony within and among states. In *The Republic*, through the character of Socrates, he emphasizes that warfare should serve a just cause, such as defending the people or punishing injustice, and therefore holds that a well-founded city must be prepared for war, and that

a great importance should be attached to the right education of soldiers. Plato was especially concerned with the moral education of the guardian class, who would wage war not out of self-interest, but in defense of the common good. He also drew a critical distinction between just wars against external enemies and unjust internal strife, such as civil war, which he regarded as especially destructive to the moral fabric of the polis (Reichberg et al. 18–20).

Much like Plato, Aristotle considered war just only when it ultimately aimed at peace and virtue, not conquest for its own sake. Aristotle views on war primarily through his discussions of politics and ethics, emphasized the significance on reason, justice and common good. In *Politics*, he asserts that warfare is just when it serves the *telos*—or purpose—of achieving peace and the flourishing of the state. In discussing how laws ought to be framed, and the commonwealth governed, Aristotle, comments on the proper place of “warlike pursuits” within a finely governed political community by stating the military prowess is not an end to itself; rather it should be cultivated in order to defend one’s nation and a means to achieve rational order in the broader interest of peace.

Unlawful it certainly is to rule without regard to justice, for there may be might where there is no right... Most men appear to think that the art of despotic government is statesmanship and what men affirm to be unjust and inexpedient in their own case they are not ashamed of practicing towards others; they demand just rule for themselves, but where other men are concerned, they care noting about it. Such behaviour is irrational. Hence, we see very plainly that ‘warlike pursuits’ although generally deemed to be honourable, are not the supreme end of all things, but only the means. A good lawgiver should therefore inquire how states and races of men and communities may participate in a good life, and in the happiness which is attainable by them. (Aristotle qtd. in Reichberg et al. 41-42)

---

<sup>1</sup>See also *The Complete works of Aristotle*, vol 2 (ed. Barnes), pp. 1991-2, 1994.

When considering Roman contributions to just war thinking, one observes a transition from philosophical reflection to more practical and legalistic interpretations concerned with formalities and observances rather than beliefs or personal piety. In ancient Rome for instance, the *fetials* (*fetiales*) were a college of priests responsible for maintaining relations among the Latins, tasked with the responsibility of declaring war, making treaties, negotiate peace or even demand redress where an offence has been perceived against the state. In ancient Rome, “war would be considered just when it was carried out in conformity with the proper set of religious laws (*jus fetiale*), and declarations of war were cast in the form of a lawsuit, in which the verdict transmitted by the fetials was meant to decide on the question if the war could be rightly waged” (Reichberg et al. 47).

In his works *De Republica* and *De Officiis*, Cicero refers to the Roman "fetal laws" to emphasize the necessity of a formal declaration of war following a demand for satisfaction. He highlights the significance of legal and religious sanctions and discusses the conditions that must be met for a war to be justly initiated and conducted. In his examination, Cicero introduces a more codified and duty-bound approach to just war thinking, where he asserts that a war must be declared by the proper authority, waged for a just cause, and conducted with the right intention. Cicero's views were foundational to later Roman and Christian just war thinking that: “Wars, then, ought to be undertaken for this purpose, that we may live in peace without injustice” (Cicero qtd. in Reichberg et al. 52).

---

<sup>2</sup> Santangelo, Federico, “The Fetials and their ‘Ius,’” in *Bulletin of the Institute of Classical Studies*, Vol. 51, 2008, pg. 63-93, pg. 92. 7

<sup>3</sup> The Fetials were expected to deliver the ultimatum to the enemy, then provide them with 30 days to reply. Only once a response was received, could Rome declare war. See Bainton (1960), pg. 41

<sup>4</sup> Eckstein presents an interesting outline of the fetial process before war was declared, although he keeps the outline limited. See Arthur M. Eckstein, *Arthur M., Mediterranean Anarchy, Inter-state War, and the Rise of Rome*, University of California Press: Los Angeles, 2006, pg. 121.

Roman thought provided a more institutionalized perspective, framing war as an extension of law and political order rather than merely a philosophical virtue. This framework established many principles of the later just war tradition. The Roman concept of a just war (*bellum lustrum*) was significantly influenced by religious and legal practices. The ritual of the fetiales formalized the declaration of war, ensuring it aligned with legal and moral standards. Cicero codified these ideas in his writings, contributing to a Roman ethos where legality and morality intertwined in the conduct of war. This created a foundation for later thinkers to adapt and build upon his framework, leading to a more formalized doctrine of just war.

## 1.2. Just War in Late Antiquity and Medieval Thought

The Christian perspective played a pivotal role in shaping the ethical dimensions of war and how battles should be conducted. Classical Just War Theories rooted in ancient religious traditions and shaped by thinkers such as St. Augustine and Thomas Aquinas, sought to morally justify the use of military force in warfare and the manner such force should be utilized. As societies have sought to justify and regulate warfare, religious and philosophical traditions have played a crucial role in providing a counterpoise to lawlessness and formulating ethical frameworks for war, arguing that states should be concerned with just cause and just outcomes.

---

<sup>5</sup> Moskalew argues that, in the Roman system, war was beneficial for the senatorial class— which made sense, as it could confer on the successful general a strong public following, not to mention money. See Walter Moskalew “Fetial Rituals and the Rhetoric of the Just War,” in *The Classical Outlook*, Vol. 67, No. 4, 1990, pp. 105-110, pg. 107-108

<sup>6</sup> Cicero, in his work *De Officiis*, argued that wars could only be justified if they were fought for just causes, such as self-defence or the restoration of peace. However, it was Christianity, particularly through the works of St. Augustine (354–430 AD) and St. Thomas Aquinas (1225–1274), that provided a structured, theological foundation for Just War Theory. Their perspectives were deeply rooted in metaphysical concepts of divine justice, human nature, and moral order, shaping how war was perceived in relation to faith and ethics. Reichberg et al *The Ethics of War*, Part 1, pp. 18-90 gives a detailed overview of ancient and early Christian perspectives of just war.

### Late Antiquity: Saint Augustine

St. Augustine, shaped by his religious understanding of good and evil, humans fallen nature and the necessity of divine justice argues that while peace is the ultimate goal of human existence, war might be a necessary tool for restoring peace and justice in a 'fallen world'. His idea of a human society as conceived by God, is one where perfect peace and harmony exists amongst all. However, the instantiation of such notion on earth is plagued with conflict and violence and war therefore is perceived as a consequence of human sin. For Augustine, the need for social order necessitates committing certain acts that might otherwise be deemed 'evil' from a Christian perspective but depending on the disposition of one's heart and circumstance might be morally obligatory. He therefore articulates that war is morally justified only when it serves as the last resort to address an injustice that has not been rectified by its perpetrator. He further proposes that only legitimate authorities, acting under God's guidance, could wage war for a just cause—primarily self-defence or punishment of wrongdoing.

### Medieval Thought: St. Thomas Aquinas

Developing on St. Augustine's synthesis, St. Thomas Aquinas, believed 'human reason' as being the sole arbiter between right and wrong moral choices and by extension just and unjust human laws. In pursuing the justification of warfare, he first enunciates that that war in itself is evil and further condemns such act by saying that "war is threatened by Our Lord with punishment according to Matt26:52 'all that take the sword shall perish with the sword'" (Aquinas qtd. In Reichberg et al., 169). Although Aquinas takes the stance of a pacifist who perceives war as an act of evil and ought to be eradicated, Contrary to the tradition of pacifist that condemned war in its entirety, Saint Thomas Aquinas does not forbid war exclusively. He uses Augustine's sermon on the son of centurion to buttress that war is not totally bad in itself as thus: "If the Christian

Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counselled to cast aside their arms, and to give up soldiering altogether... True peace is the work of justice, insofar as justice removes the obstacle to peace”(Aquinas, qtd. in Reichberg et al. 171). Like his predecessor, St. Augustine, Aquinas opined that war was never an end in itself but a means to achieve a greater good: ‘peace’. He believed that peace was not merely the absence of war but the presence of justice, order, and harmony. Thus, a just war must always aim to restore peace and rectify injustices. His moral analysis on war follows Augustine’s in his stipulation that wars may not be undertaken without the right intentions such as; the advancement of good, security, peace, etc. and identifies three fundamental moral criteria —Legitimate authority, just cause and right intension— for going to war, thus laying the foundation of the ‘Just war theory’. Aquinas comments focus mainly on the legitimacy to resort to armed force termed ‘*jus ad bellum*’ and the question of how soldiers should conduct themselves in war ‘*jus in bello*’, thus finding the first two arms of the Just war theory.

In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged... Secondly, a just cause is required, namely, that those who are attacked should be attacked because they deserve it on account of some fault... Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good or the avoidance of evil. (Aquinas, qtd. in Reichberg et al. 177).

---

It can be argued that although Aquinas did not explicitly develop the concept of post-war justice, his ethical reasoning implies that victorious parties have a moral obligation to establish a just peace, avoiding excessive retribution or oppression.

<sup>7</sup>Aquinas utilizes Augustine's arguments to support the notion that war can be morally permissible under certain conditions. In his *Summa Theologica*, specifically in the *Secunda Secundae Partis*, Question 40, Article 1, he addresses the morality of war by referencing a sermon by St. Augustine (Letter 138, also known as *Epistola ad Marcellinum*), where Augustine contends that Christianity does not categorically prohibit military service. <https://www.newadvent.org/summa/3040.htm>

### 1.3 Secularizing the Just War Tradition

While the Just War tradition finds its early development in the religious and metaphysical teachings of Christian theologians like St. Augustine and St. Thomas Aquinas, Hugo Grotius (1583–1645) represents a pivotal shift toward a secular understanding of war ethics. Grotius emerged during a time of intense religious conflict in Europe, including the Thirty Years' War, which exposed the limitations of a purely theological approach to warfare. In response, Grotius sought to ground the principles of Just War not in divine revelation but in natural law and rational human reasoning. By appealing to the shared moral sensibilities of all people—regardless of religious affiliation—he laid the foundation for a system of international law that transcended sectarian boundaries. Grotius maintained that the three main types of law—the law of nature, the law of nations (or international law), and divine law—are not only compatible with each other but may also sometimes necessitate war. He therefore argued that all parties involved in a conflict are subject to moral obligations, and that, in certain circumstances, war can be justified.

While it was commonly believed that natural laws applied only to Christians and not to non-Christians, as the principles governing these rules were often of a religious nature —. Given that natural laws form the basis for morality, then since they do not cover non-Christians, it follows that Christians were under no obligations to treat non-Christians morally— Grotius (like many others) strongly disagreed with such arguments. For him, natural laws apply to all rational and social beings as such. It doesn't matter what they think or believe; if they are rational and social, they are bound by the law of nature.

He who wills the attainment of a given end, wills also the things that are necessary to that end. God wills that we should protect ourselves, retain our hold on the necessities of life, obtain that which is our due, punish transgressors, and at the same time defend the state...

But these divine objectives sometimes constitute causes for undertaking and carrying on war... Thus, it is God's Will that certain wars should be waged... Yet no one will deny that whatsoever God will, is just. Therefore, some wars are just. (*DIP* Chap. Three)

While Grotius retained many of the structural elements of the Christian Just War tradition—including the requirements of just cause, right intention, and proportionality—he reframed them in terms of legal obligation and mutual human rights rather than divine will. He recognizes that national perspectives can never be completely objective and to address matters of objectivity, he attempts to free morality from the constraints of pious authority by emphasizing on natural laws that are binding to all people at all times. While he condemns and aims to prevent war; in situations where preventive efforts fail, Grotius aims to reduce the brutality of conflict by outlining a detailed set of criteria for nations to evaluate circumstances that might necessitate the use of force. These criteria form the basis of his concepts of *jus ad bellum* and *jus in bello*, which must be met for a war to be formally considered just. Grotius *jus ad bellum* criteria determine whether a war is morally permissible based on the following key principles:

JAB 1. Just cause. The principle of just cause asserts that a state is permitted resort to armed force against another state, in the interest of vindicating universal principles of international peace, including human rights and the principles of political sovereignty and territorial integrity.

JAB 2. Right intention. Possessing the primary motivation for going to war is insufficient, as a state must have the intention of going to war solely for the purpose of a just cause and its underlying motivation must also be ethically sound and directed towards safeguarding the said just cause.

---

<sup>8</sup>See translation of Grotius's seminal work *De Jure Belli ac Pacis* (On the Law of War and Peace), published in 1625, [https://constitutioncenter.org/the-constitution/historic-document-library/detail/hugo-grotiusde-jure-belli-ac-pacis-on-the-law-of-war-and-peace-1625?utm\\_DIB=II.20.44](https://constitutioncenter.org/the-constitution/historic-document-library/detail/hugo-grotiusde-jure-belli-ac-pacis-on-the-law-of-war-and-peace-1625?utm_DIB=II.20.44). <sup>9</sup>JAB and JIB principles sourced from Brian Oren: "*Jus Post Bellum*." *Journal of Social Philosophy* (2000): <https://doi-org.proxy.bib.uottawa.ca/10.1111/0047-2786.00034pp>. 120-121.

JAB 3. Proper authority, public declaration, and domestic human rights protection during war. War must be declared by the legitimate political authority and in right public manner within the state in question. Commitment must also be made towards maintaining domestic human rights in the midst of war.

JAB 4. No precipitate use of force. States should not resort to military force hastily without careful deliberation. Engaging in armed conflict must be a last resort after all other means of peaceful deliberations — such as diplomacy, negotiations and mediations — have been exhausted.

JAB 5. Probability of success. A state may not initiate war if it can reasonably predict that such actions will have no meaningful impact on the present circumstance. This particular criteria seeks to proactively prevent unproductive violence/aggression, casualties, suffering and destruction.

JAB 6. Proportionality: The anticipated benefits of the war must outweigh the expected harms and destruction it will cause.

Grotius principles of *jus in bello* advocates restrictions and lawful conduct of war on who be lawfully attacked, means of attack adopted in war and treatment of prisoners.

JIB 1. Discrimination and noncombatant immunity. Combatants must always directly target legitimate military-industrial sites that are the source of the armed threat and discriminate between the military targets and the civilian population within an enemy state.

JIB 2. Proportionality. When a state is at war, it's important to weigh the likely pros and cons of each major military tactic employed by its opponent. A state may therefore employ or execute a proposed tactic only if the benefit is reasonably proportional to the risk posed.

JIB 3. No intrinsically heinous means. prohibits the use of weapons, tactics, or methods of warfare that are inherently evil or inhumane, regardless of the military advantage they might provide.

Classical Just War Theory remains a crucial framework for assessing the morality of warfare, offering a sophisticated and thorough approach to the ethical dilemmas associated with conflict. This theory distinguishes between *jus ad bellum*, which refers to the justifications for initiating war, and *jus in bello*, which focuses on the ethical conduct during wartime. These principles continue to inform contemporary debates surrounding military interventions, humanitarian efforts, and the broader ethics of warfare in the complex landscape of the 21st century.

#### 1.4. Contemporary Just War Theory

##### The emergence of the concept of *Jus Post Bellum*

The concept of post-war justice as a critical dimension of the just war theory underscores on the restoration of peace and attainment of justice after the cessation of hostilities. Although a more recent and formal articulation of the just war theory, the philosophical and legal roots of *jus post bellum* can be traced through centuries of ethical thought and significantly embedded within the first two theories of the just war theory. In classic just war theory, medieval canon law and doctrinal writings progressively acknowledged the importance of peace treaties and the ethical treatment of the vanquished. For example, although St. Augustine did not elaborate on post-war justice in a structured way, his emphasis on peace as the ultimate goal of war and the need for charity toward the defeated, offered a moral foundation for later *jus post bellum* thinking. Likewise, St. Aquinas in his *Summa Theologica* while he may not have provided a detailed post-war ethic, outlined

essential conditions for a just war with critical emphasis on ‘right intention’ implicitly signifying that the goal of any warfare should be the establishment of a just peace. This implies that for a war to hold moral legitimacy, its conclusion must pave the way for the restoration of justice and order, rather than descending into vengeance or domination. By shifting the conversation of morality in war from a theological perspective to a legal grounding, Grotius made the idea of post-war justice universally applicable by arguing that the end of war should not be arbitrary or vindictive but governed by reason and shared moral duties of humanity.

The horrors of the two World Wars and the subsequent global efforts to prevent future conflicts led to more explicit discussions about *jus post bellum*. The Treaty of Versailles, signed in 1919 to conclude World War I, is frequently cited as an example of unjust post-war conditions, as it contributed to the rise of Nazism and the eventual outbreak of World War II, highlighting the necessity for a fair and stable post-war order. In the post-World War II era, the principles of *jus post bellum* began to take shape. The Nuremberg Trials, held from 1945 to 1946, represented a crucial moment in post-war justice by holding individuals accountable for war crimes and crimes against humanity (Lambourne, 1268:8)

The establishment of the United Nations and the development of international human rights law further institutionalized norms that align with *jus post bellum*. The Hague Peace Conferences of 1899 and 1907, along with the creation of the League of Nations after World War I, marked a shift towards viewing armed conflict as an activity states should only engage in for self-defence. This shift also influenced the evolution of *jus post bellum*. However, in recent years, the challenges that the United States and its allies have faced in concluding conflicts in Iraq and Afghanistan, as well as the rise of transitional justice and peacebuilding efforts in various regions, have rekindled interest in *jus post bellum*. Scholars like Michael Walzer and Brian Orend proposed that *jus post*

*bellum* be recognized as a third category within just war theory, alongside *jus ad bellum* (the morality of going to war) and *jus in bello* (the morality of conduct during war). The inclusion of *jus post bellum* not only completes the moral framework of war ethics but also provides practical guidance for establishing a just and lasting peace in the aftermath of conflict, especially in an era characterized by complex international disputes and prolonged warfare.

Michael Walzer

Theoretical justifications for waging war have been brought into discussion ever since Antiquity, and the discussion of the just war theory preoccupies on one hand—the justification for waging war, and, on the other —the moral behavior of combatants in warfare, and more recently — questions of accountability and justice post war. In contemporary discourses on conflict, a distinction is seemingly made between *jus ad bellum*, *jus in bello* and the introduction of a more recent factor for post war considerations — *jus post bellum*. Unlike its classical or historical counterpart, Contemporary just war theory embraces a normative approach in analysing the justification for war beyond biblical teaching. Contemporary just war theory arguably starts from Michael Walzer's seminal book, *Just and Unjust Wars* In 1977 where he revitalized the discourse on warfare, questioning the rights of states and individuals: "War is always judged twice, first with reference to the reasons states have for fighting, and second with reference to the means they adopt" (Walzer, 21).

Walzer's dual evaluation supports the concept of Just War theory, specifically distinguishing between its two key aspects: *jus ad bellum* and *jus in bello*. While *jus ad bellum* refers to the legality of starting a war, considering justifications for engaging in conflict—such as just cause, proportionality, and right intention,— *jus in bello* pertains to the legality of how the

war is conducted, ensuring compliance with principles like discrimination (the ability to distinguish between combatants and non-combatants) and proportionality in the use of force. Walzer provides an example illustrating that a just war can be fought unjustly, while unjust wars can be fought justly. For instance, a German soldier in World War II may have legally participated in combat and, therefore, could receive immunity for killing allied soldiers, despite the fact that Nazi Germany initiated the war through illegal aggression. Conversely, Walzer argued that even if a nation is engaged in a just war—such as the U.S. defending NATO against a Soviet invasion—it could still violate international law, for example, by deploying nuclear weapons against civilian populations, except in a case of supreme emergency where a state may be justified in violating the usual moral and legal constraints of war—particularly the principles of *jus in bello*—*in order to prevent a greater catastrophe*.

Walzer argues that in its traditional form the just war theory was radically incomplete because it failed to account for the complexities of modern warfare, particularly the moral dilemmas that arise in irregular conflicts, humanitarian interventions, and post-war responsibilities. Traditional Just War Theory—primarily focused on *jus ad bellum* (justice in going to war) and *jus in bello* (justice in the conduct of war)—fails to fully address certain key moral and political questions, making it insufficient as a comprehensive framework. He contends that “if there are recognizable war crimes, there are recognizable criminals... the law must provide some recourse when our deepest morals are savagely attacked” (p. 287 – 288).

Walzer’s account of the morality of war introduces a third consideration in the discourse of war and conflict. “Individual moral rights are the foundation in which moral rights are recognized and embedded — referred to as ‘our ordinary morality— and claims that the ‘war conventions represent the adaptation of this morality to the circumstances of war” (45). In Walzer’s

view, individuals in war retain their right to life and liberty but lose it when they choose to bear arms in war; killing in war becomes legitimate against combatants, therefore, but not civilians who do not choose to fight. Nations too have rights, that of territorial integrity and political independence, and can legally and morally defend themselves against aggression by others. Walzer's debate on a post war argument of justice fully engages with modern conflicts, unconventional warfare, moral dilemmas and the responsibilities of victors after war.

Brian Orend

Orend defines just war theory as “a coherent set of concepts and values designed to enable systematic and principled moral judgement in war time... such concepts and values are poised to minimising unjust suffering in war, especially for (innocent) civilians, right from the start of the war (*ad bellum*), during the war (*in bello*), and after the war (*post bellum*)” (p. 37). His definition sees *jus post bellum* as a natural corollary of *jus ad bellum* and *jus in bello*. He argues:

It seems, then, that just war theorists must consider the justice not only of the resort to war in the first place, and not only of the conduct within war, once it has begun, but also of the termination phase of the war, in terms of the cessation of hostilities and the move back from war to peace. It seems, in short, that we also need to detail a set of just war norms or rules for what we might call *jus post bellum*: justice after war. (37)

In reinforcing his Kantian perspective on the just war tradition, Orend views the sum total of international laws on armed conflict — like the Hague and Geneva convention — on the termination of warfare as grossly imbalanced and further senses an acute problem in legal, prudential and moral domains respectively. He therefore addresses the need for a third category within the just war theory that accounts for internationally recognised protective laws, governing

the just termination of war, peace and reconciliation agreements, as well as the prosecution of war criminals, and publicly labelled terrorists.

Where members of the just war tradition have always contented themselves with the stock and time-honoured distinction between the justice of war and the justice in war, Kant cogently insists that a complete theory in this regard must also consider justice after war... thus a complete just war theory must consider the topic of what constitutes justice towards the end, and after war” (Orend, 217).

The introduction of *jus post bellum* as a third criteria/principle of the just war theory concerns justice after a war, including peace treaties, reconstruction, environmental remediation, war crimes trials, and war reparations. Vanaprastha defines *jus post bellum* as “the set of norms applicable at the end of an armed conflict—whether internal or international—with a view to establishing a sustainable peace”(144). In her view, the call for the review of the old concept of a ‘just war’ appears to be happening partially due to “the increase of interventions and the growing impact of international law on post-conflict peace, as well as the recognition among scholars that a gap in the international legal framework governing the post-conflict phase exists, especially relative to the more developed frameworks of *jus ad bellum* and *jus in bello*” (146). The nature and conceptualization of a contemporary *jus post bellum* in her opinion is founded on the central aspiration of ‘sustainable peace’ after conflict.

#### 1.5. *Jus Post Bellum* as an interpretive framework

Orend defines *jus post bellum* as a natural corollary of *jus ad bellum* and *jus in bello* by stating: the norms of both *jus ad bellum* and *jus in bello* are required for a comprehensive consideration of both the ends and means of warfare. Both sets of norms must be satisfied before

we can conclude that a state has truly prosecuted a just war... It stands to reason that just as we can imagine a war justly begun being fought unjustly, so too we can imagine a war justly begun, and justly fought but ending with a set of unjust settlement terms...It seems, then, that just war theorists must consider the justice not only of the resort to war in the first place, and not only of the conduct within war, once it has begun, but also of the termination phase of the war, in terms of the cessation of hostilities and the move back from war to peace. It seems, in short, that we also need to detail a set of just war norms or rules for what we might call *jus post bellum*: justice after war (118).

Another definition according to Williams Jr. states that:

*Jus post bellum*—justice after war—is a set of principles to guide those making the transition from war to peace. Just as *jus ad bellum* principles exist to guide policymakers in the period before a war begins—posing questions about the ethics of resorting to war—and *jus in bello* principles exist to guide combatants in the conduct of war, so *jus post bellum* principles exist to offer moral guidance in the aftermath of war... If it is to be useful over the long term and consistent with the other parts of the Just War tradition, *jus post bellum* must offer principles akin to the last resort principle of *jus ad bellum* or the proportionality principle of *jus in bello*. (170 -171)

While Orend's definition encompasses the requirements and ethical considerations necessary following the cessation of armed conflict, aiming to ensure a just and enduring peace, William Jr. expresses that rather than a list of rules and regulations there is the need for moral principles guiding *jus post bellum* to be weighed against other moral principles of just war theory, in developing strategic considerations for post war peace. Both Orend and William Jr.'s perspective

can be examined through two distinct lenses: the first focuses on structured and prescriptive frameworks that outline specific actions deemed appropriate and lawful in post-war scenarios, the second considers the moral obligations and ethical imperatives that arise independently of legal stipulations.

Philosophers often strive to uncover the fundamental moral principles that underpin "legal" *jus post bellum*, exploring how these principles correlate with the ideals of justice. However, there is a counter-argument posited by some thinkers who challenge the necessity of invoking moral concepts, stating that moral principles are nonexistent and might further argue that moral judgments relevant to post-war scenarios are either too ambiguous or too contentious to define with any authority. Rather than viewing *jus post bellum* as a set of rules that dictate certain outcome, Gallen proposes that *jus post bellum* may be employed as an interpretive framework; a concept that advocates for the employment of *jus post bellum* in assessing the actions and political decisions of transitional actors to evaluate how they contribute to the restoration of public trust and the rule of law. He argues that:

the task of *jus post bellum* as integrity is to offer a description of the existing international law, policy, and theory as applied to given transition and seek to justify this practice by reference to its value goals in a unified or coherent fashion... Taking this dynamic approach to *jus post bellum*, would promote coherent post-conflict responses and emphasize the mutually supporting relationship between different frameworks that apply in post conflict settings, such as Transitional Justice, peacebuilding, security sector reform, and development (Gallan, 59-85).

The history of humanity has experienced the coexistence of war and peace, which raised both arguments on the justness of war, and the just conducts adopted by the belligerents during combat. Ethical considerations of war do not end with the cessation of hostilities, as aftermath of war often involves humanitarian crises, political instability, and economic devastation. In rethinking the post effect of conflict, Teitel articulates the notion that:

Wars being waged within a highly developed set of constraints under human rights and international humanitarian law, as well as expectations of democratization, calls for an extraordinarily high demand for post bellum justice. By contrast, the inherited notion of *jus post bellum* tends to view conflict as the interruption of a putatively just or stable status quo ante, which is to be restored to the fullest extent possible. Given the nature of modern warfare and the evident shift to wars of liberal intervention, the contemporary understanding is no longer limited to restorative ex post justice, but must also include forward-looking aims, and for this purpose the discourse of transitional justice is better suited (336 -337).

As an interpretative framework, *jus post bellum* can serve as a guideline towards achieving sustainable peace, for nations emerging from armed conflict, by providing a lens through which the moral legitimacy of diverse legal and political practices and actors in transitions can be identified and evaluated. With the conception of a dynamic — rather than static— *jus post bellum*, Gallan considers the potential for its principles “to operate as an interpretive framework for international law through the various dimensions of complexity that arise in transitions” ( 59). In his opinion, *jus post bellum*, if employed, could serve as a primary framework over and balancing areas of international law and policy applicable to the termination of conflict and gross human rights violations. It underscores the necessity of planning for post-war reconstruction and

governance, as seen in recent conflicts in Iraq and Afghanistan (to be discussed in later chapter), where the failure to establish stable post-war conditions led to prolonged violence and instability.

### Principles Of *Jus Post Bellum*

*“A just state, seeking to successfully terminate its just war, ought to be guided by all of the following principles of justice” (Orend, 128).*

JPB 1. Just cause for termination. A state has just cause to seek termination of the just war in question if there has been a reasonable vindication of those rights whose violation grounded the resort to war in the first place. Not only have most, if not all, unjust gains from aggression been eliminated and the objects of Victim’s rights been reasonably restored, but Aggressor is now willing to accept terms of surrender that include not only the cessation of hostilities and its renouncing the gains of its aggression but also its submission to reasonable principles of punishment, including compensation, *jus ad bellum* and *jus in bello* war crimes trials, and perhaps rehabilitation.

JPB 2. Right intention. A state must intend to carry out the process of war termination only in terms of those principles contained in the other *jus post bellum* rules. Revenge is strictly ruled out as an animating force. Further-more, the just state in question must commit itself to symmetry and equal application regarding the investigation and prosecution of any *jus in bello* war crimes.

JPB 3. Public declaration and legitimate authority. The terms of the peace must be publicly proclaimed by a legitimate authority.

JPB 4. Discrimination. In setting the terms of the peace, the just and victorious state is to differentiate between the political and military leaders, soldiers, and the civilian population within aggressor territory. Undue and unfair hardship is not to be brought upon the civilian population in

particular: punitive measures are to be focused upon those elites most responsible for the aggression.

JPB 5. Proportionality. Any terms of peace must be proportional to the end of reasonable rights vindication. Absolutist crusades against, and/or draconian punishments for, aggression are especially to be avoided. The people of the defeated Aggressor never forfeit their human rights, and so are entitled not to be “blotted out” from the community of nations

## 1.6 Conclusion

While the foundations of *jus post bellum* may be traced back to classical just war theory, its proponents had a fundamentally different understanding of battle that does not apply to the realities of modern combat. Early public international lawyers like Hugo Grotius and Alberico Gentili saw war as a conflict between two equal governments. But modern wars don't fit neatly into this traditional idea of warfare, or into the traditional just war theory or even more modern international laws of war frameworks. Contemporary considerations on war ethics reflects a growing understanding of war's aftermath and further emphasising the importance of ethical considerations beyond battle. By broadening the classic just war theory principles—*jus ad bellum* and *jus in bello*—*jus post bellum* emphasizes on the ethical, legal, and political components of postwar justice and reconstruction, in the transition from warfare to peace. “Ending a just war means rolling back aggression and restoring the victim's rights as a political community. It also means punishing the aggressor and deterring future aggression, especially towards the aggressor, but also other would-be aggressors” (Orend, 39).

Contemporary concept of *jus post bellum* emerged as a necessary addition to just war theory, in addressing the responsibilities of both victors and vanquished in securing a just and lasting peace. 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 now a more intricate focus on what happens after war has been fought and the steps necessary towards justice, restoration, reconstruction and peace building. The justness of the after-war scenario is crucial to the justness of a 'just war'. Therefore, 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.

Despite its significance, the theory is not without its shortcomings. Critics argue that, while it provides a moral compass, it may not fully address the harsh realities of modern conflict. Pacifists maintain that war is fundamentally immoral and cannot be justified under any circumstances, positing that real and lasting peace can only be achieved through nonviolent means. Conversely, realists assert that Just War Theory is excessively idealistic, failing to adequately consider the anarchic nature of international relations, where power dynamics often overshadow ethical considerations.

Immanuel Kant, a prominent critic of Just War Theory, challenges it through his teachings on moral philosophy and perpetual peace. He argues that traditional Just War Theory fails to address the root causes of conflict among states and instead reinforces the notion that war is a necessary evil and an inevitable part of human affairs. His critique stems from his deontological principles, which emphasizes on duty, universal moral laws, and the inherent value of every individual. In his work, *Groundwork of the Metaphysics of Morals* (Perpetual Peace, 1785), he argues that moral actions must be guided by the categorical imperative—acting only on principles that can be universally applied. As a result, he considers war fundamentally flawed because it tends to treat people as tools for achieving objectives, rather than respecting them as ends in themselves. Kant contends that the notion of a "just cause" for war is frequently manipulated by states to justify

their own interests. In his view, wars are typically fought for motives such as power, territory, or economic gain, rather than for genuinely moral purposes. Even when a war is framed as defensive or humanitarian, Kant is skeptical of the motives behind it. He writes:

War is only a regrettable expedient for asserting one's right by force within a state of nature where no court of justice is available to judge with legal authority... A war of punishment (bellum punitivum) between states is inconceivable since there can be no relationship of superior to inferior among them. It thus follows a war on extermination, in which both parties and rights itself might be simultaneously annihilated and would allow perpetual peace only on the vast graveyard of the human race (Kant, qtd. in Reichberg et al. 522)

Kant observed that when every party firmly believes in its own righteousness, it casts serious doubt on the idea that states or their leaders can objectively assess the moral legitimacy of a war. This built-in bias among the conflicting sides not only complicates but may even completely nullify the ability to fairly judge the ethical merits and faults of a conflict. As a result, Kant critiques the validity of *jus ad bellum* criteria, such as "just cause" and "right intention," which are often based on deeply subjective judgments rather than universal truths, further raising skeptic yet significant questions about the ethical foundations of warfare and the criteria we use to justify military action.

## Chapter 2

### Legal And Ethical Challenges in the Application of *Jus Post Bellum* in Asymmetric and Protracted Conflicts.

#### 2.0 Introduction

In the previous chapter, we explored the theoretical foundations of just war theory and its guiding principles. This included an analysis of just war in antiquity and medieval thought, beginning with the teachings of Cicero and transitioning into a metaphysical perspective through the writings of St. Augustine and St. Aquinas. We then examined Hugo Grotius's more secular and legalistic approach. The works of Michael Walzer and Brian Orend contributed to contemporary thinking about just war traditions, with a focus on the principles of *jus ad bellum*, *jus in bello*, and *jus post bellum*.

Given that this study focuses on modern post-war justice in the context of contemporary asymmetric warfare, this chapter examines the legal and ethical challenges associated with applying *jus post bellum* in asymmetric and prolonged conflicts. It begins by exploring the perspectives of Hugo Grotius and Brian Orend on Natural Law, which provide ethical criteria for evaluating just war principles in international law. Grotius —considered the father of modern international law— was one of the first thinkers to develop a systematic theory of just war that combines natural law and legal positivism. Through his view on natural law, he outlines moral and legal rules for declaring, fighting, and ending wars, thus laying the groundwork for modern humanitarian law and the concept of *jus post bellum*. Orend however, presents a more contemporary adaptation of Natural Law from a Kantian perspective and adapts it to address modern ethical challenges, such as human rights, asymmetric warfare, and post-conflict reconstruction. He expands *jus post bellum* beyond peace treaties to include norms for justice, rehabilitation, and reconciliation.

In the aftermath of war, peace is not merely the cessation of hostilities, but a moral and political condition characterized by justice, order, and the restoration of rights. Within the just war tradition—especially under *jus post bellum* (justice after war)—peace is conceived as the moral end of war, requiring more than just the silence of arms. Walzer states that peace after war must be a “just peace” (121), which must reflect not only the victory of one side but also the restoration or establishment of a political and moral order that upholds the rights and dignity of individuals. Therefore, since the study discusses the attainment of sustainable peace in the post-war environment, it is essential to define the concept of peace within the context of this research and evaluate the applicability of *jus post bellum* in international law towards achieving such ‘peace’. The chapter concludes with a discussion on the limitations of *jus post bellum* in modern asymmetric warfare, citing examples from recent conflicts.

## 2.1 Legal and Moral Justification in Just War Theory

### 2.1.1 Hugo Grotius

In the law of war and peace, Grotius categorizes all laws into two broad types: natural law and volitional law. He defines natural law as a dictate of "right reason," which indicates that an action, depending on whether it aligns with rational nature, carries a quality of moral baseness or moral necessity. Regarding volitional law, he states that when discussing natural law, the question arises whether an act can be performed without injustice. In this context, injustice can be articulated to as whatsoever that is absolutely repugnant to rational and social nature. Natural law pertains to the interpersonal relationships and the sense of rationality that exists among humans, while volitional law, according to Grotius, is divided into three types: first, domestic relationships (such as those between a father and his children); second, municipal laws; and third, laws of nations. Grotius supports the last two laws as rooted in the principles of natural law by asserting

that it is inherent to human nature to exist within a society. Thus, honoring agreements becomes a fundamental rule of law as such commitment allows individuals to bind themselves to each other in mutual respect and responsibility.

While natural laws serve to obligate, prohibit, or permit actions through the concept of forfeiture, most voluntary laws address situations that fall into a gray area—those that are not strictly obligatory or expressly prohibited by natural law; in other words, they are permissible. These voluntary laws gain their binding nature from the explicit or implicit consent of individuals, forming a pact with others who are also bound by the same legal frameworks. Grotius believed in a universal natural law, which suggests that even in a hypothetical world without God, the principles of justice— including those governing war— would still apply. He argued that these principles are universal, immutable, and rooted in rational nature. Grotius emphasized sociability, or the human tendency to create societies, as the foundation of justice and law. For him, natural law guided the behavior of both individuals and nations; it is not dependent on religion but can be understood through rational and moral reasoning. <sup>1</sup>Christopher states:

The fundamental tenet of Grotius’s conception of natural law is that human beings are social creatures, as civil societies must have existed in the state of nature —even if states did not— because it proceeds from essential traits implanted in man. These traits include the disposition to sympathize with others, a disposition to fulfill promises, the ability to know and act in accordance with general principles, the ability to use language and a proclivity to inflict penalties on individuals in accordance with their just deserts (69).

---

<sup>1</sup>See book chapter by Paul Christopher: *Hugo Grotius: father of international law*. 66-103

Therefore, rather than perceive war as lawless chaos, Grotius treats the subject of warfare as a legal proceeding governed by rules developed from natural law. He bases his argument on the notion that; just as states, individuals also possess rights and duties. War therefore can be justified when it is employed in enforcing certain rights. Furthermore, the legitimacy of such endeavour must be judged objectively not only in the interest of the parties involved, but essentially through moral standards.

### 2.1.2 Brian Orend

While Grotius grounds natural law in human nature, particularly on man's sociability, arguing that natural law consists of principles that can be discovered through reason, and further aligns these principles with the fundamental needs of human beings to live peacefully in society. In contrast, Orend takes a Kantian perspective that defines natural law not based on human nature or sociability, but on pure reason and moral autonomy. According to Orend, natural law is a component of moral law, derived from the categorical imperative —a principle stating that one should act only according to maxims that can be adopted as universal laws. Moral laws are deemed valid not because of human nature or their consequences, but because of the rational will that freely guides them. Orend contends that the legitimacy of law is derived from its grounding in essential moral values such as respect for human rights, justice, and the promotion of the common good. In discussions of international justice in general, he maintains that:

<sup>2</sup>Human rights are the highest priority goal of a contemporary Kantian perspective... In a case of morality versus law, he further opines that while individual persons and their rights are the most important normative focus of contemporary Kantian internationalism, the main actors on the international stage are the states... the states therefore have rights only

because human beings have rights and are entitled to rights in the international arena because their citizens are entitled to the objects of their rights (109-111).

Orend posits that although international law has established comprehensive legal codes—exemplified by the Geneva Conventions—it frequently falls short in terms of moral rigor, particularly when it comes to clearly distinguishing between just and unjust causes for war. He emphasizes that legal authorization alone does not equate to moral justification for war as prescribed in *jus ad bellum* principles; <sup>3</sup>for example, “a war may receive legal approval from international bodies like the United Nations but still lack ethical legitimacy if it does not satisfy critical moral criteria, such as having a just cause, proportionality in response, and right intention” (33). Conversely, Orend further illustrates that a war may be morally justified—such as in cases of humanitarian intervention—even if it lacks formal legal authorization. He succinctly encapsulates this idea by stating, “The law is a necessary but insufficient guide to the morality of war,” thereby underscoring the importance of an independent moral assessment that must accompany any legal analysis (37).

Orend insists that international law should not only be appraised based on its consistency and enforceability but also evaluated in light of its adherence to fundamental moral principles. He advocates for the creation and enhancement of international institutions and laws that reflect this moral foundation, which includes UN conventions and international criminal tribunals aimed at holding both state and non-state actors accountable for unjust practices in warfare. Orend, envisions *jus post bellum* not merely as a moral afterthought to war but as a structured legal and ethical framework that shapes the transition from war to peace.

---

<sup>2</sup>See Brian Orend, 2000, War and International Justice: A Kantian Perspective, 109-111

<sup>3</sup> —2006, The Morality of War, 27-37.

Driven by a commitment to connecting law and ethics, Orend's concept of justice in the aftermath of war presents a practical tool for attaining moral goals, such as human dignity, justice, and peace. Drawing from classical just war theory and modern international law, he asserts that the victorious parties in a conflict have both a moral and legal obligation to ensure that peace goes beyond simply ending hostilities; it must involve the establishment of a just political order. This responsibility includes protecting basic rights, reconstructing political institutions, and ensuring proportional accountability for war crimes. He emphasizes that for *jus post bellum* principles to be effective in practice, they must be integrated into international legal systems, such as the Geneva Conventions or the United Nations Charter as this legal framework provides moral principles with institutional legitimacy and enforceability, especially when faced with political complexities and competing national interests.

## 2.2 The Concept of Peace in *Jus Post Bellum*

While finding its roots in traditional Just war principles —*jus ad bellum* and *jus in bello*— *jus post bellum* as a legal framework for post war justice aims at actualizing the ultimate goal of a just war, i.e. the restoration or reestablishment of peace. In the wake of modern discussions on interventions, peacebuilding missions, and post-conflict transitions, it can be argued that *jus post bellum* has a particular function in international law, to organize the application of law and principles in order to successfully guide the transition from armed conflict to a just and sustainable (or “positive”) peace —More specifically, the peace established after the war must be preferable to the peace that would have prevailed if the war had not been fought.

When considering the end of warfare, a key question arises: what does ‘peace’ truly mean in post-war conditions? Classical thinkers like St. Augustine and Thomas Aquinas believed that the ultimate goal of a just war was the restoration of peace and order. This type of peace was often

understood as a return to previous political arrangements, aligning with the ideal of *status quo ante bellum*, which refers to the condition that existed before the war. For instance, Aquinas argued that “a war is just if it is waged with the right intention, aiming for a “just peace” characterized by the reestablishment of order and the punishment of wrongdoing (Summa Theologica, II-II, Q. 40). Classical theorists did not focus on post-war reforms or the transformation of unjust regimes; their framework primarily focused on retributive justice and restoring balance. The concept of peace they advocated—*tranquillitas ordinis*, or tranquility of order—implied a return to stability that had been disrupted by conflict.

Conversely, modern just war theorists such as Michael Walzer and Brian Orend challenge the notion that returning to the *status quo ante bellum* is always just or adequate. Walzer, for instance, argues that if the conditions that existed before the war were unjust—such as colonial occupation or tyrannical regimes—then restoring those conditions would merely perpetuate injustice.

The object of war is a better state of peace, and better within the confines of the argument of justice, means more secure than the *status quo ante bellum*, less vulnerable to territorial expansion, safer for ordinary men and women and for their domestic self-determinations... (Walzer, 122).

Orend corroborates with Walzer’s statement by saying that:

It is often contended, that the just goal of a just war is the proverbial *status quo ante bellum*:

---

<sup>4</sup>The [Stanford Encyclopedia of Philosophy](https://plato.stanford.edu/entries/pacifism/#PosiPeac) defines “positive Peace” as going beyond merely dialectical definitions of peace as the opposite of war and instead focus on peace as a state of rest, wholeness, or completion. The peace of a just and tranquil order points toward something like a condition of wholeness in which there is solidarity, mutual respect, and satisfaction of needs. In this vision of peace there is genuine community and human flourishing. See <https://plato.stanford.edu/entries/pacifism/#PosiPeac>

<sup>5</sup>The positive ideal of peace can be found in religious conceptions of peace. Hauerwas explains that some Christian pacifists claim that the concept of shalom (Hebrew for “peace”) is focused on positive peace: it is more than the absence of war; rather, it is “harmony, health, and well-being in all human relations. Hauerwas, Stanley, 2006. “Pacifism: Some Philosophical Considerations”, in Larry May *et al.* (eds.), *The Morality of War: Classical and Contemporary Readings* 155.

where the victorious regime ought to simply reestablish previously existing ground rules and/or state of affairs... However, one might add that given the sheer destructiveness of war... any such literal restoration is empirically impossible. Perhaps it might then be contended by way of improvement, that the just goal of a just war, once won, is a more secure and more just state of affairs than existed prior to the war (224)

In discussing the morality of war, Orend argues that the purpose of *jus post bellum* is not merely to revert to a pre-war condition but to establish a minimally just political order that addresses the underlying causes of the conflict and fosters lasting peace. His argument advocates for a more transformative approach, suggesting that the end of war should lead to the correction of injustices and the creation of a just and stable order. He emphasizes on rectificatory justice, placing a greater focus on human rights, reconciliation, and institutional reform, especially in post-colonial and humanitarian contexts. He insists that a war waged for the protection of rights should conclude with a peace that secures those very rights.

### 2.3 *Jus Post Bellum* in International Law

To achieve a sustainable and enduring peace, it is crucial to establish a harmonious balance between transitional justice and social order. The efficacy and relevance of this concept largely hinges on its interpretation and application within the domain of just war theory. The debate of *jus post bellum* in relation to legal international law engages with several significant issues that are vital for post-conflict resolution:

1. Establishing Terms for Ending War: Once the rights of a political community have been affirmed and upheld, the continuation of hostilities is considered an unjust act of aggression rather than a legitimate means of resolving disputes.

2. Guidelines for Crafting Peace Treaties: Clear frameworks are necessary to ensure that peace treaties are just, equitable, and conducive to long-term stability, thus preventing future conflicts.

3. Framework for Political Reconstruction: As defeated states attempt to rebuild, it is essential to provide comprehensive guidelines that facilitate political reconstruction, ensuring that new governing structures are inclusive and representative of all segments of society.

4. Preventing Harsh and Vengeful Peace Terms: The principles that a just state defends during warfare impose ethical constraints on what is permissible to demand from a defeated enemy. This approach discourages punitive measures that could sow the seeds of resentment and conflict.

Recognizing the vital importance of the post-conflict transition phase in establishing a stable foundation for enduring peace, the *jus post bellum* framework is designed to address the root causes of conflict while reducing the likelihood of a return to violence. Although there are existing international laws that govern the post-conflict landscape—mainly outlined in the 1907 Hague Regulations and the Fourth Geneva Convention of 1949—these legal instruments are often perceived as disjointed, overly narrow in their focus, and not reflective of contemporary realities. As Orend puts it:

...there is a gross imbalance in the international laws of armed conflict and it is war termination that gets the short end of the stick... one of the most shocking and unfortunate facts about international law is that, in the century since ratification of Hague IV, no other rules regarding war termination have been codified into laws of armed conflict...the lack of law—or its datedness—on war termination further means that not only are there no standards of aspiration, there are not even minimal standards of conduct. This vacuum can

only encourage extremism and arbitrariness on the part of the victor during settlement process and evasiveness, resentment and plans for future revenge on the part of the vanquished” (219-221).

Historically, Orend’s concerns are well illustrated by the Treaty of Versailles (1919), which ended World War I. Rather than establishing a just peace, the treaty imposed crushing reparations on Germany, disbanded its military, and fostered deep political humiliation. These conditions contributed to the resentment and economic despair that fueled the rise of Adolf Hitler and ultimately led to World War II. Orend would classify this as a textbook example of a war termination process lacking moral and legal guidance, resulting in extremism and renewed violence. In more recent history, the 2003 U.S.-led invasion of Iraq also highlights the dangers of an inadequate post-war framework. While the war may have initially been justified on claims of self-defence and humanitarian intervention, the post-war occupation was characterized by disbanded institutions, lawlessness, and widespread violence. This situation culminated in a brutal insurgency and the rise of ISIS. Bass observes that “the U.S. had no real plan for peace, only for war, leading to an unstable and violent aftermath...” (344). Orend’s critique applies here as well, as the absence of legally codified post-conflict obligations allowed for arbitrary decisions by occupying powers, ultimately damaging prospects for peace.

Orend argues that while ending a war is crucial for determining future peace, stability, and justice, it is often neglected by legal frameworks. The mechanisms for negotiating settlements, rebuilding societies, and securing justice are not clearly articulated or enforced within the law. Additionally, there are no enforceable rules to prevent exploitation, collective punishment, or institutional collapse in post-conflict societies. This failure he argues, “encourages plans for future revenge on the part of the vanquished” (221), thereby undermining the core moral aim of just war

theory —the establishment of a just and lasting peace—. Scholars and practitioners envision a comprehensive *jus post bellum* legal framework that unifies and strengthens the currently fragmented approaches in international human rights law, international criminal law, and international humanitarian law. By identifying and filling existing gaps, this framework elucidates how these diverse legal domains should interact, ultimately fostering a more robust and coherent response to the challenges faced during post-conflict reconstruction. In discussing the functionality of *jus post bellum* in international law, Frowe and Bellamy discusses two distinct approaches:

### 2.3.1 Minimalist and Maximalist Approach of *jus post bellum*

As global conflicts grow increasingly intricate and military interventions become more frequent, Frowe’s exploration of *jus post bellum* studies the deficiencies of existing international legal frameworks in addressing the responsibilities that arise after conflicts end. She identifies two primary approaches to post-war justice: the minimalist approach, which promotes a limited legal framework focused on the bare essentials of justice, and the maximalist approach, which demands a comprehensive and morally engaged response to the complexities of post-conflict recovery. Frowe’s comparison of these approaches illuminates the significant shortcomings of legal minimalism and underscores the need for a more ambitious moral framework that could potentially be transformed into a legally binding model of post-war justice, capable of addressing the profound challenges faced by societies emerging from conflict.

The minimalist approach holds that the principal purpose of *jus post bellum* is to prevent excesses by victors through limiting what they are entitled to do. Drawing upon the quasi-judicial concept of the just war evident in the work of jurists such as Grotius and Vattel as well as philosophers such as Kant. Minimalists tend to view just wars in terms of rights vindication and argue that combatants are entitled to wage war only to the point at which

their rights are vindicated... In contrast to minimalism, the maximalist approach to *jus post bellum* begins from the proposition that there is a ‘presumption against war’ in just war thinking and that the victors acquire special responsibilities towards the vanquished that go above and beyond the responsibility not to exact more from the foe than is necessary to restore and secure the rights whose violation necessitated war in the first place. According to the maximalist position, *jus post bellum* places additional burdens on combatants irrespective of the justness of their cause... (Bellamy, 602-612).

The minimalist approach, as noted by Frowe, suggests that the principles of Just War Theory are primarily applied to limit the excesses of the victorious state. It argues that once active hostilities cease, the moral and legal responsibilities of a just victor are largely fulfilled. According to this view, obligations are limited to the immediate cessation of violence, providing basic humanitarian relief, and minimal compliance with international humanitarian law. This perspective aligns closely with existing frameworks of international law, particularly the Geneva Conventions, which outline protections for civilians and humane treatment of prisoners. Frowe however supports a more qualified maximalist stance and argues that ethical obligations extend beyond what international law currently requires. Existing conventions do not mandate political reconstruction or long-term peacebuilding efforts. In contrast, the maximalist approach asserts that victors—especially those engaged in a just war—bear broader responsibilities to ensure a stable, just, and lasting peace. These responsibilities may include rebuilding political institutions, securing human rights, facilitating transitional justice, and preventing a return to violence.

The traditional minimalist approach to a victorious state’s obligations has largely given way to a maximalist view that imposes a fairly demanding set of positive duties upon those who defeat aggression. In particular, many maximalist accounts of *jus post bellum* require

the victor to undertake at least some kind of political reconstruction even in the aftermath of humanitarian intervention. Maximalist also include the obligation to punish both the initial aggression and any subsequent war crimes (Frowe, 227).

On expanding on a maximalist approach of *jus post bellum*, Orend involves three main components: (1) just cause for termination, (2) proportional and rights-respecting peace terms, and (3) legitimate political reconstruction (232). These principles align closely with international legal obligations related to human rights, reparations, and non-aggression. Although *jus post bellum* is not codified in a single legal instrument, its principles are reflected in several areas of international law, particularly:

#### 1. International Humanitarian Law and Geneva Conventions

The Fourth Geneva Convention and Additional Protocols establish protections for civilians and occupied populations, requiring humane treatment, prohibition of collective punishment, and restoration of civil institutions. These norms resonate with *jus post bellum* values, such as restitution and rehabilitation. As Bell notes, "the rules of occupation and humanitarian law constitute an early legal expression of *jus post bellum* ideas, setting out limits on the conduct of the victor in managing the transition to peace" (308).

#### 2. Transitional Justice and International Criminal Law

Post-war justice often involves criminal accountability, truth commissions, and reparations for victims. The Rome Statute of the (ICC) plays a central role in ensuring that war crimes, genocide, and crimes against humanity do not go unpunished. Kersten argues that "justice after conflict must be seen not only as a moral imperative but as a legal responsibility embedded in international norms and institutions" (p. 110).

### 3. Peace Agreements and Customary International Law

Modern peace agreements often incorporate *jus post bellum* standards, including power-sharing arrangements, disarmament protocols, and guarantees of non-recurrence. These practices are increasingly becoming customary norms, particularly in conflict resolution processes overseen by the United Nations. According to Teitel, "the intersection between transitional justice and international law provides a framework for understanding *jus post bellum* as a dynamic, evolving legal concept" (p. 48).

While *jus post bellum* principles have historically been embedded in the framework of international law governing post-war justice—especially in guiding the formulation of peace treaties, reconstruction, and the vindication of rights—the evolving nature the 21st century conflict presents new complications, notably the rise of asymmetric warfare involving non-state actors such as insurgent groups, terrorists, and militias, which challenges the applicability and effectiveness of existing *jus post bellum* norms. Modern conflicts often lack clear endpoints, involve non-traditional combatants, and unfold within fragile or failed states. These factors make it difficult to apply conventional legal tools like ceasefire agreements or nation-to-nation reparations. As a result, there is a need to reconsider how *jus post bellum* can be adapted to reflect the moral and legal complexities of asymmetric warfare. Justice after war may require innovative approaches to reconciliation, reconstruction, and the reintegration of irregular combatants into society.

#### 2.4 Modern Asymmetric Warfare

Modern war is no longer characterized by “uniformed armies on a large plain, with civilians tucked away safely far behind the front-lines.” rather, military operations are now

conducted in the contemporary operational environment, which assumes 360-degree operations against asymmetric opponents who strike at known weaknesses, including a nation's compliance with the law of war (Banks, 1).

The evolution of warfare illustrates humanity's relentless quest to adapt to emerging technologies, innovative strategies, and the ever-changing landscape of global challenges. It begins with the rigid formations of first-generation warfare, where armies clashed head-on in defined battle lines, emphasizing discipline and cohesion. Transitioning to Second Generation Warfare, also known as industrial warfare, that witnessed the introduction of machinery and mass production, enabling nations to mobilize larger forces and utilize more advanced weaponry. This era was marked by extensive trench systems and attrition tactics that aimed to wear down the enemy through sheer manpower. The progression continues into Third Generation Warfare, characterized by blitzkrieg and maneuver warfare. This approach emphasized speed, surprise, and the ability to encircle and outmaneuver opponents, leading to rapid victories and changing the nature of battlefield engagements.

In the contemporary landscape, a Fourth and Fifth Generation Warfare have emerged, defined by asymmetric conflicts, insurgencies, and the pervasive influence of cyber and information technology. This modern warfare blurs traditional combat lines, where state and non-state actors engage in a complex web of influence, utilizing digital platforms and psychological operations to achieve their goals. These transformations in military tactics not only redefine the concept of warfare but also significantly intertwine combat with political implications, highlighting the intricate relationship between the battlefield and the broader socio-political environment.

It can be argued that of all the descriptions of war “asymmetric” is among the broadest, as it draws along various prisms of interpretation, from power distribution to method of warfare and even organisation status. One of the limiting factors in the consideration of the just war theory, is that it is viewed as an inter-state war or cross-boarder interventions by third parties. However, over the last three decades various dimensions of conflict witnessed more unparallel features where conflict have included forms of war-lordism (with different armed factions), terrorism, guerrilla tactics, remote bombings and cyber attacks. This has reflected a weakened distinction between combatants and civilians and a disregard for the various Geneva Conventions ruling the conduct of war. As banks puts it;

Modern warfare features an array of nonstate participants playing central roles in hostilities, often with substantial resources and fire-power at their disposal. From guerilla and terrorist groups in South Asia to American military contractors in Iraq to human shields in Gaza, the legal status of the varied participants in modern conflict is less clear-cut than it was in the past... distinguishing between civilians and combatants in these situations—even at the level of theory—is increasingly difficult (108).

#### 2.4.1 Limitations of *Jus Post Bellum* in Modern Asymmetric Conflict

Throughout history, it has been widely believed that choosing to go to war—that is, to unleash the forces of death and destruction that come with war—imposes significant ethical obligations, but choosing to make peace—that is, to put an end to the killing—imposes no such obligations. The doctrine of *jus post bellum* has evolved to define the moral and legal responsibilities of states and actors following the end of armed conflict. While traditionally focused on state-centric warfare, this framework faces new challenges in its reachability in conflict

scenarios where the rule of engagement has changed. Asymmetric conflict poses unique challenges, in actualizing not only the principles of *jus post bellum*, but the goal of the jus war theory in its entirety.

In the context of modern asymmetric warfare, a significant limitation of *jus post bellum* is the obscured distinction of combatants and civilians. Traditional principles of *jus post bellum* rely heavily on the legal categorization of the factions involved within any conflict. However, modern asymmetric warfare complicates this categorization because combatants often do not belong to a clearly defined command structure and may not wear uniforms. “This situation undermines legal mechanisms such as the Geneva Conventions and international criminal tribunals, which depend on a clear delineation of responsibilities and combatant status” (Orend, 176). Additionally, retaliatory violence by occupying forces and drone warfare targeting suspected militants further obscures the ethical boundaries of post-conflict justice.

A fundamental premise of traditional *jus post bellum* is that wars conclude with a definitive end to hostilities, typically solidified through treaties or negotiated agreements. However, in asymmetric conflicts, achieving a clear victory can be quite challenging. Non-state actors often do not surrender in conventional manners; instead, they may retreat into civilian areas or cross into other countries to evade defeat. Having established in previous discussion, that “the object of war is a ‘just peace’ —where peace in this case represents a more secured and just state of affairs than existed prior to the war—, this however is not the case as many contemporary conflicts do not yield a clear victor, leading to significant legal and moral ambiguity within *jus post bellum* frameworks” (Walzer, 121). For instance, during the U.S.-led interventions in Afghanistan and Iraq, insurgent groups continued their operations well after main warfare had ceased, complicating efforts to create a stable and legitimate post-conflict environment.

Asymmetric conflicts increasingly dominate modern warfare, and they consistently challenge the legal frameworks that support *jus post bellum*. The rise of pre-emptive wars, targeted killings, and indefinite detention complicates the application of post-war norms. International laws—originally designed for interstate conflicts—often fail to provide effective mechanisms for enforcing justice when non-state actors are involved. These challenges underscore the need for scholars and policymakers to reinterpret or evolve *jus post bellum*, adopting flexible, culturally aware, and context-sensitive approaches to peacebuilding and accountability. A major limitation of *jus post bellum* in asymmetric conflicts is the difficulty of political and social reconstruction in situations where legitimate state authority is weak or absent. Orend argues that “a just post-war settlement should focus on rebuilding institutions and protecting human rights” (173), however, in modern conflicts—particularly those involving foreign intervention—efforts to impose liberal democratic frameworks often encounter resistance, cultural mismatches, or power vacuums that extremist groups may exploit. A typical example in practice is the reconstruction of Libya following NATO’s military intervention in 2011, which aimed to protect civilians during the uprising against Muammar Gaddafi’s regime. Although the intervention successfully toppled Gaddafi, the absence of a coherent, locally informed post-war plan resulted in political fragmentation, lawlessness, and ongoing conflict. As noted by Kuperman, “NATO’s failure to plan for the postwar period or to stabilize the country afterward contributed directly to Libya’s descent into chaos” (67). The power vacuum left by Gaddafi’s fall was quickly filled by militias and rival governments, leading to civil war, humanitarian crises, and the emergence of extremist groups. This situation starkly illustrates how *jus post bellum* objectives—such as establishing peace, rebuilding governance, and securing justice—can fail when imposed externally without considering the political, cultural, and social realities of the affected country.

## 2.5 Conclusion

Just war theories, particularly the concepts of *jus ad bellum* and *jus in bello*, have evolved significantly over time, indicating a pressing need for a more nuanced approach that addresses the complexities of modern warfare and its associated challenges that have resulted from the post-Cold War era, highlighting a critical oversight in considerations of the aftermath of conflicts. To adequately address the ramifications of warfare, it is essential to deliberate on the post-conflict period, which has become an increasingly significant concern in contemporary discussions about war ethics. The concept of *jus post bellum*, often associated with the notion of 'justice' in the aftermath of war, highlights the moral imperatives for ending wars and transitioning out of conflicts in a just and equitable manner. By integrating *jus post bellum* into existing legal frameworks, it creates a comprehensive tripartite theory that offers a philosophical foundation that encompasses the entire arc of war: a thoughtful beginning, a responsible middle, and a conscientious end.

The principles of just war theory offer a framework for analyzing the ethical dimensions of warfare, by incorporating the principles of *jus ad bellum*, *jus in bello*, and *jus post bellum*; with *jus post bellum* further converging on creating a fair and sustainable transition from conflict to peace, through considerations of moral, legal, and practical aspects of post-conflict reconstruction, and reconciliation. Modern variations of warfare, often categorised by asymmetric and protracted conflicts, poses significant challenges to the application of conventional post-conflict frameworks, due to the involvement of non-state actors and practice of irregular combat tactics. In asymmetric warfare, state actors typically have greater military and economic power, while non-state actors often rely on guerrilla tactics, insurgencies, or terrorism. The dynamism of asymmetric conflict has invariably created significant challenges in realizing the objectives of *jus post bellum*

due to the significant imbalance of power between state and non-state actors, which further complicates accountability, negotiations and peacebuilding efforts.

A normative consideration of *jus post bellum* involves scrutinizing existing or emerging frameworks on transitional justice, responsible for protecting humanitarian law. Modern asymmetric warfare, as in the case of the US Afghanistan conflict, is characterized by power imbalances between state and non-state actors, non-traditional battlefields, and blurred lines between combatants and civilians, which challenges conventional frameworks of conflict resolution and justice. While conventional frameworks of *jus post bellum* focus on state actors and do not fully address the accountability of non-state actors, the intricacies of modern asymmetric conflict mandate innovative and adaptable frameworks, grounded in the realities of present-day warfare to address its unique legal, ethical, and practical challenges. By improving accountability mechanisms, emphasizing inclusivity in peacebuilding, and utilizing technology, the transnational community can more effectively address modern dimensions of conflicts and promote justice, stability, and sustainable peace.

## Chapter 3

### Modern Asymmetric Warfare: The United States Afghanistan War (2011-2021)

#### 3.0 Introduction

Chapter two examined the legal and moral justification of war through the lens of just war principles, drawing on the natural law perspectives of Grotius and Orend to explore the ethical basis for using force in enforcing certain rights. The chapter also clarified the concept of peace, presenting it as both the objective of a just war and the guiding framework for post-war recovery. Key concepts such as minimalist and maximalist approaches to war, modern asymmetric warfare, and the application of *jus post bellum* in international law were analyzed. The chapter concluded with a critical evaluation of the limitations of *jus post bellum* in addressing the challenges posed by contemporary asymmetric conflicts.

Chapter Three examines the case study of the United States' war in Afghanistan, analyzing its justification, consequences, and eventual outcomes. It begins with an overview of warfare and asymmetry, highlighting how asymmetric strategies have evolved and become central to contemporary conflicts. The chapter provides a concise historical background of the Afghanistan conflict, leading up to the U.S. intervention from 2001 to 2011. It explores both supporting and opposing arguments surrounding the invasion, offering a balanced perspective. To evaluate the practical application of *jus post bellum*, the chapter further analyzes two real-world cases, focusing on key strategies, challenges encountered, and lessons learned in the areas of post-conflict reconstruction, reconciliation, and peacebuilding.

#### 3.1 Warfare and Asymmetry

Over the past two decades, much of the literature on warfare strategies has highlighted the unique challenges presented by modern warfare. The concept of warfare has broadened from being

a regular conventional, symmetric exercise into an irregular, unconventional, asymmetric event. However, this evolution necessitates a renewed understanding of the asymmetry from a contemporary perspective. “While the term “asymmetric” bears a representation of the broadest definition of forms of conflict, it can be argued that creating asymmetry is foundational to much, if not most, strategic theory, particularly in power-specific contexts” (Milevski, 77). Milevski’s statement establishes that asymmetry has been a consistent trend in conventional warfare as it represents a ‘good strategy’. In asymmetric warfare, strategy can be viewed as a comprehensive approach in exploiting an opponent’s weakness for the purposes of the conflict.

Asymmetry Despite being the weakest form of control, remains potent as it is capable of denying control to the superior enemy. A strategy based upon the accumulated effect of minor actions and continued elusiveness to deny control of the operational pattern of the war presents significant difficulties for the opposing side. Presenting no single set of targets and acting against and among civilians across geographies larger than their opponents may completely secure provide the counterinsurgent with a wide array of potential choices, whose strategic worth may be estimated but hardly known” (Milevski, 81)

Barnett points out that:

Asymmetries arise when one opponent enjoys greater freedom of action or has access to weapons or techniques that the other does not. Perpetrators aim to undermine their adversaries' strengths and to remain unpredictable. They strive to capitalize on their ability to take actions or employ methods that cannot be anticipated or effectively countered... Effective strategy—especially in long and complex conflicts—requires more than battlefield acumen; it requires political clarity and administrative capacity... and failure

often stem from the inability to match political ends with the realistic means available (268-271).

Milevski argues that "strategy should not be reduced to a series of tactical adaptations or reactions, but rather a dialectic of wills... signifying a dynamic relationship between adversaries" (23). While Milevski and Barnett contend that asymmetry in warfare, as an effective strategy, must extend beyond the immediate exploitation of enemy vulnerabilities to incorporate the broader political and societal dimensions of conflict, it must be viewed as a holistic framework that aligns military efforts with political vision, cultural understanding, and long-term governance goals. Success in such conflicts is not measured solely by territory gained or enemies neutralized, but by the ability to build legitimate structures of power, undermine adversary cohesion, and maintain moral and political support—both domestically and internationally.

In contemporary asymmetric warfare, this dialectic is particularly complex because weaker parties often do not aim to win in a traditional military sense, but to prolong the conflict, exhaust their opponent, or achieve victory in the realm of perception—both locally and globally. For example, insurgent groups may prioritize narrative dominance and population control over successes on the battlefield. Their strategy, therefore, integrates military resistance, political messaging, and social influence into a cohesive approach.

### 3.2 Afghanistan—The Historical Context of the Conflict

Afghanistan's modern struggles began during the Cold War era, when it became a critical battleground for the strategic rivalry between the United States and the Soviet Union. In December 1979, the Soviet Union launched a military invasion of Afghanistan, aiming to bolster the faltering Marxist-Leninist government of the People's Democratic Party of Afghanistan (PDPA), which had

assumed power through a coup in 1978. This regime, however, quickly found itself entangled in a fierce internal rebellion, facing widespread opposition from a predominantly Muslim and tribal population that viewed the government as foreign and illegitimate. In response to what they perceived as an expansionist threat, the U.S. initiated Operation Cyclone, a covert program that funneled billions of dollars in weapons and support to Afghan mujahideen fighters. Collaborating with the CIA and Pakistan's Inter-Services Intelligence (ISI), the U.S. assisted in arming these resistance fighters, including a young Saudi named Osama bin Laden, who would later go on to establish al-Qaeda. The brutal conflict ravaged Afghanistan, claiming the lives of over a million people and displacing countless others into refugee camps. When the Soviets withdrew in 1989, Afghanistan spiraled into a chaotic civil war, as various factions of mujahideen battled one another for power, leading to an environment of lawlessness and destruction.

In the tumultuous years between 1994 and 1996, the Taliban began to rise from the ashes of this post-Soviet discord as a militant Islamic movement. Comprised primarily of Pashtun students, or Talibs, who had received their education in religious madrassas in neighboring Pakistan, the Taliban promised to restore stability and enforce a rigid interpretation of Islamic law. Their ascent was significantly bolstered by support from Pakistan, which sought to ensure a sympathetic regime in Kabul and gain strategic depth against its longstanding rival, India. By 1996, the Taliban had forcibly captured Kabul and established control over much of the country. Their rule was defined by the imposition of harsh Sharia law, the systematic oppression of women, the erasure of cultural heritage—epitomized by the destruction of the monumental Buddhas of Bamiyan—and the harboring of international jihadist groups, notably al-Qaeda.

Al-Qaeda itself was established in 1988 by Osama bin Laden and a cadre of other Arab fighters, emerging from the fervor of the anti-Soviet jihad. Its mission transformed into a quest for

a global Islamic caliphate, targeting what it deemed as corrupt Muslim regimes and their Western allies, especially the United States. Bin Laden opposed the continued presence of U.S. military forces in Saudi Arabia, the birthplace of Islam and home to its holiest sites, a presence that had been solidified during the Gulf War (1990–91). He also condemned U.S. support for Israel and authoritarian regimes across the Middle East. Before the catastrophic events of September 11, al-Qaeda orchestrated several high-profile attacks on U.S. soil, including the notorious World Trade Center bombing in 1993, the bombings of U.S. embassies in Kenya and Tanzania in 1998, and the attack on the USS Cole in Yemen in 2000, each resulting in severe casualties and leaving deep scars on the American psyche.

### 3.2.1 The Case for the US United States Afghanistan Conflict (2001-2011)

The United States Afghanistan war can be categorised as one of such wars where a non-state actor (insurgent group) of significantly unequal military power or strategy, adopts unconventional tactics to exploit the vulnerabilities of the stronger side. The U.S.-Afghanistan war, which ignited in October 2001, was the culmination of a complex interplay of longstanding geopolitical tensions, the lingering effects of the Cold War, regional instability, and, most immediately, the devastating terrorist attacks of September 11, 2001. Although these attacks served as the immediate spark for military action, the origins of the conflict are deeply rooted in decades of animosity between both parties.

In October 2001, the United States led a coalition that invaded Afghanistan in response to the September 11 terrorist attacks, which resulted in the deaths of approximately three thousand people in the United States. Although the US Congress never issued a formal declaration of war against Afghanistan or the Taliban, it however passed the Authorization for Use of Military Force (AUMF) on September 14, 2001, giving the president broad authority to use military force against

those responsible for the 9/11 attacks. <sup>1</sup>President George W. Bush announced that the U.S. was declaring war on terrorist organizations in the Middle East, specifically targeting Osama bin Laden, Al-Qaeda, and the Taliban, which was the ruling government in Afghanistan at the time and notorious for its human rights abuses. The United States established six key objectives for its invasion:

1. Destroy Al-Qaeda.
2. Destroy the Taliban.
3. Demonstrate that the United States is NOT at war with Islam.
4. Build international support.
5. Accept casualties.
6. Stabilize Afghanistan.

Based on the principles of *jus ad bellum*, it can be argued that the invasion had a plausible just cause. Under Article 51 of the United Nations Charter, states have the right to individual or collective self-defence in response to an armed attack. From a retaliatory perspective, the 9/11 attacks by al-Qaeda constituted an armed assault on the United States. The Taliban's support for

The focus on targeting the Taliban and al-Qaeda was proportionate to the threat they posed and the perceived success in dismantling al-Qaeda and the Taliban government —responsible for severe human rights abuses—, preventing Afghanistan from being used as a base for terrorism and

---

<sup>1</sup>See George Washington Bush Library. 3 January 2003. <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror>. 2024 al-Qaeda and its refusal to surrender Osama bin Laden provided a reasonable basis for the U.S. to assert its right to self-defence, especially considering that their demands were being ignored.

eliminating terrorism in the Middle East all held global significance. Hence, the declaration to go to war could be said to have met the criteria of having the right intention and backed by legitimate authority, as the U.S. Congress authorized the use of force in Afghanistan, and the war received support from NATO allies.

### 3.2.2 The Case Against the US Invasion

Conversely, the United States can also be viewed as the aggressor, as its invasion of Afghanistan was conducted before all diplomatic options for securing Osama bin Laden's extradition had been fully explored. In 2004, former UN Secretary-General <sup>2</sup>Kofi Annan noted that “that the U.S.-led invasion of Iraq was not in conformity with the UN Charter and, from the UN's perspective, was illegal” (An Illegal War). Annan's remarks were significant because they questioned the legal justifications presented by the coalition forces, especially the U.S. and the U.K., who claimed that existing Security Council resolutions permitted the use of force. He emphasized that the invasion lacked approval from the UN Security Council, which he believed was necessary to legitimize such military action under international law.

Additionally, the lengthy occupation by U.S. and allied troops, significant civilian casualties, and challenges in achieving lasting stability complicated the justification for the war. While the initial intervention may have been considered just, the prolonged nature of the conflict, along with its extensive costs in terms of lives lost, infrastructure destroyed, and overall socio-economic instability, raise questions about the war's legitimacy in its later stages. The war lasted for 20 years (2001-2021) and resulted in the deaths of 3,500 allied soldiers, 125,000 Afghan soldiers, and over 71,000 Afghan civilians, as well as the displacement of over five million people.

---

<sup>2</sup>See <https://www.nybooks.com/articles/2004/10/21/an-illegal-war/> for Kofi Annan's interview

Although it was clear that the United States had a moral obligation to confront terrorism, the war in Afghanistan led to an increase in terrorist activities due to the collapse of the Afghan government and resistance to Western democracy. Efforts to build a stable Afghanistan proved increasingly problematic, and the hasty withdrawal of U.S. and allied troops allowed for the resurgence of the Taliban.

### 3.3 Preliminary Conclusion: *Jus Post Bellum* in Context

Over the years, Just War theory, based on the fundamental principles of *jus ad bellum*, *jus in bello* and more recently *jus post bellum* has significantly influenced international and ethical discussions regarding war, serving as a guideline for policymakers and military leaders in justifying and engaging in war ethically. In discussing the ethics of war and peace, Helen Frowe, noted that:

The emergence of terrorism as a central issue on the international stage, combined with the recent and controversial wars in Iraq and Afghanistan and the growing awareness of humanitarian crises in developing countries, has triggered in many people deep reflection upon fundamental questions about justice, rights and the causes for which people may kill and be killed. (16)

The U.S. invasion of Afghanistan in 2001 following the 9/11 terrorist attacks provides the framework for analyzing the practicability of the Just War principles. Although the initial rationale for the war may have appeared justified at its outset, the prolonged nature of the conflict, coupled with the staggering loss of life, widespread destruction of infrastructure, and the profound impact on socio-economic stability, casts doubt on the legitimacy of the war's continued existence in its later stages. These factors contribute to a complex debate about whether the war can still be

considered just as it evolved. While the theories, *jus ad bellum* (justice of war) and *jus in bello* (justice in war) may hold as guiding principles in the consideration and actual engagement in warfare, respectively, there is also the need to consider the aftermath of any war because the consequences of war often extend far beyond the battlefield, affecting societies, individuals, and international relations for years.

Ethical considerations of war's aftermath, usually framed by *jus post bellum* (justice after war) principles, ensure the achievement of the original goal for warfare engagement and that the transition to peace is practical and aligned with moral values such as justice, dignity, and reconciliation. *Jus post bellum's* principles, in this case, ensure that the transition from conflict to peace is just, sustainable, and conducive to human dignity. Furthermore, by addressing the long-term impacts of war, ethics seeks to prevent future violence and foster a world where conflict resolution prioritizes humanity's collective well-being. Schuck states that:

If one assumes for the moment—as many do—that the rubrics of the just war theory are morally tenable...then post-war behaviour must also come under moral scrutiny. Suppose we are called upon to probe the ethical propriety of entering and conducting war by using the *jus ad bellum* principles (which concern justification for using force) and the *jus in bello* principles (which apply to conduct in war). Should they not be called upon to monitor the moral propriety of conducting war through some set of *jus post bellum* principles? (2).

The post-war period presents an opportunity to reflect on the resurgence of the Taliban and the ongoing humanitarian crises, leading us to crucial discussions about the fairness of the war's conclusion. As we analyze the complexities of modern geopolitics, asymmetric warfare, and the challenges of achieving sustainable peace, it becomes essential to explore the principles of *jus post bellum* (justice after war). This exploration provides a constructive framework for assessing the

ethical implications and outcomes of the U.S.-led intervention in Afghanistan and its subsequent developments. We can focus on three key considerations:

First, —Peacebuilding— the principles of *jus post bellum* guide us in establishing moral foundations for transitioning away from conflict. We should consider what conditions might be appropriate for formally ending a war. For instance, are terms like disarmament, unconditional surrender, and amnesty viable options that can be included or enforced in pursuit of lasting peace?

Second, —Accountability— it is vital to address any violations of *jus ad bellum* (the justification for war) and *jus in bello* (just conduct in war). A constructive dialogue should center on who possesses the authority to respond to these violations and how these responses should take shape. Engaging both individual nations and the international community in this conversation is crucial, as is recognizing the importance of appropriate consequences for wrongdoing.

Finally, —Reconstruction— *jus post bellum* prompts us to consider the ethical dimensions of rebuilding efforts following conflict. Identifying the parties responsible for reconstruction is essential, as is establishing what standards should be used to measure the success of these initiatives. By doing so, we can work towards restoring balance and fostering resilience in communities affected by war, contributing to a more stable and harmonious future.

### 3.4 Post-War Efforts

In classical just war theory, as well as in its early modern interpretations, the fundamental goal of a just war is to restore the *status quo ante bellum*, meaning a return to the state of affairs that existed before the war. Early modern philosophers like Grotius viewed this as a just outcome, arguing that war should not be used to change the existing political or territorial status, but rather as a means to restore justice and undo aggression. However, Walzer critiques the rigid adherence

to returning to the *status quo ante bellum*, especially in cases where the pre-war situation was itself unjust. He advocates for a post-war outcome that addresses inherent injustices and promotes long-term peace. A perspective similar to Walzer's can be found in the writings of Orend who states that

The aim of a just and lawful war, we know, is the resistance of aggression and the vindication of the fundamental rights of societies, ultimately on behalf of the human rights of their individual citizens. These values revolve around the concept of a minimally just and hence legitimate community. Such a community is one which does all it reasonably can to: (i) gain recognition as being legitimate in the eyes of its own people and the international community: (ii) adhere to basic rules of international justice and good international citizenship, notably non-aggression: and (iii) satisfy the human rights of its individual member (to security, subsistence, liberty, equality, and recognition (160).

It can be argued that the United States went beyond a minimalist approach in its efforts to achieve peace and security. When the United States launched 'Operation Enduring Freedom' in 2001, its early objective was limited —indicating a minimalist approach— focused primarily of countering terrorism and a quick military exit, with no detailed plan for political or societal transformation. Post 2002, however, saw a shift into a maximalist approach where the ousting of the Taliban resulted in a power vacuum, thus requiring the U.S and its NATO allies to gradually adopted a maximalist *jus post bellum* strategy towards nation rebuilding, restructuring the economy, reforming the security sector, promoting human rights and gender equality. As Braun puts it: “more than \$2 trillion was spent in nation building endeavours and 40 percent of Afghanistan's GDP came Nations Development Program (UNDP) in 2003, launched a disarmament, de-mobilization, and reintegration (DDR) campaign named Afghan New Beginnings Program” (ANBP), similar to those employed in other post-conflict environments in

central America, Africa and the Balkans. "...With a budget of \$140 million the goal of the ANBP was to demobilize the many armed, competing power centers around the country, thus diluting the power of warlords and the potential for renewed conflict.... (Patterson, 171). Furthermore,

The job of Security Sector Reform (SSR) in Afghanistan was taxed out to five lead nations...the US took on mentorship of the Afghan National Army (ANA), Germany was allocated the Afghan National Police (ANP), Italy the task of judicial reform, Japan the role of supervising the demobilization, disarmament and reintegration of armed groups (DDR), and the UK adopted the counter-narcotics brief. This emphasis on high-speed institution-building was itself a carry-over from 'liberal peace theory', as well as what some now advocated as the essential process of institutionalization before liberalization' (Bird & Marshal, 119).

Despite the efforts of the U.S. and its NATO allies, critiques of Biden's administration's decision to completely withdraw from Afghanistan characterized it as a hasty pull-out that failed to achieve its objectives. This withdrawal left the existing Afghan government and its institutions in a fragile state, creating a vacuum for the Taliban's resurgence. Walzer (100) discusses the challenging nature of the 'Ethics of Exit' and questions whether Afghanistan's future necessarily requires a continued Western presence. Former British Ambassador to Kabul, Sir Sherard Cowper Coles, counseled that "if Western forces were to leave Afghanistan, the Afghan authorities might not be able to maintain control in the southern part of the country for more than 24 hours, leading to a likely Taliban takeover" (qtd. In Bird & Marshall, 258).

\*Conetta, Carl. "Strange Victory: A Critical Appraisal of Operation Enduring Freedom and the Afghanistan War." Project on Defense Alternatives, 2002, <https://www.comw.org/pda/0201strangevic.html> provides a detailed examination of the U.S. military strategy in Afghanistan and supports the assertion that the initial objectives were limited, focusing primarily on counterterrorism with no extensive plan for nation-building or political transformation.

### 3.5 Challenges in Applying *Jus Post Bellum*

The post United States Afghanistan war did not achieve its objectives of bringing justice, peace or stability, but instead exposed the limits of military power in achieving ethical outcomes in complex societies. Its efforts of expanding from a counterterrorism campaign to an attempt at changing the Afghan society can be described as a ‘stalemate in perpetuity’ due to the harsh complexities of the Afghan environment and opposition to western tradition among other challenges. While *jus post bellum* offers a valuable framework for evaluating post-war obligations, its application in Afghanistan failed from the inception because it was flawed by strategic missteps, moral inconsistencies, and a failure to prioritize Afghan agency.

#### 1. Legitimacy of Governance and Political Stability

One of the essential doctrines of *jus post bellum* is the creation of a legitimate and just political order. While the U.S. and its allies made significant investments in developing Afghan institutions—such as democratic elections, judicial systems, and a constitution—these efforts faced challenges due to fragmentation across provinces, resulting in a lack of a unified coalition. Additionally, the legitimacy of these institutions was compromised by issues of internal corruption, insufficient inclusivity, and a heavy reliance on foreign military support. The absence of a clear, stable, and inclusive political transition indicates a failure of *jus post bellum* in this instance. Rather than fostering sustainable peace, the conclusion of military involvement led to a resurgence of authoritarianism, pointing to the necessity of establishing a political framework that is genuinely rooted in the beliefs and needs of the Afghan people. Bird & Marshal noted that:

The institution-building framework in Afghanistan failed almost from the outset. The emphasized top-down governmental structuring process (which in practice remained

largely abstract and corrupt) meant that the everyday needs of the Afghan people continued to be poorly served. The ‘lead nation’ approach was notable from the very outset for its lack of coordination, and for the absence of an Afghan voice in decision-making. The most damning testament to this fundamentally mismanaged approach was that, far from improving, basic indicators of development actually fell in Afghanistan between 2003 and 2005; life expectancy fell from an already dire 44.5 to 43.1 years, and adult literacy from 28.7 to 23.5 per cent. (119-120)

## 2. Responsibility for Reconstruction

Post-conflict justice involves reconstructing war-torn societies, including rebuilding infrastructure, supporting economic development, and restoring public services. Following the U.S. occupation of Afghanistan after 2002, over \$145 billion was invested in reconstruction. However, by 2004, the newly established institutions developed a dysfunctional and corrupt government system. Many development projects were disconnected from local needs, resulting in unsustainable initiatives. Although schools, hospitals, and roads were built, they often lacked long-term maintenance and local capacity-building. Bird and Marshall pointed out that a significant flaw in the U.S. and NATO allies' reconstruction and nation-building efforts was their reliance on “Western neoliberal economic theory.” This approach treated the Afghan state as an abstract, politically disenfranchised facilitator rather than actively promoting the development of a strong, independent economic entity. Patterson also noted that:

While it is worth noting that these approaches were all good- faith efforts based on what was considered state-of-the-art Western approaches to post- conflict stabilization and reconstruction. There are numerous reasons why these approaches have not brought safety

and security to Afghanistan, but one of them is simply that these efforts often did not take root because they lacked cultural and religious relevance to the local population (172).

### 3. Transitional Justice and Accountability

Another key component of *jus post bellum* is justice for war crimes and human rights violations committed during the conflict. Patterson noted that:

At the end of some conflicts, particularly since WWII, a richer dimension of *jus post bellum* has been employed—provisions for justice in addition to creating a situation of security. Aggressors are held accountable in some way for their actions. Accountability is a moral principle based on the notion of responsibility—political and military leaders have a responsibility to their citizens and their neighbors to promote security... If order is attainable and justice the possible, then reconciliation is the desirable. (66)

Justice in the aftermath of war should encompass more than mere punishment; it should involve recognizing the rights and suffering of victims, promoting healing within communities, and laying the groundwork for sustainable, long-term peace. Unfortunately, in Afghanistan, these essential goals were unfulfilled, leaving a legacy of unresolved grievances that undermine any prospects for stability and unity. Perpetrated war crimes by various actors, including the Taliban, US forces, Afghan national forces, and regional warlords, which resulted to significant suffering among the civilian population and violation of international humanitarian law needed to be brought into account. However, there was a significant inconsistency in bringing war criminals to justice. While some US service members faced court-martial for specific abuses, many incidents involving egregious violations went largely uninvestigated, leaving a sense of injustice among victims and their families. The Afghan government often pardoned Taliban members under the guise of

reconciliation. These actions faced global criticism and justifications for these actions were often viewed as inadequate or biased.

The absence of a comprehensive transitional justice mechanism in Afghanistan further complicated peace-building initiatives such as truth commissions, reparations for victims, and institutional reforms, rendering them insufficient in addressing the deep-rooted issues stemming from decades of conflict. This lack of a coordinated approach to justice and reconciliation not only hampered the healing process for victims but has also fostered a culture of impunity. As a result, individuals, and groups responsible for heinous acts remain unpunished, creating an environment where future atrocities may occur.

#### 4. Humanitarian Responsibilities and Refugees

*Jus post bellum* refers to the obligations owed to those harmed or displaced by war. The inconsistent and reactive refugee resettlement policies of Western nations highlight a moral failure to anticipate and address the human costs of military intervention. Following the Taliban's return to power, thousands sought to flee Afghanistan out of fear of persecution. The chaotic U.S. withdrawal led to a humanitarian crisis at Kabul airport, where desperate crowds attempted to evacuate. While the U.S. and other countries eventually resettled many Afghans, tens of thousands remain in limbo, stuck in refugee camps or residing under regimes hostile to their rights. Although decades of conflict displaced many Afghans, it can be argued that a more robust and coordinated international response, along with an inclusive civilian policy, could have alleviated suffering and upheld the dignity of Afghan civilians.

## 5. Cultural and Ethical Imperialism

One important aspect of U.S. involvement in Afghanistan is the need to acknowledge the unique traditions and complexities of Afghan society while pursuing democratic reforms. Many Afghans were supportive of such changes; however, a more collaborative approach to nation-building could have ensured that local voices and cultural nuances were better integrated into the process. To foster lasting stability, it is essential to focus on building indigenous capacity alongside military objectives. Prioritizing grassroots engagement can lead to a stronger, more self-reliant state. Emphasizing the ethical principles of sovereignty and self-determination is crucial in achieving post-war justice. A balanced *jus post bellum* approach would involve not just external support but also a commitment to empowering local communities. The collapse of the U.S.-backed government serves as a reminder of the importance of this balance and the benefits of developing political orders that have strong, sustainable foundations built from within the society itself.

### 3.6 Real World applications of *Jus Post Bellum*

#### 3.6.1 The Persian Gulf War (1990 -1991)

In illustrating the post-war application of *jus post bellum*, Orend examines how these principles played a crucial role in peace-building efforts after the Persian Gulf War, leading to the establishment of more sustainable peace treaties. He first assesses the justifications for the U.S. and UN allied forces' engagement in the war with Iraq by stating, “Even if it is problematic to say that Iraq aggressed against Kuwait by crossing into its borders, the subsequent actions of Iraq once in Kuwait—widespread destruction, looting of property, random attacks, rapes, and murders—constituted aggression against the Kuwaiti people. This, in turn, necessitated the armed response of the Allies” (234). The intention behind this engagement was clear: to expel Iraqi forces from

Kuwait and end the hostilities. A comparison between the Persian Gulf War and the U.S. Afghanistan War reveals notable differences in post-conflict actions and their outcomes.

#### JPB 1&2 — Just Cause for Termination and Right Intention

“The de facto end to the war came on February 27, 1991, when American president (G.H.W. Bush) ordered the allied forces to adhere to a ceasefire, following the rout and flight of Iraqi forces from Kuwait...” (Orend 235). Orend argues that by successfully driving out the Iraqi forces from Kuwait, the aggression against the Kuwaiti people was halted, providing grounds for a just termination of the war. The coalition had limited and clear objectives: to expel Iraqi forces from Kuwait. Once Kuwait was liberated, hostilities ceased, and the U.S. and its allies did not pursue regime change or long-term occupation.

#### JPB 3 — Public Declaration, Legitimate Authority, and Domestic Rights Protection

Following the de jure end of the war on April 3, 1991, when the United Nations Security Council Resolution 687 proclaimed its conclusion, the restoration of Kuwait’s governance was swift. Reconstruction efforts were largely managed by Kuwait—with support from its allies—fulfilling the domestic rights of its people. The United States and its allies respected Kuwait’s autonomy, refraining from imposing regime change. This underscored the importance of promoting local traditions and cultural initiatives in effective nation-building efforts.

#### JPB 4&5 — Proportionality and Discrimination\*\*

Orend also contends that the U.S. and its allies' response by imposing sanctions on Iraq was proportional to the conflict, and there was no long-term military occupation of Kuwait or Iraq. According to the principles of JPB regarding proportionality, “Iraq was to be demilitarized not to the point of collapse but at least to the point where it would not pose a threat to international peace

and security within the region... actions of discrimination were mostly centered on the substantial maintenance of economic sanctions on Iraq after the ceasefire for a considerable duration” (237-239).

### 3.6.2 South African apartheid conflict (1948–1994)

This conflict shares similarities with the U.S. Afghanistan conflict, particularly in its nature, which features elements of protracted asymmetric warfare, including guerrilla resistance to state repression and internal structural and political conflict. The conclusion of the apartheid war highlights the importance of non-military transitions and inclusive political settlements in achieving sustainable peace.

Spanning over a 40-year period, the autonomy of the marginalized black population was central to post-conflict transition proceedings. The end of apartheid was driven by domestic negotiations between the apartheid government and the liberation movements—primarily the African National Congress (ANC)—which laid the groundwork for a just termination of the conflict and a move towards reconciliation and reconstruction. Post-conflict governance was locally led and legitimized through the 1994 democratic elections, where President Nelson Mandela became the face of the new democratic government, thus fulfilling the *jus post bellum* requirement of a legitimate political transition. The transition was led by South Africans for South Africans, with foreign governments supporting the peace process through sanctions and diplomacy but not dictating outcomes or installing leaders.

Another notable effort towards a peaceful transition was the establishment of the Truth and Reconciliation Commission (TRC), championed by legitimate local authorities like Archbishop Desmond Tutu. The TRC facilitated the process of conditional amnesty and promoted healing

through public truth-telling, thereby preventing potential cycles of revenge. Transitional justice was context-sensitive, peaceful, and rooted in Ubuntu values such as forgiveness and restoration—a hallmark of thoughtful *jus post bellum* application. To address inequality, the state developed initiatives aimed at reconstruction and peacebuilding, focusing on rebuilding democratic institutions and promoting rights-based governance in social development, education, and political inclusivity. This emphasis on inclusive institution-building, rather than militarized reconstruction, aligns with *jus post bellum* ideals.

### 3.7 Conclusion

Through the lens of asymmetric warfare, the chapter illustrates how the United States' war in Afghanistan diverged from conventional military engagement and complicated both moral and legal evaluations. It specifically examines the justification, conduct, and post-war outcomes from 2001 to 2011. By presenting arguments for and against the legitimacy of the invasion, the chapter emphasizes the complex geopolitical and ethical dimensions of modern warfare.

In analyzing post-conflict efforts through the *jus post bellum* framework, two comparative cases—the South African apartheid conflict (1948–1994) and the Persian Gulf War (1990–1991)—provide valuable insights. Both instances demonstrated relative success in post-war recovery due to a combination of clearly defined objectives, international consensus, and strong institutional mechanisms for reconciliation and rebuilding. South Africa's peaceful transition from apartheid to democracy was driven by an internal commitment to restorative justice, exemplified by the Truth and Reconciliation Commission, which facilitated national healing. Although brief, the Persian Gulf War concluded with well-defined military and political goals and coordinated international engagement, creating a stable post-conflict environment.

In contrast, the U.S. intervention in Afghanistan was hindered by ambiguous war aims, a lack of coherent long-term strategy, and insufficient attention to local political realities. Cultural misunderstandings, fragmented governance, and inconsistent support from international actors contributed to the failure of nation-building efforts. This, in turn, undermined the application of *jus post bellum* principles in achieving sustainable peace and reconstruction in Afghanistan.

This chapter underscores that the effectiveness of *jus post bellum* relies on clearly defined objectives, inclusive political processes, and sustained international commitment.

## Chapter 4

### Proposition For a Contemporized *Jus Post Bellum* Framework

#### 4.0 Case Study in Retrospect

Just war theorists typically uphold the moral equality of soldiers as the dominant view. Much of the historical and contemporary thinking about the morality of War and its aftermath is informed by this framework, where two sovereign nations engage in conflict, typically triggered by one nation invading another in an act of aggression. In this model of Just War Theory, combatants on both sides fight in a public and transparent manner and are easily identifiable and domain-oriented. Both sides' combatants possess equal rights to engage in warfare against one another and are entitled to certain protections if captured, regardless of the justice of their respective causes. The conflict continues until one side is defeated or an armistice agreement is reached. A treaty is then implemented to formally end the conflict and address any outstanding issues, reasserting the sovereign rights of the initially invaded community. The principles of just war theory provide a framework for analyzing the ethical dimensions of warfare, incorporating the principles of *jus ad bellum*, *jus in bello*, and *jus post bellum*. The principle of *jus post bellum* specifically focuses on creating a fair and sustainable transition from conflict to peace, considering moral, legal, and practical aspects of post-conflict reconstruction and reconciliation. However, contemporary variations of warfare, often categorized by asymmetric and protracted conflicts, pose significant challenges to applying conventional post-conflict frameworks. These challenges arise due to the involvement of nonstate actors and the practice of irregular combat tactics. Milevski states, "Unlike the generation of conventional asymmetries, many of which tend to be domain-oriented, asymmetry is most often associated with insurgency and irregular forces today" (79). Current theories on counterinsurgency strategies also implicitly highlight the need to generate

effective asymmetry against the so-called asymmetric enemy. "Asymmetries in this case occur when one opponent has greater freedom of action or possesses weapons or techniques than the other. Perpetrators aim to neutralize their adversaries' strengths, act unpredictably, and further exploit their ability to pursue specific courses of action or use methods that cannot be easily anticipated or effectively countered" (Barnett 15). This power imbalance complicates realizing *jus post bellum's* objectives and further hinders post-war nation-building efforts. The US-Afghanistan War (2001–2021) exemplifies asymmetric warfare, where state actors (the US and NATO forces) engaged with nonstate actors (primarily the Taliban). The prolonged nature and dynamics of the War presented significant challenges for effectively applying the principles of *jus post bellum*.

#### 4.1 Analyzing the Ethical Framework of *Jus Post Bellum* in Modern Asymmetric Conflicts

Analyzing *jus post bellum* principles within modern asymmetric conflicts reveals both challenges and opportunities for improvement. Although traditional frameworks stress accountability and restitution, current conditions demand that scholars and practitioners adapt these principles to address the complexities of contemporary warfare more effectively. By doing so, they can develop a more flexible and responsive approach to *jus post bellum* that strengthens efforts to achieve sustainable peace and justice. In analyzing the ethical framework of *jus post bellum*, three core arguments emerge as significant limiting factors that hinder the effective application of these principles in modern asymmetric conflicts:

##### First Argument — Inadequate Accountability and Justice Mechanisms in *Jus Post Bellum*

Since the end of World War II, a richer dimension of *jus post bellum* has emerged, incorporating provisions for justice and creating a secure environment. Aggressors are often held accountable for their actions, based on the moral principle of responsibility. "Political and military

leaders have a duty to their citizens and neighbours to promote security. If order is attainable and justice possible, reconciliation becomes desirable" (Patterson, 66). In a concluded conflict, justice and order are critical considerations for the conditions that may be imposed to end the War formally. Questions arise: Are disarmament terms conditional or unconditional? Is surrender or amnesty permissible? What appropriate measures should be adopted to address violations of *jus ad bellum* and *jus in bello* criteria? Failure to adhere to these requirements subjects the pursuit of justice to criticism, with the objection that trials may be seen as mere victor's justice. "Respect for agency requires that processes dealing with past violations adhere to the rule of law requirements, even when such adherence undermines the likelihood of a conviction" (Murphy 53). In contemporary asymmetric wars, the concept of accountability and post-war justice in *jus post bellum* encounters significant challenges, including identifying perpetrators on both sides, ensuring fair justice, building institutions, respecting cultural contexts, and addressing nonstate actors. A primary challenge is determining who should be held responsible for violations of *jus in bello*—actions in warfare. Unlike traditional armies, nonstate actors in asymmetric conflicts tend to blend into civilian populations, making distinguishing between combatants and civilians difficult.

Furthermore, groups such as the Taliban, ISIS, or Boko Haram operate outside recognized international legal frameworks and seldom accept the authority of international courts or the Geneva Conventions. This complicates the logistics and politics of capturing and prosecuting their members. Orend argues that these blurred roles challenge the moral and legal distinctions necessary for accountability (175–177). Additionally, the prevalent issue of "selective justice," particularly from the victors in dominant asymmetric conflicts, further complicates the quest for accountability and justice in post-conflict situations.

## Second Argument — Challenges Arising from the Absence of Sovereign and Cohesive Governance

In the aftermath of modern asymmetric conflicts, achieving justice and sustainable peace under *jus post bellum* principles can be challenging. Unlike traditional wars between states, asymmetric conflicts often leave behind fragmented political structures, divided societies, and power vacuums due to the collapse of centralized authority. In many asymmetric conflicts, such as the US conflict in Afghanistan, insurgent groups, militias, or occupying forces dismantle the existing government without a viable replacement ready. After the ousting of the Taliban regime in 2001, the international alliance struggled to establish a functioning government, resulting in widespread discord among Afghan nationals, instability, corruption, and the eventual resurgence of insurgent forces. These conditions severely undermine the possibilities for rebuilding legitimate governance, conducting fair accountability processes, and ensuring the restoration of rights. As Chesterman explains, "the lack of an effective sovereign government makes the transition to peace extremely fragile... because there are no dependable actors to enforce laws, rebuild institutions, or negotiate political settlements" (37).

Another challenge to cohesive governance, capable of commanding national legitimacy in fragmented societies, is the proliferation of armed factions competing for power, with little incentive to cooperate or compromise. US policymakers underestimated how deeply decentralized Afghan society was, and the imposition of a Western-style liberal democracy lacked grassroots legitimacy. The Afghan government, especially under Hamid Karzai and Ashraf Ghani, was heavily criticized for favouring certain ethnic groups, particularly Pashtuns, over others. This ethnic favouritism deepened internal divisions, made national unity impossible, and further fueled cycles of violence. Consequently, the Taliban, which was never comprehensively defeated, steadily

reasserted itself in rural areas, building its own parallel shadow government systems—including courts and tax collection—that often operated more efficiently (though brutally) than the Kabul government.

In societies where tribal, clan, or religious councils historically played a role in conflict resolution, War often erodes these structures, leaving communities without any accepted form of justice or reconciliation. Rebuilding these local systems takes time and legitimacy, which foreign powers or interim authorities frequently lack. While massive amounts of international aid and funding flowed into Afghanistan, the level of disruption and lack of a stable structure led to widespread misappropriation of funds and corruption. This, in turn, fostered distrust in the government among citizens, some of whom often preferred local strongmen or even the Taliban for basic services. Joireman states that:

Customary law is familiar, tied to the identity and history of a community, and operates independently of outside resources. Conflict creates a 'new normal' in how customary systems are used and administered... The experience of violence and population displacement leads to changes in traditional leadership and a community recovering from War or ethnic conflict has to find ways of reweaving the fabric of economic and social life with new patterns of interaction and changed demographics. (Rebuilding Communities)

### Third Argument — Obstacles to Effective Reconciliation and Reconstruction in Post-War Contexts

The fundamental responsibility of political actors, in both War and peace, is to work toward order. In post-conflict settings, order begins when the killing diminishes and the exercise of sovereignty by a single point of authority is established. If order is attainable and justice is possible,

then reconciliation becomes desirable. Reconciliation is future-focused in that it sees former enemies as partners in a shared future, building bridges between parties with a shared past. In international conflict, the goal is often reconciliation—the mutual effort of both sides to overcome past hostility and reframe their relationship as one of partnership to rebuild together.

Another key consideration after an armed conflict, based on the principles of *jus post bellum*, is reconstruction, which progresses from reconciliation. During its two decades of occupation in Afghanistan, the United States achieved its primary goal of dismantling the al-Qaeda terrorist organization with the death of Osama bin Laden in 2011; however, it failed to stabilize the Afghan nation and promote universal humanitarian practices. Political and societal engagement are necessary for reconciliation and nation-building to take effect. However, the signing of a peace deal with the Taliban in 2020 fell short of its goals due to several structural weaknesses. A significant factor was the insufficient inclusion of all relevant stakeholders, which hindered the process from gaining widespread support and legitimacy. The notable exclusion of the Afghan government from the negotiations severely undermined its standing and authority. Instead of establishing order in the collective rebuilding of Afghanistan, the collapse of the Afghan National Defense and Security Forces (ANDSF) and the imminent return of the Taliban to power worsened the country's humanitarian crisis.

This exclusion produced significant consequences, notably alienating key stakeholders such as women's rights organizations and various ethnic minority groups. By sidelining these voices, the process silenced critical perspectives and deepened feelings of disenfranchisement within affected communities. Frequent violations of ceasefire agreements and continued violence further eroded trust in the reconciliation process, fostering widespread uncertainty and anxiety among the population. Adding to these challenges were the deep internal divisions within the

Afghan government, which rendered cohesive negotiations nearly impossible and severely hampered the effective implementation of reconciliation strategies. Together, these factors highlighted the complexities and vulnerabilities of the peace process in Afghanistan. Murphy noted that "The fact that global human rights norms, such as religious freedom for all and the equal citizenship of all adults—including women and religious minorities—never fully took root in Afghanistan is clearly a failure. But it is one that could have been predicted" (75).

In traditional conflicts, *jus post bellum* emphasizes holding aggressors accountable and providing restitution to victims. However, enforcing accountability becomes problematic in modern asymmetric conflicts involving nonstate actors. Murphy and Radzik notes that "the lack of effective or legitimate authority over the whole of the country due to prevailing insecurity" hampers the application of transitional justice mechanisms (). Without a central authority, prosecuting war crimes and ensuring justice for victims is challenging, leading to a sense of impunity and hindering the healing process. A stable and cohesive government is crucial for implementing *jus post bellum* principles as the lack of governance structures impedes establishing justice systems and delivering essential services. In many asymmetric conflicts, the state's infrastructure is either weak or non-existent, complicating efforts to rebuild political institutions and restore order. As highlighted by Murphy and Radzik, rebuilding requires "the creation of reciprocal moral agency based on the rule of law, sufficient trust, and support for fundamental capabilities," which is difficult to achieve without a functioning government.

Reconciliation and reconstruction lie at the heart of *jus post bellum*, aiming to confront the root causes of conflict and foster lasting peace. However, in asymmetric conflicts, deep-seated grievances and entrenched societal divisions often complicate and obstruct meaningful reconciliation efforts. Andrew Rigby emphasizes that "a necessary element in facilitating the belief

that a peace is 'just enough' is that the socio-cultural scars left by the War are addressed." Reconstruction efforts may be superficial without addressing these underlying issues and fail to prevent future conflicts.

#### 4.2 Restorative Justice and Cultural Relativism

A starting point in the interpretation of conflict is the realization that particularly hard or important conflicts are always over the same values that help shape our sense of selves. Our emotions are elicited by our more or less important values being either affirmed or militated against by particular people or particular situations. If a value we deem highly important is affirmed by our interlocutor and by the treatment we receive from others, this will result in pleasant feelings. If, on the other hand, an important value is threatened, this will elicit very unpleasant feelings (Fatić, et al., 19)

Restorative justice in warfare embodies a proactive approach that applies principles of healing, accountability, dialogue, and community reconciliation following armed conflict. This framework serves as a valuable alternative or complement to traditional retributive justice models, such as war crimes trials and punishments, by prioritizing the restoration of relationships, acknowledging the harm inflicted, and facilitating the reintegration of both victims and offenders into society. By shifting the focus from punitive measures to healing and communal engagement, restorative justice fosters a collaborative environment where individuals can work together to address the consequences of wrongdoing. Fatić, et al., explains that "Conflict resolution is closely associated with the so-called restorative justice" (21) and unlike standard justice, which seeks to establish and expressively emphasize a relationship between the offence and the treatment the offender receives, Van-Ness notes that "restorative justice theory places a much higher value on direct involvement by the parties. Victims are able to restore an element of control. Offenders are

encouraged to assume responsibility as an important step in repairing the harm caused by the crime and in building a prosocial value system" (24). Restorative justice from this perspective is forward-looking, as it is based on the idea that an underlying relationship between the offender and society, or the offender and the victim of the offence, ought to be 'restored.

On the other hand, cultural relativism calls for interpreting moral values, beliefs, and practices within the context of their specific cultural framework. It argues that moral systems are context-dependent and should not be judged by external or universal standards. This perspective encourages the appreciation and acknowledgement of the rich diversity of ethical systems across societies and their distinct practices guiding them. It is essential to balance acknowledging cultural differences and upholding ethical standards related to justice and universal human rights. Braithwaite argues that restorative justice "works best when it is localized, community-based, and attentive to the cultural narratives of those involved" (56). This perspective positions restorative justice as inherently compatible with cultural relativism, as it accommodates diverse conceptions of justice and respects the unique values embedded within different societies. While restorative justice resonates with many indigenous and traditional practices, its adaptation across diverse cultural landscapes fosters a dynamic dialogue about justice. This synthesis can enhance the legitimacy of justice processes and promote shared understanding, ultimately leading to more effective and inclusive pathways toward reconciliation and healing, offering both opportunities for synergy and challenges regarding the universality and legitimacy of justice processes.

However, in offering a counter perspective to the adaptation of restorative justice to cultural relativism, Weitekamp opines that "restorative justice must navigate the tension between respecting cultural traditions and challenging those that reinforce systemic inequality or abuse" (212). A critical perspective of his, cautions that not all cultural practices promoted under the

banner of "restoration" are inherently just or equitable. When taken to an extreme, cultural relativism risks excusing or perpetuating practices that violate fundamental human rights. For instance, in particular traditional societies, restorative mechanisms like compensation or forced reconciliation may marginalize victims, especially women and children, or coerce them into silence. This tension becomes especially apparent in contexts where restorative justice mechanisms are rooted in patriarchal structures. In Afghanistan, community-based jirgas often employ restorative principles to resolve disputes; however, the outcomes of these decisions frequently mirror male-dominated norms and exclude women from meaningful participation. Schirch highlights this concern, stating that "restorative justice can be subverted when power imbalances are left unchecked within traditional systems" (87). This underscores the necessity for critical engagement with local customs to ensure that restorative processes are culturally appropriate and ethically sound.

Despite these challenges, restorative justice can act as a bridge between universal human rights and cultural particularism. When implemented thoughtfully, it offers a participatory model that accommodates cultural diversity while upholding principles of fairness and dignity, in post-war reconciliation and peacebuilding efforts

#### 4.3 Proposed Contemporized Framework

The wars in Afghanistan and Iraq have focused new attention on a perennial problem: how to end wars well. What ethical considerations should guide warfare, settlement, and its aftermath? In cases of protracted conflicts, recurring War, failed or failing states, or genocide and war crimes, is there a framework for establishing an enduring peace that is pragmatic and moral? (Patterson, 62)

A normative consideration of *jus post bellum* involves examining existing or emerging frameworks related to transitional justice, which strives to protect humanitarian law. Modern asymmetric warfare, such as the US conflict in Afghanistan, is characterized by power imbalances between state and nonstate actors, non-traditional battlefields, and blurred distinctions between combatants and civilians. This complexity challenges conventional approaches to conflict resolution and justice. Traditional frameworks of *jus post bellum* primarily focus on state actors and often overlook the accountability of nonstate actors. However, the intricacies of modern asymmetric conflict require innovative and adaptable frameworks that are attuned to the realities of contemporary warfare. These normative frameworks must address such conflicts' unique legal, ethical, and practical challenges. The transnational community can more effectively address the modern dimensions of conflict and promote justice, stability, and sustainable peace by strengthening accountability mechanisms and prioritizing inclusivity in peacebuilding efforts.

In a world where intrastate wars now far outnumber interstate conflicts, scholars and policymakers must ground Just War principles in frameworks that move beyond the outdated notion of absolute sovereignty. It may well be that nonstate actors should be discouraged in most circumstances from waging War; however, denying them any consideration in Just War theory or international humanitarian law is not the way to do so... Tying *jus post bellum* principles to human rights can also help Just War theory rationalize the asymmetry that arises at the end of War by acknowledging that power and authority are in fact morally relevant qualities in War as in peace... (Williams jr., 177)

#### 4.3.1. Hybrid Justice Mechanisms for Asymmetric Conflicts

The erratic nature of contemporary asymmetric conflict often renders traditional post-conflict justice models inapt for establishing a just aftermath of War, where the need for

accountability, reconciliation and reconstruction is not only interwoven but essential towards achieving sustainable peace. While traditional post-conflict justice has depended chiefly on international criminal prosecutions, like the ICC or ad hoc tribunals, in initiating justice and retribution for atrocities and has assumed a distinct end to a symmetrical war, its precepts have been challenged by modern asymmetric conflict. Thus, necessitating the need for a 'hybrid justice mechanism' system of transition that prioritizes inclusion, justice, and local ownership.

Where traditional top-down state-building efforts have failed—often due to the imposition of foreign governance models that excluded local actors and ignored cultural and social realities—“a contemporized framework must prioritize institutional hybridity, adaptive sovereignty, and timely legitimacy-building to stabilize post-conflict societies and effectively apply *jus post bellum* principles” (Richmond 44–45). The hybrid framework integrates external support with local ownership from the outset of recovery, shifting away from the centralized, Western-style governance models.

Instead, it promotes a collaborative system in which formal state institutions work alongside traditional, tribal, or community-based structures. Supporting this model, Roland advocates for a "guided sovereignty" approach that allows international actors to offer technical assistance while enabling local political systems to evolve organically (182–183). A practical example of this approach is the integration of traditional councils, such as jirgas or shuras, into Afghanistan’s political system during the early phases of post-war reconstruction—an initiative that holds greater potential for enduring legitimacy than imposing an exclusively Western parliamentary framework.

The increasing activities of international tribunals and the push to end impunity and amnesty have led the international community to focus on the need for retributive justice. However, this must be balanced with the importance of restorative mechanisms to prevent a cycle of vengeance. Assuming all other factors are equal, this 'justice balanced' hybrid approach has a greater likelihood of producing lasting peace. The hybrid mechanism enhances legitimacy and capacity by integrating international expertise with local participation while establishing accountability within a broader transitional justice framework. It also aims to address the challenges posed by contemporary asymmetric conflicts, seeking an initial truce agreement and eventual peacebuilding. Teitel contends that "rethinking the regulation of conflict in contemporary circumstances entails the challenge of integrating and recalibrating the norms that were shaped traditionally by their strict association or co-relation with a defined point in the course of the conflict... with the complexity of the new phenomena, one can see that multiple legal orders are arguably applicable in guiding the law of War, including post bellum and in bello... (339). By fusing international and domestic, retributive, and restorative elements, hybrid models can overcome the "moral dilemma" of ending conflict without sacrificing accountability. In addition to advocating for combining elements of retributive and restorative justice, Pugh maintains that "different contextual factors – such as culture, historical legacies, and trust in international organizations – are key elements of a more complex theoretical model and possess potential for unexpected variations due to local context" (6).

The likelihood of success of any transitional justice mechanism initiated in any conflict resolution endeavour depends on how much the interests of the various ethnic/local leaders align with and correspond with cultural/contextual factors within the broader society. As Bartoli argues, the effectiveness of any transitional justice mechanism depends on "the cultural coherence, how

much elite and populations speak the same language at the same time, and how much the transitional justice that is proposed, pursued, and applied is expressed in that alignment." Bartoli further observes that this observation is related to the post-conflict state-building challenge: "Transitional justice is one of the many instances that a new state formation needs to be put together after a fundamental trauma. Thus, the credibility, the sustainability, and success of the formation is clearly dependent on the leaders but also on the people and if the design is palatable to both...the chances of the strategy to be successful is greater." ( 245-274 ).

#### 4.4 Frameworks in Abstract

The nature of modern warfare, particularly asymmetric conflicts involving nonstate actors and fragmented political environments, has significantly challenged the applicability of traditional justice systems. In such contexts, hybrid justice mechanisms and restorative justice approaches offer promising alternatives that are both pragmatic and ethically responsive.

Hybrid justice mechanisms represent a blend of international and domestic legal approaches, developed to address the shortcomings of both systems when applied independently. These mechanisms are especially valuable in post-conflict societies where state institutions are weak or illegitimate, and where there is a need to incorporate local customs and leadership structures into the justice process. Richmond emphasizes that in asymmetric conflicts, "institutional hybrid and adaptive sovereignty, as well as timely legitimacy-building" are essential for successfully implementing *jus post bellum* principles (44–45). By combining international standards with culturally appropriate local practices, hybrid mechanisms can enhance legitimacy and foster local ownership.

One of the most apparent benefits of hybrid justice is its ability to address the limitations of international tribunals, which often impose external values and norms without sufficient attention to local context. This approach has been applied in places like Sierra Leone and East Timor, where hybrid courts incorporated both international and domestic legal professionals and norms. As Roland argues, "the 'guided sovereignty' model allows international actors to provide technical assistance while permitting local political systems to evolve organically (182–83). Such models aim to support rather than supplant local structures, building trust and long-term capacity.

The restorative justice system is closely tied to hybrid mechanisms, which shifts the focus from punishment to reconciliation, healing, and community restoration. Rooted in indigenous conflict resolution traditions, restorative justice emphasizes accountability through dialogue, truth-telling, and the reintegration of offenders into society. This model is especially relevant in asymmetric conflicts, where nonstate actors and civilian populations are deeply entangled, and where retributive justice alone may exacerbate divisions. Zehr explains that the restorative justice approach seeks "to repair the harm caused by criminal behavior" by involving victims, offenders, and communities in the justice process (26).

In asymmetric conflict, restorative justice may offer more sustainable peacebuilding outcomes than traditional punitive models. For example, in post-genocide Rwanda, Gacaca courts—community-based tribunals—demonstrated how localised restorative practices could process large volumes of cases while promoting national reconciliation. Teitel notes that such innovative frameworks are essential in "rethinking the regulation of conflict in contemporary circumstances," where formal legal structures alone may not suffice (339).

#### 4.5 Conclusion

Contemporary asymmetric conflicts pose significant challenges to traditional notions of accountability and justice in *jus post bellum*. Key tasks such as identifying perpetrators, ensuring impartial justice, building credible legal systems, respecting cultural norms, and addressing the roles of nonstate actors are complex and often beyond the reach of current international frameworks. The multitude of liberation, post-colonial, and post-Cold War intra-state conflicts over recent decades—along with the mass killings and human rights abuses that have frequently accompanied them—has sparked a debate about the effectiveness of various transitional justice mechanisms. Nations and their allies are forced to adapt to a new reality following violent conflict. Addressing these challenges necessitates rethinking and revising *jus post bellum* principles to align with the complicated realities of today's wars; otherwise, both justice and lasting peace may be compromised.

The prudential just war criteria compel leaders to constantly assess the rationale for going to War, remaining in War, and ultimately ending the conflict. This reflection includes evaluating the reasons for entering the War, the means by which objectives were met, and the accountability measures established after the War. The absence of a sovereign, cohesive government in the aftermath of asymmetric conflict hinders the implementation of *jus post bellum* principles. Without effective authority, essential tasks such as rights vindication, political reform, rebuilding trust, and establishing the rule of law become impossible or highly unstable.

Thus, modern peacebuilding efforts must emphasize early institution-building and local legitimacy to achieve the goals of a just and lasting peace. The increased activity of international tribunals and the push to end impunity and amnesty have led the international community to recognize the need not only for retributive justice but also for accountability from both parties

involved in order to achieve other facets of *jus post bellum*, including reconciliation and reconstruction. This focus aims to prevent a cycle of vengeance (Pugh, 19-20).

Conclusively, this study highlights that while discussing the significance of post-war justice in the context of modern asymmetric conflict, contemporary post-conflict peacebuilding must move away from rigid templates and adopt flexible, hybrid models that balance external support with indigenous legitimacy. Additionally, this approach should incorporate restorative mechanisms and dynamic, contemporary frameworks designed to prevent cycles of resurgent violence and vengeance, as these have a greater likelihood of success. By doing so, *jus post bellum* principles can genuinely promote justice and sustainable peace in the fragmented landscapes left by modern asymmetric conflicts.

## Works Cited

- Aleksandar Fatić, Klaus Bachmann, and Igor Lyubashenko. *Transitional Justice in Troubled Societies*. Rowman & Littlefield Inc., 2018.  
<https://ebookcentral.proquest.com/lib/ottawa/detail.action?docID=5573504#>.
- Banks, William C. *New battlefields, old laws : critical debates from the Hague Conventions to asymmetric warfare*. Columbia University Press, 2011. <https://doi.org/10.7312/bank15234>.
- Barnett, Correlli. "Total strategy and the collapse of British power." *The RUSI Journal* (1991): 1-6. <https://doi.org/10.1080/03071849108445544>.
- Bartoli, Andrea. "Mediating Peace in Mozambique: The Role of the Community." Chester Crocker, Fen Osler Hampson, and Pamela R. *Herding Cats: Multiparty Mediation in a Complex World*. Washington, DC: USIP Press, 1999. 245 - 274.
- Bass, Gary J. "Jus Post Bellum." *Philosophy & Public Affairs* (2004): 384–412.  
<https://doi.org/10.1111/j.1088-4963.2004.00019.x>.
- Bell, Christine. *On the Law of Peace: Peace Agreements and the Lex Pacificatoria*. Chicago: Oxford University Press., 2008.  
<https://doi.org/10.1093/acprof:oso/9780199226832.001.0001>.
- Bellamy, Alex J. *Just wars : from Cicero to Iraq*. Chicago: Polity Press, 2006.
- Bird, Jeremy, and Andrew Marshall. "Security Sector Reform in Afghanistan: The EU's Role." Williams, edited by Michael J. *NATO, Security Sector Reform and Afghanistan*. 2011. 117–131.

- Chesterman, Simon. *You, The People: The United Nations, Transitional Administration, and State-Building*. Oxford: Oxford University Press, 2005.
- Christopher, Paul. *The Ethics of War and Peace: An introduction to Legal and Moral Issues 2nd edition*. New Jersey: Prentice Hall, 1999.
- Frowe, Helen. *The Ethics Of War and Peace: An Introduction*. New York: Taylor & Francis Group, 2011.
- Gallen, James. "Jus Post Bellum: An Interpretive Framework." Edited by Carsten Stahn, Jennifer S. Easterday, and Jens Iverson. *Jus Post Bellum: Mapping the Normative Foundations*. Oxford University Press, 2014. 59-68. <https://doi.org/10.1093/acprof:oso/9780199685899.003.0005>.
- George Washington Bush Library*. 3 January 2003. <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror>. 2024.
- Gregory M. Reichberg, Henrik Syse, Endre Begby. "Immanuel Kant: Cosmopolitan Rights, Human Progress and Perpetual Peace." *The Ethics of War: Classic and Contemporary Readings*. Oxford: Blackwell Publishing, 2006. 522 . Saint Paul University Library.
- Gregory M. Reichberg, Henrik Syse, Endre Begby. "Thomas Aquinas: Just War and Sins Against Peace." *The Ethics of War: Classic and Contemporary Readings*. Oxford: Blackwell Publishing, 2006. 169-177. Saint Paul University Library.
- Kersten, Mark. *Justice in conflict : the effects of the International Criminal Court's interventions on ending wars and building peace*. Chicago: Oxford University Press, 2016. [https://ocul-uo.primo.exlibrisgroup.com/permalink/01OCUL\\_UO/51qjs2/alma991047344963905161](https://ocul-uo.primo.exlibrisgroup.com/permalink/01OCUL_UO/51qjs2/alma991047344963905161).

- Kuperman, Alan J. "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign." *International Security* (2013): 67. <https://direct.mit.edu/isec/article-abstract/38/1/105/12085/A-Model-Humanitarian-Intervention-Reassessing-NATO?>
- Lambourne, Wendy. "International Humanitarian Law, *Jus Post Bellum* And Transformative Justice." *International Review of the Red Cross* (2024): 1268. <https://international-review.icrc.org/articles/international-humanitarian-law-jus-post-bellum-and-transformative-justice-927>.
- Milevski, Lukas. "Asymmetry Is Strategy, Strategy Is Asymmetry." 30 September 2014. *National Defense University Press*. <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/577565/asymmetry-is-strategy-strategy-is-asymmetry/>. April 2025.
- Orend, Brian. "*Jus Post Bellum*." *Journal of Social Philosophy* (2000): 121-127. <https://doi-org.proxy.bib.uottawa.ca/10.1111/0047-2786.00034>.
- . *The Morality of War - Second Edition*. Peterborough, CA: Broadview Press, 2013.
- . *War and International Justice. A Kantian Perspective*. Waterloo, Ontario: Wilfrid Laurier University Press, 2000. Saint Paul University Library.
- . *War and International justice: A Kantian perspective*. Canada: William Laurier University Press, 2006. <https://canadacommons-ca.proxy.bib.uottawa.ca/artifacts/1867070/war-and-international-justice/2616042/view/>.
- . *War and International justice: A Kantian Perspective*. Waterloo: Wilfrid Laurier University Press, 2000. Saint Paul University.

- Patterson, Michael. "Afghanistan's Disarmament, Demobilization and Reintegration: A Case Study in Post-Conflict Security Sector Reform." *Journal of International Peacekeeping* (2009): 171-172.
- Pugh, Jeffrey. *Peace, Justice, and Transitional Justice: Retributive and Restorative Justice and Sustainable Peace*. Boston: University of Massachusetts, 2019. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4473954&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4473954&download=yes).
- Richmond, Oliver. *A Post-Liberal Peace (1st edition)*. London: Routledge, 2011. <https://doi-org.proxy.bib.uottawa.ca/10.4324/9780203810262>.
- Roland, Paris. *At War's End: Building Peace after Civil Conflict*. Cambridge University Press, 2004.
- Schirch, Lisa. *Ritual and symbol in peacebuilding*. Bloomfield, CT: Kumarian Press, 2005.
- Schuck, Michael J. "When the shooting stops: missing elements in the just war theory: In The Christian century ." *The Christian Century Foundation* (1994): 268-271. [https://ocul-uo.primo.exlibrisgroup.com/permalink/01OCUL\\_UO/17kkpb9/cdi\\_gale\\_infotracgeneralonefile\\_A15897645](https://ocul-uo.primo.exlibrisgroup.com/permalink/01OCUL_UO/17kkpb9/cdi_gale_infotracgeneralonefile_A15897645).
- Tietel, Ruti. "Rethinking *Jus Post Bellum* in an Age of Global Transitional Justice: Engaging with Michael Walzer and Larry May." *The European Journal of International Law* (2013): 336-337. <https://academic.oup.com/ejil/article-pdf/24/1/335/1203738/cht014.pdf>.
- Vatanparast, Roxana. "Waging Peace Ambiguities, Contradictions, and Problems of a *Jus Post Bellum* Legal Framework." Stahn, Carsten, Jennifer S. Easterday, Jens Iverson. *Jus post bellum: mapping the normative foundations*. Oxford: Oxford University Press, 2014. 144

[uo.primo.exlibrisgroup.com/permalink/01OCUL\\_UO/10j9een/cdi\\_oup\\_oso\\_acprof\\_9780199685899\\_chapter\\_9](https://ocul-uo.primo.exlibrisgroup.com/permalink/01OCUL_UO/10j9een/cdi_oup_oso_acprof_9780199685899_chapter_9).

Walzer, Michael. *Just and Unjust Wars*. New York: Basic Books, Inc., Publishers, 1977. Saint Paul University Library.

Weitekamp, Elmar G.M. and Theo Gavrielides. "The History of Restorative Justice." Hudson, Edited by Burt Galaway and Joe. *In Restorative Justice: International Perspectives*. Criminal Justice Press, 1996. 75-212.

Williams Jr., Robert E., Caldwell Dan. "Jus Post Bellum: Just War Theory and the Principles of Just Peace." *International Studies Perspectives*, (2006): 170 - 171.  
<https://doi.org/10.1111/j.1528-3585.2006.00256.x>.

Zehr, Howard. *The little book of restorative justice*. Good Books, 2002.