

UNIVERSITY OF SOUTHAMPTON

FACULTY OF LAW, ARTS & SOCIAL SCIENCES

School of Humanities

**War Termination and the Just War Tradition
'The Ethics of the End Game'**

by

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ABSTRACT

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Since the time of St. Augustine, philosophers have attempted to outline conditions that make warfare just. This just war tradition has conventionally been divided into two categories; *jus ad bellum* stating what makes it right to go to war and *jus in bello* which explains what is right to do in war. The focus of this thesis is to investigate the controversial development of a third category; *jus post bellum*.

This thesis demonstrates that war termination has not been totally neglected by classic just war texts. This research in itself contributes to the knowledge in the discipline as most current philosophers explain that *jus post bellum* is a forgotten aspect in just war thinking. By drawing upon these historical resources, building on contemporary thought, and by expanding upon the standard just war doctrine, this thesis generates a comprehensive set of *jus post bellum* principles, including a section on ‘Cultural Change’ which opposes recent literature. This thesis also stresses the need for *jus post bellum* principles to relate to a variety of types of conflict, or ‘backdrops’, and will apply these norms to cases of humanitarian intervention as well as inter-state wars.

Moreover, this thesis defends the development of *jus post bellum* against potential critics; whether they emerge from inside the just war tradition or from outside it. This thesis then engages with the pressing issue as to how such principles should be used in practice. This chapter illustrates the difficulties of using these principles in an absolute manner and will, instead, show how they can best be employed in a flexible way as a guide to action. Again, this is a shift away from current reflection on the topic. This concept is strengthened in the final chapter of this work, which addresses the ethical issues surrounding regime change.

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Finally, there is some material in Chapters I and II of this thesis which contains themes already dealt with in my Masters dissertation. However, the chapters within this work engage with these issues in much greater depth and in fact draw a differing conclusion from the previous work. Yet, I would like to thank Doctor Barrie Paskins for guiding my first early investigations of *jus post bellum*.

The End of a Just War

'The Parable of the King'

The King sat triumphantly atop his throne listening to the cheers of the crowd through the window. His people were happy, for the moment, and so was he. Today was a noble day; his land army had just repelled the vicious attack of his neighbour and successfully defended its country.

However, the King was not happy simply because he had defended his country; he was happy because he had fought this encounter in a way that would have made his ancestors proud. He had followed the lessons of the past king, his father, as best as he could. He had not attacked his neighbour but repelled an invasion, he had sought permission from the Prime Minister and parliament, and he had declared the actions of the military publicly. Much as it had saddened him to resort to warfare, the King felt happy with the knowledge that, for the sake of his people and his country, he had been presented with no other choice.

Furthermore, even though he had to resort to the horrific act that was war, he had made sure that his forces did not do more than was absolutely needed. He had made certain that his great army had only fought against the army of his neighbour and not its people. He had ensured that all prisoners of war were treated with respect and that the land of the country itself was not destroyed through their actions. So the King sat with this knowledge in his mind, pleased that he had fulfilled his duties both as a ruler of a state and leader of men, but also as a man and a human being.

When his Advisers strode into the throne room, their faces did not mirror the happy face of the King or the cheering of the crowd gathering outside. The faces looked sombre, engaged as they had been throughout the whole war - faces in constant anguish. Perhaps they are still saddened by the losses in the war, after all every war, no matter how justly fought, is a terrible thing the King thought. At the head of the line of advisers was the powerful figure of the King's General, followed by the much less grand Adviser for Trade, he was followed by the Prime Minister, and he in turn was followed, finally, by the Queen.

The General was first to speak "My congratulations on the successful defence of our country, your highness."

“No my General, thank you for both leading your men to victory and for ensuring that they acted in a fair and legal manner.”

The General swiftly replied “Your Highness, it has been an honour, as it will be to continue to lead your men into the heart land of the enemy.”

The King looked amazed “What do you mean, General. The war is over; we have driven the enemy from our own soil and back onto theirs. The war is won.”

“True, sire, the defence is complete now we have a weak enemy at our doorstep; an enemy that has intended to destroy us for many an age, an unjust enemy who attacked your land. In your time, before us now, we have a golden opportunity to destroy that monster on the throne of your adversary and secure our own lands even further.”

“But that would be unjust, General, to continue with the war. We are the victors and have fought the true and right fight. We do not want to be remembered as invaders and tyrants, do we?” the King announced, looking into the faces of his Advisers.

“I would rather be remembered, your highness, as the leader who saved the lives of my men. If we let this country stand, then they will surely rebuild and re-arm their forces. Then we will have another war, a greater war, in which more of our countrymen will suffer and die. Perhaps, sire, we might not even win that fight”.

The King said nothing but stared out blankly.

“If we continue now and do not end the war today we can easily brush aside the remaining forces they can muster and restore a more lasting peace in this land. I ask you, your majesty, is that not a just outcome? Remember that, for a defence, one must not always wait for an attack. One can act pre-emptively. All we are doing is to prevent a further attack later down the line. Is that not just?”

The King looked around at his other Advisers and spoke “Does anybody else have any advice on this subject?” It was the Prime Minister who spoke up next, in a tired and deflated voice “Your highness, there is another advantage I can see of a continued attack on our erstwhile attacker.”

“What is that?” the King asked, amazed at the response.

“Well sire; the people of our enemy are ruled over by an ambitious tyrant. He has never been elected and his own people cower in fear from him. We have before us today the chance not only to ensure peace in our land through the pre-emptive attack that the General described, but also by replacing the terrible regime that exists. With this evil leader on his knees and having fought this just war, we can end it by replacing an evil leader with a just one, chosen by the people, for the good of the people.”

“I’m simply not sure” the King truthfully exclaimed “It seems sensible and right to free a people through our after war activities, but I’m simply not sure. What about the sovereignty of our enemy?” The King truthfully exclaimed “Wouldn’t it be wrong for me to launch an invasion on the simple grounds that I did not feel its leadership was particularly fair. Simply because we have won the battles does that make it any more right or just?”

“But, your majesty, we have not started this conflict. This would simply be part of our post war reconstruction; both for our benefit and for those unfortunate men and women forced to fight for an ambitious ruler’s desire for conquest. Do you not agree it is the right thing to do?”

“I just don’t know. It will need considerable thought.” the King answered.

It was at this point that the General re-entered the debate “Your majesty, if we are to perform these acts, we simply do not have the time to sit back and think. To retain our tactical advantage we must decide, here, now, today.”

“But there are so many more questions that could come from the outcome of this hard decision”. The King paused for a moment, and then continued with his own rhetoric “What would we do with the current ruler? How would we get the defeated people to choose a new regime? They have had the old one for so many a year. How long would we leave our army there whilst this change occurred? What would be the right and just way of dealing with these issues? I simply don’t know.”

The King sat back into his throne; why had he not considered such end of war dilemmas before? He understood now that they needed to be answered with great haste and discussed before he decided. How could he reach such a decision so quickly, on such a complex decision that would have such wide spread effects? It was too much to consider and the Trade Adviser was just about to speak.

“Your majesty, let us assume for one moment then that we do not wish to continue with this conflict - that we are content with repelling our attacker from our borders. We still have various issues that need to be addressed, in particular the setting of terms for the peace. For example, have you considered the issue of reparations?” the Trade Adviser said in a weakly voice.

“Well, no, I have not” answered the King.

“Your highness, fighting this just war has not been cheap, both in the cost of men and resources. It is not only our adversary that is weak. I think it only fitting that we expect from the peace vast payments of reparations from our enemy, to rebuild the damage to

our land and our economy. Or do you want our lands to be weak both economically and against further attack?"

Before the King could answer one way or the other, the Queen spoke up loudly "It may be true that our neighbour attacked us, but for them to pay so heavy a price in reparations would lead them to total disaster. They are in an incredibly dangerous and fragile situation and it will, in the end, only be its people that suffer. We need to come to some better arrangement than this. I would also say that to tax and demand from this land too heavily will only increase any animosity and hatred between our two countries. We need to help them rebuild not take for ourselves."

"Sire, they attacked us. We need to look at our own country's political and economic safety rather than our enemies. What say you? Is that not just?" asked the Trade Adviser.

The King sat in silence; his advisers waiting on his answer. But he did not have an answer to give; he did not know what to do. His father had never taught him how to answer these questions, so he simply sat there in silence. Breaking the silence was the Prime Minister, he, however, was not offering words of guidance only more issues.

"My King, related to the peace treaty, there is also the question as to the strictures we wish to place upon the size of our neighbour's military."

The King replied "Well, do please advise me. I want dearly to do the right thing, as we did during the war itself. What is the just thing to do with our enemies' army?"

"The answer seems clear" replied the General. "In order for a just act we have to ensure that they cannot attack anyone else again. Therefore we should order that all of their military forces are completely disbanded. This would be safer for us, and safer for our other neighbours. That is the right, and indeed just, thing to do."

Before the General had even finished his prose, the Queen spoke up "But what about our neighbours? If we are trying to rebuild this land, rather than simply punish it, we must leave it with some forces to defend itself. What if another of our neighbours took advantage of the situation and attacked. It cannot be just to leave a land defenceless and punish it so greatly."

The Prime minister spoke up again "There is also the question, assuming that the war is in fact over, of what is the fair thing to do with our own army."

"I do not understand the issue here, Prime minister, please explain."

"Well Sire, a large part of our army is made up of conscripted men, brought into the army as part of the emergency of the attack on our lands. Is it right to keep them as serving soldiers to guard over borders, oversee the actions of this treaty we are deciding,

or even entering our enemies lands to change a government. Or should we leave that to our regular soldiers, and allow our conscripted men to return to their homes? It all depends on what you think is right.”

“My King, there is also the matter of those whom we have captured as prisoners of war and who remain in the tower. What are we to do with them? We have imprisoned various types of captives. Some are common soldiers who violated our code as to the practice of war and engaged in the treacherous crimes of rape, murder, torture and pillage. We also have behind bars some of the foul ringleaders of the assault on our country. Those who sought to take you from the throne and march their own armies through the capital of our great nation.”

The King answered ‘Well, this is no issue. We already have them captive in the tower and they have quite clearly broken our rules as to the justice of warfare. End of the story.’”

“Not quite, you’re Majesty. Although it is true that they have broken the codes that we live by regarding war, how are we to punish them? Are we to put to trial those criminals in the same manner as for civil crimes, or should we create a special judicial proceeding? The enemy also has some of our soldiers captive. Would it be more just to make some kind of trade?”

The King sat poised on his throne. His face now reflected the concern of his Advisers; the cheering of the crowd outside now an irritation to his thought process. The King wondered if they would still be cheering if he made the wrong decision in the court today. What if he made the wrong decision and it resulted in more warfare, and disaster, for his people? He wanted to be remembered as a just and strong man, not one who had not even considered such basic war termination issues.

“Whilst I do not wish to burden you with yet more thoughts, my King, we also have to discuss the matter of what is the best manner in which to conduct the peace process” asked the Trade Adviser.

“Do please continue” said the confused King.

“Well we could make the whole peace process very public and announced, or we have the option to conduct certain peace talks behind closed doors.”

“The public option sounds more just to me” replied the King.

“Perhaps” said the Trade Adviser “but we may not be able to make such fair deals in public as our neighbour may not want to lose public face. So the question might be, sire, do you want to actually be fairer and just, or do you want to appear more fair and just?”

As the King contemplated his many burdens, a messenger from the court entered the room and approached the throne. He spoke in a loud and glamorous voice “Your Majesty, the court is ready and the people await your address at the conclusion of this war.”

After a moment of silence the King answered “The court will have to pause, as will the address. My quest for a just war is not nearly over. The celebrations will have to wait.”

Chapter I – Introduction to Jus Post Bellum and the Just War Tradition

'The Borders and Boundaries of the Question'

'Wars have taken place from the beginning of recorded time and in all parts of the world. They are prominent, and sometimes dominant, both in the history books and in today's headlines. They have shaped the international system and prompted social change...In the process they raise the most fundamental questions of ethics.'

-Sir Lawrence Freedman, Professor of War Studies at King's College.¹

Most would agree that the phenomenon of warfare, in all its various guises and forms, has taken place since the beginning of recorded time. In the same way, few would argue that war has not altered and shaped the international system in which we live. Furthermore, few (although importantly not all) would dispute that war raises fundamental questions of ethics as Freedman illustrates.² This thesis is designed to address one set of those fundamental questions of ethics raised by war, namely the justice of the war termination process and the after war peace.

Although few would challenge that questions of ethics occur in warfare, what does change is the stance different schools of thought take on the questions of ethics that wars present. Also, the 'answers' these schools of thought find to the ethical questions of war do differ.

For instance, some schools of thought attempt to make the claim that questions of ethics should not be raised in conjunction with the phenomenon of war. To this school of thought, warfare is a moral vacuum which the boundaries of ethics are unable, and should not attempt, to cross. To rehearse this group's popular phrase, they hold the view that all of 'warfare is hell' and therefore ethics cannot play a role. So, although at this stage I am not critically evaluating this theory, they, in a sense, bury their heads in the sand and turn away from these fundamental questions of the ethics of war. They recognise the questions exist, but say they should not really apply. A famous supporter of this way of thinking was General Sherman, he explained that 'If the people raise a howl against my barbarity or cruelty, I will answer war is war ... War is cruelty and you cannot refine it'.³

¹ Freedman (1994), p.3

² Freedman (1994), p.3

³ Oderberg (2000), p.185. Please also see Kellogg (2002), p.3 and DiMeglio (2005), p.121

Another stance that one can adopt in response to the ethical questions that war provides is that of ‘pacifism’. Different to the realist school of thought, it holds that these fundamental questions of ethics do apply in relation to war and, in fact, are of the utmost importance. This school’s way of thinking, which must be explained in this brief synopsis, has many different strands and degrees each with its own history, but each essentially explains that ‘war is wrong’. These groups in pacifism include ‘absolute pacifism’, ‘ethics of non violence pacifism’, ‘positive pacifism’ and ‘modern-age pacifism’.⁴ Although the groups and grounds differ, they all hold, for a variety of reasons, that war is wrong.⁵ For this reason pacifists strongly opposes any theory or tradition that holds that warfare may be permissible.

This brings this section neatly to a third way of addressing the fundamental ethical questions of war.⁶ This way of dealing with the questions of ethics lies somewhere between these two schools of thought, perhaps closer to the pacifist’s side (although still very different). This view, unlike pacifism, is that warfare can be permissible; however warfare is only allowed when it has fulfilled a set of moral and legal rules and criteria. This school is described as the ‘just war tradition’ or the ‘just war theory’ and it is through this lens, and in relation to this tradition, that this thesis will be looking into the questions of war termination. By way of introduction, this section will provide a thumbnail sketch of the tradition and of justice post war.

The just war tradition has a very long past that dates back to at least the time of St Augustine of Hippo (354 – 430 AD), who described the qualities of a just war in

⁴ For reference an Absolute pacifist takes the view that engaging in warfare is always wrong no matter what the consequences of not doing so is.

Contingent pacifism was a phrased coined by John Rawls and as explained by Oderberg (2000), p.186 ‘does not disapprove of war in principle, claiming that in the contingent circumstances of a particular case a given war is wrong.’

Ethics of non violence pacifism is the pacifism linked to the thoughts of Ghandi, Tolstoy and certain forms of Buddhism. As stated clearly by Oderberg (2000), p.187 ‘This form of pacifism does not even begin to inquire into the circumstances of war, since it argues from a priori views about the wrongness of violence in general’.

Positive pacifists do not only take the view that warfare is wrong but actually promote taking steps to avoid future war and strive for peace. Their theory is often called ‘Just Peacemaking’. Modern-age pacifism is a contemporary version of the views held by the Ethics of Non-Violence pacifist, however they hold their views by explaining that whilst war in the past may not automatically have been unjust, due to today’s circumstances and weapons every war will now be unjust.

For further information regarding the differing strands and degrees of pacifism please see Oderberg (2000), pp.185-190 and Glover (1977), p.253-261. It should however be noted that many other texts on this wide subject do exist.

⁵ Oderberg (2000), pp.185-186 and DiMeglio (2005), p.121

⁶ DiMeglio (2005), p.121

response to the attacks by the Vandals on Rome. In fact, many would say that he was the just war tradition's founding father, although it must be stated that some earlier examples of just war thought can be found in work that predates Augustine. Since then, the tradition has passed through the hands of a great many theorists and philosophers. From the early origins of St Augustine, the tradition was famously developed by the Dominican friar St Thomas Aquinas (1225-1274), Francisco de Vitoria (1492-1546) and then codified by theorists and legal jurists such as the Dutch protestant Hugo Grotius (1583 – 1645) and the Swiss thinker Emerich de Vattel (1714- 1767) to name but a few.⁷ More recently the tradition continues to be developed by thinkers such as Walzer, Orend and Johnson. The tradition itself was originally based upon Christian and in particular Catholic doctrine and protestant theology, but over the years has also been adapted to 'Natural Law' and reason based arguments primarily through the work of Vitoria, providing it with greater access to a wider audience.⁸ In many ways, as explained by Johnson, the principles of the just war tradition 'have become perceived as generic to Western culture.'⁹

At this early stage in this thesis it seems appropriate to express its boundaries clearly. This thesis will address only one ethical issue of war, the issue of war termination and post war justice. Secondly, it will be addressing this issue from the perspective of the just war tradition, as opposed to any of the other schools of thought regarding the ethical questions of war.¹⁰ However it is crucial to explain that the tradition which I have begun to describe is the western tradition of just war and this is not the only thinking on justice and warfare. For example, as explained by Holmes 'Both Judaism and Islam give attention to the issue, particularly to the question of how wars should be conducted, as does some eastern thought... the concept of Jihad has a clearly developed just war doctrine.'¹¹ Despite the existence of these other traditions, this thesis is concerned only with the western tradition of just war thinking. Therefore whenever this work refers to the just war tradition it is in fact the western tradition to which it is referring.

⁷ Many philosophers make the above point. For example DiMeglio (2005), p.119-120. Although DiMeglio lists Kant as a just war philosopher (following on from the work of Orend) which this thesis would dispute (please see later section).

⁸ Williams and Caldwell (2006), p.314

⁹ Johnson (1984), p5

¹⁰ Although it must be noted that within Chapter III a realist position will be investigated acting as an antagonist of the just war position.

¹¹ Holmes (1989), p.146. For information on this directly related to jus post bellum please see Hashmi (2005) at the Fordham University conference 'The Ethics of Exit'.

The just war tradition is typically divided into two main areas. The first area is described as *jus (or ius) ad bellum* which relates to the just reasons for going to war. The second area is described as *jus in bello* which refers to what is just or right to do in war.¹² Both of these areas, often described as the two pillars that make up the just war tradition, are then subdivided into various principles, rules and laws that can vary between theorists. It is for this reason (amongst others) that many thinkers describe it as a ‘tradition’ rather than a ‘theory’ or ‘doctrine’ as not one set of principles are universal for all scholars.¹³ However most of the academics that deal with just war, and most text books that describe the just war tradition, divide it by using these two overarching headings. The purpose of this thesis, as described above, is to identify and examine a third possible heading to the just war tradition, which has only recently become publicly recognised, a heading described as *jus post bellum* or justice after war¹⁴ which as Walzer explains asks the question, ‘what is it that makes a legitimate post-war settlement?’¹⁵

Whilst this thesis will argue that the just war tradition has commented on war termination since its ancient roots, the actual phrase *jus post bellum* appears to have been first developed by Michael Schuck in his article ‘When the Shooting Stops: Missing Elements in the Just War Theory’, which was the cover story of ‘Christian Century’ published on 26th October 1994.¹⁶ So bearing in mind the long history of the just war tradition, described above, the actual term *jus post bellum* is in its infancy.

If *jus ad bellum* refers to the just start of the war, and *jus in bello* refers to the just fighting within the war or the middle of the war, then it is obvious that Schuck’s phrase relates to the end of the war and the ethical issues surrounding a war termination. *Jus post bellum* is clearly the last needed step within the just war tradition and looks to regulate, and provide moral rules for, all of the war termination issues faced by the King in the opening parable, allowing a just movement from the state of war to the state of peace. When is it the just time to end a war and how does a state make the transition back to peace? What terms should be included within a just peace? Is an invasion ever

¹² Honderich (1995), p.905. This point is also made by most *jus post bellum* thinkers including Bass (2004), p.384, Williams and Caldwell (2006), P.309, DiMeggio (2005), pp.117-126, Stahn (2005), p.1 and Evans (2005), p.19

¹³ Johnson (1884), pp.12-14. Williams and Caldwell (2006), p.313

¹⁴ DiMeggio (2005) makes a similar point on p.117. Bosanquet (2007), p.1

¹⁵ Walzer stated this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.5

¹⁶ Schuck (1994), p.4 Taken from Christian Century. For evidence of Schuck as the first to use the term *jus post bellum* please see DiMeggio (2005), p.133 who states ‘the first unequivocal reference to *jus post bellum*... belonged to theologian Michael Schuck in 1994’. This point is also made by Bosanquet (2007), p.2

justified? What does a country do about an enemy's troops? Is it ever just to punish the enemy through reparation payments? What about war guilt and war crimes? These are the types of immediate questions with which *jus post bellum* should deal.

It should also be explained that this thesis does not wish to become overly embroiled with the philosophical project of endlessly defining terms. The main reason for this is that, whilst in some circumstances it can throw light upon ethical issues, in many cases it just involves using one set of terms to describe another, which then in turn need to be defined, thus leading to an infinite regress of definition. However, despite the fact that defining terms is not the primary aim of this thesis it seems clear that as *jus post bellum* has been explained as relating to war termination, this umbrella term of 'war termination' needs also to be explained. In short, what actual period of time is included in a war termination?¹⁷

For example, does war termination cover when the decision is made to conclude a war? Does war termination relate to the initial cease fire between combatants? Does war termination include the official truce? Does war termination refer to the Peace Treaty that follows? Furthermore, does the term war termination cover the post war reconstruction and transition from war to peaceful political life? Whilst this question of defining war termination is neglected by most contemporary *jus post bellum* philosophers, the answer is relatively straight forward. War termination (within this thesis) covers all of the areas outlined above. The war termination process begins when one chooses to call a cease fire, it extends through the truce and peace treaty stages, and it also covers the war reconstruction and transition period leading towards peace.¹⁸ So whilst this text will focus exclusively on *jus post bellum* and war termination, leaving discussions of *jus ad bellum* and *jus in bello* to other thinkers, it should not be ignored that the principles examined will cover quite a wide array of issues and problems.

The next step in this chapter will be to demonstrate that, compared with the two other principles of the just war tradition, the *jus post bellum* section is largely excluded and not well developed by most modern philosophers. This position is clearly outlined by Major DiMeglio who states that 'In contrast to the voluminous material regarding

¹⁷ Whilst not directly related to this question Mathew (1920), p.819 discusses the different stages of a war's end and the distinction between the termination of hostilities and of the actual war. Mathews also discusses the difference between truces and full peace treaties. It was through reading this work that this idea was developed.

¹⁸ Orend (2000), p.135 briefly lists the concerns of *jus post bellum*.

causes of war and actions in war, there is a vacuum regarding proceeding after war termination.¹⁹

The most obvious empirical exercise to undertake is to compare the vast amount of texts, journal articles and debates on *jus ad bellum* and *jus in bello* compared to the scarce amount of literature that relates solely to *jus post bellum* and the ethical issues of war termination. After researching this topic for several years, I have found several books related solely to either the issues of *jus ad bellum* or *jus in bello*, I am yet to discover a text whose sole topic and purpose is an investigation of *jus post bellum*. Whilst there are some recent just war thinkers who are now beginning to tackle the questions of justice and war termination, up until recently even with only a cursory glance at the literature on the subject one can plainly see that it was barely given lip service if it was even mentioned at all.

So whilst there is a huge amount of research and literature regarding, say, the link between *jus in bello* and modern warfare with weapons of mass destruction, there is precious little relating to the broad category of justice post war. However, this body of work is steadily growing.²⁰

Although the topic of *jus post bellum* is not totally ignored by all contemporary writers (some existing texts will be reviewed within this chapter), there is now a realisation that *jus post bellum* raises fundamental questions of ethics related to war that need to be addressed in more detail.²¹ As stated by the prominent just war thinker Walzer '*Jus ad bellum* (which deals with the decision to go to war) and *jus in bello* (which deals with the conduct of battles) are its standard elements, first worked out by Catholic philosophers and jurists in the Middle Ages. Now we have to add to those two an account of *jus post bellum* (justice after the war).²²

¹⁹ DiMeglio (2005), p.117 and p.132. Bass (2004), p.384 also makes a similar point explaining that 'Much less has been said about what happens after a war'. This thought it also expressed and shared by Williams and Caldwell (2006), p.313, Stahn (2005), p.1, Orend (2002), p.43 and Orend (1999), p.253, Orend (2000), p.135

²⁰ Walzer makes a similar point to this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, pp.5-6 Walzer describes *jus post bellum* as 'the least developed part of the theory', p.5 transcript. This point is also made by Elshtain (2005) at the Fordham University conference 'The Ethics of Exit' and by Godfrey (2006), p.1

²¹ Hayden (2005), p.168. He states that 'Recent work in just war theory points to the need to consider a third category, *jus post bellum*'.

²² Walzer (2004), p.8. This point is seconded by Williams and Caldwell (2006), p.311

The next role of this chapter will be to look momentarily into other disciplines to see if the same neglect exists. To see if it is only philosophers who seem to have been reluctant to write about war termination issues.

By looking into this subject it seems clear that this absence is not limited purely to philosophical circles. If one looks into libraries on political theory, social science and history, a vast number of texts relate to how wars start and what actually happened during a particular war. The aftermath of wars and its conclusion seems also to be neglected by social scientists and historians as well as present-day philosophers. This conclusion is also shared by Ikle the author of the text *Every War Must End*. Within this work Ikle states ‘How wars are brought to an end? Historians, students of military strategy, and experts on foreign affairs have tended to neglect this question. Much attention, by contrast, has been devoted to how wars begin.’²³

That is not to say that no texts exist on the subject of war termination and conclusion, a few notable examples include *After Victory* by Ikenberry and *How Wars End* by Bailey. However, it is worth comparing the vast amount of texts written about how wars start, in comparison to the minute number of texts on how they end. This demonstrates that in the same way that just war thinking philosophers seem to focus on the start and middle phase of war, so to do social scientists and historians.²⁴

It has also been claimed by the thinkers Stahn, DiMeglio and Orend that this neglect is also true of the International Law in existence, it too being more focused on the start and middle of war.²⁵ By investigating the International Law relating to war termination, Orend explains that the only International Law relating to the termination of wars can be found within Articles 32-41 of The Hague Convention of 1907. In addition, not only does Orend explain that there is very little law to regulate the ending of wars, he also explains that what is in existence is far from satisfactory. He states that ‘Their quaint references to white flags and buglers, their vague commitments to military honour, their pedantic distinction between general and local armistice, and the overwhelming emptiness of their nature renders these articles all but irrelevant in the current context.’²⁶

²³ Ikle (1971), p.v. This position is also held by Massoud (1996), p.491

²⁴ Ikle (1971), pp.1-4

²⁵ Stahn (2005), p.3 DiMeglio (2005), p.131 (although he primarily quotes Orend) and Orend (2000), p.219, Orend (1999), pp.254-255

²⁶ Orend (2000), p.219 and Orend (1999), p.255

Whilst it is clear from Orend's argument that little law exists relating to war termination and *jus post bellum*, this thesis does disagree with the statement that it is the only law regarding the ending of wars. One need but look at Article 43 of the Hague Convention which relates specifically to occupation. Moreover, one can also find law relevant to war termination in 'Article 64 of the 1949 Convention Relative to the Protection of Civilian Persons in Times of War, the Fourth Geneva Convention'.²⁷ There is also in existence quite a wide array of International law that relates to the subject of prosecuting war criminals. This is an important factor within *jus post bellum* and war termination, again to be investigated in more depth within this thesis. Suffice to say, what Orend does illustrate is that in the same way current philosophers, social scientists and historians have given war termination and post war issues a back seat, so too has International Law.

Moreover, the neglect of war termination is not restricted to purely academic circles. It has also been claimed that this neglect extends to strategic planning and crisis management. For example Lieutenant Colonel Soucy, Major Shwedo and Major Haven published a paper in March 1994 which described war termination as 'A dangerous Omission in U.S. crisis action planning'.²⁸ So it seems as if a lack of understanding in relation to the end of wars is not restricted to scholars but also to those in the field that deal 'hands on' with such events as well.

However, this introduction is serving in many ways to provide the boundaries for this work. In the same way that this thesis is only addressing justice post war, and not all of the ethical issues to do with war and that the thesis is looking at it primarily from the stance of the just war tradition, it must also be stated that this topic will not address the neglect of war termination in international law, strategic planning or in social science but only in philosophy.²⁹

The next step in this chapter is to come to some degree of understanding as to why after so many years of study without *jus post bellum* it is now the topic of debate. Why is it recognised by Walzer as something we now need to add to the tradition? For what reason is the issue of *just post bellum* taking a place in the debate of just war philosophers?

²⁷ Meierhenrich (2006), p.101

²⁸ Soucy, Shwedo and Haven (1994), p.1

²⁹ For further details of an investigation specifically geared towards the development of post-conflict law in relation to *jus post bellum* please see Stahn (2005).

The answer to this particular question has been captured within a few lines of Walzer's most recent work 'Arguing about War'. Within this text he highlights the fact that current writing regarding *jus post bellum* is 'too brief and doesn't even begin to address many of the problems that have arisen in places like Kosovo and East Timor and, recently, in Iraq'.³⁰ The crucial fact within these few lines demonstrates that the reason for this current interest in justice post war is because it is these ethical issues of war that currently face us. The issues of what to do post war are being raised by politicians, the media and by the public at large.³¹

To further strengthen this reason, sketched out briefly by Walzer, one needs to look back at the history and origins of the just war tradition. As commented on previously, the just war tradition was not set out as a theory by St Augustine, written in 'stone tablets', and applied in the same way by philosophers since Roman times. In fact the just war tradition has adapted and changed to meet with the needs of its time.³² It has adapted and altered but still kept its essence the same. This viewpoint is shared and supported by a variety of just war writers including Johnson, Paskins and Dockrill. As explained by Paskins and Dockrill 'An essential part of the just war tradition is its changing agenda. As the world alters which the tradition seeks to comprehend, so the agenda changes for meetings of those who gather from time to time to ponder'.³³

For examples of this standpoint, one need but look at key times in the history of the tradition. If we begin by looking into the works of St Augustine of Hippo, who I described as one of the founding fathers of the just war tradition: St Augustine was not writing in isolation or in abstract theory, he was writing principles of war relating to issues that were facing him in his time, and in his place, and which were most pressing. As explained within *The Ethics of War* 'many if not most of Augustine's reflections on political matters were written in direct response to ongoing events, and they were thus tailored to meet the concrete challenges he faced'.³⁴ For example, one of the major features of Augustine's works is the need for a legitimate authority in war (still one of the major factors of the just war tradition today). This feature was largely introduced due

³⁰ Walzer (2004), p.xiii. Orend (2000), p.135. This is also noted by Godfrey (2006), p.9

³¹ Rodin (2006), p.243

³² Evans (2005), p.7

³³ Paskins and Dockrill (1979), pp.193-194. This point is also made by Iasiello (2004), p.1

³⁴ Reichberg, Syse and Begby (2006), p.71 and DiMeglio (2005), p.119

to the invading vandal tribes attacking Rome.³⁵ So the just war writings of Augustine were a product of its time.

We could also look at more modern examples of the same. For instance one could look at the just war writings that related to America's involvement in Vietnam. Certain questions of intervention moved into just war thinking as did the question as to whether any unjust conduct or actions within the war automatically made it unjust even if its reasons for starting the war were just.³⁶ Another contemporary example could be the question as to whether just war tradition was still a valid tradition to follow with the development in technology of the weapons used to fight. Simply put, could modern war be just with weapons of mass destruction?³⁷ This question was raised frequently by just war thinkers during the cold war, again very much a product of its own time. There are many more examples of this throughout the history of the just war tradition, however this section has merely sketched out a historical and modern exemplar as this thesis is to focus on *jus post bellum* and not on the evolution of the just war tradition. It should be realised that this evolution does exist and does relate to the issue of war termination at hand.

So to bring these two arguments of Walzer and Paskins and Dockrill together, the just war tradition evolves and changes to meet its agenda and today's agenda seems to be focusing on the ever increasing issues of *jus post bellum* and war termination.³⁸ In this way one could compare the just war tradition to a river. The course and shape of the river may adapt to its surroundings and to any obstacles ahead. However it is still the same river throughout its journey and its central current always remains constant. Therefore this thesis will continue to hold the central themes of the just war tradition but will alter its course to deal with any obstacles on route.

It should also be noted that, whilst this thesis recognises that an interest in *jus post bellum* has been sparked by events in places such as Iraq and Afghanistan, this particular thesis is not a work exclusive to these topics. Whilst some *jus post bellum* writers have focused on the pressing issues related to these specific cases this thesis will take a broader look at the subject of justice post war and not limit itself to one, albeit

³⁵ Johnson (1984), p.1

³⁶ Johnson (1999), p.2

³⁷ For example please see Johnson (1984), 'Can Modern War be Just'.

³⁸ Iasiello (2004), p.3

currently important, case study.³⁹ Of course mention will be made to these events but rather than develop an understanding of *jus post bellum* from one particular case it seems more prudent to develop a philosophical understanding of war termination from a variety of sources and then apply that knowledge to specific cases. The danger to undertaking the project the other way around is that you could end up with a set of war termination principles that relate exclusively to one situation.

By undertaking the project in this broader way, the aim is to generate an understanding of *jus post bellum* that will of course be relevant to today's events but in addition will not be made redundant by the next war. Whilst this might appear a high and unrealistic aim, one need but look again at the example of Augustine. Augustine was able to tackle contemporary questions but did so in such a way that his thoughts were not completely bound to that isolated episode and for this reason his understanding and influence still has relevance for just war thinkers today.

The next step within this chapter will be to investigate how other contemporary just war philosophers have begun to tackle the pressing issue of *jus post bellum*. Despite the fact that justice post war has been neglected for many years, very recently a plethora of accounts have been offered, many motivated by the ongoing situation in Afghanistan and Iraq. The most prominent and published author on the subject of *jus post bellum* is Brian Orend. As stated by DiMeglio 'Orend ... provides a comprehensive contemporary proposal for *jus post bellum*'.⁴⁰ This thesis will therefore critically examine this 'comprehensive contemporary proposal'⁴¹ as a starting point for its own investigation. By highlighting potential areas of difficulty and raising issues in this influential account of *jus post bellum* it will demonstrate which areas need to be explored further within this thesis.

It is certainly obvious that Orend has not excluded *jus post bellum* from his research and he should be given credit for being the first modern thinker to give the subject its due attention. Orend's early thoughts on war termination can be seen in the journal article 'Terminating War and Establishing Global Governance' published in 1999, five years after Shuck coined the phrase *jus post bellum*.⁴² Whilst Orend is yet to write a text solely related to the justice of war termination he has written numerous other

³⁹ This is also the goal of DiMeglio (2005), p.146. Although his own comments are quite brief, outlining three criteria.

⁴⁰ DiMeglio (2005), p.140

⁴¹ DiMeglio (2005), p.140

⁴² Schuck (1994), p.1

articles and chapters on the topic. For instance, Orend's texts 'Michael Walzer on War and Justice'⁴³ and 'War and International Justice: A Kantian Perspective' both contain detailed sections on *jus post bellum*. In the first text Orend reviews Walzer's contribution to the discussion of *jus post bellum* and states that his 'account remains short, spotty and unsatisfying'.⁴⁴ Orend therefore gives himself the task of rebuilding a more detailed understanding of *jus post bellum* from the sparse comments of Walzer and as he says 'put some meat on these bones'.⁴⁵ In the second text Orend makes the claim that 'Kant cogently insists that a complete theory [of just war] must consider justice after war'.⁴⁶ Orend then performs a similar project as his other text and builds up a framework of *jus post bellum* based upon the political writings of Immanuel Kant.⁴⁷

As an interesting point, despite the fact that Orend is drawing an understanding of justice post war from radically different philosophers, he ends up with exactly the same list of principles in both texts. These principles are just cause for termination, right intention, public declaration and legitimate authority, discrimination and proportionality.⁴⁸ Furthermore, this same set of principles is again identical to his own list of *jus post bellum* rules set out in his article 'Terminating War and Establishing Global Governance'.

Orend has recently had published a text called 'The Morality of War' which incorporates detailed sections on justice post war which brings together many of the

⁴³ Orend (2000), pp.135-152

⁴⁴ Orend (2000), p.135

⁴⁵ Orend (2000), p.136

⁴⁶ Orend (2000), p.217

⁴⁷ Orend (2000), pp.217-256

⁴⁸ For reference Orend's Summary of his five principles. Orend (2000), pp.232-233. The outlines line can also be found in Orend (2000), p.151

'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.'

'Right Intention. A state must intend to carry out the process of war termination only in terms of those principles contained in other *jus post bellum* rules. Revenge is strictly ruled out as an animating force' This principle for Orend also incorporates his understanding of 'war crimes'.

'Public Declaration, legitimate authority and domestic rights protect. The terms of peace must be publicly proclaimed by a legitimate authority' furthermore 'any domestic rights must be fulfilled as readily as external rights'.

'Discrimination. In settling the terms of peace, the just victorious state is to differentiate between the political and military leaders, the soldiers and the civilian population within Aggressor. 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'.

'Proportionality. Any terms of peace must be proportional to the end of reasonable rights vindication. Absolute 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.'

central themes of his previous works. For this reason it is this most recent text which will form the main substance of this evaluation, however the texts outlined above will also be referred to.

It should be made clear that Orend makes some informed and interesting points within his study of *jus post bellum*. His arguments about the expansion of principles related to *jus ad bellum* and *jus in bello* so that they can relate to war termination issues are particularly important.⁴⁹ For this reason some of his views on when to end a war, whether to exact reparations, regime change, war crimes and disarmament amongst others, will be referred to when this work goes on to develop its own list of *jus post bellum* criteria. On this level one should not ignore the impact that Orend's work has had on every contemporary *jus post bellum* writer including myself.⁵⁰ Additionally, it should be pointed out that many of these standard norms are popular and common with most *jus post bellum* philosophers. It should, however, be made plain that this thesis will not merely adopt the rules of Orend and others, but rather will expand upon these positions in order to develop its own unique set of *jus post bellum* principles.

However, despite similarities that may exist on the surface in certain areas between this thesis and Orend, (we are after all looking at the same issue) on many vital areas this thesis would stand in stark contrast and actively disagree with him. The first major difference to raise is that Orend claims that Kant is the first philosopher to discuss war termination issues in relation to the just war tradition.⁵¹ Furthermore, that prior to Kant war termination was a complete void in just war thinking. As Orend boldly states Kant 'essentially invents a new just war category, *jus post bellum*'.⁵²

In response, the first minor point to make is that Kant never in a single text mentions the term *jus post bellum*. Whilst this might not necessarily mean that he did not write insightful comments on how to justly terminate a war, to state that he invents the category *jus post bellum* without ever using those words seems somewhat strange. Secondly, to many academics it is actually dubious to describe Kant as a just war philosopher in the first place. For instance the Kantian scholar Williams states that 'Kant

⁴⁹ Orend (1999), p.259 and Orend (2002), pp.44-45

⁵⁰ Bosanquet (2007), p.4

⁵¹ Orend (1999), p.258, Orend (2000), p.217 and Orend (2004), p.173

⁵² Orend (2004), p.173. In his latest text Orend does explain how Vitoria and Aristotle mention war termination issues. However he explains that the comments of Vitoria identifying war termination issues 'failed to add content to this observation' and about how Aristotle understanding was 'banality itself'. Orend (2006), p.20. This thought is echoed and supported by DiMeglio (2005), p.133.

has no theory of just war'.⁵³ This matter will not be investigated in depth as it moves the topic away from *jus post bellum*, however it seems an important point to set out briefly.⁵⁴

Thirdly, and most importantly, this thesis will, over the course of its several chapters, demonstrate that numerous philosophers over the years have in fact looked into *jus post bellum* issues. Moreover some of the arguments employed by Orend can actually be found in the work of Vitoria and Gentili.⁵⁵ That is not to say that every classic just war scholar has addressed the issue of war termination in great depth, or that a complete understanding is already in existence, but that important work does exist on war termination in classic just war texts and that this work is worthy of study. This issue will be addressed further in Chapter II.

Another massive area of difference between Orend's work and this thesis is the conceptual relationship between *jus post bellum* and the other two pillars of the just war tradition. In his latest book, Orend makes his thoughts on the subject explicit, showing that he sees a strong and rigid link between the principles of *jus post bellum* and those of *jus ad bellum* and *jus in bello*. As Orend states 'the three just war categories are not separate but, rather, connected... [and that] failure to meet *jus ad bellum* results in automatic failure to meet *jus in bello* and *jus post bellum*'.⁵⁶ Orend then goes on to say that if a war began by breaching the rules of *jus ad bellum* its war termination could be 'better or worse'⁵⁷ but still importantly 'we cannot call these terms just'.⁵⁸

However is this necessarily the case? Certainly some thinkers such as Boon would disagree with this. Boon, who writes predominately about International law and the just war tradition makes the point that the 'rationale for separating *jus ad bellum* from *jus in bello* should similarly apply to *jus post bellum*'.⁵⁹ Boon goes onto justify this claim, drawing on Walzer,⁶⁰ by stating that 'It is possible to imagine that a war fought

⁵³ Orend (2004), p.162. For Orend's discussion on the subject please see Orend (2004), pp.162-163

⁵⁴ Merten (2002), p.559 For further information on this issue please see Mertens review of 'War and International Justice' as he discusses some of the difficulties of Kant as a just war thinkers.

⁵⁵ Please see chapter II for further details.

⁵⁶ Orend (2006), p.162. This can also be seen in Orend (2000), p.136 and Orend (2002), p.44. This position is supported by Thurley (2007), p.1 and Walzer makes this point during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, Transcript, p.6. This view can also be seen in Williams and Caldwell (2006), p.316 who state 'an unjust war cannot produce a just peace'.

⁵⁷ Orend (2006), p.162

⁵⁸ Orend (2006), p.163

⁵⁹ Boon (2005), p.290

⁶⁰ Walzer (2004), p.163

inhumanely can still be terminated in accordance with justice, or that a peace agreement, although imposed, is just and equitable'.⁶¹

In order to analyse Orend's claim, this section will take a different route and begin by briefly looking at his description of *jus ad bellum*. Orend lists the rules of *jus ad bellum* as just cause, right intention, public declaration by a proper authority, last resort, probability of success and proportionality.⁶² Orend then makes it plain that in order for a war to fulfil its *jus ad bellum* requirements it must fully satisfy every single principle. As Orend states 'Failure to fulfil even one rule renders the resort to force unjust'.⁶³ So for instance, if a state went to war with a just cause in response to some Nazi like aggressor bent on wiping out its population, but did so without a probability of success or reasonable chance of success, as some other theorists describe it, then that would (for Orend) be a failure to meet the requirement of *jus ad bellum*. It should be noted that this section will not critically evaluate Orend's account of *jus ad bellum* as this thesis is solely interested in *jus post bellum*, however this observation will be relevant to the next stage in this argument.

If we return to the case described above, what would happen, if by some miracle, the state which at the start of the conflict looked like it had no reasonable chance of victory actually managed to win the war? To give more detail to the thought experiment, perhaps an unforeseen ally intervened or the aggressor state had some internal problem that was not evident at the start of the war or a natural disaster occurred or the aggressor state itself was attacked by another aggressor. Given any of these logically conceivable actions it would seem strange to suggest that because the defending state had little to no chance of winning the war at the start if it actually won, its peace terms and war termination would automatically have to be unjust.

Orend could perhaps defend himself by adapting his position somewhat and claim this does not relate to every principle of *jus ad bellum* but that a state could not end a war justly if it went to war as an aggressor breaching the principle of 'just cause'. In relation to this argument several points need to be made, firstly that argument is not the argument utilised by Orend. Secondly, even if a war began with an unjust cause Orend ignores the possibility that this aim could change over the course of the conflict. This

⁶¹ Boon (2005), pp.290-291. This point is also made by Himes (2005) at the Fordham University conference 'The Ethics of Exit'.

⁶² Orend (2006), p.61

⁶³ Orend (2006), p.61

important thought will be commented on in various places through out this thesis.

Admittedly, as Walzer points out, the overall justice of war might still not be ideal and even by performing a just peace it would not right the past breach of *jus ad bellum*⁶⁴, however to state that in such cases it would impossible to have a just war termination seems incorrect. For this reason this thesis would dispute Orend's claim that *jus post bellum* can only follow a completely just war. This thesis will go on to state that in fact there is some link between *jus ad bellum* and *jus post bellum* but it is not as clear cut and straightforward as Orend would like to make out.

Additionally, there are two further points that this section should note about Orend's account of *jus post bellum*. Each of these points will be analysed in later chapters. Firstly, the structure that Orend has when writing about *jus post bellum* remains similar throughout most of his work on the subject. He first sets out a list of *jus post bellum* principles and he then applies those principles to a modern and relevant case study. It should perhaps be noticed that this trend is also now the popular template in war termination writing, again possibly due to the influence of Orend. However, despite writing in some depth on the actual principles, Orend writes little in his chapters on *jus post bellum* or his articles as to how exactly those principles should be employed or utilised. Based upon his work and clear Kantian influence, it would appear that, for Orend, *jus post bellum* principles should best be applied absolutely, akin to a Kantian moral law. This thesis will fully investigate this issue within Chapter IV. However this introductory chapter simply wishes to explain that how you use *jus post bellum* principles, is as important as what principles you select. Therefore Orend should, perhaps, have spent more time expounding his thoughts on this subject.

Secondly, in 'The Morality of War', Orend sets out his rules of *jus post bellum* in reference to an interstate war. He then states that 'I do believe that these principles, owing to their generality and moral strength, clearly apply as well to non-classical war'.⁶⁵ This thesis however takes the position that in fact it is not adequate to simply 'believe'⁶⁶ that such principles, due to there universal nature, will automatically apply to differing styles and backdrops of war. It seems more prudent and thorough to investigate these principles and see if they do still relate as strongly to war termination if the backdrop changes. This makes up a substantial aspect of Chapter V.

⁶⁴ As explained by Walzer (2004), p.163 'I doubt that a settlement of this [just] sort would retrospectively justify the war...but it might still be just in itself.

⁶⁵ Orend (2006), p.162

⁶⁶ Orend (2006), p.162

The next chapter within this thesis will look into what exists within classical and contemporary just war thought, draw on it in places and generate a list of just war principles to deal with the immediate issues of war termination. The secondary task of that chapter will be to apply these principles to both contemporary and historical examples. Finally, it should be noted that this list of *jus post bellum* principles (and indeed much of this thesis) will relate to the war termination activity of the ‘victor’ in the war.⁶⁷

⁶⁷ This appears to be common to most *jus post bellum* thinkers. Please see Orend (2000), p.223

Chapter II – A Framework of Jus Post Bellum

'The Foundation of Ethical War Termination'

'True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and uplifting the good.'

-Saint Thomas Aquinas citing a passage from Augustine in Summa Theologica¹

The chapter will engage, head on, with the question of what should actually make up the principles of *jus post bellum*. Detailing what should be done in order to terminate a war in a just manner, and make the transition from war to peace.

A vital point to stress is that the principles laid out in this chapter will relate primarily to an interstate just war, rather than any other type of warfare.² The typical example of a just war being a conflict of self defence, with one just state defending itself from an unjust aggressor. This was the standard framework through which the just war tradition developed and, as explained by Bass, 'Wars of simple self-defence are, ideally, the easiest to recognize and to justify; they are, for Walzer, the basic example of just war.'³

This thesis will then, in Chapter V, undertake an investigation to see if this framework of *jus post bellum* can apply to other scenarios or 'backdrops' to see if the *jus post bellum* principles need to be altered or adapted. So, in many ways, this thesis will itself mirror the development of the just war tradition, firstly to outline and develop criteria for inter state wars fighting with a just cause and then apply and test its validity to other areas and 'backdrops'.

In addition, as stated within Chapter I, this list of principles will be built upon the foundation of what is already understood and held within the tradition.⁴ It will not

¹ Johnson (1999), p.210

² Orend (2002), p.44. Orend discusses interstate wars as a clear just case study.

³ Bass (2004), p.407. This thought is stated by Walzer during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.6

⁴ DiMeglio (2005), p.118 - 119 describes a similar exercise where he will 'define the existing *jus ad bellum* and *jus in bello* principles to provide a larger context by which to understand *jus post bellum*'. However DiMeglio develops three principles which differ from this thesis. He discusses the need for a lasting peace (similar to *Securing Freedom from Strife*), war crimes trial and

simply be a list of the standard elements that make up just war tradition reapplied to fit it to war termination. Having stated that, as Pendergast explains, *jus post bellum* should not be something totally independent of the just war tradition either,⁵ and so what will follow below will not be an extra aspect of just war thinking bolted onto the side of the tradition. In many ways what will follow will be somewhere between these two extremes, it will not be exactly the same as the principles currently within the tradition, and it will not be something artificially made up of ideas alien to classical just war thought. The principles within this section will be fresh ethics grown from the roots of the just war tradition and built from its foundations.

Moreover, it is critical to point out that many of the prominent classical just war thinkers do mention war termination, and *jus post bellum* issues, within their texts. This is a position which stands in stark contrast to many war termination philosophers such as DiMeggio who boldly state that *jus post bellum* has been ‘largely absent during the preceding two thousand years of the just war tradition’.⁶ It is clear that whilst *jus post bellum* thoughts have not been so formalised over the years, and are not as well developed as the writings on *jus ad bellum* or *jus in bello*, never the less such thoughts do exist.⁷ As a brief example of the fact that some classical just war thinkers do discuss justice and war termination, one need but look at the writings of de Vitoria. Vitoria, in his landmark just war text ‘On the Law of War’, divides up his work into three canons. The first relates to thoughts commonly linked to *jus ad bellum*, the second relates to *jus in bello* and, importantly for this thesis, Vitoria’s third canon explains that ‘once the war has been fought and victory won, he must use his victory with moderation and Christian humility.’⁸ Gentili also writes extensively on war termination and, in fact, his text ‘The Law of War Book III’ begins with a chapter entitled ‘On Peace and the End on War’. This chapter is followed by twenty three other chapters that all have a direct bearing and

finally the need for post-war reparations. For further details please see the article. Also see Bass (2004), p.386

⁵ Pendergast (2004), p.60

⁶ DiMeggio (2005), p.134

⁷ Stahn (2005), p.4. Although Stahn describes how these thoughts have not been developed into International Law rather than developed philosophically. Stahn comments on war termination guidance found in Suarez, Grotius and Vattel. Although he does not draw directly on any of their works. Williams and Caldwell (2006), p.311 also comment on how the just war tradition has ‘demonstrated some concern for the aftermath of war’. However they go on to state (Williams and Caldwell (2006), p.313) that ‘the needed principles are not be found merely by digging more deeply into the work of Augustine, Aquinas, Suarez, or Grotius’. In addition Pendergast (2004), p.64 briefly comments on Vitoria and Grotius (although he does describe them as expansions upon *jus ad bellum*). Schuck (1994), p.4 also states that Augustine is relevant to *jus post bellum*.

⁸ Reichberg, Syse and Begby (2006), p.332

relevance to *jus post bellum*.⁹ A third example would be Vattel whose Book IV of ‘The Law of Nations’ is centred on ‘The Restoration of Peace’.¹⁰

Suarez also provides details on three periods in war ‘the beginning of war; its prosecution, before victory is gained’ and importantly for this thesis ‘the period after victory’.¹¹ Moreover as rightly explained by Stahn ‘Grotius... formulated some general principles concerning the form and technicalities of conflict termination’.¹² These are but five of the many examples that demonstrate that the classic just war thinkers throughout the ages did not all forget about this important aspect of war termination and justice. Despite the fact that most just war termination scholars neglect these works or, like DiMeglio, describe them as ‘vague references to war termination’,¹³ these resources, will be of the utmost importance when formulating an understanding of *jus post bellum* and war termination.

However, whilst many just war classic texts address the issue of war termination, what will follow within this thesis will not simply be a carbon copy of what has gone before. This will be the case for several important reasons. Firstly, whilst this thesis will demonstrate that many war termination issues have been addressed in the past, what is in existence is certainly not a complete understanding of *jus post bellum*. In fact, whilst certain areas such as reparations payments are quite readily discussed many other aspects are seriously neglected. For instance, the issue of regime change, and if it is necessary, what type of government should follow, is not discussed at all. Secondly, many sections of these classic texts are quite obviously outdated and no longer have any direct bearing on modern war termination. Gentili, for example, writes a detailed section on what to do with slaves during the aftermath of a war¹⁴ and another section as to whether a personal duel may legitimately conclude a conflict.¹⁵ Another example of outdated war termination guidance can be found in the work of Grotius, who looks in-depth at the rights of a child or insane monarch to make a peace treaty.¹⁶ These examples demonstrate that, despite these thinkers analysing war termination, much of what they

⁹ Gentili (1612), pp.289-433

¹⁰ Vattel (1758), p.341. The full title of the book is ‘The Restoration of Peace; and Embassies’. The major focus is on peace treaties and war termination but does include several chapters on how to treat embassies in war times.

¹¹ Reichberg, Syse and Begby (2006), p.360

¹² Stahn (2005), p.4. Stahn in fact describes Suarez, Grotius, Vattel and Kant as providing *jus post bellum* guidance although he does not provide any details other than the principles of Kant.

¹³ DiMeglio (2005), p.133

¹⁴ Gentili (1612), pp.328-335

¹⁵ Gentili (1612), pp.367-375

¹⁶ Grotius (1646), p.804

describe needs to be adapted and evolved to bring it up to date. Finally, another reason why this thesis has to do much more than merely copy these past thinkers is that in several places the central just war protagonists actually disagree with one another. This, in fact, is not uncommon and this issue is discussed within Chapter III. Moreover, in certain places this thesis disagrees and argues against some of the positions taken by classical just war thinkers.

In order to undertake this investigation, this chapter will be subdivided into sections, each outlining a principle that will make up an understanding of *jus post bellum*. It is these principles which a state should use in order to conclude a just war, and answer the immediate questions of war termination. Each section will also include a variety of historical and contemporary examples to help illustrate its position. These principles are '*Peace First*', '*Complete Cessation of Conflict*', '*Securing Freedom from Strife* (including an important subsection on cultural change), '*Impartial War Crimes Trials*' and '*Ensuring the Protection and Safety of Non-Combatants and Innocents*'.

What will follow below will be a brief 'sketch' of each principle, to create an initial framework of *jus post bellum* thought. Then, as this thesis continues and its framework is applied to other scenarios and examined more closely from specific angles, this 'sketch' will be elaborated upon and completed in more detail.

Peace First

The first principle required for a successful and just war termination is the principle of *Peace first*. The basic notion of the principle is that whenever it is appropriate to make a peace it should be done, and that to continue with violence and warfare when a peaceful opportunity, or alternative, presents itself would be unjust. Whilst this principle of just war termination might seem very basic, it actually works on various levels and is developed from the traditional just war principles of *jus ad bellum*, the current musing of war termination philosophers, and the comments on war termination found in classic just war texts.

As described above, this principle has been grown from a variety of just war roots. The first area that most would relate this to is the *jus ad bellum* principle of warfare as a last resort. Orend, in his examination of the just war tradition, describes Last resort thus 'Last resort. A state may resort to war only if it has exhausted all plausible, peaceful alternatives to resolving the conflict in question, in particular through

diplomatic action.’¹⁷This was explained originally by Augustine who stated that ‘Preventing war through persuasion and seeking or attaining peace through peaceful means rather than through war are more glorious things than slaying men with the sword’.¹⁸ So it is clear how one could apply this principle in relation to *jus ad bellum*, but also claim that this principle has a relevance to this notion of *Peace first*. The argument for its inclusion under this heading would be that this principle of the just war tradition is obviously to only go to war when every other option has gone, leaving you absolutely no choice but to take life.

Therefore one could assert, with that principle in our minds, that whenever a peace option is available, one should take it and, furthermore whenever there is an alternative avenue to war, and it is not taken, such an omission would be unjust.¹⁹ As an example of such thinking, in the same way that diplomatic action and trade sanctions are seen as preferable to war and should be exhausted before a war begins, if during warfare it would again be an option to return to diplomatic action, or trade sanctions, then it would be unjust not to do so. So in *jus ad bellum* the principle reads ‘War as a last resort’ when adapted for *jus post bellum* its emphasis switches and is renamed ‘Peace as a first resort’.

Whilst it may seem that this should be the case, and that the title *Peace first* relates to the counter side of war as a last resort, this is not the argument within this thesis. The most obvious point to raise is that these two situations are not, although they might appear to be, opposites. To explain further, the situation when one is considering military action is different to the state of affairs when one has actually engaged in combat. Therefore, because the situation is so radically different the same principle does not correlate. As an aside, perhaps another good reason to separate the principles of *jus post bellum* from *jus ad bellum* is due to the fact that the situation is different. Additionally, if you have started a just war, would it really be just to cease the war before you had fulfilled the goals you have set yourself? This issue will be addressed within this section and has been commented on by a variety of *jus post bellum* thinkers, both classical and modern.

Although ‘warfare as a last resort’ does not make up the foundation for this *jus post bellum* principle, it does illustrate the important point that peace is something for

¹⁷ Orend (2000), p.49

¹⁸ Reichberg, Syse and Begby (2006), p.80

¹⁹ Pendergast (2004), p.63. However, Pendergast goes onto to partially reject this position.

which the just war tradition does strive. Wanting to hold off warfare until completely necessary, this factor will play a small role within this principle as it is, like all of this understanding of *jus post bellum*, searching for a peaceful, and just, war termination. For further information on this issue please see the section '*Securing Freedom from Strife*'.

The next stage within this section is to describe what is to be incorporated in this principle. The most important principle from classical just war tradition to play a role within this subsection is 'just cause'. One of the major areas in which all *jus post bellum* scholars seem to agree is that 'just cause' should play a role in determining both when a war should end, and how it shall determine such an end. This investigation of *jus post bellum* will not be different in that respect, but will not simply utilise that principle for *jus post bellum*, but will develop it further and evolve it into an understanding of *Peace first*.

One of the most central issues within war termination is when one should end a war. It is clear that any understanding of *jus post bellum* must include not only how to end a war correctly, but when to do so.²⁰ The answer seems evident, to simply work out when to end a just war by looking in detail at the reasons you started the conflict. It is at this point that the principle of just cause comes to the forefront, as a just way to end a war would be to look into the just reasons and goals for starting the war. When those goals have been met then it would be the just time to conclude the combat.

As detailed by the military thinkers Fotion and Elfstrom, in their text *Military Ethics Guidance for Peace and War* 'A natural way to devise reasonable war goals would be to generate them from the legitimate causes for going to war. If a war were started as a just response to aggression or in self defence, the goals of war should be to thwart the aggression.'²¹ It should also be pointed out that such an understanding of just cause and *jus post bellum* has been outlined by Orend,²² Bass²³ and Pendergast.²⁴ However Fotion and Elfstrom do seem to have been the first contemporary scholars to do so, although they do not mention the term *jus post bellum* specifically, unlike the

²⁰ Pendergast (2004), p.51

²¹ Fotion and Elfstrom (1986), p.228 This argument is also present in the work of Pendergast (2004), p.64 Walzer (2004), p.18 and Orend (2000), p.225

²² Orend (2000), p.137 and Orend (2002), p.46

²³ Bass (2004), p.386. Please also see Williams and Caldwell (2006), p.313 who similarly state that a state must 'confine itself to the pursued ends'. This thought is also echoed by Haden (2005), p.169, Orend (1999), p.267, Orend (2000), p.225 and p.273 and Bosanquet (2007), p.2

²⁴ Pendergast (2004), p.64

other thinkers named above.²⁵ However all of these views can perhaps be traced back to the just war texts of Vattel. In his seemingly forgotten work on war termination and peace treaties, Vattel writes a section on ‘How long a war may be kept up’.²⁶ Vattel concludes that ‘The love of peace should prevent a sovereign ... from continuing it [war] when the necessity for it has ceased’.²⁷

An aspect of vital importance is the strict nature of the just war tradition that should be applied. As Fotion and Elfstrom again point out, ‘A War that fails to achieve the goals that justified its start is a waste’.²⁸ This demonstrates that, under these guidelines, if a state starts a war for just reasons then it is morally bound to see that war to its conclusion, and should not stop until it has seen those just goals fulfilled. Therefore, a war that failed to fulfil the just goals it set itself could be seen as unjust, especially if that war was a just war of choice. As further illustrated by Pendergast ‘Thus, if we are engaged in a war that is morally obligatory, we are limited in this important sense: we cannot accept peace as long as justice has not been served. In such times and in such cases, we are morally obligated to continue fighting for justice’.²⁹ Again, however, the seeds of this argument were planted many years ago by Vattel who goes on to state that the sovereign ‘may continue the operation of the war until he has attained the lawful object of it’.³⁰

Whilst this position may appear extreme, if one takes a step backwards, and examines the common understanding of *jus ad bellum* then this aspect of *Peace First* might not be quite as radical, and full of danger, as first it might seem. Certain critics might suggest that this understanding of war termination could lead to complete carnage or crusade type wars that will continue without end.³¹ However, it should be remembered that one of the main principles of *jus ad bellum* is that, in order for a war to have a just cause then it must have a ‘Reasonable Chance of Success’.³² Therefore, the notion that a just goal must be taken to its conclusion is not quite as uncompromising as first it may look, as in order for that goal to be just it must have a reasonable probability of triumph. So this thesis is not suggesting that a war should continue indefinitely, but if a just war has been started to achieve a just goal that has fulfilled the *jus ad bellum*

²⁵ Fotion and Elfstrom (1986), p.228

²⁶ Vattel (1758), p.344

²⁷ Vattel (1758), p.344

²⁸ Fotion and Elfstrom (1986), p.227

²⁹ Pendergast (2004), p.63. Please also see Orend (1999), p.273 and Orend (2002), pp.46-47

³⁰ Vattel (1758), p.344

³¹ Bass (2004), p.393

³² Johnson (1999), p.29

requirements, then such a war should be concluded only when that goal has been fulfilled. If a goal of war has not met the *jus ad bellum* requirement of reasonable chance of success, then such a war and goal cannot be considered just and, as such, no requirement for continual fighting exists.

Operation Desert Shield and Operation Desert Storm, Persian Gulf 1991

One of the most documented and debated wars to illustrate the points raised above, is the war in the Persian Gulf that took place in 1991. In fact, this case study is the only case study looked at in-depth by Orend within his chapter regarding *jus post bellum*.³³ The background to this military operation was when Iraqi ground forces entered Kuwait, by means of an aggressive invasion. Prior to the actual invasion of forces, the Amnesty International report of 1990 highlighted a variety of atrocities committed by Iraq against the people of Kuwait.³⁴ When the war, began George Bush, President of the United States, in order to gain approval from the Senate, United Nations and Middle Eastern allies, gave clear objectives of any military operations.³⁵ The military objective was simply to remove the Iraqi forces from Kuwait and liberate its people. In many ways this would qualify as a just cause as it was a war of defence, defending the Kuwait people from an unjust invasion. So this case study does fit with our standard guidelines discussed above.

It is not the topic of this discussion to analyse the *jus in bello* aspect of the operation whilst some actions can be put under question, for example the highway to hell incident, and the bombing of certain aqueducts. However, what is clear, by looking into this case study is that as soon as Iraqi forces were beaten and driven from Kuwaiti land on 27th February 1991 an immediate cease fire was called which continued until 3rd April 1991 when the war ended officially, following UN security resolution 687.³⁶ So the goal of the war was set out through the requirements of *jus ad bellum*, and as soon as that goal had been fulfilled a policy of *Peace first* was adopted.³⁷ If, however, the American and British Forces had failed to liberate Kuwait from the unjust invasion of Saddam Hussein, and had pulled out prior to achieving the goals it had set itself, then such a military action would have not met the requirements of *jus post bellum*.

³³ Orend (2000), pp.234-240 and Orend (2000), pp.234-240 In fact, several of his key points will be used in this brief subsection.

³⁴ Orend (2000), pp.234-235

³⁵ Pendergast (2004), p.54

³⁶ Orend (1999), pp.278-279 and Orend (2000), p.235

³⁷ Orend (1999), pp.278-279 and Orend (2000), pp.234-240

Furthermore, at the time of Operation Desert Storm, the commander of the American forces was General Norman Schwarzkopf. He urged for a continuation of the war, and for American forces to essentially enter Iraq, hunt down the Republican Guard and take Baghdad.³⁸ If such a response had occurred, and the war had continued in such a way, then it would also have failed to meet the criteria for *Peace first*. If they had altered the *jus ad bellum* cause for starting the war, then the war would have become unjust on those grounds, also causing problems as further goals would have been added. Secondly, the goal of the war had been set out as liberating Kuwait. If they had continued with military action when that goal had been fulfilled then those actions would have been unjust as the war would have continued for longer than necessary.³⁹

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To relate just cause to the title of this section, *Peace First*, it is clear that through this interpretation of the just war tradition one should not move to peace from war at any opportunity that presents itself.⁴⁰ Rather, by looking into the goals that were outlined during the *jus ad bellum* phase, as soon as one has achieved those just goals then the war should terminate, and thus beginning the movement from the state of war back to the state of peace. This thought echoes a reflection from Walzer that ‘There is always a humanitarian impulse to stop the fighting, and... to impose a cease-fire. But it isn’t always true that such cease-fires serve the purposes of humanity’.⁴¹

So *Peace first* can only occur when just goals are complete, and so when it states at the start of this subsection ‘whenever it is appropriate to make peace it should be done’⁴², the appropriateness depends on completing the just goals. It is also evident that such an understanding is built from early classical just war thought, found in both Augustine and Aquinas. For example, Aquinas explains that ‘a certain peace is, seemingly, evil, else our Lord would not have said... “I came not to send peace”’.⁴³ In many ways, one could see this as demonstrating that the just war tradition places justice above peace, this is perhaps another avenue for research into *jus post bellum*, however within this chapter the basic framework for *jus post bellum* is simply being sketched out.

³⁸ Pendergast (2004), p.54 and Orend (1999), p.279

³⁹ Orend (1999), p.279 and Coates (1997), p.288

⁴⁰ Coates (1997), p.274

⁴¹ Walzer (1977), p.123. Please also see Pendergast (2004), p.63

⁴² See previous start of subsection.

⁴³ Reichberg, Syse and Begby (2006), p.173

Moreover, one should recognise the strong links that this principle of *Peace First* forges with *jus ad bellum*. It is apparent that if this idea of determining just goals of war through just aims is sound, then it is also clear that *jus post bellum* is an area of strategic planning that should be considered at the outset of war, and thus should be determined at the start.⁴⁴ Therefore, it is unacceptable for a state to have reached the conclusion of a war without having considered these war termination issues. To return to the above case, Gordon Brown the Foreign Service officer in the Gulf War stated ‘We never did have a plan to terminate the war’.⁴⁵ If this statement were true it would go against the principle set out within this section. So, the link between *jus post bellum* and *jus post bellum* is particularly strong in relation to the principle of *Peace First*.

Having stated that, it is also important that *jus post bellum* through the understanding of this thesis should be something independent of the other two categories of just war. To explain further; it is quite possible to fight a war using just methods but for unjust reasons, it is also possible to fight a war for just reasons and fight using unjust methods, therefore it also seems evident that one should be able to terminate a war justly, even if the reasons for starting the war are unjust.⁴⁶ It is through this example that this paper moves somewhat away from current thinking, as commentators such as Orend and Pendergast list the principle just cause as a principle for *jus post bellum*. However that would seem to suggest that a war could only end justly if it was started for a just reason, this seems to go against the independent nature of *jus post bellum* that we have discussed above.

By utilising the principle to *Peace first* whenever appropriate, that opens the doors to allow wars that were started for both just and unjust reasons to be included following *jus post bellum* guidance. Using our typical example of the war of just self defence, *Peace first* follows immediately when one has successfully completed the just goals set. If we now address a situation where a state goes to war for an unjust cause but wants to conclude justly, for example, if there has been a change of government, then it should simply return to the state of peace as soon as possible. There is no just goal that needs to be completed, and for that reason *Peace First* should apply straight away, without any hesitation, for to continue with a war without any just cause or goal would be simply as bad as to continue fighting if that just goal had been met.

⁴⁴ Evans (2005), p.19

⁴⁵ Greene (2006), p.294

⁴⁶ Walzer (2004), p.163

As an example of a war continuing after it has met its goals, one could analyse the wars of Russia on the Eastern front during World War II. Russia entered the war in response to invading German forces following Hitler breaking his pact of Peace with Russia. Russia's initial motivations for war were a war of self defence and to defend themselves against an enemy who had violated a peace agreement. As we have stated, a war of self defence abided by the classical just war principle of self defence. However, when the Red Army had driven the German forces out of Russia it continued with the war. Importantly, Russia did not continue to fight as a pre-emptive protection move but because Stalin now saw opportunity for territorial expansion in Eastern Europe.⁴⁷ So this short example demonstrates that you can have a situation where the termination of war should have taken place, but that transition of war back to peace did not take place and as such broke these rules of *jus post bellum*.

Another area of importance related to *Peace First* is that, in order for war termination to be just the end of the war cannot be simply a method of regrouping. That is to say, one should not stop a war to bring about *Peace First* if there is some sort of secret motive to rearm and re-equip in the lull between violence only to bring about another storm. This understanding of justice and war termination can be gleaned from the writing of Hugo Grotius. In his text *De iure belli ac pacis* Grotius writes a chapter on Good faith and peace, again providing yet another example of how these *jus post bellum* thoughts have been pieced together from fragments in traditional just war writing.

Grotius writes a section with the title 'Peace, when made, must be kept with the utmost scruple'. Within this section Grotius makes the point that 'peace, whatever the terms on which it is made, ought to be preserved... and not only should treachery be avoided, but everything else that may arouse anger'.⁴⁸ This notion is also expressed explicitly by Kant in the preliminary articles of Perpetual Peace, where he states that 'No conclusion of peace shall be considered valid as such if it was made with a secret reservation of the material for a future war.'⁴⁹

This adds an element of 'just cause' to the war termination itself, with just cause not acting only as a method of working out the goals of a war. Explained simply, in the same way that one should only go to war for right reasons, in classical just war thinking,

⁴⁷ A related point to this is made by Williams and Caldwell (2006), p.310. Williams and Caldwell do not discuss the just time to end a war but point to the unjust dictatorship of the Soviet Union following World War II.

⁴⁸ Reichberg, Syse and Begby (2006), p.437

⁴⁹ Kant (1970), p.93

one should only make peace for the just reasons. It is important to explain that this could be planning a future war as Kant described but could also relate to any other unjust reason for drawing the war to a close.⁵⁰

So by adapting this principle away from simply just war goals, and by incorporating other elements, this thesis has moved *Peace First* away from being totally dependant on *jus ad bellum* but, in the same light, drawn from its basis as well. This provides guidance not only for the case for war termination following a just cause, but also provides us with useable guidelines for when a state goes to war for unjust reasons but wants to conclude the war justly. To illustrate the points explained above, and apply it directly to our standard example of just war (war of self defence), *Peace first* should follow as soon as the just goal of defending the nation has been completed, and any military action that took place after those just goals having been completed would then be unjust. So this principle of war termination answers the vitally important questions as to when it is just to end a war, as well as how to do so. Furthermore, in our example, if the aggressor wished to end the war justly then it should stop the fighting as soon as possible and *Peace first* should begin immediately. However, as Bass importantly points out ‘just post war actions cannot redeem a war that was unjust to begin with’⁵¹ in the same way that taken as a whole a war would be unjust even if you fought using just methods but for an unjust aim.

Complete Cessation of Conflict

This principle within an understanding of *jus post bellum* is, again, initially simple and obvious; if there is still fighting going on, then you cannot have a just peace. As stated by the Italian canonist and just war writer Hostiensis, in *De treuga et pace* ‘What is peace. The end of conflict’.⁵² This principle would include sporadic outbreaks of violence as well as wide scale conflict and, therefore, in order for a just peace to ensue, all combat must be stopped. For example, a peace could not be seen as just if, although the majority of battles are over, forces continue to hold certain positions or engage in ‘hit and run’ style warfare. It would also not be a just war termination if, when the war is over, the victorious side continue to use military might to crush existing enemy forces, or punish bomb certain civilian areas. Plainly put, you can’t have a just peace if people are still killing each other in combat. The basis of this principle can be

⁵⁰ Orend (1999), p.273

⁵¹ Bass (2004), p.390

⁵² Reichberg, Syse and Begby (2006), p.162

gleaned from the writings of both Pufendorf and Gentili. Pufendorf explains in his sparse comments on war termination that it should be the case that ‘war ceases entirely when peace has been ratified by the rulers’.⁵³ Gentili makes a similar point, drawing on the work of Baldus and calls for a ‘complete cessation of discord’ post war explaining ‘that peace cannot exist while war remains’.⁵⁴ It is these thoughts that are expanded upon and developed within this section.

The reason why this has been listed as the next component of *jus post bellum* is because if this has not been met, then the *jus post bellum* aspect of the just war tradition should not really apply. *Jus post bellum* relates to the last phase of war, and if fighting is still going on, even if it is to a much smaller degree than in all out war, then the principles of *jus in bello* should still be the guiding light. *Jus post bellum* should only play a role when all of the fighting has ceased. Therefore, not only does this principle form part of the *jus post bellum* requirement, it forms an essential marker of when *jus post bellum* should start and when *jus in bello* should stop. So *Complete Cessation of Conflict* will essentially act as a marker as well as a requirement.

As explained previously, an important part of this thesis is that these principles come out of what is already included within the *jus ad bellum* and *jus in bello* aspects of the just war tradition. It is clear that this principle of *Complete Cessation of Conflict* can be drawn from various parts of the tradition, and includes various notions. The first principle that *Complete Cessation of Conflict* stems from is the need for a Public Declaration of Peace. This principle of ‘Public declaration’ is listed as part of *jus post bellum* by Orend, and is mentioned in passing by Pendergast, Bosanquet, and Hayden.⁵⁵ It is vital to stress, however, that the principle of public declaration is typically a principle associated with *jus ad bellum*, and explains that, in order for a war to be just, it must be ‘made public, notably to its own citizens and to the enemy state(s)’.⁵⁶ However Orend does not actually state why ‘Public declaration’ is needed for *jus post bellum*, he just lists it as a requirement. This thesis will suggest that the reason it is seen as essential for a just peace is, in part, because of the need for a *Complete Cessation of Conflict*.

⁵³ Pufendorf (1927), p.141

⁵⁴ Gentili (1612), p.290

⁵⁵ Orend (1999), p.273, Orend (2002), p.55 Pendergast (2004), p.54 Although Pendergast states that public declaration ‘does not seem to add much to the current state of affairs we are attempting to create’. Hayden (2005), p.169 Bosanquet (2007), p.12, Thurley (2007), p.1

⁵⁶ Orend (2000), p.49 and Orend (2000), p.232. Publicity is also stressed by Meierhenrich (2006), p.110

It is clear how this is an important aspect of *jus ad bellum*, and is crucial to the makeup of *Complete Cessation of Conflict* as well. For, importantly, any just peace needs to be made public for the simple reason to command the armies to cease the violence of war. In order for the violence of a war to stop, it must be publicly halted by the leaders of the states involved. If such a public and decisive declaration halting the war is not made, then fighting may continue on the ground. This point is made by Vattel, who stresses the need to publicly declare a peace. In order to avoid fighting after a peace has been agreed, Vattel states that ‘notice of the restoration of peace should be made public without delay, at least to the army’.⁵⁷ Another aspect, in which this principle relates to justice post war, and *Cessation of Conflict*, is because by making any peace public it is for all to see, not only to the states involved, but also allows the international community to scrutinise it.

Public Declaration of Peace by Emperor Hirohito, Japan 1945

As an example of the need for a public declaration to stop violence, one need but look at the conclusion of World War II, focusing in particular on the war in Japan and the public declaration made by Emperor Hirohito in 1945. On August 6th 1945, the United States of America dropped an atomic bomb on Hiroshima; following this on the 8th August the Soviet Union declared war on Japan. This was then followed by a second atomic strike on the city of Nagasaki on the 9th August.⁵⁸ It was these events that led to the eventual surrender of Japan. However, despite all of the factors mentioned above a large proportion of the Japanese armed forces were still prepared to fight, as were some of its civilian population, in response to an American occupying force. One need but look at the newspapers in Japan at the time when, on the 11th August, the morning newspapers spelled out this resistance by stating the army officers and soldiers should continue to fight ‘even if we have to eat grass, chew dirt and sleep in the fields’.⁵⁹

As explained by Ikle ‘To inform the whole nation of surrender and to ensure that all Japanese forces would lay down their arms, the cabinet prepared a speech for the Emperor, which was recorded for broadcast the following day.’⁶⁰ The Japanese government knew that if such a public declaration were not made, then the forces of Japan would have fought furiously against the occupying American forces. For this

⁵⁷ Vattel (1758), p.352

⁵⁸ Hasegawa (2005), p191. These points are also made clear by Opie (1951) in ‘The search for Peace Settlements’ p.272 and Pendergast (2004), p.57

⁵⁹ Hasegawa (2005), p.248

⁶⁰ Ikle (1971), p.71

reason, at 7.21am on the 15th August 1945, radio announcers stated that the Emperor Hirohito would make a public declaration at midday. When the time came all Japan, including its soldiers and civilians, listened; first they heard the national anthem of Kimigayo and then the Emperor made his public declaration of peace.⁶¹

The Emperor stated ‘Unite your total strength to be devoted to the construction for the future. Cultivate the ways of retrieve; foster nobility of spirit; and work with resolution so as ye, may enhance the innate glory of the Imperial State and keep pace with the progress of the world’.⁶² In fact many hold the view that this surrender would have been thwarted if such a public declaration had not been made, in fact as it happens a group of military officers did attempt to steal the Emperor’s recording to prevent such a public declaration taking place. Luckily for the war termination process, these officers did not succeed because if they had then such an immediate stop to conflict might not have been possible.⁶³ Therefore this example, whilst obviously is referring to a state who is losing a war rather than winning it, nevertheless still demonstrates the importance placed on a public declaration of peace needed in order for there to be a complete cessation of violence which can transfer to either the victorious or the defeated party. It is also therefore important for *jus post bellum* that such a declaration be made. Whilst the war termination process in Japan clearly does not meet other requirements of *jus post bellum* the principle this case study demonstrates is that in order for a *Complete Cessation of Conflict* to occur in some cases a public declaration is essential.

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It should also be stated that simply to publicly declare a peace is not always sufficient of and by itself. To explain further, some thinkers may explain that to list public declaration as a part of *jus post bellum* will be sufficient to cover cessation of violence. However, it seems possible to have leaders of states publicly declare a peace but outbreaks of violence to continue on the ground. An example of this could be when the British troops fought in Malaya a public declaration of peace had been made. However, as forces were situated in small pockets, and due to the nature of the warfare, combat continued on the ground even after a public declaration of peace had been made.

⁶¹ Hasegawa (2005), p.248

⁶² Hasegawa (2005), p.249. Please also see Pendergast (2004), p.57 for a different part of the announcement.

⁶³ Ikle (1971), p.71

Therefore, it is crucial to realise that whilst public declaration forms a part of the principle, it does not fully determine the principle either. It is for this reason that *Complete Cessation of Conflict* is the heading of this principle, and not public declaration. This, again, demonstrates that part of this principle of *Complete Cessation of Conflict* comes from what is already held with the tradition but has been expanded upon, and elaborated, to provide it with a clear just war termination goal.

Another principle that relates typically to *jus ad bellum* that relates to *Complete Cessation of Conflict* is legitimate authority.⁶⁴ It could be claimed that, in the same way that a legitimate authority has to command a war to start in order for it to be just, the same is true of the cessation of violence. Only when it is commanded by a legitimate authority can it be just. A private peace would, like a private war, be unjust. This position is made explicit by both Hugo Grotius and Vattel. Grotius explains, quite rightly, that ‘Those who have the right of initiative in conducting a war have the right to enter into treaties for the purpose of ending it’⁶⁵ and in a similar vein Vattel states that ‘The same power which has the right to make war, to decide upon it, to declare it...has naturally the power to make peace’.⁶⁶ Additionally Grotius takes the point further and explains that ‘Generals do not have the power to make peace’ because ‘It does not fall within the province of the general to conduct negotiations with regard to the causes or the consequences of a war; the terminating of war is, in fact, not part of the waging of it’.⁶⁷ So this notion of a legitimate authority as a requirement of a just war termination is definitely not a ‘new’ idea. As a point worthy of note, legitimate authority is listed as a requirement of *jus post bellum* by several contemporary just war writers⁶⁸ however not a single writer has given any credit to Grotius or Vattel. Instead, a counter claim is made that war termination and post bellum issues were completely forgotten by such thinkers.

However, as a response or counter claim to Grotius position, is it always necessarily unjust for a general to make a peace? For instance, if a general’s army was quickly losing a war but the ‘legitimate’ authority commanded that they carry on fighting to the death, would it always be unjust for the military general to refuse that command and make peace? As another example, one could look at the case in Paris at the end of World War II. Hitler ordered his military to destroy Paris towards the end of

⁶⁴ Orend (1999), p.273, Orend (2000), p.232 and Pendergast (2004), p.63 mentions this point but dismisses it stating that it ‘clearly says nothing that would aid us in our understanding of *jus ad pacem*’.

⁶⁵ Grotius (1646), p.804

⁶⁶ Vattel (1758), p.346

⁶⁷ Grotius (1646), p.848

⁶⁸ Orend (1999), p.273, Orend (2000), p.232

the war, this order was ignored and a private peace was essentially made. Are these actions unjust due to the lack of a legitimate authority?

It is at this point that one should perhaps illustrate the point that a difference exists between terminating a war fully and calling for a truce. In order for a just war to be terminated, it seems right to draw on Grotius position that it should be commanded by a legitimate authority. However, that does not necessarily make a temporary truce called by a general, or military leader, an unjust action in the final stage of the conflict.

Another aspect of the just war tradition that is relevant to *Complete Cessation of Conflict* comes from *jus in bello*. One of the principle aspects of that category of just war thought is that you should not target non military personnel, and that non combatants should be immune from the horror and death of war. In the same way that through classical just war thought you should not target civilians during war time, the same must also be true of peace time. Furthermore, the claim could be made that when one is in the termination phase of war its soldiers have surrendered, and therefore then become non-combatants. So, by adapting this principle of *jus in bello*, it is clear that military attacks should cease when the war has been brought to an end. So in the same way that you cannot engage and kill soldiers when they are surrendering as a part of *jus in bello*, this transfers to the defeated enemy at large in *jus post bellum*. This notion of non combatant immunity, and *jus in bello*, will also play a major role and will be discussed in a great deal more depth within the *jus post bellum* principle of ‘*Ensuring the Protection and Safety of Non-Combatants and Innocents*’.⁶⁹ However, it is clear that whilst there is an overlap between these two areas of *jus post bellum*, this is not dissimilar to classical just war thought as many of its principles overlap and work together.

So, once again, the *Complete Cessation of Conflict* can be developed from what is already within our understanding of just war principles. Having now set out this ‘sketch’ of the second principle of *jus post bellum* this theme of development will continue during the investigation of the next principle.

⁶⁹ Please see the section ‘*Ensuring the Protection and Safety of Non-Combatants and Innocents*’.

Securing Freedom from Strife

The just war tradition has a long past that dates back to at least the time of St Augustine. An important subplot of this thesis is that over the years, and through the labours of many philosophers and legal jurists, this tradition has adapted and evolved.⁷⁰ However, at the core of the tradition certain central themes have remained constant throughout its development. One of these central themes that existed in Augustine's work was the need for a just war to end with, and have as its goal, a just peace. As Augustine explains in a letter to Boniface 'We do not seek peace in order to be at war, but we go to war that we may have peace'.⁷¹ This central premise can be found within many of the classic just war texts. As another example amongst many, one need but look at the writings of Grotius who continued this theme and explained that 'In war peace should always be kept in view'.⁷² As a more contemporary example, if one looks at the *jus ad bellum* writings of Johnson, when he sets his criteria for 'defining the right to resort to force', he lists 'The Aim of Peace' as a fundamental tenet.⁷³

It seems clear that if peace is the aim of a just war, then it is essential for that peace to be secured in the war termination phase. For example, it would clearly not be just to end a war at the right time (following the guidance of *Peace First*); to ensure that you did not violate the people of the defeated nation; and to make certain that there was a *Complete Cessation of Conflict*, but then to simply leave things in such a way that a future war was immanent. As described by Gentili 'the end of war for which all ought to strive is peace'.⁷⁴ Gentili also then states that 'for in peace the principle object is to avoid strife'.⁷⁵ This position also appears to be a common one held by many contemporary *jus post bellum* philosophers. For example Iasiello states that 'From war's inception... the goal of all should be the establishment of a just and lasting peace'⁷⁶ and DiMeglio's first *jus post bellum* criterion 'recognises a need to ensure that a post-war peace is, to the best extent possible, a lasting peace'.⁷⁷

⁷⁰ This view is shared by many just war thinkers. For example Johnson (1984), pp.1-7 or in particular related to *jus post bellum* see Iasiello (2004), pp.2-4

⁷¹ Johnson (1999), p.33. Bass (2004), p.387

⁷² Reichberg, Syse and Begby (2006), p.436

⁷³ Johnson (1999), pp.28-29. This can also be seen in Pendergast (2004), p.51 and this point is also made by Himes (2005) at the Fordham University conference 'The Ethics of Exit'.

⁷⁴ Gentili (1612), p.289

⁷⁵ Gentili (1612), p.300

⁷⁶ Iasiello (2004), p.4

⁷⁷ DiMeglio (2005), p.118

This thesis will follow suit from both classical just war thought (indeed utilising some of the terminology of Gentili), and more modern interpretation to explain that an aspect of *jus post bellum* needs to be developed, to ensure that in the aftermath of war steps are taken to prevent another immediate outbreak of conflict. Otherwise the goal of peace will not have been met, and the horrors of war might have been endured without the reward of a just peace. This principle of *Securing Freedom from Strife* is designed to work in conjunction with the other principles of *jus post bellum* to achieve this aim of securing that peace in a war termination.

The thought that peace should be secured in a just war termination is shared by most prominent contemporary *jus post bellum* thinkers, including Walzer, Bass⁷⁸, DiMiglio and Orend. For example Walzer explains, when writing about the ending of war, that the goal of *jus post bellum* should not simply be to put things back to the way they were before the war started, and restore ‘the status quo ante bellum because that situation was precisely what lead to war in the first place’.⁷⁹ For Walzer ‘the just goal of a just war, once won, must be a more secure and just state of affairs’.⁸⁰ In many ways this thesis is in total agreement with Walzer on this issue, and this particular principle is designed to guide that creation of a ‘secure and just state of affairs’⁸¹ through the termination stage of warfare.

As an important aside it should be noted that this principle of *Securing Freedom from Strife* will overlap with several other principles of *jus post bellum* set out in this chapter. For an obvious example, *Impartial War Crimes Trials* will play an important role in securing peace because one way of thwarting future war is to put to trial those responsible for the previous aggression and hold them accountable for their actions. However, two key points need to be made at this juncture.

Firstly, the simple fact that several principles of *jus post bellum* overlap and cover similar ground is not any kind of problem as they each deal with related but separate issues. In addition, if one closely examines the traditional just war principles, they too can be seen to overlap in several key areas. For example the *jus in bello* principles of *Non-combatant Immunity* and the notion that a just war should not create more evil than it was designed to stop cover related ground. Secondly, whilst this

⁷⁸ Bass (2004), p.396

⁷⁹ Orend (1999), p.266, Orend (2000), p.136, Orend (2000), p.224 and Orend (2002), p.44

⁸⁰ Orend (2000), p.136 and Orend (2000), p.224. This point is also made by Elshtain (2005) at the Fordham University conference ‘The Ethics of Exit’. Walzer (2004), p.92

⁸¹ Orend (2000), p.136, Orend (2000), p.224

principle of *Securing freedom from Strife* may closely connect to principles such as *Impartial War Crimes Trials*, and *Ensuring the Protection and Safety of Non-Combatants and Innocents*, it does relate to areas that are clearly not covered within any of these other principles.

The next step in this subsection will be to outline exactly how a victorious nation could *Secure Freedom from Strife* within a war termination. It should be noted however, that when most *jus post bellum* thinkers address this question their focus often immediately shifts to a discussion of occupation and regime change, perhaps due to the topical questions raised by recent actions within the Persian Gulf and Afghanistan. DiMeglio is a clear example of a thinker who immediately links ‘securing a peace’ with ‘regime change’. In his work he outlines three essential criteria for *jus post bellum*, and he begins by discussing the need for a just war to ‘Seek a Lasting Peace’⁸². This criterion then focuses exclusively on ‘Political Restructuring’⁸³ and states that *jus post bellum* will ‘require replacing regime elites and politically restructuring the aggressor nation’.⁸⁴

However, a crucial point to make is that, in order to secure a peace and prevent another war one does not always have to invade, topple a regime and occupy a country.⁸⁵ For this reason it appears misguided, and rather rash, to move directly to a discussion of occupation and regime change when seeking a lasting peace, without analysing other less extreme alternatives. One possible reason for this is that if *jus post bellum* moral guidance is to be utilised, it might push a victorious nation towards an occupation without other avenues for securing freedom from strife being explored properly. Therefore, what will follow within this thesis will be a spectrum of potential activities that, dependant on the situation and level of aggression in the defeated enemy, can guide those involved in a war termination towards a just and more secure peace. Because the way a just war termination will secure peace with an attacker who accepts responsibility, submits a formal apology and accepts peace terms readily and wholeheartedly, will differ to a case where the defeated state still demonstrates a deeply aggressive and hostile intent. This position is hinted at to a certain degree by Gentili who states that

⁸² DiMeglio (2005), p.146

⁸³ DiMeglio (2005), p.146

⁸⁴ DiMeglio (2005), p.147

⁸⁵ This view is shared with Bass (2004), pp.393-394

‘peace ...must be granted according to the various characters of victor’ [and importantly for this point] ‘and vanquished’.⁸⁶

The first thing that is clear is that, in some cases, the simple defeat of the aggressive nation may prevent any kind of future attacks or aggression. By following the guidance set out under the heading of *Peace First*, and concluding the war at the most appropriate time, such an action on its own might deter future aggressive behaviour. This view is explained to a limited degree by Bass who explains that ‘By winning the war, one has already attrited the enemy state’s capabilities’.⁸⁷ However in some circumstances that might not be sufficient alone and in the war termination further actions may need to be taken in order to secure peace.⁸⁸

One possible action to take in a war’s aftermath, to prevent further aggressive behaviour, would be to implement a policy of demobilisation and disarmament of the enemies’ forces. This may not always be needed as, in some wars of self defence, the aggressor’s armed forces might be in a severely dilapidated state after the conflict already, but this might not always be the case. It certainly could be conceivable that following a limited war of self defence, following the rules of *jus in bello*, that the aggressors’ army might still be quite potent and well equipped, or in another case that the aggressive nation might have had its army destroyed but could retain industrial strength enough to quickly and forcibly rebuild. In such cases, in order to secure peace and make sure that as soon as one war is over another one doesn’t start, it would seem just to undertake a policy of disarmament and to place limitations upon an aggressor’s armed forces.⁸⁹ This is in line with the war termination guidance of Gentili who states that ‘There is no doubt that arms may be taken’.⁹⁰

However this immediately raises two key questions. Firstly, is such action always necessary? And, secondly, what limits could one place on a once aggressive state’s armed forces and remain just? Would it ever be just to reduce the defeated nation’s armed forces to merely a token force? In answer to the first question, no; it may

⁸⁶ Gentili (1612), p.354. This point is also made by Pendergast (2004), p.65 without any reference to Gentili.

⁸⁷ Bass (2004), p.394

⁸⁸ Bass (2004), p.394-396. In fact Bass does make further points explaining that further action may be required.

⁸⁹ Orend (2000), p.139, Orend (2000), p.141 and Orend (2002), p.49. Orend also explains how Walzer lists this point but does not develop it. This point is also made by Bosanquet (2007), p.13 and briefly by Stahn (2005), p.6 and Thurley (2007), p.2 and Walzer (2004), p.92

⁹⁰ Gentili (1612), p.347

not always be necessary to disarm a nation, for example, if it is clear that the nation poses no further threat. Importantly one should not assume that, simply because a nation started one war, it will be the cause of a second. As Gentili states arms ‘may’ be taken, not that they always must be.⁹¹ However it should not be ignored that a second war could in some instances be a possibility, thus allowing movement further down the spectrum towards disarmament if the defeated nation still demonstrates hostile intent.

In order to answer the second, and related third, question certain things need to be explained. Firstly, that this thesis is not a disarmament manual, designed to create a specific list as to what would be an acceptable size of armed forces. Quite clearly, that number will change dependant upon the time, the location, the technology and a multitude of many other strategic and political factors. Instead, it seems more prudent to turn to the just war traditions understanding of proportionality⁹² and reasonable chance of success as guides for disarmament.

The level of disarmament and demobilization should be proportionate to the level of previous aggression demonstrated, and the current state of military affairs. As such, the scale of the disarmament would depend upon the original size of the standing army, of the victorious nation’s armed forces and the potential for a future conflict. Moreover, other factors must play an equally important role in such a delicate calculation of proportionality.

For example Gentili looks at the case study of the Gauls. The Gauls begged not to be disarmed ‘saying that all their neighbours were hostile to them and they could not defend themselves against them, if they were deprived of their arms...such a situation deserves consideration’.⁹³ In considering this issue, as Gentili recommends, it seems clear that a just victor may disarm the defeated aggressor in order to secure freedom from strife but must leave the defeated state capable of maintaining a meaningful defence. This position is also expounded and developed by Orend who explains (without reference to Gentili) that ‘Aggressors may not be so demilitarized as to jeopardize its ability to fulfil its function of maintaining law and order within its own borders, and of protecting its people from other countries who might be tempted to invade’.⁹⁴ So, strict

⁹¹ Gentili (1612), p.347

⁹² Orend (1999), p.270 and Orend (2000), p.141. Orend discusses the use of Proportionality in reference to Disarmament but not the use of Reasonable chance of success.

⁹³ Gentili (1612), p.347

⁹⁴ Orend (2000), p.141, Orend (2000), p.141, Orend (2000), p.228 Orend (2002), p.49 and Orend (1999), p.270

limits must be considered when determining the level of disarmament to balance the basic needs of the defeated nation state on one side, but to still maintain freedom from strife on the other.

However, in certain cases disarmament and demobilization might not be sufficient to *Secure Freedom from Strife*. Take, for example, a case where the defeated nation still has quite large armed forces; it will take time in the aftermath of war for any demobilization to take place. Until that process has been completed, and the threat is removed, freedom from strife could not be secured; in such circumstances further action could be taken. Another possible situation could be that, in addition to the defeated state, another neighbouring power also has a potentially aggressive powerful armed force. Under the guidance of proportionality, it would not be just to disarm the defeated nation state to the point where it would be unable to defend itself against this other large threat. However, by leaving the defeated nation with a substantial armed force, it may use that force simply for defensive capabilities or it may launch a further attack on the once victorious just state. This is where the principle of reasonable chance of success plays a role, as if it is clear that disarmament will not be successful on its own then more drastic action may be required.

Another action a victorious nation could take following a war of self defence, on a similar scale on the spectrum, would be to secure the borders using troops whilst any disarmament takes place. In addition, this could potentially be coupled with the creation of demilitarized 'buffer zones' between the victorious defending party and the defeated aggressive nation.⁹⁵ This could provide a needed gap and breathing space between the nations within which one could secure a peace. Furthermore, in certain cases, it may be more prudent to create the buffer zones and to secure the borders without having to disarm the aggressor; if for example, the defeated state's army was already quite weak the deterrent of a large defence army guarding the border might be enough to deter future war. It is clear that this, in certain cases, would prevent an immediate outbreak of violence during this fragile war termination phase, but would do so without having to totally invade the aggressor and violate its sovereignty as a state.

Like many things within the just war tradition, it would be a limited response rather than a total one. This aspect of limited response to a situation is another central theme to just war thought which it is important to clarify. This theme is expressed

⁹⁵ Orend (1999), p.270, Orend (2000), p.141, Orend (2000), p.228 Orend (2002), p.49 and Orend (2006), p.169. However his point is only briefly touched upon in each case.

clearly by Walzer in his brief but important chapter on Wars End. Walzer explains by quoting from Liddell Hart who writes that ‘The object in war is a better state of peace’.⁹⁶ Walzer then goes on to make the point that ‘better, within the confines of the argument for justice, means more secure than the status quo ante bellum, less vulnerable to territorial expansion, safer for ordinary men and women...The key words are all relative in character: not invulnerable, but less vulnerable; not safe, but safer’.⁹⁷ It is crucial to point out that this understanding is spelt out in this subsection, as it is clear that during the a war termination it will be next to impossible to secure a complete and total freedom from strife, but if peace is the goal of a just war, then action must be taken to make the victorious state as safe as is possible. This is why a spectrum of activities has been introduced so that the action required is proportionate to the threat level.

Securing Freedom from Strife will also have a profound effect on when the just victorious state may demobilise and disarm its own military. Whilst it has been suggested that the defeated nation could be disarmed in the wars aftermath, this might not necessarily be the case for the just victorious state straight away. In order to bear the responsibility of securing the peace in the war termination its armed forces may still be required. For example, troops will need to be present to supervise the defeated nation’s disarmament, more importantly, if a buffer zone and secure border is required to *Secure Freedom from Strife*, then it will be the role of the armed forces to do so. It therefore seems clear that if such a course of action is required to prevent another war, that being the end goal of a just war, then the victorious power has just as much necessity for its armed forces as it did during the *jus in bello* stage of the engagement. It should be noted, however, that if it is possible to send troops home then priority should be given to any soldiers who were conscripted to fight. As conscripts have not actively chosen a soldiers role, they should be the first to return to civilian life during the war’s conclusion. Professional soldiers should remain, if soldiers are required, as it is their vocation.

In order to demonstrate that freedom from strife can be secured in a war termination without having to occupy a country, change a regime and invade, this subsection will turn to its first case study.

⁹⁶ Walzer (1977), p.121

⁹⁷ Walzer (1977), p.121-122

The Korean War and the Creation of the Demilitarized Zone (DMZ), Korea 1953

The Korean War began on the 25th June 1950 and lasted until a cease fire was declared on 27th July 1953.⁹⁸ The war itself began as a civil war between North and South Korea. However, South Korea was heavily supported by the United States, and North Korea had the backing of the Peoples Republic of China (PRC) and the Soviet Union.⁹⁹ Importantly this case study does not wish to become embroiled with either the *jus ad bellum* or the *jus in bello* phases of the Korean War, but to look exclusively at the use of securing borders and creation of buffer zones during the war termination to prevent future conflict.

When the cease fire was announced in July 1953, both sides were fighting over the 38th parallel, which marks the centre of the Korean peninsular, which in fact was the original border between the forces of the United States and the Soviet Union at the conclusion of World War II.¹⁰⁰ At the start of the war termination both sides agreed to move their troops back to create a buffer zone 4km wide. This became known as the Demilitarised Zone or DMZ which cuts across the 38th parallel and is 248 km long. Although this zone continues to be heavily guarded to prevent further attacks from either side, several agreements have remained in place. For example, whilst both sides are allowed to guard their borders, a tight restriction is placed on the types of soldiers and weapons which are allowed to patrol the DMZ. Moreover, no side is permitted to cross the Military Demarcation Line into the other's territory.

It is true that this is not the most ideal example of a war termination, if for no other reason than both North and South Korea are still officially at war with one another.¹⁰¹ However, what this case does demonstrate is that one way of securing (albeit a fragile) peace is through the use of a buffer zone. Even though there may have been difficulties, and certain tensions over the years, the use of the DMZ and securing borders has ensured that war has been prevented for the past fifty years without the need for either a full scale occupation or invasion by either ideologically opposing sides.

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⁹⁸ Leckie (1962), pp.13-17

⁹⁹ Sandler (1999), pp.3-5

¹⁰⁰ Leckie (1962), pp.32-33

¹⁰¹ Sandler (1999), p.14

Whilst it may be possible, in certain circumstances, to *Secure Freedom from Strife* through the appropriate use of buffer zones, securing borders and disarmament¹⁰² it would be naïve to assume that such action will be sufficient in every case of war termination. In more radical cases, in order to secure freedom from strife, more extreme action may need to be taken to stabilise and secure the goal of the just war. For example, some aggressive nations might ignore any buffer zones, or take a secure border as an insult or act of aggression which could, in turn, lead to further conflict.

In some other cases, a policy of disarmament may be ignored by a still powerful aggressor automatically sparking further fighting. In other cases a defeated aggressive nation may, despite agreeing to disarm in the peace treaty, rebuild its forces and develop contraband weaponry through either covert means or by simply denouncing the agreement. This was the tactic employed by Hitler before the Second World War as he built up a strong army and contraband air force despite the disarmament policies within the Treaty of Versailles.¹⁰³ This is one of the reasons why this principle has been given the title *Securing Freedom from Strife* rather than *Ensuring Disarmament and Securing Borders*, the other reason being that, in some cases, in order to secure a peace you might not actually even be required to do either of these things (please see above).

In more aggressive states that still pose a considerable threat it may be necessary to take further steps in proportion to the threat level. As explained by Orend and Walzer, the action taken in the war termination would depend ‘on the nature and severity of the aggression it committed and the threat it would continue to pose’.¹⁰⁴ Therefore, following a war of self-defence, in more extreme cases against a still hostile and aggressive defeated state it may be required to move further down the spectrum and begin an occupation.

Moreover, in order to *Secure Freedom from Strife* this occupation might also include a change of regime if that regime continues to remain actively hostile and it is clear that, as soon as is practically possible, it will launch another attack or begin another war. Walzer makes a strong and similar point on this position explaining that the sovereignty of a state ‘can be forfeit ... in cases of repeated aggression’.¹⁰⁵ This need to

¹⁰² Bass (2004), p.394. Bass lists these points and describes them as ‘A restrictive posture on post war reconstruction’ but does not go any further than listing them.

¹⁰³ Taken from www.historychannel.com/worldwartwo/?page=prelude on 26/07/06

¹⁰⁴ Orend (2000), pp.138-139 and Orend (1999), p.268

¹⁰⁵ Walzer makes this point during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.15 and Walzer (2004), p.92. Please also see Orend (2002), p.50

change a regime may also be closely linked to the principle of *Impartial War Crimes* as, in the case of a war of self defence, many leading figures of the defeated state may be put to trial. For further details please see related section. Needless to say, if through the course of the war, or through war crimes trials, the defeated nation does not even have a working government then that also might result in the establishment of a new government in the war termination phase. As stated by Bass in some cases ‘Without some reconstruction, there would be another war, and that is an injustice in itself’.¹⁰⁶

It should be noted that, by making such a claim, this thesis is in no way providing a just war driven ‘green light’ for regime change and occupation in every case following a war of self defence.¹⁰⁷ As a point of fact, quite the reverse is true, an occupation and change of regime should only be justified if it is clear that the simple defeat, disarmament and secure borders and buffer zones will all fail to secure peace. It is also a vital point to make that, under this principle of *Securing Freedom from Strife*, any occupation must be initiated for the reason of securing peace¹⁰⁸ and not any other type of selfish end. For example, an occupation would not be justified if its purpose was to gain material wealth, to punish or to create a satellite or puppet state.¹⁰⁹ This introduces the idea that a valid occupation like a just war must have a just cause.

As a further point, some *jus post bellum* writers make the claim that any war termination, especially one that involves an occupation, should be conducted quickly. For example Bass states, building on the argument of Rawls¹¹⁰, that ‘an occupation be as brief as possible’¹¹¹ and that ‘the primary *jus post bellum* responsibility of a victorious state is to get out as soon as is possible’.¹¹² However, whilst this thesis would make a similar claim and suggest that any occupation and war termination should not go on for longer than was absolutely necessary, and that sovereignty needs to be fully passed back to the defeated state when possible, it also seems that rather than a priority of speed a priority of being successful seems more important.

¹⁰⁶ Bass (2004), p.397. This passage is drawn from Walzer (1977), p.123. Please also see Orend (2004), p.174

¹⁰⁷ This thought is shared by many just war thinkers including Walzer (1977), p.113. Bass (2004), p.398

¹⁰⁸ A similar thought is echoed in Bass (2004), p.412

¹⁰⁹ Walzer (2004), p.163. This text makes some points in relation to satellite states and revenge. This point is also made by Bass (2004), p.390 who states that ‘victorious states have no right to reconstruct a conquered polity simply out of self interest’.

¹¹⁰ Bass (2004), p.388 and Rawls (law of people), p.98

¹¹¹ Bass (2004), p.388

¹¹² Bass (2004), p.412

In the same way as the principle *Peace First*, if you set a just goal that has a reasonable chance of success then it would be unjust to stop if you had not achieved that goal. In the case of an occupation and regime change, it will be important to leave as soon as possible and in some cases a swift exit may be achievable such as the ‘UK intervention in Sierra Leone’.¹¹³ It would however clearly not be just, if by concentrating on leaving early, it does not *Secure Freedom from Strife* or leads to severe internal discord. It is clear that in many cases of occupation any new government will require support and help¹¹⁴, financial and diplomatically. In short, if a victorious state is required to undertake a regime change and occupation to secure peace then, exactly as in *Peace First*, it must see it to a complete conclusion. If you have reached such an extreme and, in order to promote peace, such drastic action is needed, then the victorious just state has a commitment and moral responsibility to see such actions to the end, in some cases this may result in a long hard road. As stated by Rivkin and Bartram ‘occupation related missions will be tough, [and] unglamorous’.¹¹⁵ To begin such an arduous journey with a mind set of speed, as opposed to success and responsibly, would seem misguided.

To summarise, this principle certainly does not condone occupation in every war termination case, only in those cases which are so severe that if a just state did not occupy then it would be thrown back into a dangerous war. Secondly, if an occupation was undertaken for a reason other than to secure peace (especially a self-centred reason) then such an occupation would be unjust. Thirdly, that if an occupation and regime change is performed for just reasons then such an important project must, of course, be temporary, but must be taken to an adequate conclusion despite potential hardships.

As a related point, this thesis will claim that occupation and regime change is only ever justifiable for several reasons. One reason is to *Secure Freedom from Strife*, as outlined above, the other reason relates to the principles of *Ensuring the Protection and Safety of Innocents and Non-Combatants*;¹¹⁶ however that will be covered in more depth in the relevant chapter.

It should also be noted that, by suggesting that an occupation should take place in such extreme circumstances, this thesis is not in any way running contrary to the

¹¹³ Fisher (2005), p.115

¹¹⁴ Orend (2000), p.142

¹¹⁵ Rivkin and Bartram (2003), p.90. This point is supported by Fisher (2007), p.115, Godfrey (2006), p.3 and Orend (2006), p.207

¹¹⁶ The understanding that occupation may be acceptable for reasons of human rights is another popular position in current just war debate. For examples please see Bass (2004), p.399 and Iasello (2004), p.6.

international law in existence. In fact, as stated by Rivkin and Bartram ‘The military occupation model, under which victorious belligerents occupy the territory of a defeated country and administer it for a period of time before turning power to a successor government, is a viable and legal instrument of statecraft’.¹¹⁷ In addition, these thinkers go on to explain that ‘Both the Geneva Convention and customary international law allow military occupation’.¹¹⁸ Much of the military international law in existence today was developed and prompted by just war thought, therefore as international law has developed from such roots it seems right that any understanding of *jus post bellum* should sit comfortably alongside the limited law in existence that regulates such matters.

Lastly, when one inspects the growing *jus post bellum* literature that is in existence, it seems immediately clear that the notion that occupation and regime change should be avoided in all but the most extreme cases is a popular view point. Such a position is common to Bass, Orend and Walzer.¹¹⁹ However, as explained at the start of this chapter, one role of this thesis is to demonstrate that, whilst many of these notions on regime change and occupation have been developed as ‘new’ additions to the just war tradition, if one examines closely key texts within just war literature such issues may not be as forgotten as first they might seem. In some cases this thesis has developed *jus post bellum* principles by adapting and developing principles from *jus ad bellum* and *jus in bello*, in other cases an understanding of *jus post bellum* can be directly taken from classical just war texts.

For instance, Vitoria’s text *On the Law of War* published in 1557 makes an almost identical point to Orend, and many other current *jus post bellum* thinkers. Vitoria actually wrote a section entitled ‘Whether one may depose the enemy’s princes and set up new ones’. As an aside, whilst this thesis and contemporary *jus post bellum* philosophers examine governments and regimes rather than princes, it seems that both are discussing the leaders in power.¹²⁰ Vitoria poses the question, in exactly the same way as modern war termination thinkers, ‘whether we may depose the enemy’ princes and set up new ones in their place, or take over the government ourselves?’¹²¹

¹¹⁷ Rivkin and Bartram (2003), p.87

¹¹⁸ Rivkin and Bartram (2003), p.96

¹¹⁹ Bass (2004), p.396, Orend (1999), p.270, Orend (2000), p.141, Orend (2000), p.229 Orend (2002), p.50, Orend (2004), p.174, Meierhenrich (2006), p.100 and Walzer (1977), p.113.

DiMeglio (2005), p.139 also describes Walzer’s views on this subject. Walzer also stated this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.13

¹²⁰ At the time of Vitoria’s writing the word Prince was commonly used to describe any ruler of a state.

¹²¹ Reichberg, Syse and Begby (2006), p.331

Vitoria answers this difficult question by explaining that ‘It is not lawful to do this in every case, or for any cause of just war. This is clear from what has been said: punishment should not exceed the crime. On the contrary, punishments should be diminished in favour of mercy...Therefore, although the harm done by the enemy may be a sufficient cause of war, it will not always be sufficient to justify the extermination of the enemy’s kingdom and deposition of its legitimate native princes; this would be altogether too savage and inhumane’.¹²² So the position that this thesis has taken that a war termination, following the guidance of the just war tradition, need not always involve an occupation is stated by Vitoria.

However, Vitoria does not abandon his enquiry at this point, but goes onto to make some further vital claims. Vitoria explains that ‘it cannot be denied that there may sometimes be legitimate reasons for supplanting princes, or for taking over the government. This may be because of the number or atrocity of the injuries and harm done by the enemy, and especially when *security and peace cannot otherwise be ensured*’.¹²³ It therefore seems apparent that a great deal of what is currently being spelled out within contemporary *jus post bellum* thought regarding occupation and regime change was outlined many hundreds of years ago by Vitoria. This position is also expressed to a limited degree by Gentili who explains briefly that ‘it is sometimes expedient and just to overthrow monarchies’.¹²⁴

It may not necessarily be a negative or bad thing as many *jus post bellum* writers are attempting to draw an understanding of war termination that fits with traditional just war thought. By looking at the work of Vitoria, it seems clear that many are on the right road as modern conclusions of war termination and justice match almost identically to those comments made by leading just war figures.

It should be reiterated, in the closing paragraph of this section, that this particular principle is concerned with methods of *Securing Freedom from Strife* and how it may be possible to secure peace following war. This is not a section designed to deal with all of the complexities of how to conduct an occupation, it is merely to demonstrate that, in certain cases, an occupation and regime change may sometimes be appropriate to

¹²² Reichberg, Syse and Begby (2006), p.331

¹²³ Reichberg, Syse and Begby (2006), p.331. However my use of highlights to make clear the central theme.

¹²⁴ Gentili (1612), p.337

make peace and that this view is very much in line with traditional just war thought, as illustrated in the writings of Vitoria and to some lesser extent Gentili.

War Termination and Cultural Change

'The Extreme Choice'

Most *jus post bellum* thinkers explain that occupation and regime change might be necessary to *secure freedom from strife* in certain extreme and difficult circumstances.¹²⁵ In the main, however, they also take the strong position that during such an occupation the victorious state should never try to change the defeated nation's culture and force different values and customs upon them. This subsection is designed to investigate and analyse that position.

In order to begin this investigation, it seems prudent to initially describe what is meant by the term 'cultural change'. When the term 'cultural change' is used to what exactly is it referring? It should be noted that attempting to provide a crisp and watertight definition of cultural change would be a detailed project in itself and is, therefore, beyond the scope of this section. Moreover such a project would also lead to the issue of 'defining terminology' as expressed within Chapter I. Therefore, this section will provide a brief cluster of considerations which will illustrate what is meant when the term 'cultural change' is being utilised in this section.

It seems clear that the culture of a people is expressed in its practices; cultural change, therefore typically involves attempting to change or modify such practices. An example of a cultural change in a war termination would be if the victorious force were to impose a religious change to a nation, altering the practices of their faith. Another example could be if the occupying force was to impose language constraints and introduced a new 'native' tongue. A third example would include the victorious nation attempting to alter the demographics of the country, for instance one could look at the forced draft policy in Vietnam designed to change the practice of people living in rural communities and move them into urban areas and towns. A fourth example could entail the change of education and a fifth example could include the conversion of social ceremony and ritual. Such changes can range from minor and limited modifications to widespread transformation, which will be discussed in more detail during the case

¹²⁵ Orend (2000), p.142, Walzer (1977), p.113 and p.119 and DiMeglio(2005), p.139

studies that will follow. Clearly this cluster of considerations is not exhaustive; however it does provide some detail as to what is meant by a discussion of cultural change.

An example of a *jus post bellum* thinker who holds the view that such cultural change should be forbidden is Bass. Bass states that quite simply during an occupation and war termination the ‘victorious states have no right of cultural reconstruction’.¹²⁶ Bass then goes on to defend his position by explaining that ‘The mere fact of military victory is hardly a demonstration of superior political organization or cultural values’.¹²⁷ It should also be noted that this position is supported in passing by Walzer. In his article in reference to ‘Regime Change’ Walzer briefly points out that ‘intervening forces have a mandate for political, but not cultural, transformation’.¹²⁸

These positions reflect a strong taboo in current thought that it is always wrong to question another’s culture, and it is definitely wrong to forcibly try and change another’s culture. Even if a culture appears abhorrent or perverse, and in the case of war termination it has the high potential of starting another war, one should not try and modify another’s cultural practices. Because, after all who are we to say that one culture is ‘better’ than another?

Whilst it is apparent that, in some ways, this thesis is not dissimilar to several *jus post bellum* texts, including the work of Bass, on this issue we clearly part company. It is for this reason that more detail has been included within this particular subsection, as it makes a dramatic move away from most current *jus post bellum* thought.

The first possible counter to the argument of Bass is that trying to prevent cultural change in a war termination is in fact impossible. To explain further, if an occupation and regime change was initiated by a government with a massively different culture to the defeated nation (which is permissible for Bass), would it really be possible to occupy a country and take control of it without making any cultural changes whatsoever? For example, a standard element of an occupation is to change and retrain a police force. Does a police force represent a reflection of culture? Wouldn’t their new training be influenced by these differing cultural perspectives? Moreover if you are modifying the political structure of the country and changing its regime, surely that would have far reaching effects on the culture of the nation as well. For instance, if the

¹²⁶ Bass (2004), p.390. This view is also supported by Meierhenrich (2006), p.106

¹²⁷ Bass (2004), p.395

¹²⁸ Walzer (2006), p.2

victorious nation introduces democratic practices into a previous non-democratic country then surely that will have a cultural impact. In addition, if the victorious power is serious about wanting that democracy to take root, then surely it needs to introduce some education to actually show the people the benefits of democracy and why and how it works. That type of education would surely involve a cultural change. Therefore cultural change in that situation would seem impossible to avoid.¹²⁹ Even if a massive political change does not form part of the occupation, the simple presence of thousands of foreign soldiers could have some impact, albeit indirectly, on the culture of the defeated country. Therefore, to make the claim that political change is permissible but cultural change is impermissible seems somewhat bizarre and unrealistic. Does this observation then make the position of Bass and others redundant?

One could defend the position that cultural change is to be forbidden by taking the argument one step further. These thinkers could note, to shield themselves from the above criticism, that whilst cultural change might occur as the by-product of a forceful occupation, there is an ethically important difference between cultural change as the offshoot of a political change and cultural change as an active decision of policy. In the first case the victorious nation is not imposing its culture on another, but in the second case, to use Bass's description, it would be 'cultural reconstruction'.¹³⁰ So those who explain that cultural change is not allowed, could recognise that cultural change may well occur as an indirect consequence of other actions but might still oppose cultural change as a direct form of policy. Having now noted the difference between cultural change as policy and as a side-effect, this thesis will now aim to demonstrate that cultural change as policy is not necessarily unjust.

At the beginning of this section it was explained that, in some circumstances, *Securing Freedom from Strife* could be achieved through fairly minimal involvement, in fact it was even asserted that a simple defeat in war might be enough to deter future aggression, and that no further action on this point would need to be taken during the war termination phase. Gradually this section has moved further down the aggressive spectrum until now we reach the opposite extreme.

It would not be inconceivable to imagine a nation where the antagonism, and desire to invade and begin an aggressive war, is more deeply engrained than simply the government in power or ruler at the time. Horrendous as it might sound; a situation

¹²⁹ Walzer (2006), p.3

¹³⁰ Bass (2004), p.390

could occur when even if a regime was changed, and an occupation took place, that on its own might not eradicate the lust for war. This may be because it is the people and customs of the nation, rather than solely the government and military, which is fuelling this motivation to engage in future conflict. For instance, if a militant government or dictator had been in power for a period of time they might have actually fostered and encouraged cultural change, and the growth of extreme elements within a culture, in order to promote their own militaristic ideal. Therefore these perverse and dangerous elements within a culture might exist because they were forcibly put there to motivate militant action. Whilst such action may be as extreme as you can get on this thesis's scale of potential aggression, in a defeated adversary that does not automatically mean that it is either impossible or unlikely to ever occur.

If a victorious state is serious about wanting to try and ensure peace in such extreme circumstances, it seems as if two options are available. One option is total, barbaric and unjust and the other is limited and perhaps the lesser of two evils. The first way of *Securing Freedom From Strife* in such cases, would be to do what the Romans did when faced with continual war with Carthage, to simply wipe Carthage from the face of the earth. As stated by Reisman 'The three words, "Carthago delenda est," for all the violence and utter finality they imported, did mean peace'.¹³¹ However this is quite clearly a savage and unjust action to take and is discussed as such in the section *Ensuring the Protection and Safety of Non-Combatants and Innocents*.¹³²

The other option that the victorious state might have, following a war of self defence, is during the occupation to implement some policy of political modification, social reform and cultural change. To move a culture away from its extreme war like tendencies, thus making future conflict less likely and securing the peace. It is important to observe that the position that cultural change can be permissible is reflected to a limited degree in certain passages of just war text. For example, 'those things which depend upon the laws and customs of states alone, may without doubt, says Baldus, be changed by the victor'.¹³³

¹³¹ Reisman (1998), p.36

¹³² Please see relevant section *Ensuring the Protection and Safety of Non-Combatants and Innocents* and Johnson (1999), p.126. It is perhaps important to note that Reisman also explains that the Roman destruction of Carthage is 'inconsistent with contemporary legal and moral codes'. Taken from Reisman (1998), p.37.

¹³³ Gentili (1612), pp.346-347

In order to defend and expand upon this position, this subsection will take a slight step back away from the field of war termination and begin by addressing, in more broad terms, this general taboo against cultural change. In many respects this section wishes to demonstrate that, in some situations, cultural respect should not always ‘trump’ every other ethical and political consideration. This thought will then be introduced to a discussion of war termination and cultural change.

As a first example against this notion of a ‘cultural trump’, one need but look at the feminist literature on the subject. As varied cultures spread throughout the world a tension is quickly growing ‘between feminism and multiculturalists concern[ed] for protecting cultural diversity’.¹³⁴ In certain cultures, traditions and practices exist which allow men to exercise complete control over women. These customs can include ‘clitoridectomy, polygamy’¹³⁵ and ‘the marriage of children or marriages that are otherwise co-coerced’.¹³⁶ As one example of such cultural traditions one need but look at the practice ‘common in much of Latin America, rural Southeast Asia and parts of West Africa – of pressurising or even requiring a rape victim to marry the rapist’.¹³⁷ Moreover in ‘fourteen countries in Central and South America – rapists are legally exonerated if they marry or (in some cases) simply offer to marry their victims’.¹³⁸ This is due to the fact that rape is seen in such traditions as an offence against the family, and the family’s honour, and not specifically against the woman.¹³⁹

The question examined by feminists is whether such cultural practices should be protected when these cultures spread and live alongside more liberal, right based, societies. More importantly for this thesis, should such actions be morally protected simply because of the ‘cultural trump’? In fact the argument of Okin is that these cultures should ‘be encouraged to alter... so as to reinforce the equality of women’.¹⁴⁰ Whilst it is clear that this example of the clash between a cultural practice and feminist thought does not relate directly to notion of changing a culture in a war termination; it does perhaps take a first step to demonstrate that respecting a cultural practice is not always such a clear cut decision, and that in some cases cultural change is campaigned for and widely supported.

¹³⁴ Okin (1999), p.10

¹³⁵ Okin (1999), p.14

¹³⁶ Okin (1999), p.14

¹³⁷ Okin (1999), p.15

¹³⁸ Okin (1999), p.15

¹³⁹ Okin (1999), p.15

¹⁴⁰ Okin (1999), p.23

Another example that throws a shadow of doubt over the ‘cultural trump’ position is a case involving a native tribe of Taiwan. In Taiwan a tribe exists which had at one time a strong and integral cultural practice of head hunting. In order for a male within the tribe to be accepted as an adult and as a man, he had to first demonstrate his worth through the act of hunting a human being down and beheading him. Furthermore, once this head hunting had taken place, part of the cultural practice of the tribe involved playing a grotesque game, which involved some participants throwing the severed heads and others having to catch the heads upon the ends of their spears. This particular illustration is perhaps stronger and more relevant than the above, as it is closer to the field of warfare than the previous example, as it demonstrates how extreme brutality and a militant tendency can form part of a cultural practice and tradition.

The question has to be asked whether it would be ethical to allow this tribe to continue to head hunt and play this barbaric game simply because this tribe had been doing it for a long time and it formed part of their cultural heritage?

Undoubtedly few people would condone the act of hunt heading, despite the fact that it formed part of a tribe’s cultural practice. As a point of fact, the Taiwanese government did act to prohibit any members of the tribe from head hunting, thus restricting this extreme aspect of the tribal culture. However, and importantly for what will be explained below, the Taiwanese government did not eradicate the tribe or completely change every aspect of its cultural heritage or tradition. Instead the government restricted and changed the abhorrent and most extreme aspects of the tribe’s culture but allowed the tribes traditions to be expressed and continued in other ways, and through other forms. As one example, the cultural game of throwing heads onto spears was allowed to continue but importantly the human heads were replaced with cabbages! So the coming of age ritual was allowed to continue but the bloody head hunting was removed.¹⁴¹ This thought will be returned to in due course.

Returning to the realm of war termination, it must be explained that this thesis is not the first, or indeed the only, text to stake the claim that cultural change could be a possible way of securing peace in a war’s ending. As an exemplar of a thinker very much in favour of cultural change in the wake of World War II, this section will investigate the writings and comments of the chief diplomatic adviser for the British Government in 1941, Sir Robert Vansittart.

¹⁴¹ I am grateful to Prof. Andrew Collier for his information and comments on the Head hunting tribes of Taiwan on 14/5/07.

Vansittart, in his BBC broadcasts and book ‘Black Record: Germans Past and Present’, described himself as ‘a working diplomatist with his coat off’.¹⁴² He describes himself in this manner because he explained that in the past he had been unable to speak his mind due to his diplomatic role, but felt that he could for the first time express what he thinks is the truth.

Vansittart puts in plain words that ‘the Hitler regime is no accidental phenomenon’¹⁴³ but that the rise and actions of the Nazis was very much a product of German culture, and that ‘Nazi methods are certainly deep-rooted in Germany’.¹⁴⁴ By drawing on his own study, research and experience Vansittart attempts to demonstrate that the reason for the Second World War, and indeed most major wars that have occurred in Europe, was due to the militaristic culture of the Germanic people. Vansittart describes the Germans as ‘barbarians’ and ‘war lovers’¹⁴⁵ and that this militarist tendency has formed an essential part of the German culture since ancient times and the Vandals (he even explains how the term ‘vandalism’ comes from German brutality).¹⁴⁶

Vansittart goes on to make two key points in his text. He first explained that the British people needed to be aware of this warlike tendency in the German people and describes the German actions as being akin to the ‘butcher-bird’¹⁴⁷ preying on its unsuspecting neighbours. So the first purpose of Vansittart’s work was to make everyone in Europe aware of the German’s warlike nature. Vansittart’s second point was that if Europe was to hope for any kind of peace and freedom from strife, then the entire Germanic culture needed to be altered and changed.

As Vansittart himself states ‘At all costs the world must never again be dragged by Germany into a war – merely because it fails to understand how Germany has behaved in the past, and how it will behave again in the future, unless the German people undergo a deep, spiritual regeneration’.¹⁴⁸ Vansittart is clear that this change would certainly not be easy due to the ingrained violent nature of the German culture. Moreover that any such change needed to be total, as he states ‘It will have to comprise

¹⁴² Vansittart (1941), p.vi and back cover.

¹⁴³ Vansittart (1941), back page.

¹⁴⁴ Vansittart (1941), p.1

¹⁴⁵ Vansittart (1941), Back page.

¹⁴⁶ Vansittart (1941), p.21

¹⁴⁷ Vansittart (1941), p.1

¹⁴⁸ Vansittart (1941), p.14

a complete change of heart , mind and soul: of taste and temperament and habit; a new set of morals and values, a new, a brand-new way of looking at life'.¹⁴⁹

It is also apparent for Vansittart that he did not see this project of changing Germany's culture as a short term or quick affair; he explains that whilst 'the soul of a people *can* be changed'¹⁵⁰ that such a change will 'take at least a generation'.¹⁵¹ However Vansittart explains that without this total change in culture and that 'fundamental change in soul, no other cure, no mere administrative or technical tinkering can be made permanent'.¹⁵² So for Vansittart, at the close of World War II, the answer for securing freedom from strife was a total and complete change in the German people's customs and culture.

Whilst it is clear that both this thesis and Vansittart share the broad view that cultural change may be required in order to secure freedom from strife, that is, in fact, where any similarity ends. In almost every respect this section will take a different path to Vansittart by explaining that cultural change can only be justified, and indeed successful, if it is strictly limited and deals exclusively with the extreme, perverse and importantly dangerous aspects of a culture. In fact, the actions of the Taiwanese government in the brief head hunter illustration above in many ways reflects, much closer than Vansittart's work, the war termination course of action that this thesis wishes to present.

The key action of the Taiwanese government being that rather than completely destroying the tribe's cultural heritage or practices, the extreme and dangerous aspects of its customs were curbed and altered. Furthermore the once dangerous aspect of the tribe's culture was allowed to survive only in a redirected and much more passive form. This differs radically to the Vansittart approach of a 'complete change of heart, mind and soul'.¹⁵³

Within a just war termination it is clear that the victorious just nation's actions, like the Taiwanese government in response to the tribe, should not be total and that, in order to secure freedom from strife, not every aspect of the defeated nation's culture needs to be destroyed or changed. It certainly should not be ignored that, in some cases,

¹⁴⁹ Vansittart (1941), p.15

¹⁵⁰ Vansittart (1941), p.53

¹⁵¹ Vansittart (1941), p.53

¹⁵² Vansittart (1941), p.53

¹⁵³ Vansittart (1941), p.15

it might be possible to curb the extreme and violent aspects of a hostile country through a small degree of education and understanding, for example the introduction of an understanding of human rights. Whilst that might not be the case in every scenario, even in the most extreme cases it seems that in order to *secure freedom from strife*, it is only the extreme and aggressive elements of a culture, enshrined in particular cultural practices that should be either modified or adapted.

The position that a cultural change needs to be limited is, in fact, much more in line with traditional just war thought. It is, after all, the role of this thesis to develop an understanding of war termination from traditional just war roots. A fundamental characteristic of the just war tradition is that just actions have to be proportionate, and that any just war actions should not create more evil than they intend to stop. Therefore, if you do not need to destroy and dismantle an entire culture, then quite simply you should not do it.

For instance, if one looks closely at the principles of *jus ad bellum* it demonstrates that for any war to be just it must have a 'limited' set of war aims and goals. Total wars, wars without just aims and crusade style wars are all ruled out.¹⁵⁴ Moreover, within the principles of *jus in bello* clear 'limits' are placed upon what should, and should not, be allowed within combat. The just war tradition always stresses 'limited' responses rather than total ones, as famously explained by Walzer 'Just wars are limited wars'.¹⁵⁵ It seems clear that in relation to war termination and cultural change, total changes suggested by thinkers such as Vansittart go against one of the central themes of the just war tradition. If we take the stance that in extreme conditions cultural changes are required, then such changes should be limited rather than total. Such thoughts build upon these central themes of the just war tradition.

For example, where Vansittart urged for a complete change of the German culture in every respect, this thesis would claim that such action is unnecessary and, because it is unnecessary, it would destroy a culture without reason. That would be unjust. It seems clear, and most historians would agree, that it was not the German culture that led to many of the atrocities in World War II, but rather it was the 'Nazi culture', promoted and fostered by Hitler. Whilst the culture of the Nazi party may well have reflected an extreme aspect of Germanic culture, it is that area that required change. So whereas Vansittart's approach would involve trying to alter the entire

¹⁵⁴ Orend (1999), pp.260-263

¹⁵⁵ Walzer (1977), p.122

German culture, this thesis would claim that the only area that would require alteration would be the extreme and perverse aspects of the Nazi party and as such would support 'De-Nazification'¹⁵⁶, but it would not support the total cultural change suggested by Vansittart.

As an interesting point of fact, during the occupation of Germany, a programme was introduced that involved removing the Nazi culture from Germany. As stated within the 'Directive to Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany' in April 1945 'The primary goal of the occupation was: [to] prevent Germany from ever again becoming a threat to the peace of the world. Essential steps in the accomplishment of this objective are the elimination of Nazism'.¹⁵⁷ With the benefit of hindsight, we can clearly see that Vansittart was fundamentally incorrect when he explained that a complete change in the culture of the German people, lasting over a generation, was needed in order to secure freedom from strife. By implementing these limited changes to remove and curb the perverse influence of the Nazis by 1949 the occupation had ended 'Germany promptly rejoined the family of democratic nations, becoming a full-fledged member of NATO and a key player in the new postwar Europe'.¹⁵⁸

It also seems that, by allowing aspects of a culture to remain, not only is it more in keeping with the tenets of the just war tradition but, from a practical point of view, makes the success of such a change more likely to succeed. For example, if a victorious nation attempts to perform a 'Vansittart like' total change, then it seems likely that such change could be met with stiff resistance and hostilities. In fact, taking a more extreme position, it could even be asserted that not only would a total change be met with hostilities but it might actually be impossible to make such a complete change to a culture within a war termination. As discussed above, by limiting cultural changes to the extreme and war like elements, often created artificially in a culture by a militant dictator, not only is it much more in line with the just war tradition, but by allowing the defeated nation to retain certain key elements within its cultural practice then these smaller changes will have a much higher chance of success. It could be noted that, in fact, a more appropriate term for what is described in this thesis would be 'cultural redirection' than full 'cultural change'.

¹⁵⁶ Bass (2004), p.395

¹⁵⁷ Rivkin and Bartram (2003), p.94. Originally taken from 'the 'Directive to Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany' ,April 1945

¹⁵⁸ Rivkin and Bartram (2003), p.94

So, by allowing cultural redirection to a limited degree, it promotes a movement towards freedom from strife without the need to remove an entire culture, only the extreme and dangerous elements (often artificially installed by a government) need to be dealt with, and should be modified, rather than completely separated. Furthermore, by addressing the German case following World War II, it has demonstrated that not only does this fit more closely with one of the central strands of the just war tradition but it also can work in practice.

To demonstrate that such an action can take place, and that *Securing Freedom from Strife* can be achieved without having to totally destroy a nation's culture, this subsection will turn to another World War Two case study, the war termination of Japan.

The War Termination and Occupation of Japan, 14th August 1945- 28th April 1952

On the 14th August 1945 Emperor Hirohito surrendered to the allied forces and ended World War II. Following the surrender, Japan was occupied by the allies with the United States of America in primary control. This occupation lasted until the San Francisco Peace Treaty was signed on 28th April 1952, at which point Japan once again became a fully independent and sovereign state.

During that seven year period General MacArthur was the supreme commander in charge of the occupation of Japan and, in order to *Secure Freedom from Strife*, various policies were introduced to curb the possibility of future war. Some of these policies revolved around actions discussed at the start of this section; for example, through article nine of the 'Peace clause', wide scale disarmament and demobilisation took place to prevent Japan from becoming a dominant and aggressive military power in the Pacific.¹⁵⁹ Furthermore, in Ichigaya, Japan's war criminals were being tried and sentenced.

However, in addition to performing those actions described in this and other sections, the allied forces also introduced changes to Japan at a much more fundamental level. For instance, in 1946, a new constitution for Japan was drafted to promote democracy and free speech. In addition, Shinto was removed from being the state religion, the Zaibatsu, large companies, were broken up and women gained the right to

¹⁵⁹ Sunoo (1975), pp.81-83.

vote.¹⁶⁰ This liberalisation and democratisation had a huge impact on the Japanese people; however through actions like keeping the Emperor as a figure head it still allowed the Japanese people to retain their Japanese cultural independence.

Other actions also took place, both large and small, that had a profound effect on *Securing Freedom from Strife*. For example, during the occupation a wide scale educational reform took place that changed the whole style of teaching and learning.¹⁶¹ Another example of securing peace was the symbolic removal of many Japanese swords from the people, as the Japanese katana had been a symbol of the militaristic warrior class since the feudal age. In fact it was a perversion of the Bushido code of the Samurai which fuelled much of the aggression from the Japanese people during the Second World War. In the post war years America banned and prohibited the practice of martial arts, which linked the Japanese people to their warrior roots, these arts were later developed into sports, again allowing the culture to continue but in a more passive format.

By fostering but adapting the militaristic aspects of Japanese society, central aspects of the culture remained, but were redirected. As explained by Ratti and Westbrook ‘This positive side of their tradition helped the Japanese to ... bravely face and survive the occupation, to close their depleted ranks and rebuild an industry in shambles, and to speedily reassume a position of prominence in the modern world. The military virtues of the past were applied to reconstruction with the intensity that had made the Japanese fearsome foes on the battlefield, making them in turn, skilful and tireless competitors in the world markets’.¹⁶²

That is not to say that everything that occurred within the American occupation of Japan was just. In fact it could be claimed that whilst to begin with the occupation was geared towards preventing war, when the tide changed, and the cold war began, the motivation of securing freedom from strife came secondary to more selfish reasons for occupation and change, for example, the stationing of more troops in Japan and Okinawa for tactical reasons. However, despite the fact that in places the occupation and cultural change can be criticised, the result of such a change is that the prospect of Japan beginning an aggressive war, from 1952 to the present day is very slim.

¹⁶⁰ Sunoo (1975), pp.75-97.

¹⁶¹ Sunoo (1975), pp.86-87.

¹⁶² Ratti and Westbrook (1973), p.35

Furthermore, whilst it is clear that the Japanese now eat McDonalds, play baseball, watch television from their tatami mats and have a school structure similar to America, the Japanese culture is still very different to the American way of life and the Japanese still retain strong cultural views and traditions. This demonstrates that limited cultural change is possible without having to completely remove what makes an individual culture unique and still take great strides in *Securing Freedom from Strife*.

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It must be stressed that in no way is this thesis making the claim that it would be just in most cases, following a war of self defence, to culturally change or redirect a defeated nations culture simply because it would suit the victorious state for its own self-centred ends or because it fits their own agenda, or because the erstwhile invader represented a different ideology. Such action would be unjust by most interpretations of the rules of *jus ad bellum*. So to once again utilise just war tradition terminology and principles, in order for a cultural redirection to be just it must also be motivated by a just cause. For the change of cultural practices to be legitimate, it must be conducted solely for the cause of *Securing freedom from strife* and, therefore, such change should be strictly limited to cultural practices and traditions which threaten peace and which have the possibility of immediately starting another war.

The reason why this subsection has continually stressed the limited nature of the cultural change proposed is because it is unmistakable that, by allowing some degree of cultural change, a real danger exists that such actions might become abused or over used. It must be stated that, at a certain level, the argument of Bass, that the victorious power should never under any circumstance attempt to culturally change a defeated nation, is appealing. It is appealing because, by making the situation appear so black and white, it rules out any possibility of a victorious 'just' nation culturally changing a defeated nation either for selfish motives hidden under a just war banner, or by having genuine just motives of securing freedom from strife but accidentally taking those actions too far and irretrievably dismantling, or destroying, a culture without need. So, for Bass, by keeping the flood gates firmly shut it stops any chance of legitimizing such abuses.

However despite the appeal, and security, of Bass's short and decisive argument, it seems clear that the situation of war termination is not quite so black and white. In fact many more intricacies and difficulties exist regarding the ethics of war termination and cultural change than have been covered thus far. For instance, what

would be the ethical position of Bass if, when a regime change took place and an indigenous regime was put in power, this regime then decided it wanted to introduce widespread cultural change itself? What if after the war termination, due to the culture of the defeated nation, the new political change broke down and war began again? This demonstrates that, as with most debated ethical issues, war termination and cultural change deals with a difficult to discern grey area in ethical thought. In response to that grey area this section has attempted to make two minimal points.

The broad first point is that to make a short blanket statement forbidding all cultural change does not give enough thought to the complex and difficult issues surrounding cultural change and war termination. Moreover, this thesis would claim that sometimes cultural change is needed, in certain extreme circumstances, in order to prevent future war and to secure the peace, which is, as explained previously, the central goal of a just war. This thesis has also made a claim that in such extreme cases it would not always be unjust, despite what Bass claims, to undertake some form of cultural reconstruction during the war termination phase.

The next crucial point to make is that any such cultural redirection must be strictly limited in nature and also have a just cause, namely to secure freedom from strife. One of the most important areas to stress is that by permitting a small degree of cultural change, focused exclusively on the extreme and perverse militant aspects of a nations culture, that the flood gates are not fully opened to provide a moral licence to allow victorious powers to culturally change every aspect of a defeated nation for there own ends.

Whereas Bass and Walzer ensured that the flood gates stayed well and truly closed, this section has taken a more dangerous approach and opened them ever so slightly to ensure that peace can be maintained and justice done in certain extreme scenarios. However such actions must be completed without fully opening the flood gates and allowing disaster to follow.

Impartial War Crimes Trials

Within Chapter I of this thesis it was pointed out that most modern just war thinkers, and writers, on military ethics have neglected the vitally important aspect of *jus post bellum* and it is only recently that its issues are being properly addressed. However,

despite this fact, it is clear that one area of war termination has been researched in immense depth, the area of War Crimes trials.

The ethical question of war crimes trials has been investigated by a variety of thinkers over the years. These thinkers have included Johnson, who devotes an entire chapter to the topic within *Morality and Contemporary Warfare*,¹⁶³ and also Walzer whose part five of *Just and Unjust Wars* provided huge insights into the field of war crimes¹⁶⁴ that many just war thinkers since have followed, including Hayden,¹⁶⁵ Bass¹⁶⁶ and Orend¹⁶⁷ whose entire section on war crimes is made up from Walzer's arguments presented in part five.¹⁶⁸ In addition the question of war crimes trials has been widely researched by academics in the field of international law. However what is interesting to note is that, despite this wide and in-depth study of war crimes, few have ever attached the importance of war crimes to *jus post bellum*. Walzer is a good example of this as, in his 1977 master piece, he writes a great deal about war crimes but does not mention the term *jus post bellum* once. It is only in recent years that *jus post bellum* has drawn on the vast amount of literature and thought available.

One such thinker to do so is Kellogg, who draws primarily on the writings of Suarez who explained that 'Three periods must be distinguished with respect to every war: its inception; its prosecution, before victory is gained; and the period after victory.'¹⁶⁹ Kellogg explains within the article '*Jus Post Bellum: The Importance of War Crimes Trials*' that justice post war is of vital importance and, in fact, the entirety of Kellogg's *jus post bellum* thought is purely related to the issue of war crimes. As stated within the article 'There is, however, as Francisco Suarez observed, a third point in the waging of war when justice should be done, and that is when a justly declared and justly fought war is over (*jus post bellum*). Once hostilities have ceased, those most grievously harmed have a natural right to some reasonable expectation that a just society ...acknowledge the fact that atrocious crimes have been perpetrated on them, and fairly

¹⁶³ Johnson (1999), pp.191-218

¹⁶⁴ Walzer (1977), pp.287-327

¹⁶⁵ Hayden (2005), p.169 Hayden briefly listed Punishment but does not expand on the position in any depth.

¹⁶⁶ Bass (2004), p.404

¹⁶⁷ Orend (1999), p.273 and Orend (2000), pp.230-231

¹⁶⁸ Orend (1999), p.273, Orend (2000), pp.144-150 and Orend (2000), p.229. The importance of war crimes is also stressed by DiMeglio (2005), p.153 and Stahn (2005), p.8 and mentioned by Thurley (2007), p.1, Meierhenrich (2006), p.107, Coates (1997), p.287 and Williams and Caldwell (2006), p.316

¹⁶⁹ Kellogg (2002), p.1

judge and exact punishment from the perpetrator.¹⁷⁰ Importantly it is not only Suarez who traditionally held the view that war crimes and punishment should be an integral aspect of justice post war. Gentili again touches upon this subject by detailing that ‘it is not fitting for a judge to give his attention to establishing peace until the faults which led to the war are punished’.¹⁷¹ Gentili goes on to explain that ‘we must first provide for a just penalty, in order that when all the roots of war have, so to say, been cut away, peace may acquire greater firmness’.¹⁷² This concluding remark will be investigated in greater depth as this thesis progresses.

Kellogg clearly holds the view (based on an understanding of Suarez) that *jus post bellum* is of the utmost importance and is dominated by the issue of war crimes trials. However, whilst this thesis would agree that *jus post bellum* is of importance it is clearly not of the opinion that war crimes trials make up the be all and end all when it comes to ethical issues at the termination phase of war. One need but look at the parable of the King. It is clear that some of the King’s ethical dilemmas would be clarified through an understanding of war crimes trials as Kellogg suggests. But it is also apparent that not all of the war termination problems that the King and his advisers were facing could be answered through such an understanding. Therefore, unlike Kellogg, the boundaries of *jus post bellum*, through this understanding, extend further than prosecution of war criminals.¹⁷³ Furthermore if one looks closely at the key texts of Suarez he himself discussed other matters related to war termination, and the just war tradition, other than war crimes trials.

Another point to make is that this principle of *Impartial War Crimes Trials* is not primarily original thought, and much of what will be discussed within this subject has been worked on by both legal jurists and philosophers. However it is only recently that the detailed studies of war crimes trials have commonly been applied to an understanding of *jus post bellum*.¹⁷⁴ For this reason, this thesis has the luxury of being able to draw on the abundant sources of information regarding war crimes, and present a case for how it not only fits with classical just war thought but forms a vital position in war termination. This thesis will not attempt, however, to elaborate in as much detail the issue of war crimes as many texts already exist on such the subject, what is important to

¹⁷⁰ Kellogg (2002), p.4

¹⁷¹ Gentili (1612), p.291

¹⁷² Gentili (1612), p.291

¹⁷³ This point is also made by Bosanquet (2007), p.5

¹⁷⁴ As examples of War Crimes Trials being linked to Jus post bellum please see DiMeglio (2005), pp.153-158, Walzer, Iasiello (2004), p.10 Bass and Orend.

this investigation is to demonstrate how these theories fit with an understanding of *jus post bellum*.

The reason that *Impartial War Crimes Trials* are of such vital importance within just war thinking is that it provides some kind of force to its principles.¹⁷⁵ In a sense it is the mechanism that needs to be in place to punish and hold to account those who break its strictures, to be blunt it is the punishment aspect of *jus post bellum*. Quite clearly war crimes trials are best done when the war is over; that is why it is part of *jus post bellum*. As explained by the well used phrase of Walzer ‘There can be no justice in war if there are not, ultimately, responsible men and women’.¹⁷⁶ To make a crude comparison, war without an understanding of how to enforce your just war principles would be the same as having a detailed legal system but no police or courts to enforce it. In addition, by making war crimes trials an important tenet of *jus post bellum* it institutionalised the just war tradition.

As explained within the past three principles of *jus post bellum* it is important to stress from what principles of the classical just war tradition war crimes relates. Whilst the principles listed above have related specifically to some of the components of either *jus ad bellum* or *jus in bello*, the issue of war crimes relates to all of the principles of the just war tradition, both *jus ad bellum* and *jus in bello*.¹⁷⁷ This position is identified by Walzer who explains that there needs to be war crimes trials to deal with the breaches of *jus ad bellum* which he describes within his section ‘The Crimes of Aggression’. Walzer also points out that war crimes are needed to cover breaches of *jus in bello* which he illustrates in the following chapter ‘War Crimes: Soldiers and their Offices’. So, of all of the principles this chapter has set out, *Impartial War Crimes Trials* is not only the most researched area of thought but is also built from the widest background of just war principles.

It is also quite clear that through an understanding of war crimes trials in this way there is no need to set out any kind of separate list of what war crimes should punish, that in essence has already been done for us by centuries of just war tradition and is codified within international law such as the Geneva and Hague Conventions. Through war crimes what is needed is for impartial trials and punishment for those who break the strictures of the just war tradition and international law.

¹⁷⁵ Kellogg (2002), pp.5-7

¹⁷⁶ Walzer (1977), p.288. This quote is used by Orend (2000), p.135

¹⁷⁷ DiMeglio (2005), p.154. However DiMeglio comments are draw from Walzer.

The first pillar of the just war tradition that requires a category of war crimes is *jus ad bellum*. Walzer describes what is included within these types of war crimes by using the terminology employed by the prosecution at the famous Nuremberg trials. He explains that breaches of *jus ad bellum* should be described as ‘Crimes Against the Peace’ and includes ‘the planning, preparation, initiation and waging (aggressive) war.’¹⁷⁸ It is clear that this aspect of war crimes trials is to be directed not at the soldiers who were involved in the fighting of the war on the ground, but at the political leaders of the state who were involved with the decision making process. Therefore those who decide to break the rules of *jus ad bellum* and engage in wars of an unjust nature have to be suitably punished. The punishment aspect of such crimes is not fully outlined by Walzer, who explains that it very much depends on the circumstances, however as explained by Orend ‘It is clear that it is not possible, a priori, to stipulate what exactly is required with regards to such personal punishments. The point here is simply that the principle itself, of calling those responsible for the aggression to task for their crimes, must be respected as an essential aspect of justice after war.’¹⁷⁹

This thesis fully supports such an understanding of the need for war crimes, not only for the head of state, but against all of those involved in the initiation of aggressive wars. The crucial aspect of this thesis which is stressed in the title of the subheading is the ‘*Impartial*’ nature of the war crimes trials that take place. It is important that what occurs in a war termination is not ‘show trials’ used purely for the purpose of deterrent nor is it trials of ‘victors justice’ used to punish those who have lost the conflict.¹⁸⁰ Because to lose a war does not automatically make you the unjust party (a fact ignored by many just war thinkers who simply assume those fighting a just war are bound to win. For example how should the just side act post war if they lose? Such an occurrence will be investigated in a later work).

¹⁷⁸ Walzer (1977), p.292. This can also be found in Orend (2000), p.144, Orend (2000), p.230 Orend (1999), p.268, Orend (2002), pp.52-53 and Kellogg (2002), p.5. For details of Walzer discussing this issue linked to *jus post bellum* please see his speech at Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.14

¹⁷⁹ Orend (2000), p.145, Orend (2000), p.231 However this issue of punishing state leaders is an important one. For instance, could you justly execute the leader or ring leaders of a once aggressive nation state. This question has been raised recently by the execution of Saddam Hussein. However this question will not be tackled directly by this thesis as this would involve rehearsing many capital punishment arguments which are otherwise not discussed. It is worth noting perhaps that some of the classic texts in the just war tradition are in favour of the death penalty in these cases. For example Gentili takes the stance that leaders of a state could be executed provided that the execution was not overly cruel (Gentili (1612), pp.322-324).

¹⁸⁰ Orend (2000), p.231

Therefore, in order for a just war termination, the war crimes trials cannot take just any format but require strict adherence to impartiality and fairness. In addition such war crimes must be made public (again drawing from the just war principles of legitimate authority and public declaration). To avoid such claims of victor's justice¹⁸¹ some have suggested that, in fact, a nation should try its own war criminals; however this seems to open up bias in the opposite direction.¹⁸² Therefore in order to take steps to avoid bias of war crimes, and make them as impartial as possible, such proceedings should take place through an international court and not one of the victors.¹⁸³ Obviously the victor still has a clear role in these trials, and in its organization, but the court itself should remain international and ensure fairness by having such strict procedures and unbiased judges as outlined above. These thoughts are in fact echoes of both Orend and his section on long term reforms and the members of the International community who 'in July 1998, voted in favour of a treaty establishing such a permanent court at The Hague.'¹⁸⁴In fact what Orend is referring to was the creation of the International Criminal Court (ICC) on the 17th July 1998 where 'Philippe Kirsch...announced the result of the vote to create the first truly global war crimes court'¹⁸⁵ and by 1st July 2002 that court became legally functioning.¹⁸⁶ This demonstrates that this vision of impartiality and the need for adequate and fair war crimes trials is not something isolated within the field of *jus post bellum*, but is already seen as a necessity in the field of war termination and international law.

One important question, often raised, is whether you can ever have war crimes of *jus ad bellum* on both sides of the conflict. To explain simply, can both sides be guilty of war crimes of *jus ad bellum*? The answer seems that 'yes' both sides can break the rules of *jus ad bellum* however if we take our classic example of just war of self defence if one is fighting for a just cause then its leaders should obviously not stand trial for 'crimes against peace.' What is important to stress is this, whilst I have stated that in our example of a just war illustrated at the start of this chapter only the aggressor can be tried for crimes of *jus ad bellum*, this is not necessarily the case for the second category of war crimes to be detailed below. In addition, it is also important to note that through understanding of classical just war thought you cannot have a just war on both sides, as detailed by Vitoria. This has been outlined by Wells who, drawing on the writings of

¹⁸¹ Rigby (2005), p.189 and Kellogg (2002), p.1 Please also see DiMeglio (2005), p157 and Coates (1997), p.288

¹⁸² Kellogg (2002), p.8

¹⁸³ Jasiello (2004), p.10, Orend (2000), p.149

¹⁸⁴ Orend (1999), p.285, Orend (2000), p.148, Orend (2000), p.231

¹⁸⁵ Stephen (2004), p.168

¹⁸⁶ Stephens (2004), p.174

Vitoria, explains ‘if justice were on both sides of the same war, and this was not precluded, it seemed to follow that the war would then be unjust for both sides.’¹⁸⁷ This makes the point that in any war, even a just war, there needs to be some form of war crimes to deal with breaches of *jus ad bellum*.

The second pillar of the just war tradition that requires an understanding of war crimes, again set out by Walzer, are those events that are in breach of the strictures of *jus in bello*.¹⁸⁸ Again, the strictures of what is to be included under this heading do not need to be explored within this thesis as one need but look at the vast amount of literature available on *jus in bello*. What is clear is that, whilst the war crimes of *jus ad bellum* were directed towards rulers, heads of state and planners of crimes against peace, this category of *jus post bellum* is directed at the soldiers and combatants in the war.

Therefore any soldier who breaks the guidance of proportionality, or targets non-combatants, or uses contraband weapons must again have an impartial fair trial. However there must be some mechanism in place to punish those who go outside the boundaries set by the just war tradition and by international law.

One consideration of this category is that these types of crime can, and have been, committed by both sides, even in a war that was started for just reasons. Again, as explained by Orend, building on the writing of Walzer ‘In order to avoid charges of asymmetry- or double standard’ – and revenge punishment, Victim/Vindicator, despite the justice of the cause in fighting, must also be willing to submit members of its military for the commission of *jus in bello* war crimes to an impartially constructed international tribunal.’¹⁸⁹

However it should be noted that the just victorious nation might not need to conduct all of the *jus in bello* war crimes trials during the wars termination. In fact, if its own soldiers breach the rules of *jus in bello*, it might be more appropriate for these soldiers to be removed from the war zone immediately to prevent them from further crimes and to conduct a trial whilst still engaged in the *jus in bello* stage of the war. Of course that would not prevent an international court conducting *jus in bello* war crimes trials during the war termination for both soldiers of the defeated nation and soldiers

¹⁸⁷ Wells (1984), p.25

¹⁸⁸ Orend (2000), p.31, Orend (2000), p.148 and Orend (2002), p.52

¹⁸⁹ Orend (2000), p.148. However this same thought can be seen in Orend (1999), p.272, Orend (2000), p.231, Orend (2002), p.54 and Thurley (2007), p.2

from its own nation; however it should be realised that not every crime of this nature has to wait for the wars aftermath until justice is done.

The War Crimes Trials of Serbian President Slobodan Milosevic and actions of The Hague, May 1999

When most just war theorists employ an exemplar of war crimes trials they typically turn to the Nuremburg and Tokyo War Crimes Trials that followed the Second World War in 1946. This thesis however will take a different road and utilise the example of the UN court in response to events in the former Yugoslavia for a variety of reasons.

The first reason for this change is because most just war thinkers use the Nuremburg case study and, therefore, it has been explained many times; this thesis does not wish to simply go over old ground. In a sense this thesis aims to introduce not only historical examples but contemporary examples also, especially when it is from these contemporary examples that such thoughts were formulated. So the first reason for this particular case study is that it is both contemporary and has not been as thoroughly reviewed as the cases of Nuremburg and Tokyo.

However, there are of course, other recent war crimes trials that could have been investigated within this subsection instead of the former Yugoslavia. For example, this thesis could examine the war crimes trials following events in Cambodia, Sierra Leone or East Timor.¹⁹⁰ However one factor that is of the utmost importance that separates the War Crimes of former Yugoslavia from these others is that it was the first to have an international court formed by the United Nations, through UN resolution 827. This separates it from the trials in Nuremburg and fits more closely with the *jus post bellum* notion of impartiality explained above.

The conflict in former Yugoslavia began in April 1992 and came to a close in the November of 1995 during which time, in a search for what Milosevic described as 'Greater Serbia', terrible conflict and wide scale ethnic cleansing took place. This devastation took place firstly in Croatia, and then Milosevic turned his attention to Bosnia-Herzegovina. As explained in Crimes of War 'The Serbian political project... envisioned the creation of ethnically homogeneous States, fashioned by seizing territory

¹⁹⁰ Stephens (2004), p.169

from other States. Ethnic cleansing meant using violence and deportation to remove any trace of the other ethnic communities.’¹⁹¹

The importance of the war crimes that took place in The Hague following these atrocities were that they covered both aspects of the just war tradition, including *jus ad bellum* and *jus in bello* as specified above. The first convictions that the UN court managed to action were against those individuals involved in breaches of *jus in bello*, men who came from the military, paramilitary units (such as the ‘red berets’ or Archans Tigers) or were prisoner guards. For example, one could look at the case of Dusko Tadic, a guard at Omarska prison camp. He is reported to have been the first prisoner to enter detention and in fact was one of the first men to be sentenced by The Hague in 1997 for he is recorded to have set off fire extinguishers into the mouths of Muslim prisoners until death. As a matter of fact he was jailed for twenty years for such savage acts against prisoners.¹⁹²

However the war crimes trials following the wars and ethnic cleansing in the former Yugoslavia did not stop with the trials and sentencing for prisoner guards and other low level murderers such as Tadic. Importantly in relation to this thesis, not only did they cover breaches of the rules of *jus in bello* but extended to bring to trial those politically responsible as Walzer describes in ‘Crimes against the Peace’ which breached the rules of *jus ad bellum*.¹⁹³ These included The Hague tribunal indicting ‘political leader Radovan Karadzic and military commander Ratko Mladic’.¹⁹⁴ This famously also led, eventually, to 12th February 2002 when case number IT-02-54-T, the trial of Slobodan Milosevic, began. Unfortunately this trial never reached a conclusion due to the poor health and death of Milosevic. As explained by the chief prosecutor, Del Ponte, ‘her aim was to demonstrate that the wars of Yugoslavia were not, as many supposed the result of inter-ethnic tension but rather of cold calculation on the part of Slobodan Milosevic.’¹⁹⁵

Whilst this thesis could go into great detail following the court case and recalling the tragic events that occurred in places such as Kosovo and the small town of

¹⁹¹ Hartmann (1999), p.52.

¹⁹² Stephens (2004), pp.75,106,109,134-5

¹⁹³ Walzer (1977), p.292

¹⁹⁴ Hartmann (1999), p.54. Also mentioned briefly by Orend (2002), p.50

¹⁹⁵ Stephens (2004), pp.178-179

Srebrenica, this detail is not needed and has been investigated by other texts.¹⁹⁶ What is important to note is that this impartial and independent war crimes trial dealt with the breaches of both *jus in bello* and *jus ad bellum*. It also importantly demonstrated that such *Impartial War Crimes Trials* are not limited to the musing of philosophers, just war and legal theorists, but can actually take place and it is this case that helped spark the creation of the International Criminal Court (ICC) described above. As explained by the court President Judge at The Hague ‘Cassese said that the Tribunal’s mission was “to do justice, to deter further crimes and to contribute to the restoration and maintenance of peace.”’¹⁹⁷

But whilst the International Criminal Court (ICC) incorporates many of the ideas outlined above, it does not fully enshrine all of the elements of *Impartial War Crimes* trials set out within this subsection. For example, an important aspect of this thesis’s understanding of *jus in bello* war crimes is that every side involved can be held accountable. It seems clear that the victor’s soldiers as well as the defeated aggressor’s soldiers can break such rules and strictures.

As such, any nation’s soldiers should be liable for prosecution under this understanding of *Impartial War Crimes Trials* if they participate within a war. Yet the United States of America, by exerting international pressure and restricting its aid, has made sure that all of its soldiers and indeed its citizens are in fact immune from prosecution in the ICC.¹⁹⁸ This immunity for US citizens demonstrates that the ICC is not fully in line with all of thoughts presented above and could be seen to undermine the nature of *jus in bello* war crimes and indeed undermine the ICC itself.

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Additionally, when just war philosophers engage with the complicated questions of *jus post bellum* they all tend to agree that war crimes trials should play some sort of role. The other thing that these thinkers have in common is that they restrict their discussions of war crimes to breaches of *jus ad bellum* or *jus in bello*. However whilst this thesis has performed a similar exercise, thus far it does appear as if there exists an omission within these works.

¹⁹⁶ Please see ‘Crimes of War’ edited by Roy Gutman and David Rieff. Also ‘Judgement Day: The Trial of Slobodan Milosevic’ by Chris Stephens.

¹⁹⁷ Stephens (2004), p.122

¹⁹⁸ Singer (2004), pp.132-133. This point is also made by Mani (2002), p.98 and Kellogg (2002), p.8

It was explained that crimes of war can occur at the start and in the middle phase of war, however it seems immediately unmistakable that during a war termination crimes can also occur. Whilst, of course, war termination is the time to prosecute for the crimes against *jus ad bellum* and *jus in bello* it seems as if the just nation also has to be vigilant and deal with crimes that actually occur within the war termination stage itself. These breaches would have to be dealt with as the war termination stage progressed, in many ways mirroring the thought that some crimes of *jus in bello* performed by the soldiers of the largely just victorious side could be prosecuted during the war.

For example, if during war termination, the victorious side is still holding prisoners then it would certainly not be inconceivable that guards could violate the principle of *Ensuring Fundamental Human Rights* and mistreat or abuse such prisoners of war. One need but look at the events that occurred in Abu Ghraib prison during the occupation of Iraq.¹⁹⁹ These types of crime are clearly not crimes of *jus in bello*, how can it be if a truce has been called and the fighting is over? It is a war crime of *jus post bellum*.²⁰⁰

Another example could be if groups of soldiers were to pillage and rob after a cease fire has been declared, again this is a crime within the war termination. In many ways some of these crimes actually pre-suppose the occupation stage of a war termination, as quite clearly you are not able to pillage and rob a country until you are in it. Such crimes could extend from these types of war crimes to other types of war termination crimes, including groups illegally profiteering from the wars ending, to even conducting war crimes trials in an illegal way. What is clear is that in the same way one can breach *jus ad bellum* and *jus in bello* and therefore need to be punished, punishment is also required if *jus post bellum* principles are breached. It would certainly not make sense to introduce and develop a detailed understanding of *jus post bellum* if there was then no come back on those that breached these principles.

Some critics might suggest that in fact these types of war crimes are *jus in bello* war crimes. However it is clear that whilst breaches of *jus post bellum* may share certain similarities with *jus in bello* crimes, they have not occurred whilst the war has been conducted and therefore can simply not be crimes of *jus in bello*. So the major addition that this thesis brings to the area of War Crimes trials is the recognition that war

¹⁹⁹ Kinzer (2006), p.313

²⁰⁰ Another *jus post bellum* war crime could be making money illegally out of an occupation. Please see Gordon (2006), p.91

termination crimes can occur and that punishing these types of crimes must form a fundamental aspect of the just war tradition.

This section has demonstrated that an understanding of *Impartial War Crimes* should form a crucial, but not exclusive (unlike Kellogg), principle of *jus post bellum*. This thesis will now turn to its final principle of *jus post bellum*.

Ensuring the Protection and Safety of Non-Combatants and Innocents

‘For peace is made in order that all subjects may be safe’
-Hugo Grotius²⁰¹

It is obvious that, thus far, this thesis’s understanding of *jus post bellum* has been primarily developed from both classic just war roots and the principles of the just war tradition commonly associated with *jus ad bellum* (with *Impartial War Crimes Trials* as an exception covering both). Thereby linking the just reasons for going to war strongly with the just actions in ending a war. This in essence is similar to the work of Pendergast, who developed his theory of just war termination, named *jus ad pacem*, primarily from the principles of *jus ad bellum*. As he explains within his article ‘the most efficient and effective manner in which *jus ad pacem* can be carried out is rooted in the process of *jus ad bellum*.’²⁰² This position is taken to more of an extreme by Meierhenrich who develops a theory of lustration as an important part of *jus post bellum*. Meierhenrich then explains that ‘*jus post bellum*... is a constitutive-although hitherto neglected- element of the institution of *jus ad bellum*’.²⁰³

These viewpoints stand in contrast to the *jus post bellum* ideas developed by Bass, Iasiello, and Williams and Caldwell who strongly suggests that human rights and non-combatant immunity are also vitally important as an aspect of classical just war thought to be applied to the end of a war (although importantly Bass does explain the *jus ad bellum* is to play some role also).²⁰⁴ This thesis sits more closely with the side of Bass, holding the position that both *jus ad bellum* and *jus in bello* need to be developed to form a complete understanding of *jus post bellum* (although perhaps incorporating more of *jus in bello* than Bass does and making *jus post bellum* more independent in

²⁰¹ Grotius (1646), p.816

²⁰² Pendergast (2004), p.60

²⁰³ Meierhenrich (2006), p.103

²⁰⁴ Williams and Caldwell (2006), p.316 and Bass (2004), pp.386-390

nature). Although the principles outlined above have concentrated on developing *jus ad bellum* thought, this section focuses exclusively on how some aspects of *jus post bellum* should be created from *jus in bello*.

To sketch out the fundamental aspects of this principle is relatively straightforward. During war time, under the guidance of *jus in bello*, certain acts are prohibited. For example, these include the killing of non-combatants, theft, pillage and rape, using people as human shields, exterminating a people and destroying the land of the country.²⁰⁵ These acts are a small selection of those excluded under the principles of both *Proportionality* and *Non combatant immunity*.

If we take the situation of a just war of self defence, if one has beaten the attacker in the field of combat and they have surrendered, as stated by Fotion and Elfstrom ‘An enemy placed in abject surrender before an opponent is powerless to prevent that opponent from wreaking any destruction it wishes.’²⁰⁶ The principle of *Ensuring the Protection and Safety of Non-Combatants and Innocents* demonstrates that when the war is over and the enemy is at your feet, just because the war is finished you are not then entitled to breach the strictures of *jus in bello*. As explained by Suarez ‘I hold that the innocent as such may under no condition be killed, even if the punishment inflicted upon their commonwealth would, otherwise, be deemed inadequate’.²⁰⁷ Put simply, in the same way that it is prohibited to pillage, exterminate civilians, kill for revenge and destroy land during war the same must also be true of the wars end and termination.²⁰⁸ For example, following World War II the Russian army ‘raped as many as two million women’²⁰⁹ in Germany after the war. Clearly such actions are as unjust in the war termination as they would have been during the actual conflict. Gentili also makes some significant comments in relation to this point saying that ‘if such acts cannot be committed during a war, much less will they be tolerated when the war is ended’.²¹⁰ So this section of *jus post bellum*, in many ways, is built from *jus in bello* roots primarily from the texts of Suarez and other later just war thinkers.

²⁰⁵ Glover (1977), p.273. This is also stressed by Walzer during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003 when he explains that ‘The central goal of the rules is to protect non-combatants’. Transcript p.8. This point is also made by Schuck and DiMeglio (2005), p.136

²⁰⁶ Fotion and Elfstrom (1986), p.240

²⁰⁷ Reichberg, Syse and Begby (2006), p.364

²⁰⁸ Schuck (1994) p.3, Orend (1999), p.273, Orend (2000), p.232, Iasiello (2004), p.8, Williams and Caldwell (2006), p.316, Gordon (2006), p.85 discusses the effect of harsh sanctions and Himes (2005) conference on Jus Post-Bellum

²⁰⁹ Williams and Caldwell (2006), p.317

²¹⁰ Gentili (1612), p.296

This principle, as explained above, correlates with the principle of *Complete Cessation of Conflict* in relation to the fact that when a war is over all of the defeated country's soldiers are non-combatants as no combat is taking place. This notion of respecting non-combatant immunity is echoed in others judgments on the ending of war, for example Johnson explains that in other words 'no Carthaginian peace... After a war is over, all are non-combatants, and ongoing harm to them violates the immunity from harm they should enjoy.'²¹¹ This understanding is also detailed by Orend who states that '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. There is thus no such thing as a morally-mandated unconditional surrender.'²¹² By incorporating these rules within such an understanding of *jus post bellum*, it essentially blocks any type of revenge or punishment activities a state may want to undertake on an aggressor during a war termination.

Furthermore this respect for safety and security, developed from an understanding of *jus in bello*, relates to indirect effects against civilians in addition to the obvious direct attacks. For example, it is quite clear that, under this understanding of *jus post bellum*, if one attacked and killed civilians through some sort of punishment bombing it would be unjust in a war's ending. However this notion should also include areas such as reparations payments, sanctions and occupations (please see related principles) and other indirect actions. If for example the victorious side demands such high payments in reparations from the defeated aggressor which then leads to an economic collapse and wide scale poverty, then this too would be simply as unjust as to drop a bomb onto them.²¹³ So both direct and indirect violations of this principle are to be restricted under this principle of *jus post bellum*, and both of these rules can be developed from classic just war texts and the *jus in bello* principles of *non combatant immunity* and *proportionality*. It is these 'indirect' aspects which importantly separate them from typical *jus in bello*.

However it should also be noted that whilst it would be unjust to demand reparations that would cripple a country, this does not automatically rule out any form of

²¹¹ Johnson (1999), p.126. The idea of non-combatant immunity is also central to the *jus post bellum* work of Williams and Caldwell (2006), p.316.

²¹² Orend (1999), pp.273-274

²¹³ Orend (2000), pp.139-141 and Orend (2000), p.227. Orend however makes the point that compensation should occur because war is a crime and as such owes the just nation. Therefore in Orend's view reparations should always be taken. Thurley (2007), p.2.

reparations payments. For example a just nation that has fought off an unjust attack in our standard example could also have huge financial problems, suffer damage due to a war of defence and could possibly be on the brink of economic collapse itself.²¹⁴ Such a state would not then be unjust in demanding some form of repayment to rebuild its own shattered economy and repair some of the damage done in fighting a war to protect its own people. This view was in part developed by the famous just war theorists Vitoria, Gentili and Vattel. Vitoria explained in his limited paragraphs related to a wars end that ‘There is no doubt that all booty taken in a just war up to a value sufficient to recompense the property unjustly seized by the enemy, and also including reparation of the costs of war, become the property of the captors’.²¹⁵ Gentili is much clearer on the issue explaining that ‘It is just that the victor should recover the expenses of the war and compensation for the losses he has suffered’.²¹⁶

This thesis, however, wishes to develop the statements of Vitoria and Gentili by arguing that such actions would become unjust if the repayments were used simply as a punishment set out in victor’s justice. Grotius makes a key point in relation to this stating that ‘the party who had a just cause of war should obtain that for which he took up arms... but that he should not recover anything by way of penalty, for that would arouse more hatred’.²¹⁷ Especially if the reparations payments were so damaging to a defeated nation that it plunged it into a state that caused financial ruin, suffering, poverty and possibly even death to its people. This thought again is echoed in the writings of Suarez. Suarez in his third canon related to war termination explains that ‘He must give satisfaction to the injured, but as far as possible without causing the utter ruination of the guilty commonwealth’.²¹⁸ This position is also reflected clearly within International Law which explains that reparations are allowed in certain circumstances, however in ‘Article 43 (3) of the 1996 Draft Articles on State Responsibility’ it states that ‘reparations shall “in no case...result in depriving the population of a state of its own means of substance’.²¹⁹

For some *jus post bellum* philosophers the issue of reparations payments plays a central role, for instance Alford’s article on *jus post bellum* relates purely to ‘principles

²¹⁴ Alford (2002), p.216

²¹⁵ Reichberg, Syse and Begby (2006), p.330

²¹⁶ Gentili (1612), p.298

²¹⁷ Grotius (1646),p.809. Vattel (1758), p.310 also makes a similar argument explaining that the just victor may ‘justly impose burdens upon the conquered people in order to indemnify himself for the expenses of the war’. This point is also made by Alford (2002), p.209

²¹⁸ Reichberg, Syse and Begby (2006), p.332. Please also see Alford (2002), p.211

²¹⁹ Stahn (2005), p.7

of war reparations'.²²⁰ As another example DiMeglio outlines three criteria for *jus post bellum* and his third, and final, criterion is the need to 'Exact Reparations'.²²¹ After explaining how reparations are necessary, DiMeglio draws upon Orend's work and explains in a similar manner to the above that a victor should 'utilize a proportionality analysis to determine the ability of the aggressor to pay war reparations'.²²² However, for DiMeglio, reparations always seem to be necessary and make up one third of his entire theory of *jus post bellum*. Bass also makes a case that in a just war then 'the duties of the vanquished to the victors may be considerable'²²³ and for this reason may demand reparations payments. It is clear that both DiMeglio and Bass could find support for these positions within several classic just war doctrines, however in this instance this thesis is perhaps developing and moving away from strict classical tradition.²²⁴

It should, however, be noted that under this thesis understanding of *jus post bellum*, whilst reparations payments need not at all times be unjust, it does not automatically mean that the victor needs to exact them during termination process. In fact the 'norm' would be to not exact reparations payments rather than take them. For example, whilst it is clear that that no war could take place without any damage being done to the just nation (unless all that was required was a demonstration or show of force) it seems possible that a situation could occur where a war of self defence is over quickly and that the just victorious nation suffers only negligible losses and damage. In such cases the only real motivation for exacting reparations would be as a punishment or deterrent. As stated by Orend, who appears also to be in favour of always exacting reparations 'proper punishment includes requiring that an aggressor nation provide restitution to the victim nation'.²²⁵ For this thesis the motivation for reparations payment should be to rebuild and recoup the losses of the war and only in cases when the just victorious power is in terrible financial difficulties, thereby developing and expanding upon either Suarez or Vitoria's understanding of reparations to cover the 'costs of war'.²²⁶ If there are no, or negligible, costs then surely there should be no reparations.

²²⁰ Alford (2002), p.217. Alford's article provides an in-depth investigation of reparations payments in relation to law and *jus post bellum*.

²²¹ DiMeglio (2005), p.158. This is also the case for Orend (2000), p.227 and Walzer. He stated this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.14

²²² Orend (1999), p.269, Orend (2000), pp.139-141 Orend (2002), pp.47-49 and DiMeglio (2005), p.159

²²³ Bass (2004), p.408. Also see Walzer (2004), p.18

²²⁴ Gentili (1612), p.303

²²⁵ DiMeglio (2005), pp.142-143. Please also see Orend (1999), p.268, Orend (2000), pp.139-141 and Orend (2002), pp.47-49

²²⁶ Reichberg, Syse and Begby (2006), p.330. Please also see Bass (2004), p.409 for agreement on this point

If you then make the claim that some form of reparations payments is always required as a punishment against such unjust behaviour, then what would occur if a defeated nation was so damaged after the combat that even the smallest reparations payment would push them over the brink and into an economic collapse? Clearly such actions would be unjust for the reasons stated above. For these reasons, whilst it seems that in certain extreme cases the use of reparations payments within a war termination may be just, it seems both illogical and unjust to make the claim that they are always required in a 'just' war termination. Moreover, the punishment aspect of *jus post bellum* can be found within the section *Impartial War Crimes Trials* and is set out to ensure that only those that breach international law and the just war tradition are punished. Punishment should not be inflicted on the innocent people of a country through reparations and sanctions. This reflects the just war words of Cicero who quite rightly points out that 'it is the part of a magnanimous man, after examining the circumstances, to punish the guilty but spare the multitude'.²²⁷

So, through this thesis's understanding of justice and reparations, reparations are only to be taken if two criteria are both fulfilled. Firstly, the victorious just side must be in severe economic danger which threatens the safety of its people and, secondly, the defeated side must have economic strength enough to pay the reparations without causing widespread damage and poverty.²²⁸

Also related to this principle is the question as to what the just victorious state should do with former enemy combatants and more specifically, with captured prisoners of war.

One potential answer can be seen in the work of John Locke, a figure who stands on the outskirts of the just war tradition. As explained by Moseley, for Locke those soldiers, who have fought for an unjust cause, 'remove themselves from the natural and rational order which is man's proper moral demesne'²²⁹. For this reason the just and victorious state, according to Moseley's interpretation of Locke 'gain despotic rights over those who fought in an unjust cause. They may be enslaved or killed, or

²²⁷ Gentili (1612), p.316. This point is also made by Pendergast (2004), p.60

²²⁸ Alford (2003), p.217. Alford states that 'while a victorious country has the legal right to claim full compensation ... it also has the right on behalf of its nationals to waive claims for full compensation'.

²²⁹ Moseley (2005), p.122

perhaps may be allowed to repent, although the emphasis, if read without knowledge of his broader philosophy, is always on the first two policies!²³⁰

However this thesis will demonstrate, drawing on the contemporary work of Walzer and Bass and the ancient work of Augustine, that killing or enslaving prisoners of war is not a justifiable action to undertake in a war termination. Furthermore that this proposal of Locke actually goes against some of the central notions of standard just war thought.

As Walzer explains ‘Surrender is the procedure by which soldiers cease to be combatants’.²³¹ For this reason if an enemy has surrendered then the soldiers who were once fighting must, during a war termination, be considered to be non-combatants.²³² Moreover Bass, the thinker named above, also makes an excellent statement in relation to non combatant immunity and an understanding of prisoners of war. Bass explains that when a conflict is over ‘They are no longer fighting men and women, but simply citizens of another state, being held against their will.’²³³ Therefore as the war is over the soldiers that once fought within it become non combatants. By describing this principle as *Ensuring the Protection and Safety of Non-Combatants and Innocents* it not only prohibits acts of violence but also of continuing to detain prisoners of war when the war is over. So Bass is clearly in favour of a ‘*jus post bellum*’ duty to repatriate prisoners of war.²³⁴ This thesis quite clearly supports such a stance with the obvious addition of the need for *Impartial War Crimes Trials* outlined above.

To clarify, in order for a war termination to be just, prisoners of war whose only crime is to have taken part in combat should be released²³⁵. If, however, they have broken international law and the strictures of *jus in bello* then they should have a fair hearing through our understanding of *Impartial War Crimes Trials*. So this adapts and builds on this understanding of Bass. However, Bass does not comment on the fact that whilst this element of *jus post bellum* requires further work, the roots of this view can be traced right the way back to *Augustine* who in a letter to *Boniface* wrote that ‘As

²³⁰ Moseley (2005), p.126-127

²³¹ Walzer stated this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.13

²³² Walzer makes this point during a speech held at the Heinrich Boll Foundation, Berlin, July 2nd, 2003. Transcript, p.13. Williams and Caldwell (2006), p.316

²³³ Bass (2004), p.390

²³⁴ Bass (2004), p.390

²³⁵ Bass (2004), p.390

violence is returned to one who rebels and resists, so should mercy be to one who has been conquered or captured'.²³⁶

The End of the Third Punic War and the Roman Destruction of Carthage, 146BC

As an example of a case that illustrates why it is so important to include such an understanding of human rights in relation to war termination, this thesis will look back to the destruction of Carthage following the Roman conquest.

In the year 150BC Carthage declared open war on the King of Masinissa, which was an act forbidden by a treaty made with Rome in 201BC. This gave Rome the excuse that it needed to yet again fight a war with Carthage. The invasion took the form of a siege and lasted from the years of 149BC – 146BC. The events that took place following the defeat of Carthage mirrored what Marcus Portius Cato had been using as a catch phrase at the end of most of his speeches 'Delenda est Carthago'.²³⁷

What occurred in the war termination phase was as described by one thinker as 'perhaps the greatest systematic execution of non-combatants before World War II'.²³⁸ It is recorded that as soon as the defences were breached the city was burned almost entirely to the ground through a fire estimated to have lasted between ten and seventeen days. Carthage's temples were sacked, its walls knocked down and those people not killed by the starvation of the siege were slaughtered by the soldiers in six days of brutal killing. It was also noted that of the entire population some 50,000 surrendered who were then sold into slavery by the conquering Roman army. In addition it is also claimed (although debated by some historians) that an area of approximately fifty miles around the city of Carthage had salt ploughed into the fields to totally destroy any chance of rebuilding Carthage.²³⁹ The aim of the war termination process was to totally remove Carthage and its people from the face of the earth.

It is these types of horrific post war actions that this principle is designed to restrict and stop. Whilst it is clear that the destruction of Carthage is an extreme case, it is obvious that in order for any notion of justice to prevail such acts should be totally forbidden. Therefore *Ensuring the Protection and Safety of Non-Combatants and*

²³⁶ Reichberg, Syse and Begby (2006), p.79

²³⁷ www.channel4.com/history/microsite/c/carthage/chronology.html. (04/01/06) The Latin translates to 'Carthage must be destroyed.'

²³⁸ www.barca.fsnet.co.uk (04/01/06)

²³⁹ Iasiello (2004), pp.8-9

Innocents prohibits any kind of Carthaginian peace as stressed by Johnson.²⁴⁰ In the same way that these actions would be forbidden under just war thought during the war they should also be forbidden during the termination phase of war also.

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However it is vital to stress, at this early stage, that this subsection does not simply read ‘Do not harm non-combatants and innocents’ it explains that in order for a war to be just then a just state must ‘*Ensure the Protection and Safety of Non-Combatants and Innocents*. Therefore not only must one not subject such a state to ongoing harm as in the Carthaginian example but one also has a duty to some extent to provide support and assistance.²⁴¹ As stated by Williams and Caldwell ‘Without the rehabilitation in some small measure of war-torn economies, it may be difficult to secure the most basic human rights’.²⁴² Williams and Caldwell also quite eloquently state that ‘even those who were responsible for the war should not be allowed to starve to death’.²⁴³

Moreover, within the section *Securing Freedom from Strife*, it was explained that a state may justly occupy another nation for two reasons. The first reason was to prevent another war and secure peace, the other reason for such extreme action is to *Ensure the Protection and Safety of Non-Combatants and Innocents*. For example, in a defeated state wide scale poverty might exist, a break down of working government might also occur along with destruction of fundamental infrastructure. In such cases a victorious power, in order to be just, must not only refrain from harming the people but must also aid such a state. In such severe cases occupation may be justified in order to protect the lives of those living in the defeated and failing nation state.

Although it was stated earlier that this section is primarily geared towards addressing wars of self defence, it is important to note that such an understanding of ‘ensuring’ and not only stopping such violations is especially needed when looking into wars of humanitarian intervention. If you make it your moral responsibility to engage in a war to stop the violation of human rights, then surely as a just state your responsibility extends to ensuring people’s safety upon conclusion of the war.²⁴⁴ One should not leave people if they are on the verge of anarchy after a war is over. It is quite clear that a

²⁴⁰ Johnson (1999), p.126

²⁴¹ Williams and Caldwell (2006), p.318. This point is also stressed by Iasiello (2004), pp.6-13

²⁴² Williams and Caldwell(2006), p.318

²⁴³ Williams and Caldwell(2006), p.318

²⁴⁴ Bass (2004), pp.400-409

justification for occupation on humanitarian grounds needs to be investigated in much greater depth. Due to the clear link with humanitarian intervention this issue will be addressed in much greater depth within Chapter V.

Apart from occupation another important aspect of *Ensuring the Protection and Safety of Non-Combatants and Innocents* is the need for a victorious state to ‘clean up’ after itself. During the fighting of many wars, even perhaps a just one, weapons are used and damage is done that if it is not cleaned up during the termination phase of war could lead to loss of life and violation of civilian rights. This point is made clearly by Schuck²⁴⁵ and in particular Iasiello who actually included two separate *jus post bellum* principles related to this point which he describes as ‘Safeguarding the Innocent’ and ‘Respect for the Environment’.²⁴⁶ It is clear, however, that the key elements of both of these principles can be incorporated into the overarching principle of *Ensuring the Protection and Safety of Non-Combatants and Innocents*. As an example of the type of weapons that need cleaning up, Iasiello discusses the use of ‘depleted uranium’ and explains that ‘while these rounds prove extremely effective in piercing armoured vehicles, critics claim they remain hazardous to humans long after the battle ends.’²⁴⁷

Therefore in order to continue to ensure immunity to non combatants these types of weapons need to be properly cleaned and removed by the victorious side. The other example, not mentioned by Iasiello, that seems relevant to this discussion is the one brought to prominence by Diana, the Princess of Wales, the anti-personnel land mine.²⁴⁸ This weapon is again one which long after the final shots of war is over still cripples and kills non-combatants, women and children. For example one need but look at the horrific damage caused by landmines in locations such as Cambodia, Bosnia or Mozambique.²⁴⁹ Again in order for a war termination to be just such weapons must be removed as part of the war termination process.

As an interesting aside it could perhaps be noted that the public campaign to ban land mines, as they cause damage to civilians post war, which eventually led to the Ottawa Convention,²⁵⁰ could be another example in the current agenda leading to *jus post bellum* thought. The issue of landmines and their damage post war, is another

²⁴⁵ Schuck 1994), p.3

²⁴⁶ Iasiello (2004), pp.7-8. This point was also made briefly by Himes (2005) conference on *Jus Post-Bellum*

²⁴⁷ Iasiello (2004), p.8

²⁴⁸ This example is mentioned by Schuck (1994), p.3 and Bosanquet (2007), p.2

²⁴⁹ Hampson (2002), p.80

²⁵⁰ Hampson (2002), p.92

example of the topical and contemporary nature of *jus post bellum* and why it is beginning to become more recognised by just war thinkers.

The other aspect of cleaning up after a war is in response to damage done to the defeated states land. If wide scale damage has occurred that would leave farmers without crops, and water polluted, then this will lead to undue hardships for civilians and non-combatants; this again needs to be dealt with in the immediate war termination phase.²⁵¹ This element of the just war tradition can be traced back to the ancient Greeks who whilst fighting other Greeks were forbidden to damage the olive trees. This was due to the fact that whilst other crops can be re-sown relatively easily the olive trees could not.²⁵² This needs to be extended into this principle of *jus post bellum* explaining that if such damage is done then it needs to be repaired. A more contemporary example of the need to clean up and restore an environment after a war is Vietnam. During the Vietnam War, in order to destroy areas of forest used to conceal Vietcong, a substance called ‘Agent Orange’ was utilised.²⁵³ This defoliant caused wide scale ecological damage to the region which then in turn affects the people who live in such an area. In short, as an important part of ensuring the protection and safety of a defeated nation, a victorious power must clean up after the war by removing any potential toxic or hazardous munitions, by removing any live ordnance or harmful device and, finally, by restoring and repairing any damage to the physical environment.

In this way not only would a state not be harming the people of a defeated state by dropping bombs or starving them to death, but it would be taking those all important steps to ensuring their safety, rather than taking steps simply not to violate them. This will all play a role in both ending a war justly and also paving the way for a more lasting peace, which was, after all, Augustine’s aim for a just war. As quite aptly put by Rawls, in his text *The Law of Peoples*, ‘the way that a war is fought and *the deeds done in ending it* live on in the historical memory of societies and may or may not set the stage for future war’.²⁵⁴

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In conclusion, it seems clear that these five principles sketched out above shed some light on the issue of justice post war and most especially within immediate war

²⁵¹ Bosanquet (2007), p.12 and Iasiello (2004), p.7

²⁵² I am grateful to the information from Andrew Collier 27/11/06

²⁵³ Iasiello (2004), p.9

²⁵⁴ Meierhenrich (2006), p.108. Originally taken from Rawls, *Law of Peoples*, p.96. My emphasis on ‘the deeds done in ending it’.

termination. It is also obvious that the majority of what has been built so far can be adapted from key texts from classical just war thinkers, modern ethical war termination thought and from the essence of the just war tradition itself, but modified to best fit with *jus post bellum*. It is vital to stress that, whilst what has been developed within this chapter is of vital importance, two important factors need to be explained in closing.

Firstly, that this line of thought builds heavily upon recent *jus post bellum* texts. This chapter has sought not to automatically disagree or disregard the efforts of modern war termination thinkers, but rather to combine, evaluate and built upon their thoughts and put them into a single set of coherent principles. More importantly, this chapter has also demonstrated that many of these points, and principles, have been outlined by classic just war thinkers and that such ideas are not new. Secondly, that whilst this chapter has sketched out five principles of *jus post bellum* it has only sketched them out in relation to one military background. It is vital for the reader to realise that this thesis will go on to address other backdrops and look in depth towards possible criticisms of both the just war tradition in general and more specifically at *jus post bellum*.

Chapter III – Can there ever be Justice Post War?

'A Critical Analysis of Jus Post Bellum'

Within Chapter II a framework of *jus post bellum* was presented, built from both current *jus post bellum* thinking and from the classical just war tradition. However, before this project begins to engage with other 'backdrops', or types of conflict, it must first engage with schools of thought who would question or criticise this framework. So, before this project takes another step forward, it must ensure that the ground upon which it is treading is safe. When this thesis does investigate war termination and other types of conflict it might raise another host of critics who will also then need to be addressed. It would, however, be misguided to build upon these immediate war termination principles without looking into potential counter arguments.

Jus post bellum, as described within Chapter I, is an area of thought in its infancy. For centuries the just war tradition has been developed primarily to deal with the issues of *jus ad bellum* or *jus in bello* and it is only recently that *jus post bellum* has publicly raised its problematic head. For this reason, whilst a wide variety of critics have emerged that have focused on these prior aspects of just war thought, few have focused such criticisms on *jus post bellum*. One possible reason for this is that the thoughts of *jus post bellum* have not been developed sufficiently to warrant critical philosophical thought. The role of this chapter is to, in a sense, pre-emptively deal with any objections that schools of thought might make against this notion of justice and the termination phase of war. So the purpose of this chapter is to play devil's advocate, and then deal with any issues raised.

Within Chapter II it was made clear that the principles developed to deal with the immediate issues of war termination were generated from what was already understood, and held, within the just war tradition itself, and in places drawing on the fragmented writings on war termination found in classical texts. It did not simply repeat classical just war thought, but was strongly built from its basis. For this reason, as the norms of *jus post bellum* have been developed from traditional just war thought, we can pre-empt some of the criticisms by performing the same process and developing the traditional criticisms of the just war tradition in the same way. As a classic example, this chapter will address what the 'political realist' would make of *jus post bellum*.

The next section of this chapter will focus on any areas of criticism that might arise from inside the just war tradition itself, in response to its adaptation to include an

understanding of *jus post bellum*. For example, to address those who take the stance that the just war doctrine does not need a third element; that the just war theory already deals with the issues of *jus post bellum*, and that to add another third to the theory will only give it more critics and make a just war harder to obtain.

Through both of these two methods, this chapter hopes to silence any possible critics of *jus post bellum*, whether they emerge from outside the just war tradition or from within it.

Jus post bellum and the Political Realist

'The Political Realists position'

'The main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power.'

-Hans Morgenthau¹

The realist position is often seen as one of the major antagonists of the just war tradition. As a school of thought, it is made of many strands and degrees including descriptive realism, prescriptive realism, super realists, Hobbesian realists, and political realists. However, despite the many varied strands the one thing they all have in common is the view that 'Realism resists the application of morality to war'.² It is clear, through engaging with the topic, that such a resistance of morality is widely discussed by realists, in particular political realists, in relation to *jus ad bellum* and *jus in bello* but not *jus post bellum*. Therefore this section will expand and develop the political realist position and relate it directly to issues of *jus post bellum*.

For the reasons that I will outline below, the school of political realism will hold firstly that the *jus post bellum* thought developed within the thesis is both unrealistic and doomed to failure, in a sense suggesting that any notion of *jus post bellum* is 'irrational'. Secondly, and perhaps more importantly, that to try and apply *jus post bellum* in the immediate termination of war is filled with danger and that the search for the idealist dream of a just war termination is incredibly 'precarious'. So to recap, the political

¹ Freedman (1994), p.160

² Coates (1997), p.17

realist holds the position that *jus post bellum* in relation to the immediate termination of war is both 'irrational' and 'precarious'.³

The next step, within this subsection, is to illustrate why a political realist would hold the position that *jus post bellum* is irrational. To explain in terms related to war termination the political realist would maintain that the movement from warfare back to peace is political, building on the phrase of the famous military philosopher Clausewitz where he explained 'War is not an independent phenomenon, but the continuation of politics by different means.'⁴ As such the end of war is governed by power and considerations of power; it should not be governed by moral frameworks such as the principles of *jus post bellum*. As clearly stated by Frost 'The core of the political realist position is that the structure of power determines the appropriate course of conduct'.⁵ Therefore the decisions as to how to end a war, and the correct manner in which to terminate such a conflict, should be, and should always have been, based upon the practical decisions of power and national self interest.⁶

The political realist would hold that the termination phase of warfare should not be governed by ideas of justice and that, furthermore, to try and apply an ethical framework to such a situation is doomed to failure. As explained by Coates 'the dynamics of international relations' (and of course war termination) 'confound most, if not all, attempts to apply an alien, moral structure to them.'⁷ This picture is painted within the work of the political scientist Morgenthau in the classic realist text 'Politics Among Nations'. He explains that the political sphere is separate from the moral sphere, and that the political sphere should not be affected by other realms of thought. Cohen, in a clear description of this influential realist, states 'Morgenthau's assertion that international politics constitutes an autonomous realm in which moral considerations, if not prohibited, must be subordinate to calculations of power'.⁸

³ Coates (1997), pp.17-25. The issue of *jus post bellum* is not mentioned in the work of Coates but this thought is developed from his general comments related to realism. As a point of fact, much of Coates excellent description of realism and just war will be used in this section, but will be adapted and altered to relate to issues surrounding war termination.

⁴ Paret (1976), p.7 Originally written by Clausewitz 22 December 1827. Also used by Coates (1997), p.22

⁵ Frost (1996), p.62

⁶ Hayden (2005), p.158. Although it must be noted that Hayden does not specific link the realist position to war termination. Coates (1997), pp.18-23

⁷ Coates (1997), p.17. The writing in brackets is my addition.

⁸ Cohen (1985), p.17. This can also be seen in Coates (1997), p.21

This understanding of power as being of the utmost importance can be seen in many works related to the termination of wars. Whilst there are few texts that relate to the ends of wars, in comparison to the vast number of texts in existence on how wars start and how they are fought, those that do exist rarely mention ethical considerations and focus instead on the power dynamics as to how to end such a war. A good example is the text *After Victory* by Ikenberry who devotes an entire book to the end of a war but pays no attention to issues of ethics and focuses completely on power and order in the war termination process. As Ikenberry explains ‘The type of order that emerges after great wars hinges on the ability of states to retain power institutionally’.⁹

Perhaps the reason for the neglect of ethical thought in the war termination process stems from the political realist’s position that in reality war termination is not about moral structures but that it’s about the use and application of power to maintain order. So the reason for seeing *jus post bellum* as ‘irrational’ is because they see it as too far removed from the real world and that peace is made by dominance and, in an almost sarcastic way, explain that war termination is not based upon the dreamy notion of justice.

So, in a sense, the political realist would argue that war termination is part of the political realm, and that this realm is governed by the dominance of power relations, and national interest, not of morality. For this reason, *jus post bellum* should always bend the knee to realism.¹⁰ As an interesting point, if one looks into the history of the political realist school of thought it could be seen, in many ways, to have been directly influenced by a failed ethical war termination attempt, in many ways directly linking issues of war termination to the political realist approach. As explained by Frost ‘Modern political realism in international relations may be seen as a reaction to earlier ‘utopian’...ways of thinking about international affairs. (This)... stems largely from the disappointed hopes of the inter-war generation of the scholars in the discipline. After the First World War there had been a widespread hope ... of lasting peace. That generation of scholars failed to predict fascism, the breakdown of the League of Nations and the outbreak of the Second World War. The conventional wisdom of such political realism came to be that it is the “realities of power”, not any normative views or theories, which are decisive’.¹¹ So

⁹ Ikenberry (2001), p.1

¹⁰ Orend (1999), p.274

¹¹ Frost (1996), p.62. Frost comments that two major realists Carr and Wight both reacted in such a manner against the actions of Woodrow Wilson.

the hard line approach of international theorists and realists to frameworks such as *jus post bellum* could be because they have had their fingers burned in the past by them.

As described above, not only would the political realist hold the view that *jus post bellum* is 'irrational' but it is also 'precarious'. This could heighten the severity of this dislike of *jus post bellum* as, rather than seeing *jus post bellum* philosophers as harmless fools, certain political realist could claim that they are in fact dangerous idealists.¹² The next stage in this thesis is to investigate why certain elements within the political realist school of thought could hold that such a position is 'precarious'.

The main cause for concern amongst realists, as explained above, is that they see *jus post bellum* as doomed to failure. Political realists would explain that the idealist nature of *jus post bellum* has an image of the possibility of a just perfect peace which is incorrect.¹³ The realist would go on to claim that using the methods described by *jus post bellum* principles is not only wrong and misguided, but is also inherently dangerous. As expressed by Coates 'Blinded by its visions of a perfect world... it ignores or treats with contempt the intricate and delicate mechanisms whereby international order of an inferior but nonetheless real kind is sustained.'¹⁴

The political realist would most probably explain that, whilst the principles of *jus post bellum* were generated by pure and innocent motives, it could be seen to have an adverse effect. As again stated by Coates it would 'threaten the fragile construct in which an imperfect peace (the only peace on offer) is seen to consist'.¹⁵ So, by continually searching for this idealistic peace, which in the previous section the realist believed does not exist, *jus post bellum* prohibits any chance of other peace as it continues to strive for this idealist dream.

To come to the point, the political realist would explain that this method of thought is 'precarious' because not only is it doomed to failure but by attempting to morally moderate the ending of wars, and to introduce strict principles of *jus post bellum*, it can draw out a war's ending that could have been terminated much earlier.¹⁶ As an example, one could take the principle of *Impartial War Crimes Trials*. The political realist would explain that, sometimes, in order to make any kind of peace you

¹² Coates (1997), pp.17-25

¹³ Bass (2004), p.394 and Orend (1999), pp.273-277

¹⁴ Coates (1997), p.18

¹⁵ Coates (1997), pp.18-19

¹⁶ Coates (1997), p.26. Although he does not actively discuss *jus post bellum*.

have to deal with those who have committed war crimes (furthermore some strands of realists would explain that the entire notion of war crimes is flawed). As explained by Bass ‘Peace often means accepting a host of injustices’.¹⁷ For example was ‘Yitzhak Rabin... right to shake hands with Yasir Arafat on the White House lawn, even though Rabin was privately disgusted’.¹⁸ Although Coates is not discussing *jus post bellum* when he made this statement, it makes the point clearly and can easily be adapted when he explains that ‘Real peace is placed in jeopardy by the foolish pursuit of a moral chimera’.¹⁹ So the realists would hold that the moral position of *jus post bellum* is in fact self defeating.

‘The Jus Post Bellum Response’

‘What the devil do you mean, morality? - word of honour? Sure, you can talk about word of honour when you promise to deliver goods in business.-But when it is the question of the interests of the nation!?...Then morality stops!

-Herman Goering²⁰

The next step, within this section, is to deal with the potential criticisms of the political realist. To demonstrate that the search for *jus post bellum* is not a wasted one, and that such thinking is not innately ‘irrational’ or ‘precarious’.

The first point to stress is that, by examining the realist position, it seems that what they consider ‘real’ and ‘actual’ is not perhaps as real as they might suggest and that, in fact, ‘The amoral conception of reality is a false conception of reality.’²¹ Whilst the political realist would make the claim that ethical considerations should not form a part of war termination, in fact, they are themselves clinging to an impracticable account of what occurs within a war termination process.

For example, it is clear that one of the reasons for the development of *jus post bellum* is the increase in moral thought in relation to the ending of wars. This can be seen in the public debates, government statements, and media activity that surround the

¹⁷ Bass (2004), p.404

¹⁸ Bass (2004), p.405

¹⁹ Coates (1997), p.22

²⁰ Holmes (1989), p.50. Originally quoted by prison psychologist Gilbert from an interview during the Nuremburg trials.

²¹ Coates (1997), p.102

war terminations in locations such as Iraq and Afghanistan. In such situations, whilst countries may exercise power the confines in which they must use that power depend heavily on moral considerations. Again, when political leaders use such power in the termination phase of war ethical grounds are commonly stated.²²

Here the realist would no doubt make a stand, drawing heavily upon the works of Machiavelli. The realist would explain that, in fact, all of that talk on morality and the ending of war is just lip service by rulers of a state, concealing the state's only interest in self preservation and power.²³ That which I have described above is simply a disguise for the prince. The Prince is unable to explain that he has formulated a war termination to gain possession of oil fields, so they have to pretend to be guided by an ethical light.

However Walzer has rejected such a position, explaining that 'The truth is that one of the things most of us want, even in war, is to act or seem to act morally. And we want this, most simply, because we know what morality means. Thus, the amorality of the realist runs afoul of the fact that 'we are still committed to a moral world.'²⁴ Explained simply, it is impossible to have the pretence of justice without there being some real justice. This can be explained, with greater clarity, if one looks at the work of Frost who explains that 'pretending is always a parasitic activity. One can only pretend to be a just statesman because there is a real (not pretend) practice of just statesmanship. Thus there might be one or two politicians who can pretend to be just, but it is incoherent thinking to suppose that all politicians could pretend all the time. There could be no plays were there no real life.'²⁵

As another example of the political realist's naive account we could look again at Morgenthau's position, where he explains that morality should have a sphere of its own, separate to the political one. This, in itself, seems to be an 'unrealistic' notion to hold and does not match with how the world works. As demonstrated by Cohen 'Plainly, however, morality has no discrete sphere of its own (a sphere of moral "fact") parallel to, but separate from, the main areas of human activity. It is not only appropriate, but characteristic and necessary, to apply its standards to economic, legal, and political phenomena'.²⁶

²² This position can be gleaned from Coates (1997), p.103

²³ Coates (1997), p.21

²⁴ Orend (2000), pp.64-65

²⁵ Frost (1996), p.72

²⁶ Cohen (1985), p.15

So far my response to the political realist has been focused on refuting the potential claim that a theory of *jus post bellum* is 'irrational' rather than addressing the claim that it is also 'precarious'. The reason for this is fairly obvious as if, through these arguments, it can be demonstrated that a framework of *jus post bellum* is not 'irrational' then it also stops being 'precarious'. This is because, from the political realist stance, the danger of *jus post bellum* grows out of its irrationality. Having stated this there are possible claims to be made against this 'precarious' vision of *jus post bellum*.

The principles set out within the category of *jus post bellum* are displayed as an ideal, as a shining example. If one utilises the principles set out in *jus post bellum*, then one will reach a just peace. However, although some *jus post bellum* thinkers have a vision for a just peace, that does not entail following all aspects of it, all the time, if by doing so will result in 'seeing justice done though the heavens fall'.²⁷ It is important to stress that one of the major aspects of *jus post bellum* and the just war tradition in broader strokes is the notion of proportionality. As explained by Walzer, about just wars 'there are moral reasons for the statesmen and soldiers who fight them to be prudent and realistic'.²⁸ The point is that whilst in an ideal world every aspect of *jus post bellum* would be utilised, if the practicalities of the situation would result in the violent breach of other just war principles, like the continuation of fighting after just war goals had been completed, then statesmen need to be prudent.²⁹ Because I hold that morals should play a role in the ending of a war does not make me a dangerous idealist, as explained by Donnelly 'Allowing that morality cannot be perfectly implemented does not imply that some degree of moral achievement is impossible, let alone that we should abstain from trying to do the right thing.'³⁰ This obviously opens the questions as to how principles of *jus post bellum* should be utilised, this will be discussed in greater depth within Chapter IV.

Returning to the criticism of *jus post bellum*; if one were to turn this argument around one could suggest, if taken to a similar extreme, that the political realists position is just as 'precarious' during a war termination. For example, if you are to terminate a war based not on principles of morality and justice, but based purely upon decisions of power and national self interest, that could present a problems in itself. You might find yourself in a long and drawn out aggressive war termination process as each state will be

²⁷ Orend (2000), pp.66-67

²⁸ Walzer (1977), p.122. Also found in Orend (2000), p.67 and Coates (1997), p.104

²⁹ For further information please see Chapter IV

³⁰ Donnelly (2000), p.167

trying to obtain the most power. Furthermore, if you have one or two very powerful states involved you may not get a war termination, as the most powerful states will just continue with aggressive tactics, each following self interest and the pursuit of power. By always searching for the most power, based on your national interest, that could draw out a war that could have been terminated much earlier and that 'real peace is placed in jeopardy not by the foolish pursuit of a moral chimera but by the continuous and unrelenting pursuit of power'.³¹ It is clear that I am guilty of taking to an extreme the political realist position within this short example, something which I, in fact, criticised the political realist for doing within this very section, however, all this section wishes to demonstrate is that utilising a moral framework does not automatically make war termination any less 'precarious' than using power as a guide if that, too, was taken to an extreme.

Furthermore, one could explain that, in fact, the political realist is perhaps more 'irrational' and 'precarious' than the moral theorist. For example, one could explain that this understanding of a state being governed by the interest of power, and the carnal drive for dominance, is not in fact an accurate account of a successful peace, even on its own terms. As a case study one could examine the termination of the First World War, culminating in the Treaty of Versailles in 1919. Although it could be claimed that Woodrow Wilson's 14 point plan was utopian, the actual peace treaty that emerged did involve the victorious state acting through motives of self interest and power. As stated by Stahn 'like at past peace conferences, power politics and strategic considerations played a signification role'.³² As evidence of this one need but look at the way the victorious powers carved up Germany and its territories. All of Germany's overseas and African colonies were divided between players involved in the war termination and large areas of land were divided between states each pursuing their own interests of power. For example, Northern Schleswig and the German dominated town of Tondern were given to Denmark, the East part of Upper Silesia was given to Poland, and the German cities of Eupen and Malmedy went to Belgium. Furthermore, huge financial reparations were placed upon Germany which, was in January 1921, officially totalled to 269 billion gold marks as well as ensuring they took full responsibility for the World War through articles 231-247 of the Treaty of Versailles.

Looking at this empirical example of war termination one can see that the victorious states, acting from their own self interest and pursuit for power, went on to

³¹ Coates (1997), p.22. Changing the quotation to relate it to realism.

³² Stahn (2005), p.5

contribute to the collapse of the Weimar Republic in 1933, the rise of Fascism³³ and the outbreak of World War II.³⁴ A war, many historians claim, was the product of this self interested peace treaty. In fact, a claim could be made that, whilst the states involved in the termination of the war were acting through self interest and power and were acting as realists, it didn't work even from a realist point of view as it did not maintain even a fragile order.

If we now turn to the termination of the Second World War, it is obvious that the war termination was not governed only by the pursuit of national interest and power. In fact, there was a wide scale plan to rehabilitate and rebuild the German nation as set out by the US Secretary of State George Marshall within what was commonly referred to as the Marshall Plan of July 1947, which was officially called the 'European Recovery Programme'.³⁵ As well as rebuilding Germany economically, war crimes trials were introduced for the first time, another ethical and legal step (although these proceedings were not as fully developed as are the *Impartial War Crimes Trials* set up within Chapter II). Furthermore the war termination also led to the creation of the United Nations.

As explained by Stahn 'Reparations were generally limited to a reasonable amount, allowing younger generations to start their lives free from the financial burdens of war. Human rights protection and criminal adjunction became fundamental components of peacemaking. Furthermore... occupation was conceived a tool to further the economic and social reconstruction of the whole nation'.³⁶ This demonstrates that the peace that followed this war was not just an exercise of power and self interest. In fact not only is this an empirical example of a peace not primarily about the pursuit of power, but in many ways was a much more successful peace than the one that occurred in Versailles, even from a realist point of view, as it resulted in more lasting order.³⁷

Therefore it could be claimed that not only are there examples of war termination processes not dominated by self interest, but that those that include rehabilitation and principles of *jus post bellum* have a better chance of success rather than a worse one. This thought can actually be traced back to the war termination

³³ Meierhenrich (2006), p.106. This thought is also stated by Alford (2002), p.210, Iasiello (2004), p.3 and by Orend (2006), p.161.

³⁴ Iasiello (2004), p.3 and Coates (1997), p.285

³⁵ Orend (2006), p.194, Coates (1997), p.278 and Bass (2004), p.407

³⁶ Stahn (2005), p.5

³⁷ Coates (1997), p.286 and p.290

guidance set out by the famous just war scholar Emmerich Vattel. Vattel, when setting out a case study, explains that ‘If you grant us peace upon fair terms, it will be certain and perpetual; if upon unfair terms it will not last long’.³⁸ A similar point is also made by Walzer, although not directly related to *jus post bellum*; he explained that ‘morality and political prudence are not polar opposites... [But] They are connected in complex ways’.³⁹ In the case of war termination the incorporation of a notion of justice makes the peace more likely to succeed.

As a final concluding thought, although the realist might claim that the moral *jus post bellum* position is a self defeating one, by critically examining the political realist position, and applying the case studies of both World Wars, one can also see that it is the political realist position which, when taken to an extreme, is in fact self defeating.

.....

Justice Post War and the Critics from within the Just War Tradition

‘We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace.’

-Thomas Aquinas, Summa Theologica⁴⁰

This chapter will now change its focus, and engage with any possible criticisms to the formulation of a framework of *jus post bellum*, which might come from thinkers within the just war community itself. It is important to stress that, whilst this thesis has outlined and answered potential criticisms that might come from a ‘political realists’ stance, there could be other schools of thought, also external to the just war community, who might oppose moral principles relating to war termination. However, the aim of this thesis is not to simply defend a notion of *jus post bellum*, but to describe and develop one. Therefore, rather than devoting this entire thesis to dealing with such critics, having dealt with one example of an external critic, this subsection will now turn to an internal example.

³⁸ Vattel (1758), p.311

³⁹ Walzer stated this during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003, Transcript, p.17. For further information on this point in relation to *jus post bellum* please see Orend (1999), pp.275-277 and Coates (1997), p.37

⁴⁰ Johnson (1999), p.211

Before engaging with the specifics as to how some just war thinkers might dispute *jus post bellum*, it is perhaps prudent to explain certain things about the just war tradition in more general terms, explaining why some thinkers might disagree with this thesis. Whilst it seems immediately obvious why a political realist might criticise a framework of *jus post bellum*, they are, of course, famous rivals to the just war tradition. It is not immediately so obvious why other just war thinkers might wish to do so.

The first point to make is that, under the general and popular term ‘Just War Theory’ or ‘Just War Tradition’, a great many different views, opinions and thoughts exist. Whilst most just war thinkers have a central core of ideas or essence, that has existed since the time of St. Augustine based on an understanding of justice and peace, not one set of principles is universal to all just war thinkers. In fact, in many areas just war thinkers do not hold a universal front at all and actively challenge and debate what should, and should not, be incorporated into just war thinking.

For example, even some of the just war principles of *jus ad bellum*, seen as essential to some, have been disputed. As a case study one need but look at Rodin’s latest text where he skilfully puts under question the right to go to war in self defence.⁴¹ This is but one example of the fact that the just war tradition was not set out as a standard list, followed diligently by philosophers through out the ages, as explained within Chapter I, but is an active and evolutionary school of thought that does challenge, and differ, between thinkers. As stated clearly by Iasiello, the just war tradition ‘has survived for millennia because it is “an historically conditioned theory,” one in a state of perpetual transition.’⁴² Whilst I might comment critically on Iasiello’s use of the term ‘theory’, the central point illustrated by Iasiello does reflect the broader position set out in this thesis.

An important point to stress is that this discord between just war thinkers is not necessarily bad or counter productive.⁴³ The fact that just war philosophers continue to debate and analyse one another leads to further clarity of thought and ensures that the tradition remains contemporary and relevant. Just as the style, technology and methods of warfare have changed since the Roman Empire, the just war tradition can adapt to meet such changes rather than being left behind. As well as this being an important

⁴¹ Rodin (2002), pp.1-3

⁴² Iasiello (2004), p.1

⁴³ Walzer (2004), p.xii

underlying reason why some just war thinkers might wish to criticise this thesis, it also forms the riposte to the strongest possible criticism. This will be explained as this section expands.

This section will focus on why certain members of the just war community might oppose the very formulation of *jus post bellum*. It is possible that some just war thinkers might not totally reject the notion of *jus post bellum*, but they might disagree with the specific principles developed within Chapter II. Again, rather than devoting more time to pre-empting such criticisms, this section will focus exclusively on dealing with those who might criticise *jus post bellum* in general, rather than deal with those who would quibble at the specific principles. As an interesting point of fact, when studying the central texts of the just war tradition, certain philosophers do comment on war termination issues, as detailed in Chapter II. However, in some cases what is presented by some just war thinkers actually goes against others, even in the small area of war termination.⁴⁴ For example, Vitoria writes that ‘After victory has been gained and the matter is beyond danger, we may lawfully kill all the enemy combatants’.⁴⁵ Whilst Vitoria is clearly writing about justice and war termination, this thesis would argue against the specific notions he describes in that paragraph. Therefore, in the same way that different just war thinkers develop different principles of *jus ad bellum* and *jus in bello*, the same could also be true of *jus post bellum*. These matters will be dealt with reactively when such criticisms are presented.

The next step within this subsection is to set out three ways in which some just war thinkers might wish to criticise a separate framework of *jus post bellum*. In the same way as the previous subsection was playing devil’s advocate, and attempting to pre-empt any possible criticisms, the same method will be used here. It could be claimed by certain elements within the just war community that, in fact, this independent category of *jus post bellum* is simply not needed as it doesn’t relate to warfare, the traditional topic of just war thinkers, or that there could be an ‘assumption’ of a just peace following a just war. In addition, some thinkers might even want to claim that, already held within the confines of the just war tradition, there are principles which directly relate and govern the termination phase of war. Following this, they could explain that not only is a third element of *jus post bellum*, presented within this thesis, not needed, but that it could create more problems than it could solve. By addressing this third point,

⁴⁴ Coates (1997), pp.280-282

⁴⁵ Reichberg, Syse and Begby (2006), p.328

it will become clear that some of the criticisms from within the just war tradition could, in fact, be viewed as much stronger than those posed by the realist outsiders.

'Justice Post War is not the concern of the Just War Tradition'

The first reason that a just war thinker might have for opposing the development of *jus post bellum* could be that, quite simply, the issues of war termination and peace should not concern just war thinkers or the just war tradition at all. Whilst justice post war might be an interesting study for other schools of thought, perhaps those engaged with peace studies, the just war tradition is interested in moral thought related only to warfare and not to peace. That the boundary of the just war tradition should clearly be established as relating to the actual conflict and not its ending. These just war thinkers could make the claim that in fact the war termination process and immediate post war activities do not raise the same kind of fundamental ethical questions with which the just war tradition has customarily dealt. Furthermore, these thinkers could claim that, in fact, this is why the just war tradition has not included a framework of *jus post bellum* for all of its centuries of existence. Not because all of the great western just war thinkers throughout the ages had, some how, forgotten about *jus post bellum*, but because it is not really a concern for the moral philosophers of war. When the conflict is over, a boundary has been crossed and it is now more appropriate for other ethical schools of thought to take the forefront.

Compared to some of the other criticisms that might emerge from within the just war community, it has to be stated that this is not a particularly strong claim to make and, if one were to make this claim, it would show a limited understanding of both classical and contemporary just war thought.

To counter such a claim, one need but look again at the short parable of the King which appears at the start of this thesis. This demonstrates that the war termination phase and the post war peace raise a great many complex ethical and moral considerations that are, in fact, in line with the type of questions answered by the traditional just war follower. To explain further; if the just war tradition is concerned with how and when to start a war, then surely it must also be concerned with how and when to end a war? If the just war tradition is concerned with controlling and restricting the actions an army takes during the fighting, then surely it must be concerned with what they do after the war is over? If the just war tradition takes the strong stance of immunity to non-combatants and proportionality within the war, surely it must be concerned with

the same issues during the wars termination phase also? Finally, if the just war tradition is serious about the strictures it wishes to present, then surely it will be interested in dealing with those that break its strictures after the war.

These points can also be strengthened by the fact that *jus post bellum* is now being recognised by many prominent just war thinkers as an important and vital part of the tradition. It certainly has not been neglected as it is now part of the same academic field. Moreover, through careful examination of the just war tradition's classic texts, it is clear that just war termination is not written about in as much detail as *jus ad bellum* or *jus in bello*, but it is certainly not a totally forgotten subject.

'Justice Post War and the Assumption of a Just Peace'

Another potential (but again weak) claim, that some just war thinkers might want to make, is the assumption of a just peace following a just war. The claim could be made something along the lines; if a war is fought for just reasons following the rules of *jus ad bellum* and it is also fought utilising just methods following the guidance of *jus in bello*, then the state involved simply would have to conclude the war in a just and fair manner. That a just state would then not suddenly switch and conclude a war unjustly, in a sense explaining that one aspect of the just war tradition will always lead to another.⁴⁶

It is again clear that such a criticism of *jus post bellum* is, in fact, quite weak and not logically sound. For example, it is certainly possible to have a just reason for going to war and then go on to fight that conflict unjustly. To explain further; just because you have fulfilled the criterion for *jus ad bellum*, it does not necessarily follow that the criterion for *jus in bello* will automatically be fulfilled by virtue of that. Whilst there is some overlap between the two strands of the just war tradition, it would seem ridiculous to say that simply because a state has a just reason for going to war that it is then bound to fight that war using just and fair methods. The same then is true regarding *jus post bellum*. As explained by Walzer 'It seems clear that you can fight a just war, and fight it justly, and still make a moral mess of the aftermath.'⁴⁷

⁴⁶ This position is hinted at by Pendergast (2004), p.61. He states 'It is, therefore, our contention that if we have reasoned properly in the *jus ad bellum* phase, then the *jus ad pacem* criteria have already been spelt out'.

⁴⁷ Walzer (2004), p.163, Orend (2006), p.160 and Orend (1999), p.257. This point is repeated by Williams and Caldwell (2006), p.317 who state that 'It should be obvious that winning a just war does not guarantee a just peace'.

So this ‘assumption’ of a just war termination following an otherwise just war does not necessarily have to follow. Additionally, one should bear in mind the words of Himes who explains that ‘war, even the most just war, can only remove obstacles to peace. War cannot create peace itself’.⁴⁸ It may well be the case that it is more likely for a just war termination to follow a just war, and that, in order for a war to be completely just, all elements of the just war tradition need to be fulfilled, however one should not neglect an avenue of thought because it is assumed that it will simply follow on from that which already exists.

‘Jus Post Bellum as the goal of Just War Tradition’

The third, and final criticism, can oppose *jus post bellum* from much stronger ground than the previous two potential arguments. This position could in fact claim to date back to the origins of the just war tradition and can be drawn from the writing of both Augustine and Aquinas. The argument could be made, in some ways contrary to the flow of the previous two criticisms, that the just war thinkers throughout the ages did not simply forget about the justice post war issues. That, in fact, rather than the war termination and post war peace being a forgotten pillar to the just war tradition, the whole just war tradition is geared towards the post war peace.⁴⁹

These just war thinkers could claim that, through traditional just war thought, the act of warfare is only permissible if it is utilised as a method of achieving or restoring peace.⁵⁰ That in fact every single just war tenet, related to both *jus ad bellum* and *jus in bello*, show war as a last resort to restore peace. As stated by Augustine ‘hence it is obvious that peace is the end sought for by war.’⁵¹ This notion can also be found in Aquinas who stated that ‘Those who wage war justly aim at peace, and so they are not opposed to peace, except to the evil peace.’⁵² So, rather than explaining that the just war tradition had somehow lost track and forgotten about the post war peace, it is, and has always been, of the utmost importance.

As an example of this, one could look at the contemporary just war writer Johnson who when setting out the principles of just war includes ‘The Aim of Peace’ as

⁴⁸ Himes (2005) Stated in a conference at Fordham University.

⁴⁹ Coates (1997), p.273

⁵⁰ Coates (1997), p.273

⁵¹ Coates (1997), p.274

⁵² Johnson (1999),p.50

one of his primary criterion.⁵³ He describes how Aquinas believed that ‘the purpose of the sovereign authority undertaking the war...was tied especially closely to the purposes of serving justice and establishing peace.’⁵⁴ This position is also set out by Williams and Caldwell who state that ‘it is important to consider the argument that...the other parts of the just war tradition-especially the right intention principle as it relates to both *jus ad bellum* and *jus in bello*- imply the existence of norms applicable to the end, and the aftermath, of war.’⁵⁵

To strengthen this argument further, one could note the many references to war termination this thesis has identified in classic text war texts, and that some of the other principles of both *jus ad bellum* and *jus in bello* can relate directly to the termination stage of warfare. For example, the classical just war notion that a just war should not create more harm or evil than it was intended to stop. This looks directly towards issues that are commonly now linked to *jus post bellum*.

As one possible case study amongst many, one could inspect Anscombe’s paper ‘The Justice of the Present War Examined’. Written as a commentary of the Second World War Anscombe writes a section ‘On the Probable Evil Effects of the War’.⁵⁶ Anscombe actually posed the question ‘What is likely to be the end, if we win, if this is what we are like at the beginning?’⁵⁷ Anscombe is, quite clearly, not trying to set out a notion of *jus post bellum* independent to traditional just war thought but actually saw the war termination and post war issues as a vital aspect of traditional just war thought. She even looks into the ‘just and lasting peace, of a “new order in Europe”’⁵⁸ and concludes that by looking into the likely post war effects of the World War that they are unlikely to outweigh the evil caused by the war. The purpose here is not to critically examine Anscombe’s moral conclusion of the Second World War, but merely to demonstrate that the post war situation is already a factor, and goal, of the just war tradition, without having to introduce a separate notion of *jus post bellum*.

Furthermore, some just war thinkers might explain that not only are these notions of *jus post bellum* not needed, but that it could cause certain problems for the

⁵³ Johnson (1999), p.30. Please see Williams and Caldwell (2006), p.311 who also comment on Johnson’s interpretation of the just war tradition as incorporating *jus post bellum* ideas. This point is also made explicitly by Coates (1997), pp.273-291

⁵⁴ Johnson (1999), p.33

⁵⁵ Williams and Caldwell (2006), p.311

⁵⁶ Anscombe (1981), p.80

⁵⁷ Anscombe(1981), p.80

⁵⁸ Anscombe(1981), p.80

just war tradition. For example, the more principles you introduce into the just war tradition, the more unlikely it is for a state to actually fulfil the requirements of the just war tradition. This danger is spelt out clearly by Evans who explains in reference to *jus post bellum* that ‘The addition of any extra criteria obviously makes just war theory more demanding. Some might fear that... its requirements have set the bar so high that no actual conflict could possibly clear it’.⁵⁹ Moreover, if you can contain your notions and ideals within two overarching principles, a third set of principles needlessly confuses and complicates the issue as the more different principles you create, the more discord it could potentially cause. If these conclusions are accurate, does it spell an end to this investigation? Has this search for principles of *jus post bellum* been a needless activity as the end of the war is already a vital part of the tradition? Is all of this work totally redundant?

In order to counter these potential critics, this thesis will begin by taking the unusual position of agreeing with them (to begin with at least). It is apparent that by investigating the foundation of the just war tradition, in fact, the post war peace is of vital importance and does make up one of the primary goals of the just war tradition. That a just post war peace is the ultimate goal of the just war tradition, and that all of the principles do help build towards that ultimate aim. That when discussing the essence of the just war tradition above, the aim of post war just peace is very much a part of that core.⁶⁰

However, as explained both in Chapter I of this thesis and briefly at the start of this subsection, the just war tradition is an evolutionary tradition. Not only one that changes dependant on its circumstances, but also one that grows from its roots. It is for this crucial reason that the understanding of *jus post bellum*, found within Chapter II, is built from the essence and principles found within the just war tradition as well as modern just war termination writing. Having identified that a just war termination, and a just peace, is part of the tradition; what this thesis aims to do is expand upon, and further explain, that goal and the methods of achieving that goal.

What is unmistakable is that, the just war tradition has, at its centre, this aim of a just peace following on from a just reason for starting a war and just conduct within the war. Whilst the aim might be present, the thinkers who suggest that an understanding of *jus post bellum* is not needed have clearly not grasped the complex, and intricate, issues

⁵⁹ Evans (2005), pp.19-20. This issue is also mentioned on p.219.

⁶⁰ Williams and Caldwell (2006), p.312

surrounding a war termination. This thought is shared by Williams and Caldwell who state that the ‘just war theorists rarely discuss the “end of peace” and what such an objective implies’.⁶¹

It is all well and good to explain that a war should not cause more evil than it was intended to stop, by looking into the post war stage, but, in order to help ensure a good end to the war, guidance needs to be in place. This is where principles of *jus post bellum* come into play. However, this thesis would, at this point, move away from the argument presented by Williams and Caldwell to demonstrate that some classic just war texts do comment on war termination. For instance, several just war thinkers discuss the issue of reparations and disarmament following a war yet, Williams and Caldwell explain that guidance cannot be found by ‘merely digging more deeply into the work of Augustine, Aquinas, Suarez, or Grotius’.⁶² It is also true, however, that many areas remain neglected, out dated or completely forgotten. For instance, the idea of democratic regime change and cultural modification are rarely mentioned.

So, whilst this thesis might agree with these just war thinkers that the essence of the just war tradition already incorporates an understanding of justice post war, and that certain thinkers sketch out a few points, this thesis would also make the claim that that essence and those points need to be brought up to date and expanded to deal with the intricacies and difficulties of the war termination situation. This is one of the reasons why all of the immediate war termination principles outlined within this thesis have been built from classical just war thought, and the principles of *jus ad bellum* and *jus in bello*, and gleaned from what is available within key just war texts.

To illustrate this point, one need but return again to the work of Aquinas. Within Aquinas’s just war thought he highlights three key areas required to ensure that a war was just, principles which traditionally are placed within the category of *jus ad bellum*. These included the requirement of a sovereign authority, a just cause for warfare and a right intention for war.⁶³ Even at a quick glance it is obvious that these principles of Aquinas just war tradition do not relate to the *jus in bello* elements of just war thinking. The *jus in bello* principles were developed after Aquinas. This short example of the expanding nature of the just war tradition demonstrates that, whilst *jus post bellum* may well be part of the essence of the just war tradition and part of its goal, it is certainly not

⁶¹ Williams and Caldwell (2006), p.312

⁶² Williams and Caldwell (2006), p.313

⁶³ Johnson (1999), p.41

as well developed as either of the *jus ad bellum* or *jus in bello* aspects of the tradition. So, in the same way that thinkers built up an understanding of *jus in bello* based upon the prior work, essence and aim of Aquinas the same process needs to be repeated to fully expand and develop the aim and goal of the just war tradition towards a post war peace.

Having now dealt with one example of an external critics, and a series of potential criticisms from within the just war tradition, this thesis will now step away from dealing with critics and towards further development of *jus post bellum*.

Chapter IV – War Termination and the Principles of Jus Post Bellum

'The Clausewitz Connection'

'In almost all other arts and occupations the agent can make use of truths which he has learnt, but in whose spirit he no longer lives, e.g. truths extracted from dusty books. Even truths which he uses daily may remain quite external to himself...he applies them as if by manual dexterity. But it is never so in war. The fact that he is concerned with reaction, and the ever-changing face of things, makes it necessary for a commander to carry in himself the whole living apparatus of his knowledge, so that anywhere and at any pulse-beat he may be capable of giving the right decision'

-Clausewitz. 'On War' Book II, Chapter 2¹

Within the field of both moral and political philosophy, it is commonplace to explore both a set of philosophical principles along side a series of individual case studies. The aim of the philosopher is to show a connection, or correlation, between the principles he wishes to present and the events of the world around them. This is especially true within the just war tradition and has been famously employed to great success by the prominent modern thinker Walzer. Walzer followed the method described above, and one can identify this by looking at the full title of his classic work 'Just and Unjust Wars: A Moral Argument with Historical Illustration'.² On the one hand you have Walzer's moral argument and on the other hand you have his historical illustrations. He makes a moral argument stating that 'The morality I shall expound is in its philosophical form a doctrine of human rights'³ and then to demonstrate his position, utilises a variety of historical illustrations, although he does focus more heavily on both the Vietnam conflict and the Second World War. The use of these historical examples has the combined effect of strengthening his arguments, identifying potential problematic areas through 'hard' case studies and also directly engaging with the cases 'that play a part in contemporary controversies'⁴ providing his philosophical principles with an immediate and obvious relevance.

When this method is adopted, the philosopher in question has then to analyse both the set of philosophical principles or framework the he wishes to employ, and the

¹ Clausewitz (1976), p.147

² Walzer (1977), p.1. Also see front and back cover.

³ Walzer (1977), p. xxii

⁴ Walzer (1977), p.xxii

case studies or examples to which he wishes to apply them. Rawls within his work 'A Theory of Justice'⁵ explains that 'Philosophers often attempt to justify general principles on the ground that they accord with our intuitive judgements concerning particular cases' and furthermore build towards what he describes as 'reflective equilibrium' where 'our considered intuitions are fully in harmony with our considered principles'.⁶

Whilst this method is popular amongst just war texts, including, it has to be said, this particular thesis, it does carry with it certain inherent dangers and pitfalls. The risk is that when undertaking an investigation you spend too much time on one side of the equation, either by investigating in depth the philosophical framework and neglecting the particular cases or vice versa. Within this thesis thus far I have introduced and sketched out principles in Chapter II, that have been primarily geared around particular case studies, with examples of the principles in action. Whilst on the surface this paper has looked into the philosophical framework in relation to the case study, due to the approach of Chapter II, it has neglected deeper, more underlying, issues. This particular chapter is designed to redress the balance and provide a more detailed account of the philosophical framework to be employed through an understanding of *jus post bellum*, in essence to balance both sides of this 'reflective equilibrium'.⁷

To investigate the philosophical framework of *jus post bellum* set out within this thesis, much wider questions need to be asked of it. Instead of focusing on specific principles in relation to case studies, broader and more generic questions need to be raised. Therefore whilst this chapter will still be focused on the philosophical framework of *jus post bellum* many of the questions that will be posed could apply to almost any work of political or moral philosophy that incorporates some sort of principles or set of rules. Clearly, however, when asking these sorts of questions what separates *jus post bellum*, and in broader terms the just war tradition, from other principle based moral or political philosophy is that it has been designed to exclusively deal with war and in particular the ending and just exit strategy of war. This is in stark contrast to those sets of moral or political principles intended to cover a wider spectrum. This particular and close link between this set of philosophical principles and the phenomena of war will be of the utmost importance when discussing below how such principles should be utilised; this will be explained in due course.

⁵ Rawls (1971), pp.18-19

⁶ Honderich (1995), p753

⁷ Rawls (1971), pp.18-19. Again simply adopting Rawls phrase.

'Questioning a Jus Post Bellum Framework'

The first step of this investigation is to identify the type of wider question to be asked. To begin with, if a just war philosopher has developed a list of just war principles, or a philosophical framework, one of the most important questions is how exactly does the philosopher intend to use such a set of principles or framework? For instance, would it be the case that the more principles of *jus post bellum* that are achieved in a war termination the greater justice a war's ending will have? Furthermore, could it be the case that some of the principles set out under the overarching heading of *jus post bellum* are senior, or of more vital importance, than others? For instance, Johnson when discussing *jus ad bellum* lists seven principles: 'just cause, competent authority, right intention, reasonable hope of success, overall proportionality of good over harm, last resort and the goal of peace'.⁸ Following on from this position he states that 'Both historically and in terms of the inner logic of the just war idea, though, these seven moral criteria are not of equal importance: the first three have priority over the others'.⁹ Whilst some other just war thinkers might dispute that claim, that is not the concern of this thesis, but rather to ask if the same could be true of the principles of *jus post bellum* set out in Chapter II. In short could *Peace First* for example be seen as of greater priority than say *Impartial War Crimes Trials*?¹⁰ Moreover if it is decided that it is more important, then by how much? Could one principle of *jus post bellum* be so important it is worth sacrificing the fulfilment of the other four? This is one set of fundamental questions that need to be addressed.

A second vitally important set of questions related to the above is what the philosopher wants to actually get from a list of moral or political principles. What do these principles set out to achieve? Placed into the context of *jus post bellum*, are they a set of rules to be followed in the same way as the Ten Commandments? In a sense suggesting that they should be followed precisely at all times and without question. As explained by Orend in relation to the principles of *jus ad bellum* 'The tradition contends that, for the resort to war to be justified, a state must fulfil each and every one of the ... requirements'¹¹ and that these principles are 'endorsed holistically –i.e. ,all of the criteria must be fulfilled, and jointly satisfied, to justify resorting to war.'¹² Should the same transcend to *jus post bellum* thinking? Or are the principles of *jus post bellum* set up in

⁸ Johnson (1999), p.41

⁹ Johnson (1999), p.41

¹⁰ Bass (2004), pp.404 -405 actually places peace above war crimes trials.

¹¹ Orend (200), p.87

¹² Orend (2000), p.176

such a way that there may be occasions in the endings of certain wars when it would be more appropriate to overlook certain principles or aspects of its structure? One might say that turning a blind eye to some principles is acceptable so long as the war's ending is still in line with the 'spirit' of *jus post bellum*, whatever that 'spirit' might be! Another possibility is that the principles of *jus post bellum* presented within this thesis could be used more in the format of a moral check list to criticise those who create an unjust exit strategy to war, or in more extreme cases to point out that they do not even have an exit strategy at all.

Whilst this may seem at first glance strange, as observed by the thinker Bailey, who as an interesting note is a very influential writer on how wars end, explains that the just war principles that make up the standard tradition are in fact largely negative in their format. They often express the things that should not be done as opposed to the things that should be done.¹³ This quite neatly sets out one of the major criticisms often presented to just war thinkers in general outside of the confines of *jus post bellum*. So to sum up, are these principles of *jus post bellum* to chase after those involved in the ending of wars purely to tell them where they went wrong rather than telling them what to actually do before the event?

A third and final set of questions to pose is: What is the background of the moral set of principles presented under the heading *jus post bellum*? From what basis has this set of principles been developed? Moving on from this position, it could also be prudent to discover if other, more suitable, backgrounds to justice post war could be utilised or developed. Furthermore, could you possibly combine a variety of schools of thought from which to develop a set of *jus post bellum* principles? Finally, in order to be effective, would the principles of *jus post bellum* need to work in conjunction with any other principles or methods?

It should be noted that within the small community of *jus post bellum* thinkers, whilst it seems relatively commonplace to introduce a list of war termination rules, it is fair to say that they certainly do not address the types of questions illustrated above. For example, Iasiello sets out a clear list of *jus post bellum* principles within his article on the subject, but never engages with the questions as to how they should be used or what he wants to get from such a list of ethical principles.¹⁴ This criticism could also be

¹³ Paskins and Dockrill (1979), p.194

¹⁴ Iasiello (2004), pp.1-13

levelled (although not as strongly) at Bass.¹⁵ The result of this is that, whilst some thinkers might have similar principles, the way they might be utilised could vary greatly. For example, some just war thinkers use the principles in a utilitarian way. Others like, for example, Orend have looked at Kantian methods of using just war principles. This issue is expounded in the work of Paskins and Dockrill who point out that different ethical schools of thought will use just war principles in vastly differing ways, for example 'For the consequentialist who is not a classic utilitarian, they will be valuable insofar as they promote its chosen goal...For the deontologist, they will be valuable insofar as they state or approximate or conduce to the observance of those principles which the deontologist regards as absolutely binding...For the situation ethics, the principles may be valued as a stimulus of thought'.¹⁶ The question arises as to which, if any, of these methods of using philosophical principles best suits an understanding of *jus post bellum*.

This deficiency of thought seems to be a clear weakness at the heart of *jus post bellum*, and if the subject is to have any philosophical depth then such questions need to be addressed. As an example of this weakness, one could compare it to the structure of a wheel, with the individual principles making up the various 'spokes'. It does not matter how many 'spokes' you have or how elaborate the individual 'spokes' happen to be, if the 'hub' of that wheel is not strong enough to support and link all the 'spokes' together then that wheel will simply collapse. What has currently been put forward as theories of *jus post bellum* are simply a collection of strong 'spokes' but without the 'hub' to bring them all together.

The next step, within this chapter, is to begin to answer some of the difficult questions presented above. However, it is important to note that not all of these questions have gone completely unanswered through the course of this thesis. Some of the answers have already been woven into the fabric of the previous chapters. The questions that have been answered have primarily been from the third set of questions, related to what the background of the philosophical framework should be and why it was chosen to fill this void. Therefore the first task of this subsection will be to briefly pull together the strands of this fabric and to succinctly recap the answers to those questions already solved in passing through this thesis.

¹⁵ Bass (2004), pp.390-412

¹⁶ Paskins and Dockrill (1979), p.194

It is obvious that the chosen background for the moral and political principles presented within this thesis is the just war tradition, both past and present. In fact, the use of this old tradition has already been expounded in-depth as the principles have been set out. This is why it was of vital importance to demonstrate within Chapter II how the individual principles of *jus post bellum* were developed and elaborated from traditional just war thought and from classic just war texts. Additionally, as well as explaining what the background for *jus post bellum* is, this thesis has also detailed in passing why that background was chosen. This will be briefly set out below.

In many ways the reason for this selection is that it built upon the work and followed suit from other thinkers interested in the justice of a wars ending. As explained previously, *jus post bellum* is still in its infancy but most thinkers within the field have used the just war tradition or theory as its springboard. The clear reason for this decision is that, as explained within Chapter III, the just war tradition deals with similar and parallel issues. As a tradition, it has centuries of wisdom and experience in dealing with the just nature of other aspects of warfare and therefore seems an ideal choice as the background and facilitator to an investigation on the just way to end a war.¹⁷ This was also explained within Chapter I of this thesis.

As a crucial point, it must be stressed that whilst this thesis advances many separate ideas in relation to war termination and *jus post bellum*, this thesis cannot take credit for this first link between *jus post bellum* and the just war tradition. What this thesis wishes to achieve is its development, by expanding it into a more cogent and understood pillar of the just war tradition. This thesis aims to add to and develop the frugal amount of literature on the subject and demonstrate that classic just war texts can aid in this investigation.

It is however abundantly clear that many of the problematic questions listed above have yet to be addressed. Crucial questions still remain, up until now, unanswered and this will be the focus of this chapter. Until this point the arguments used to deal with any problems within this thesis have been relatively orthodox in format, drawing extensively on classical and modern just war thought. However, in order to come to some understanding of these thorny questions, this chapter will make a more unexpected move, perhaps in the hope of catching these gruelling questions off guard, and begin by

¹⁷ Orend (1999), p.259

investigating the famous Prussian military strategist Carl Philip Gottlieb Von Clausewitz.¹⁸

'Clausewitz and the Principles of War'

Clausewitz was born in Prussia 1780 and was a military man for his entire life, obtaining his first commission in the 34th Infantry Regiment at the age of twelve and taking part in combat for the first time at the tender age of thirteen.¹⁹ During 1801 he was transferred to Berlin to attend the War College under the command of General Gerd von Scharnhorst. By the age of thirty eight Clausewitz became the director of that college and studied the philosophy of war until he died of cholera on the 16th November 1831.²⁰

It certainly would not be an exaggeration to state that, within the discipline of military strategy and the study of war, Clausewitz is perhaps its most central figure. Clausewitz is commonly heralded as 'the philosopher of war' and his famous text 'Vom Kriege' (On War) is at the very cornerstone of that subject. For examples of this view one need to but look at the audacious claim of Brodie who stated that 'His is not simply the greatest, but the only great book about war'²¹ or at Count Schlieffen who explained that 'On War' was 'in context and form the greatest work on war ever written'.²² Furthermore, according to Howard, Clausewitz was 'not only interested in military affairs but philosophy, politics, art and education'.²³

However, despite the fact that Clausewitz wrote extensively on many matters concerning warfare, ranging from 'Moral factors'²⁴ to 'River Crossings',²⁵ his classic and famously unfinished masterpiece includes little on the specifics of terminating and concluding a war, although he does discuss some related areas in his chapter on 'The Culminating Point of Victory'.²⁶ What's more, Clausewitz certainly did not write about the 'just war tradition' in relation to the phenomena of war in general terms, let alone *jus post bellum* more specifically! Whilst his text is occasionally mentioned in passing by

¹⁸ Heuser (2002), p.1. Heuser explains that Clausewitz's name was not Carl Maria as some other scholars have claimed.

¹⁹ Howard (2002), pp.5-6

²⁰ Howard (2002), p.5

²¹ Howard (1983), p.1

²² Gatzke (1943), p.10

²³ Howard (2002), p.5

²⁴ Clausewitz (1976), pp.184-185

²⁵ Clausewitz (1976), pp.532-534

²⁶ Clausewitz (1976), pp. 566-573

contemporary just war thinkers, primarily in relation to his understanding of warfare as politics by other means, his work certainly does not usually play an overly prominent role. Therefore, why does this chapter address Clausewitz? How will an understanding of this famous military strategist help to comprehend the *jus post bellum* principles of Chapter II and aid us in answering some of the questions outlined above?

The first point to make is that, although there are numerous stark differences between Clausewitz's project during 'On War' and this project related to 'War Termination and the Just War Tradition', both works are addressing the same phenomenon; that of war. It is true that Clausewitz directed his activities primarily towards strategic thinking, and this work is looking into the ethical methods of ending a war, but the fact remains that both are looking at warfare, only from different angles.

It could be akin to exploring a great and hostile continent; both works are exploring that same continent only from polar opposite starting points. What is central is that, whilst many thinkers within the philosophical community discuss the application of moral or political principles in relation to a great number of situations, Clausewitz's sole topic was war. As explained previously, the set of principles or framework outlined within Chapter II also exclusively relate to warfare. Therefore, if we can gain some insight of how to utilise *jus post bellum* principles, by using Clausewitz as a starting point, it will have that direct relevance to the phenomena of war that might be lacking if a more generic philosophical method was employed for the task.

The second vitally important feature, that 'On War' and this thesis share, is that both works include a set of principles, with one set of principles relating to the just end of war and the other set of principles related to the strategy of war. It is true that within my thesis those principles may be a great deal more pronounced than those of Clausewitz and of a different nature, but none the less that partial similarity does exist.

It is important to note that some scholars of Clausewitz would make the claim that 'On War' does not actually set out any type of principles of war. This is because Clausewitz was against the notion that one could contain the secrets of success to war in a few easy to follow steps; if truth be told much of his writing about war could be seen as a backlash to such an understanding of war written about by strategists such as Jomini and Bulow.

However, this is a narrow understanding of a philosophical framework, or set of principles, and, whilst Clausewitz may have rejected that specific understanding of clear cut rules, it is obvious, as stated by Gallie that ‘Clausewitz discusses a number of ‘principles of war’’,²⁷ and as stated by Brodie, even if you refuse to identify those thoughts as principles Clausewitz ‘could hardly avoid establishing certain generalizations, which is inevitably the result and the purpose of analytical study’.²⁸ However Clausewitz importantly ‘rejected the notion that the conduct of war can reasonably be guided by a small number of pithy axioms’.²⁹ For more direct evidence of the fact that Clausewitz set out principles of war one need but look at one of his notes, believed to have been written in 1827, which clearly sets out a list of his primary principles or propositions (Sätze)³⁰ of war. However this differing understanding of ‘principles’ that has resulted in a dispute between Clausewitzian scholars will be returned to as this chapter develops.

What is more, Clausewitz, following a close examination of the phenomena of warfare, explains in some depth, a method of how military principles or truths should be used in application. Gallie describes one of Clausewitz ‘most impressive philosophical achievement’³¹ as ‘his accounts of the logical character or status of the principles of war’³²; in fact Gallie goes onto to explain that this understanding ‘has important implications for human life far beyond the military field’.³³ It is this avenue which this chapter seeks to explore.

This chapter will now investigate whether the guidance Clausewitz provides, as to how one should utilise ‘principles of war’, can aid us in an understanding of how to use war termination principles or ‘principles of peace’. Can we use Clausewitz’s wisdom on the intricacies of warfare to prompt us in the right direction to answer those thorny questions outlined above?

It is important to recognise at this early stage that this thesis is not in any way attempting to ‘copy’ Clausewitz’s understanding or to point out that Clausewitz was actually discussing ethics in disguise, as clearly his topic was strategy and not ethics based. Rather than attempting to follow Clausewitz’s theories, his thoughts on principles

²⁷ Gallie (1978), p.43

²⁸ Clausewitz (1976), pp.57

²⁹ Clausewitz (1976), pp.57

³⁰ Heuser (2002), p.11

³¹ Gallie (1978), p.43

³² Gallie (1978), p.43

³³ Gallie (1978), p.43

in relation to warfare are used as a theoretical springboard to come to an understanding as to how principles of *jus post bellum* could be successfully utilised in a war termination.

It is clear that some thinkers on military strategy treat war as a science, or investigate it as if it was a particularly difficult mathematical quandary. A famous example of this school of thought would be Clausewitz's famous rival Antoine de Jomini. Within his text 'The Art of War', Jomini engages with the principles of warfare as if they were a calculation and famously concludes with an understanding of what he calls 'interior lines'. Jomini describes these 'interior lines' as the secret to success in battle and, if utilised correctly and in full, will always provide a military leader with victory.³⁴

However, for Clausewitz, war could not be understood in purely scientific or mathematical terms, for the simple reason that viewing warfare as a science misunderstood the very 'essence of war'.³⁵ In addition it has been claimed by military thinkers such as Heuser that Clausewitz project, and his over arching goal, was to grasp 'the essence of war, its spirit, its true nature, the 'concept (Begriff) of war itself'.³⁶ For Clausewitz, war was filled with uncertainties and to try and apply strict scientific principles, as such, was doomed to failure, as he states in On War 'They aim at fixed values: but in war everything is uncertain... They direct the inquiry exclusively towards physical quantities, whereas all military action is intertwined with psychological forces'.³⁷

Clausewitz also discusses the term 'friction' further, explaining that 'Everything in war is very simple, but even the simplest thing is very difficult'³⁸ (which will be investigated in more depth later). This prevents military principles being utilised in a scientific manner. Additionally, Clausewitz viewed warfare as having 'moral forces'³⁹ which are far more than a simple variation in a mathematical equation. It is through this deeper analysis of the character of war, as a complete and social phenomenon, that separates and raises Clausewitz above other strategic writers. For Clausewitz looked comprehensively at the entire phenomenon of war and not simply at the strategic

³⁴ Howard (2002), p.24

³⁵ Howard (2002), p.24

³⁶ Heuser (2002), p.189

³⁷ Clausewitz (1976), pp. 136

³⁸ Clausewitz (1976), pp. 119

³⁹ Clausewitz (1976), pp.137

deployment of troops in battle. For these reasons Clausewitz held the firm view, based on his understanding of war, that one should not use principles of war in a scientific or formulaic way.

Looking back towards ethical and political principles, it is clear that some thinkers do use their moral principles in an absolute and almost scientific way. Like Jomini with his 'interior lines', they have a set of principles that, if followed to the letter, they explain, will bring you either political success or a moral and just action. One could, in a sense, compare this to Kant's Moral Law and his understanding of the categorical imperative as a set of rules to be followed absolutely.⁴⁰ Whilst this application of moral principles may be effective in certain arenas (it is not the topic of this thesis to investigate such matters), by using Clausewitz's thought as a facilitator to further ideas, to use principles of *jus post bellum* in such a way, would be going against his understanding of the very essence of war. In the same way that fighting a war is filled with variables, so too is the ending of war. It is an ever changing and reactive situation.

An important element of Clausewitz to analyse at this point is his understanding of the friction of war. As explained above, central to Clausewitz's understanding of the nature of war was this notion of continual friction which he described as the 'fog of war'.⁴¹ This 'fog of war'⁴² impedes everything in war and is often caused by the most minor of things, making even the most simple and straightforward action difficult. Clausewitz provides an example of the weather stating that 'Rain can prevent a battalion from arriving, make another late by keeping it not three but eight hours on the march, ruin a cavalry charge by bogging the horses down in mud, etc'.⁴³ In short, for Clausewitz, it was this understanding of friction that differentiates 'real war from war on paper'.⁴⁴ Importantly, for a project related to war termination and the end phase of warfare, it is immediately obvious that this 'fog' does not instantly lift during this final stage of war termination. That fog remains, clouding the judgments through this critical, and often dangerous, time. In the same way that Clausewitz describes continual setback, hazards and variables during the waging of war, the same can occur within the war termination and post war peace. In fact, one could say that not only is there a 'friction of

⁴⁰ Honderich (1995), p.125

⁴¹ Heuser (2002), p.89. This point is also briefly commented on in relation to war termination by Williams and Caldwell (2006), p.313

⁴² Heuser (2002), p.89

⁴³ Clausewitz (1976), pp. 120

⁴⁴ Clausewitz (1976), pp. 119

war' but a 'friction of peace' also. In order to make any just war ending a success this needs to be noted. So, in the same way that to try and apply principles of war in a scientific manner will result in failure; the same could also be true of principles of war termination and peace due to this understanding of friction.

As a further note, one of the criticisms of the just war tradition is that it is too far removed from reality, and no one has ever managed to ever actually get a just war.⁴⁵ Perhaps this is because by attempting to apply its criterion in a holistic and strict way it actually goes against the very 'essence of war'? To attempt to use any just war principles, either from *jus ad bellum* or *jus post bellum*, in this scientific or 'endorsed holistically'⁴⁶ approach may work in the 'ivory tower' but, as Clausewitz demonstrates, war and war's ending is a very different environment. One could even make the claim that such an understanding of just war principles could demonstrate that such thinkers do not have a clear conception of the nature of war and what war termination is like. This thought is actually explained, in reference to war termination, by the just war thinker Vattel. In line with the above discussion, Vattel states that 'A treaty of peace can be nothing more than a compromise. Were it necessary to frame the treaty according to the principles of strict and rigorous justice, peace would be impossible of attainment'.⁴⁷

However, these initial observations of Clausewitz and Vattel do not answer the complex list of questions presented at the beginning of this chapter. Again it provides us with information as to what not to do, but does not actually tell us what to do. The next step, having decided that principles in relation to warfare should not be used as a set of scientific truths, is to further investigate Clausewitz and see if we can come to some understanding as to how to make use of the principles of *jus post bellum*.

Whilst Clausewitz held strong views against using principles of war in a rigid scientific manner, that does not mean that, for Clausewitz, there are no rules, principles or guidelines. It is clear that for Clausewitz certain disciplines could have rigid and strict rules, like physics or sciences for example, however, due to war's reactive elements and the involvement of human actions, he explained how principles should not have such a systematic treatment. One of the first things that is clear when investigating Clausewitz, as described by Gallie, is that he 'discusses a number of 'principles of war', but it is

⁴⁵ Evans (2005), p.208. Evans discusses the view that some thinkers level 'The charge of 'abstraction' at the just war theory. He however rejects the view that the 'Just War theory is too abstract to deal with the brutal concrete particularities of conflict'.

⁴⁶ Orend (2000), p.176

⁴⁷ Vattel (1758), p.350

notable that he nowhere tries to ...establish relations of logical priority and subsequence between them.⁴⁸

This is also coupled with the facts that not only are Clausewitz's principles not in any specific order but are also in many ways antagonistic. As again detailed by Gallie, whilst discussing one principle of war, he 'thereupon proceeds to show how some other principle of war commonly interferes with it'.⁴⁹ In this way Clausewitz demonstrates that no one principle is ever a scientific truth in war, and that no one principle is ever sufficient to decide what to do in military action or is ever completely necessary in and by itself.

It is at this point that we can see another similarity between Clausewitz and the principles of *jus post bellum* set out within this thesis. If one examines the principles of *jus post bellum* closely they too can be seen as antagonistic in certain areas. For example, one could compare *Complete Cessation of Conflict* and *Impartial War Crimes Trials*. In certain cases, in order to catch and prosecute every war criminal, you might have to engage in further fighting.⁵⁰ Or one could look at the notion of *Ensuring the protection and safety of innocents and non-combatants*; in some cases it would not be inconceivable that, in order to ensure safety in the defeated state the victorious nation must go beyond its original 'just aim' in fighting the war. So how is it possible to solve this antagonistic element? Could we return to Johnson's understanding of traditional *jus ad bellum* thought and explain that some principles are always more important than others?⁵¹ The best approach to the situation has already been set out. Some principles are not, ipso facto, more important than others. In order to proceed, the next step is to see how Clausewitz deals with such issues and, again, see if it can be used as a springboard for further thought.

Clausewitz does not take the stance that some principles of war are always more important than others. What Clausewitz explains is that, rather than seeing strategy as a check list of things to do in battle, the principles of war should serve as an education to train the mind of the commander. For example, 'On War' states that these principles

⁴⁸ Gallie (1978), pp.43-44

⁴⁹ Gallie (1978), p.44

⁵⁰ As a side point, that is exactly what DiMeglio suggests. DiMeglio(2005), p.158 states that one should always ensure war crimes trials take place. He explains that 'justice is rarely served by ignoring justice'.

⁵¹ Johnson (1999), p.41

should 'guide the future commander in his own self education'⁵² and, therefore, these principles are to be used in an educational way for the commander in a battle. The commander should not ever think of rigidly sticking to a list of principles, but should be educated by, and be aware of, them all, in a sense making them an aid to judgement, training himself to deal reactively to the situations that war presents. As Clausewitz himself states 'Theory exists so that one does not have to start afresh every time sorting out the raw material and ploughing through it, but will find it ready to hand and in good order. It is meant to educate the mind of the future commander.'⁵³

Viewing principles of war in this way fits with Clausewitz's detailed understanding of the 'essence of war', allowing the commander to react to the psychology and moral forces as well as to the friction of war. For Clausewitz it kept strategy fluid and allowed for subjectivity both in the situation and through the commanders own natural talent or 'genius'.⁵⁴ This also makes space for any commander of war to deal with the specifics of the situation and not attempt to mould the situation of war to fit with a particular set of highly structured principles.

This method of thinking can also be traced back to Clausewitz's interest in education outside of the military field. As explained by Howard 'His interest in education brought him in touch with the view of such writers as Pestalozzi that education was not a matter of imparting knowledge but of using knowledge to develop the human personality'.⁵⁵ So, in the same way as for Clausewitz, his thoughts on war will educate a military commander and develop his human personality towards military success; the principles of *jus post bellum* could develop the human personality towards justice in the ending of wars.

Another feature of Clausewitz's principles of warfare is that they are relatively simple. As explained by Gallie 'Military principles have to be simple... At the same time, however, military principles have to be highly adaptable'.⁵⁶ These characteristics further link Clausewitz conception of principles to his general understanding of the essence of war. For example, due to the friction of war the principles have to be simple for them to have any chance of success. Furthermore, the principles of war need to be

⁵² Gallie (1978), p.44

⁵³ Clausewitz (1976), p.141

⁵⁴ Clausewitz (1976), pp.100-113

⁵⁵ Howard (2002),p.14

⁵⁶ Gallie (1978), p.44

‘highly adaptable’ so that they can be used by the commander to deal with all of the changes and the reactive elements of a war.⁵⁷

It seems that the principles of war, as described by Clausewitz, will never be used by the common person, only by the select few, the ‘commander of war’. The same is also true of the principles of *jus post bellum*. These principles are not a set of moral guidelines that will be used by many. Governing the movement from a state of war back to a state of peace is not a social or political activity likely to be performed by many moral agents. It will only be a select few in charge of the ending of wars, and the post war peace, by whom this list of *jus post bellum* principles will ever truly be used. These select few I will name the ‘commanders of peace’.

‘Commanders of Peace and an understanding of Situational Awareness’

In the same way that Clausewitz describes how a framework of military thought should serve not as a set of rules to be used rigidly by a commander of war, but as a way of educating him, the same could be true of *jus post bellum* and the ‘commander of peace’. To avoid the antagonist element of *jus post bellum* principles, the commanders of peace should deal with the issues of a war’s termination with all the principles in mind and, as Clausewitz states, carrying ‘in himself the whole living apparatus of knowledge’.⁵⁸ So a good ‘commander of peace’ will study and have a clear grasp of every principle of *jus post bellum*, and when terminating a war, and supervising the movement from warfare back to peace, will make their own decisions, dealing with all the variants and intricacies of war termination in the most appropriate manner, with all of that knowledge at his disposal so that ‘at any pulse-beat he may be capable of giving the right decision’.⁵⁹ For Clausewitz that right decision would lead to tactical victory, for *jus post bellum* it would lead to the most just war termination available at any given time.

Additionally, as explained above, Clausewitz is clear that principles of war need to be both simple and adaptable. The same is also true of the principles of *jus post bellum*. In exactly the same way that the principles of war must be simple and adaptable, to relate to differing circumstances, so too must the principles of *jus post bellum*. As explained within Chapter II the principles of *jus post bellum* must not only relate to the

⁵⁷ Gallie (1978), p.44

⁵⁸ Clausewitz (1976), p.147

⁵⁹ Clausewitz (1976), p.147

standard just war example of a just state defending itself from an unjust aggressor, but must relate also to cases such as humanitarian intervention, civil war, possibly even terrorism and the war on terror. Whether these same principles can be used to good effect in relation to these different backdrops will be the subject of Chapter V, but it is initially obvious that, if they are to have any chance of success, then such principles need to be simple and adaptable. Furthermore, it could be claimed that Clausewitz's understanding of principles needing to be simple and adaptable is actually a similarity with standard just war thought. For example, if one looks towards the standard principles of *jus ad bellum* they are in fact quite simple and have been adapted over the centuries to relate to many differing types of conflict, ranging from tribes attacking the Roman Empire to the American empire attacking places such as Vietnam. One of the aims of the principles of *jus post bellum* is, by keeping the principles simple and adaptable, that they should not fade over time and, like the just war tradition, remain relevant for many generations. As the just war principles of *jus ad bellum* and *jus in bello* have adapted and evolved in accord with the ever changing nature of war, so too should *jus post bellum*.

In addition, by viewing *jus post bellum* principles in this educational way, it allows the 'commander of peace' to deal with all the intricacies of a war termination, rather than being bound by a list of absolute rules which is next to impossible to apply to the ever changing situation of a war's ending.⁶⁰ Furthermore, it also prevents the principles of *jus post bellum* being used as nothing other than a mere checklist telling people where they went wrong. It moves *jus post bellum*, as an important part of the just war tradition, away from a largely negative framework into a positive guide. Importantly the purpose of this thesis is not to simply create a check list for critics to point out where certain war terminations went wrong. While reviewing the actions of those in positions of power, when it comes to warfare and war termination, is still an important duty of *jus post bellum* that role in isolation does not serve justice in any practical sense at all. Instead, by utilising these concepts of *jus post bellum*, in this fluid and educational manner, they can still be used by outsiders evaluating the justice of a war termination, but can also be used by those people actually involved within the decision making process in the ending of wars.

Furthermore, it is crucial that these 'commanders of peace' should have more to their education than a mere understanding of the principles of *jus post bellum*. In order

⁶⁰ DiMeglio (2005), p162. DiMeglio explains in one sentence that the principles of *jus post bellum* 'should not be viewed as a mathematical formula...but rather, as a tool to stimulate thought'. However he does not investigate this thought further.

to be a successful ‘commander of peace’, and achieve a just war termination, knowledge and education of *jus post bellum* will never be sufficient on its own. This wisdom, in order to manifest in any kind of productive and practical way, must go hand in hand with what I will describe as ‘situational awareness’. In the same way that a ‘commander of war’ needs to understand not only the overarching principles of strategy but also his troops, the terrain, his enemy, the view of other nations, relations with other allies and adversaries, home security, the media and more. The ‘commander of peace’, as well as being aware of the principles of *jus post bellum*, needs to be well-informed and aware of the specifics of that particular situation when making the transition from a state of war back to a state of peace. For example, the ‘commander of the peace’ must be educated and have practical knowledge of the defeated nation’s history, of their social practices and customs, of their religion and beliefs, of the broader political situation, of his own troops on the ground and of his home situation. In short both a national and international situational knowledge is required. This should also extend to the way that the individual principles are actually put into action. For instance, when setting up war crimes trials, they are introduced in such a way that will work given the type of conflict and the countries in question.⁶¹

One need but look at the current situation in Iraq where commentators have stated that the Coalition forces have encountered numerous problems in the war termination phase because they simply did not understand the country, people and religious teachings of the defeated nation. In order for a war termination to be just and, importantly, for it to be effective, then this understanding is of vital importance. Clausewitz describes such knowledge as essential within ‘On War’ (although he does not use the term ‘situational awareness’). Clausewitz explains that ‘A commander-in-chief need not be a learned historian...but he must be familiar with the higher affairs of state and its innate policies; he must know current issues, questions under consideration, the leading personalities, and be able to form sound judgements.’⁶²

As an example, to demonstrate the requirement of ‘situational awareness’, one need but look at all of the war terminations that have resulted in abject failure due to a lack of ‘situational awareness’. One such example of a failed war termination, due to a distinct lack of ‘situational awareness’, occurred in Afghanistan. I refer not to the recent invasion by British and American troops (although that could, and has been called into question on similar grounds) but to the events of 1839.

⁶¹ Mani (2002), p110. Mani discusses this in relation to Rwanda.

⁶² Clausewitz (1976), p.146

The commander for that war and war termination was William Macnaghten, the British former chief secretary of Calcutta, who in August 1839 led a British army into Kabul. In order to stabilise the post war situation, and the occupation of Afghanistan, Macnaghten ordered the army to remain in Kabul as an occupying security force. To appease the locals he introduced ‘strange imported pleasures’⁶³ such as ‘drinking wine, attending theatres and horse racing’.⁶⁴ Despite being informed otherwise, Macnaghten was convinced that ‘once they felt the benefit of English civilization, they would be more grateful’.⁶⁵ In fact, due to this lack of understanding in relation to the Afghan people, combined with the continued presence of the British army, a hatred of the British set in amongst the proud and culturally independent Afghan locals.

This situation was made worse by the fact that ‘Macnaghten decided to allow the officers and soldiers of this increasingly long standing occupying force to send for their families’. Macnaghten’s plan was that bringing British women and children to Kabul would have a ‘humanizing, civilising effect’⁶⁶ on the Afghani people. In fact the opposite effect occurred and the local Afghans saw the British no longer as a temporary occupying power but as a nation planning an unending occupation and total rule of Afghanistan. This added to the growing discord and hatred of all things British and their colonial rule. It was for these reasons, alongside various other economic and military actions of Macnaghten,⁶⁷ that during December 1841 Macnaghten was killed by the Afghan people and his body paraded through the streets of Kabul. Following Macnaghten’s death the British occupation of Kabul was routed and had to retreat during the middle of a cold winter. The only recorded survivor of the withdrawal was Dr. William Brydon who survived the snow and arrived at the British outpost in Jalalabad on 13th January 1842.⁶⁸

This example of the British forces, and of Macnaghten, in Afghanistan demonstrates that a war termination attempted without any kind of ‘situational awareness’ can have disastrous consequences. While this example is not related to the principles of *jus post bellum* and the British invasion certainly was not ‘just’ under most understandings of *jus ad bellum*, it does show the inherent dangers and difficulties

⁶³ Greene (2006), p.167

⁶⁴ Greene (2006), p.167

⁶⁵ Greene (2006), p.167

⁶⁶ Greene (2006), p.167

⁶⁷ For further information read Greene (2006)

⁶⁸ Greene (2006), pp.166-169. The majority of facts related to this case study and Macnaghten come from this text.

within the arena of war termination if one enters it without any kind of situational knowledge or education. Macnaghten's problem, as quite aptly put by Greene, was that 'he projected onto the Afghans the values of an Englishman, which he mistakenly assumed were universal. Blinded by narcissism, he misread every signal along the way.'⁶⁹ You would think that following the deaths of approximately 16,500 British soldiers and followers in Afghanistan in 1842⁷⁰ that we would learn something wouldn't you?

What has to be avoided in war termination, and the application of *jus post bellum*, is the same potentially catastrophic situation. In the same way that a successful 'commander of war' has to be aware of his situation so too does a commander involved in war termination. In the termination of a war it is certainly not inconceivable that, even though a 'commander of peace' may be guided by just intentions and the principles of *jus post bellum*, such principles could be practically implemented in such a way as they offend local people, cause uprising and dissent ending in unmitigated and dismal failure. Following on from such a response it would also not be inconceivable that if an attempted just peace failed due to uprising and dissent of the defeated nation, it might not be understood as a lack of 'situational awareness' but instead the victorious nation might blame the defeated state and then abandon completely the struggle for a just war termination. It is for these reasons that, as explained above, understanding of *jus post bellum* of itself is never adequate and that a 'commander of the peace' should always be educated and supported by an understanding of 'situational awareness' as well.

'Jus Post Bellum as an Education for the Commanders of the Peace'

By drawing on Clausewitz's knowledge of war, the principles of *jus post bellum* are to be understood as an educational tool rather than as a list of absolute rules. For this reason, no principle of *jus post bellum* will ever be more valued or more important than any other. Furthermore, by viewing *jus post bellum* as a guide to education rather than a rigid list of rules, no principle of *jus post bellum* will ever need to be 'sacrificed' to fulfil any of the others. In a sense, by viewing *jus post bellum* principles through the lens of Clausewitz's understanding, it removes the need for these questions altogether as the questions only become relevant if the principles of *jus post bellum* are used in a fixed manner. It also enables *jus post bellum* to be utilised specifically by those actually involved in the termination of wars, rather than restricting its use to moral critics who

⁶⁹ Greene (2006), p.168

⁷⁰ Greene (2006), p.168

might want to use *jus post bellum* as a type of moral check list. What is more by drawing upon the importance that Clausewitz placed on the ‘commanders of war’ it demonstrated the need to understand the role of the ‘commander of peace’ in the war termination process. This is a major departure from all current *jus post bellum* writing which focuses exclusively on the principles and not on the moral agents using the principles. This insight, in turn, leads to an understanding that in order for a just war termination to be successful the principles of *jus post bellum* need to be twinned with what was described as ‘situational awareness’, thus responding to the last question of the third set which asked whether *jus post bellum* was sufficient of its own terms or whether it needed to be combined with any other methods or thoughts.

So, from the unlikely source of Clausewitz, these deeper philosophical issues have been answered providing a central ‘hub’ to the principle of *jus post bellum* presented in Chapter II. It provides a meaningful and pragmatic way of using this philosophical framework and moving *jus post bellum* from a negative list into a positive guide. The next step within this thesis will be to investigate whether this understanding of the principles and practice of *jus post bellum* can apply to the differing backdrops of wars described within Chapter II.

Chapter V – Jus Post Bellum and the Images of Conflict

'The Backdrop of War and Humanitarian Intervention'

On the first page of Chapter I, I echoed, and indeed supported, Freedman's thought that the phenomenon of warfare has taken place since 'the beginning of recorded time'.¹ I also explained that warfare has taken various guises and forms throughout history. However, despite these initial observations, within Chapter II a framework of *jus post bellum* was developed designed specifically to terminate one basic case of just war, an interstate war of self defence with one just nation having defended itself from an aggressive state.² Yet it should not go unnoticed that this is definitely not the only type of conflict that can occur in today's diverse and ever changing world. A critical reader might even suggest that, in today's modern political climate, interstate war is becoming increasingly less likely.³

I could also be accused of selecting a relatively easy, or straight forward, paradigm case for creating a set of *jus post bellum* principles as it involves a simple scenario and only two leading protagonists. I would not dispute such a claim as this 'basic example of just war'⁴ was chosen to outline certain fundamental war termination principles, so the fact that it is an unlikely case is not of overwhelming importance (although I would make a counter claim suggesting that interstate wars still occur frequently). The fact that it was a straightforward case is actually a deliberate choice to aid clarity in the early stages of this work. Furthermore, as explained during Chapter II, by beginning with a list of principles related to an interstate war of self defence and then applying them to other types of warfare actually mirrors the way that the just war tradition has developed over time.

It is clear that just war thinkers do not restrict themselves to this standard case and that, as the beast of war can appear in various forms, the just war tradition is being applied to these other scenarios or 'backdrops'. As claimed above it should not be ignored that interstate wars do still occur, one need but look at the cases of the Iran and Iraq war, of Ethiopia and Eritrea, of the conflict between Israel and the Arab nations and

¹ Freedman (1994), p.3

² Bass (2004), p.407

³ Munkler (2002), p.1. Munkler makes the claim in his text that warfare has gradually changed appearance over the years. He states that 'The classical model of war between states... appears to have been discontinued'. Also mentioned by Rigby (2005), p.179 'inter-state wars continue to represent a threat to peace in the world, it has to be acknowledged that over the last ten to fifteen years intra-state wars have been a more common occurrence'.

⁴ Bass (2004), p.407

the India and Pakistan war over Kashmir. However, other types of conflict and tensions are becoming prominent and are also being investigated by just war thinkers.⁵

For example just war commentators are examining civil wars, guerrilla wars, border disputes like that between Nigeria and Cameroon, humanitarian interventions, the situation in Northern Ireland, the cold war, police actions, and so called low intensity wars. In addition, many of the same commentators are studying the ‘war on terror’ and terrorism following the tragic events of September 11th.⁶ In fact the issue as to whether the just war tradition can be applicable to asymmetric war and the ‘war on terror’ is a topical debate amongst just war thinkers, again demonstrating that the tradition is ever changing and a product of its own time. It is clear to see that many just war commentators have engaged with, and applied just war norms and principles to, many of these different types of conflict.⁷ In fact directly related to war termination Rigby’s work on forgiveness in *jus post bellum* relates primarily to post civil wars.⁸

As an interesting aside, there is a debate as to whether many of the conflicts described above can actually be classified as a ‘war’. For example, the famous just war scholar Alberico Gentili actually wrote several chapters on the definition of what could be counted as war and therefore relate to ‘just war’ tradition. Gentili concluded that war was ‘a formal contest between sovereign equals’⁹ and detailed that war was not ‘a broil, a fight, [or] the hostility of private individuals’.¹⁰ However, it is clear that certain conflicts named above are definitely not a ‘contest between sovereign equals’.¹¹ The question then could be raised that, as some of these conflicts do not fall in the boundaries of war, from a Gentili just war stance anyway, should the just war tradition be utilised to judge and evaluate them?

However what falls within the boundaries of the just war tradition is a separate philosophical issue to *jus post bellum*, and one that is being tackled by many contemporary writers; it is therefore not the place of this thesis to investigate such matters in depth. What is important to note is that despite the fact that certain conflicts may not fall into Gentili’s rigid description of war, many just war thinkers are in fact analysing such conflicts through a just war lens.

⁵ Orend (2006), pp. 68-105. In fact Orend writes an entire chapter about Non-Classical just wars.

⁶ Please see Eshtain (2003) *Just War Against Terror* and Falk (2002) *The Great Terror War*.

⁷ Rodin (2006), p.241

⁸ Rigby (2005), p.177

⁹ Reichberg, Syse and Begby (2006), p.371

¹⁰ Reichberg, Syse and Begby (2006), p.372

¹¹ Reichberg, Syse and Begby (2006), p.371

As Chapter two's understanding of *jus post bellum* is heavily drawn from standard just war thought and is an evolution of the same tradition, it would be prudent to investigate whether these principles of *jus post bellum* can also be applied to other backdrops. As this thesis has been written for a practical end it needs to discover if the principles developed within Chapter II are sufficient to cover a variety of war termination cases, or whether the principles need to be adapted further for each different 'backdrop' of war. At a more basic level this thesis needs to determine whether it is even possible for *jus post bellum* principles to be applied to certain types of conflict.

Additionally, this thesis needs to investigate Godfrey's war termination position that 'It is difficult- and possibly unwise- to draw up a general list of criteria for the *jus post bellum*, since situations in post conflict states may differ so widely'.¹² By analysing the principles outlined in Chapter II in relation to different backdrops, this chapter will investigate whether a 'general list of criteria'¹³ can be relevant and useful or whether a much more fluid account of *jus post bellum* is required as suggested by Godfrey.

It must also be explained that the task of this particular chapter is not to analyse in-depth whether the standard elements of *jus ad bellum* and *jus in bello* are applicable to these other types of conflict. Again this task has been taken on by many different thinkers. This subsection will restrict its investigation to the principles of *jus post bellum*. This is central to note because, clearly, there will be some degree of overlap where the strands of the tradition coincide.

Furthermore, by performing this exercise, it will flesh out, and give greater depth to, the 'sketch' of the principles set out in Chapter II. By investigating *jus post bellum* in relation to a variety of backdrops and cases it will, in a sense, give greater substance to the individual principles.

Unfortunately it would be impractical in one chapter to investigate every type of conflict listed above (perhaps this should be the subject for later work). Therefore this chapter will focus on one of the most topical backdrops to war from a *jus post bellum* perspective; War termination and Humanitarian Intervention.

¹² Godfrey (2006), p.8. A similar point is also made briefly by Pendergast (2004), p.60.

¹³ Godfrey (2006), p.8. Williams and Caldwell (2006), p.315

War Termination and Humanitarian Intervention

'What is Humanitarian Intervention?'

In order to fully evaluate and discuss this issue, the first step in this chapter will be to briefly set out exactly what humanitarian intervention is and how it is different from our standard case of an interstate war of self defence. The obvious starting point for such an introduction would be a definition of humanitarian intervention. However, as an interesting fact, no strict legal definition of humanitarian intervention actually exists.¹⁴

As this thesis is approaching this issue from a just war perspective, this subsection will draw on an excellent definition of humanitarian intervention developed by the National Conference of Catholic Bishops. The Bishops explained that humanitarian intervention is 'the forceful, direct intervention by one or more states or international organizations in the internal affairs of other states for essentially humanitarian purposes'.¹⁵ Furthermore the Bishops went on to explain this 'humanitarian purpose' as 'to protect human life and basic human rights [from] internal chaos, repression and widespread loss of life'.¹⁶ Such interventions have, in recent years, not been an unfamiliar event, for example one need but look at the events in Haiti, Bosnia, Liberia, Iraq, Somalia, Sudan and Burundi.¹⁷ In fact some of these cases will be used to clarify and demonstrate principles of *jus post bellum*.

It is immediately obvious that there are several key differences between a war of self defence and a case of humanitarian intervention. These differences are all essential to note when discussing war termination issues. One of the important factors which distinguish humanitarian intervention from our paradigm case is that, as stated by Orend, you intervene when 'a country has not committed aggression against another country, yet within which massive human rights violations are occurring'.¹⁸ In many respects a standard just war responds to the 'external' affairs of a state where as humanitarian intervention responds to the 'internal affairs'.¹⁹ This stirs up major questions in relation to the principles of *jus ad bellum* and will need to be addressed in relation to *jus post bellum* as well.

¹⁴ Gutman and Rieff (1999), p.181

¹⁵ Johnson (1999), p.92

¹⁶ Johnson (1999), p.92

¹⁷ Johnson (1999), p.93

¹⁸ Orend (2000), p.5

¹⁹ Orend (2006), p.91 Discusses the fact that you respond to 'internal aggression'.

A second important factor is that in our paradigm case, of war against an aggressive invader, a state is defending its own nation's interest and country; as such has little choice in the matter. In a sense, responsibility is forced upon the defending side by an invading army. In the case of humanitarian intervention this is not the situation and it is more akin to a 'war of choice'.²⁰ In order to 'protect human life and basic human rights'²¹ as a just nation; an active and deliberate choice is made to take responsibility for the events that are occurring. This will also have implications when applying *jus post bellum* principles, especially in relation to the principle *Ensuring the Protection and Safety of Non-Combatants*.

When involved in a humanitarian intervention one of the main concerns that is often brought up when discussing *jus ad bellum* is the fact that, under the banner of justice, a state has violated the sovereignty of another state through a 'forceful, direct intervention'.²² The question is raised as to whether such a violation of national borders and boundaries should be allowed, especially when the nation in question has not attacked or threatened your state in any way, or made any internationally or 'external' aggressive moves?

Can such a forceful intervention ever be justified? Or, to provide a short case study, were the hundreds of thousands of Australians who protested in September 1999 wrong and unjust when they called for 'the introduction of an international peace-keeping force into East Timor to protect the East Timorese from the Indonesian army-backed militia who were rampaging through Dili and the countryside killing, wounding, raping and implementing a scorched-earth policy'.²³

As stated above, this thesis will not engage in depth with this question but several key positions need to be presented. Firstly, some just war commentators suggest that a state's sovereignty comes second place to human rights and human life. For example, Walzer 'is willing to countenance armed humanitarian intervention only in cases where the state in question is engaged in widespread human rights violations'.²⁴ Secondly, other thinkers such as Ramsey take a Liberal Cosmopolitan²⁵ position and

²⁰ Walzer (2004), p.167. Walzer actually uses this phrase to discuss Iraq and when a war is 'politically... unnecessary'. This phrase has been adapted in this section to relate to humanitarian intervention.

²¹ Johnson (1999), p.92

²² Johnson (1999), p.92

²³ Orford (2003), p.1

²⁴ Orend (2000), p.106

²⁵ Bellamy and Williams (2006), p.148

deal with the problem of violating sovereignty by drawing primarily from the just war writings of both Augustine and Aquinas. He explains that ‘sovereignty-that is, political authority- is justified only insofar as it serves the common good of the people governed’.²⁶ Clearly, in the case of humanitarian intervention, this is no longer the case and, as such, the country’s sovereignty is no longer valid. Additionally some just war scholars, who have studied Augustine in detail, could even make the claim that, for Augustine, defending a victimised third party is of greater justice than defending oneself. As stated in *The Ethics of War* ‘Augustine’s praise of forceful action in defence of others... would many centuries later provide a foundation for military action in support of innocent third parties so called humanitarian intervention’.²⁷

There are a multitude of academic journals and papers that deal with this difficult subject. However, whilst some of the above issues will relate to war termination, the issues of state sovereignty and just cause is far too large a question to be adequately dealt with in passing. In order to retain focus on war termination, whilst these questions of sovereignty need to be kept in mind when discussing *jus post bellum* issues, this chapter will assume the same generic position as Augustine, Ramsey and Walzer, and build a case for war termination based upon the possibility that it can, in certain circumstances, be permissible to engage in a war of humanitarian intervention with a just cause. In a nutshell, this thesis will assume that it is possible for a just humanitarian intervention that can follow the rules of *jus in bello* and, importantly, of *jus ad bellum*. However, in order for the principles of *jus post bellum* to remain independent from *jus ad bellum* in the same way as an interstate war, it must be possible to apply the principles of war termination even if the humanitarian intervention began for unjust reasons or was fought unjustly.

Humanitarian Intervention and the Principles of Jus Post Bellum

The next step in this section will be to re-examine the *jus post bellum* principles of immediate war termination. This exercise will see if they are still as relevant and useful in relation to the termination of a humanitarian intervention.

It is clear that certain principles of *jus post bellum* easily apply to cases of humanitarian intervention. For instance, the *jus post bellum* principle of *Ensuring the Protection and Safety of Non-Combatants* is a prime and obvious exemplar. It was

²⁶ Johnson (1999), pp.94-95

²⁷ Reichberg, Syse and Begby (2006), p.75 and Johnson (1999), p.75

detailed prior, that under the guidance of *jus in bello*, certain acts were prohibited as they breached the strictures of non-combatant immunity and proportionality. It was then explained that, in the same way that it was prohibited to break those rules during the war, the same notion must also apply to the war's termination. If you can't kill civilians, rape and pillage during a war then you should not be allowed to perform these kinds of acts in the war's termination and aftermath either 'directly' or 'indirectly'.²⁸ If, during a war, certain rights are extended to people, then those rights need to be respected as much in the war termination phase as when the combat was occurring. The rights do not disappear when a cease fire is called. Chapter II then went on to stress that not only should a victorious power be careful not to violate the safety and security of a defeated people but, in order to conclude a war justly, that they had a level of responsibility to help the defeated nation rebuild and restructure.²⁹

Whilst it was argued that, following a war of self defence, such actions were necessary, it is plain to see that, at the end of a humanitarian intervention, following this principle is absolutely pivotal. For the simple reason that it is the war termination phase, and the protection of non-combatants and innocents that justified the start of the conflict, through the rules of *jus ad bellum*, in the first place. If you have intervened in a country to stop genocide, prevent starvation, as a response to ethnic cleansing or to stop wide scale suffering, then *Ensuring the Protection and Safety of Non-Combatants* must form an essential part of any war termination plan. If you have entered a war for humanitarian reasons, then you have a moral responsibility you cannot discard in the war's aftermath. As stated neatly by Walzer 'Imagine a humanitarian intervention that ends with the massacres stopped and the murderous regime overthrown; but the country is devastated, the economy in ruins, the people hungry and afraid... The forces that intervened did well, but they are not finished'.³⁰

As also explained clearly by Bass 'Reconstruction is the final piece of business of a humanitarian intervention'.³¹ Whilst I disagreed with Bass over certain key points within the previous chapters, on this issue Walzer, Bass and this thesis clearly concur. If your justification and motivation for a war is humanitarian grounds, then you have a duty to fulfil the requirements of this subsection in order to validate your initial reasons

²⁸ Please see terms from Chapter II.

²⁹ Please see Chapter II and *Ensuring the Protection and Safety of Non-Combatants and Innocents*. This thought is listed in passing by Hayden (2005), p.169. This point is also made by Himes (2005) at the Fordham University conference 'The Ethics of Exit'.

³⁰ Walzer (2004), p.21 and p.149. Also see Godfrey (2006), p.4

³¹ Bass (2004), p.398 and Godfrey (2006), p.5

for going to war.³² Bass goes on to rightly make the point that ‘if a state has satisfied the demands of *jus ad bellum* and *jus in bello*... but did not reconstruct the genocidal country afterwards, then a strong case can be made that the justice of the overall effort would be compromised’.³³ If you do not follow the principle *Ensuring the Protection and Safety of Non-Combatants and Innocents* and fail to help rebuild, then you have been involved in an ‘armed forceful intervention’ and not a ‘humanitarian’ one.

It was explained within Chapter II that a victorious state could breach this principle ‘directly’. For example, the victorious side could carry out punishment bombings; destroy crucial infrastructure or other related activities. In addition, it was also explained that a victorious state could breach this principle ‘indirectly’ by imposing harsh reparation payments or sanctions that in turn had an adverse and harmful effect on innocents and non-combatants. Both of these types of breach remain relevant given this backdrop.

It should be noted that this subsection will also serve to expand upon the principles set out in Chapter II as well as to see if its principles fit with this type of ‘backdrop’. As well as being able to violate this principle ‘directly’ and ‘indirectly’, it seems evident that a victorious power is also able to rebuild and help restructure in both these ways. To explain further, it is clear that, in order to help rebuild following a war of humanitarian intervention, the just winning side could aid through rebuilding bridges, digging wells, reconstructing power stations, providing food and medical aid etc.³⁴ These are all examples of ‘direct’ methods of helping a country rebuild in order to *Ensuring the Protection and Safety of Non-Combatants and Innocents*.

However, to help a country rebuild, this will often have to be combined with other ‘indirect’ actions which are not so commonly discussed, which revolve around helping the people of the country through actions which do not involve physical rebuilding. The reason that this is discussed here is that this ‘indirect’ reconstruction is of special importance to cases of humanitarian intervention. As stated by Robertson, in relation to these types of humanitarian case ‘financial arrangements and rebuilding physical infrastructure are still important, but more emphasis needs to be given to

³² A similar point is also made by Fisher (2007), p.115

³³ Bass (2004), p.400. This position is also made explicit in the work of Godfrey (2006), p.5. Godfrey states that ‘If, say, a group of people are liberated from a brutal dictatorship but are then left to fend for themselves in a state that has its infrastructure ravaged by war and is completely unable to support itself...this would not seem to be a legitimate conclusion to a war’.

³⁴ This point is also made by Elshain (2005) at the Fordham University conference ‘The Ethics of Exit’.

people, especially their social and psychological needs'.³⁵ Robertson rightly suggests 'counselling, vocational training and job opportunities'.³⁶ This seems especially important, as quite often, former soldiers are still armed but without a war to fight. In such cases, these groups of dangerous men, if they are not given the opportunity to do something else, could easily begin fighting or become roaming bandit groups. In other cases, if there is a rebellion or resistance movement to the just intervening side, then these men could quite likely be recruited.³⁷ So, in order to successfully aid rebuilding, both 'direct' and 'indirect' actions need to be considered.

The Aftermath of the Humanitarian Intervention in Kosovo

It has to be recognised, however, that sadly, in many cases of humanitarian intervention and despite the loud speeches of 'humanitarian cause' that justified the fighting, quite often this is not backed up by proper action within the war termination. As a case study this thesis will turn to Godfrey's detailed paper which looked into the aftermath of the NATO intervention in Kosovo. This section will pick out two points of Godfrey's analysis that are pertinent.

Firstly, it was explained within Chapter II that a victorious nation, in order to conclude the war justly, had to ensure that it did not violate and kill the people of the defeated nation. It was suggested that a key aspect involved the clearing up, and removal of, dangerous munitions used within the fighting.³⁸ However, in the case of Kosovo 'The US government refused to allow American weapons disposal experts to remove unexploded cluster bombs'.³⁹ Instead, the job was palmed over to other UN civilian teams who were reported as being 'underfunded'.⁴⁰ So this case demonstrates that the principle outlined previously is as relevant as in an interstate war but was failed to be carried out properly in Kosovo.

Secondly, Godfrey demonstrates that, following the intervention in Kosovo 1999, the parties involved failed to provide adequate funds in order to carry out the requirements outlined under this thesis principle of *Ensuring the Protection and Safety*

³⁵ Barnhizer (2001), p.81. Robertson in this text does not use the terms 'direct' or 'indirect' but does provide details as to what this thesis would say is an 'indirect' action.

³⁶ Barnhizer (2001), p.81

³⁷ For examples of this occurring in Iraq please see Meierhenrich (2006), pp.115-117

³⁸ Please see Chapter II and Iasiello (2004), pp.7-8. This point was also made briefly by Himes (2005) conference on Jus Post-Bellum.

³⁹ Godfrey (2006), p.19

⁴⁰ Godfrey (2006), p.19

of Non-Combatants. As Godfrey explains ‘One consistent theme running through much of the literature on the immediate aftermath of the Kosovo intervention concerns the insufficient resources given to UNMIK by the international community’.⁴¹ This raises the important point that, without appropriate funds, these direct and indirect methods of rebuilding cannot be carried out.⁴²

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Additionally, there are important expansions of *Ensuring the Protection and Safety of Non-Combatants* that need to be made in this section on humanitarian intervention, focusing specifically on the issue of Occupation and regime change.

When discussing war termination and a war of self defence it was explained that occupation and forcible regime change was to be avoided in all but the most extreme and difficult circumstances. It was also demonstrated that this was in line with both contemporary *jus post bellum* musings and with classical just war writing as found in the work of Vitoria.⁴³ In addition, the section expanded the point and explained that such occupation could only be morally permissible for certain explicit reasons. The reason outlined in depth within Chapter II was to ‘*Secure Freedom from Strife*’ and to prevent another outbreak of war.

It was also stated that occupation could be legitimate if its purpose was *Ensuring the Protection and Safety of Non-Combatants*. It is this point that this subsection will investigate further. Whilst this important point about occupation is being made in relation to humanitarian intervention, in certain cases it could also relate to interstate wars, such as our basic example of Chapter II, if wide scale humanitarian disaster is occurring.⁴⁴ For clarity, however, this legitimate reason for occupation will be set out below as it more readily applies to this type of ‘backdrop’.

To put it bluntly, an intervening state would be justified in occupying a country if what existed was something akin to a Hobbesian state of nature, where the life of man

⁴¹ Godfrey (2006), p.17 and p.21. UNMIK is the UN-organised civilian administration.

⁴² Walzer (2004), p.20

⁴³ Please see Chapter II *Securing Freedom from Strife* and also Reichberg, Syse and Begby (2006), p.331

⁴⁴ Walzer (2004), p.149. Walzer also makes this point during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, Transcript, p.15, Walzer (2000), p.2 and Walzer (2004), p.19. Please also see Orend (2000), p.142, Meierhenrich (2006), p.100

was ‘nasty, brutish, and short’.⁴⁵ If massive loss of life is occurring with death, famine and, perhaps, organised ethnic cleansing, then in order to *Ensure the Protection and Safety of Non-Combatants* the intervening state would be justified in occupying a country. As explained by Walzer ‘humanitarian interventions to stop massacre and ethnic cleansing can also legitimately result in the installation of a new regime’.⁴⁶ This would be permissible for two distinct reasons. Firstly, to attempt to prevent these actions from occurring and, secondly, to take steps to reconstruct and rebuild the collapsing state.

Importantly it should be noted that, within the section *Securing Freedom from Strife*, it was explained, in some depth, that occupation should not occur following every war of self defence. In fact it was suggested that many other less extreme courses of action should be utilised before full scale occupation and regime change were considered. In many ways the section applied the just war notion of ‘Last resort’ to occupation.

It was decided that a victorious state should only occupy and change a regime to *Secure freedom from strife* in the most extreme of situations. However, it seems that, following a case of humanitarian intervention, occupation and regime change would be much more likely and, indeed, occur in the vast majority of cases. Now this is not because this subsection has changed its direction or holds that, in relation to *Ensuring the Protection and Safety of Non-Combatants*, a victorious state should occupy more readily.⁴⁷ In fact this thesis would hold exactly the same line that, for both the reasons of *Securing Freedom from Strife* and *Ensuring the Protection and Safety of Non-Combatants*, a victorious state should only occupy and forcibly change a regime in the most extreme of circumstances. This position stands in stark contrast to Arend who explains that a ‘humanitarian intervention must involve no regime change and no prolonged military presence by the intervening state’.⁴⁸ This thesis will now demonstrate why, given the backdrop of a humanitarian intervention, occupation may be ethically more acceptable.

⁴⁵ Honderich (1995), p.369

⁴⁶ Walzer (2004), p.149. Walzer also makes this point during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, Transcript, p.15, Walzer (2000), p.2 and Walzer (2004), p.19. Please also see Orend (2000), p.142, Meierhenrich (2006), p.100

⁴⁷ Walzer (2004), p.149

⁴⁸ Godfrey (2006), p.4

In relation to a war of self defence it would not be difficult to image a case where a victorious nation could *Secure Freedom from Strife* without needing to occupy a state and change a regime (this was outlined within Chapter II). Moreover, the same could also be true when *Ensuring the Protection and Safety of Non-Combatants and Innocents*. For instance, following a limited war of self defence, a country could withdraw its troops making sure that they did not loot, pillage and destroy along the way. In addition, the victorious power could remove any dangerous munitions and return prisoners of war as it withdraws. Furthermore the victorious power could then also help the rebuilding and recovery process by sending aid convoys and transporting assistance without having to invade and rule. To summarise, following a limited war of self defence a victorious nation could fulfil its obligation to *Ensure the Protection and Safety of Non-Combatants* without the need to occupy a country in every case.

The difference is that, in the case of a just humanitarian intervention, the situation, by its very nature, will be an extreme one. As explained by the Bishops, a humanitarian intervention has to involve ‘internal chaos, repression and widespread loss of life’.⁴⁹ So, in the case of a war of self defence, full scale occupation was to be avoided and only carried out if the potential for future aggression reached an extreme level. In the case of a humanitarian intervention, by its very nature, an ‘extreme’ has already occurred and simply withdrawing following the principle of *Ensuring the safety and security of Non-combatants* will not be sufficient. Such occupation and regime change should more readily take place to save lives and help rebuild in cases of humanitarian intervention. This, in certain ways, runs parallel to the thoughts of Walzer who explains in his brief writing about *jus post bellum* that, in cases of humanitarian intervention, regime change and occupation are likely to occur ‘because...the war is from the beginning an effort to change the regime that is responsible for the inhumanity’.⁵⁰

Having focused on a principle of *jus post bellum* that can correspond, without too much difficulty, to cases of humanitarian intervention this section will now turn its attention to a principle that does not fit quite so easily, the principle of *Securing Freedom from Strife*. It was explained in Chapter II that, in order for a war termination to be just, peace needed to be secured.⁵¹ That chapter then suggested that certain steps needed to be taken by the victorious power, and the international community, to ensure

⁴⁹ Johnson (1999), p.92

⁵⁰ Walzer (2004), p.19. This point is also made by Fisher (2007), p.115 who states that ‘where the international community intervenes in a failed state or to stop a government oppressing its own people, some political reconstitution, including regime change, is likely to be necessary’.

⁵¹ This is stressed in relation to Humanitarian Intervention by Godfrey (2006), p.6

that once one war was stopped another war didn't immediately start again. In essence, this principle focused on the potential 'external' actions of a once aggressive nation state.

However, if this principle were to be applied in exactly the same way as in Chapter II, then it will have little to offer in the case of humanitarian intervention. For the reason that a nation that requires humanitarian intervention may not, in every case, be in a fit state to launch any kind of aggressive external invasion. Furthermore, in many standard cases of humanitarian intervention there has been no 'external' aggressive behaviour in the first place as the just intervening side is responding to 'internal' aggression rather than, say, an assault.⁵² So if this principle continues to relate to 'external' peace then its use seems inherently limited. Yet in the case of humanitarian intervention the intervening state is responding to 'internal' aggression rather than 'external' aggression. Therefore it seems only logical to modify this principle of *Securing Freedom from Strife* so that it relates to 'internal' rather than 'external' conflict. When this action is performed, with this modification, it makes this principle a great deal more relevant to this type of 'backdrop'.

To clarify, it would be unjust, in war termination, to stop ethnic cleansing and help rebuild but pull out and leave things in such a way that ethnic cleansing and humanitarian disaster could erupt again. Godfrey makes an important point which this thesis would agree with that 'if a humanitarian war is successful in averting an immediate crisis, but fighting then resumes-whether between the same set of actors or different ones- the moment the outside force leaves, it is hard to argue that this war has been successful'.⁵³

However it should be noted that many of the actions proposed in Chapter II, to be undertaken or considered prior to occupation, will again not be so relevant to *Secure Freedom from Strife* in the case of a humanitarian intervention. For example, it was suggested that, to *secure Freedom from Strife*, one potential activity, dependant on the scale of aggression, was disarmament and demobilization.⁵⁴ For Bass this is clearly an

⁵² Orend (2006), p.91 Discusses the fact that you respond to 'internal aggression'

⁵³ Godfrey (2006), p.6. This point is also made by Bass (2004), p.386, Orend (1999), p.266 and Walzer (2004), p.92

⁵⁴ Please see Chapter II and Orend (2000), p.139, Orend (2000), p.141 and Orend (2002), p.49. Orend also explains how Walzer lists this point but does not develop it. This point is also made by Bosanquet (2007), p.13 and briefly by Stahn (2005), p.6 and Thurley (2007), p.2 and Walzer (2004), p.92

important aspect of *jus post bellum* as he stresses ‘If a state wages war to remove a genocidal regime, but then leaves the conquered country awash with weapons... then it may relinquish by its post-war actions the justice it might otherwise have claimed’.⁵⁵ However whilst that action may potentially *Secure Freedom from Strife* in a war of self defence, such actions might not be so effective in cases of humanitarian intervention. For instance, in many cases, such as Rwanda, massive amounts of killings did not take place following the use of organised military weaponry but by bands of men armed with machetes. By taking away military weapons it might potentially slow down the killing, but it might not fully stop it.

Other alternatives to *Secure Freedom from Strife* were also suggested within Chapter II. For instance, it was suggested that, in an interstate war, the victorious just state could create a buffer zone which separated them from the aggressive and potentially hostile nation.⁵⁶ However, whilst that might be a potential course of action to take in response to external inter state aggression, its use may be limited within cases of humanitarian intervention. This is because in many cases of humanitarian crisis, the conflicting belligerents are not separated into two easy to identify geographical locations. In fact many live alongside one other in the same place. In some cases it was this close proximity that caused the tension in the first place. As an example of this one need but turn back to the case of Rwanda where, as explained by Drumbl ‘In today’s Rwanda... Hutu and Tutsi live geographically intermingled and in close economic interdependence, sharing the same language, religion, and lifestyle’.⁵⁷ Importantly, that is not to say that ‘buffer zones’ will always be irrelevant and in certain cases they might actually be appropriate, especially in cases where the belligerents can be separated or ‘safe zones’ could be created. However it should be recognised that in many cases, like that of Rwanda, this notion will not be of direct relevance.

Another suggestion that was set out within Chapter II was that, in order to *Secure Freedom from Strife*, a victorious state could secure its own borders.⁵⁸ Again this has little relevance to a humanitarian intervention because, firstly, the country in question may not be launching aggressive moves at your country and, secondly, and perhaps more importantly, you may not be neighbours!

⁵⁵ Bass (2004), p.386 Also supported by Rigby (2005), p.181

⁵⁶ Please see Chapter II and Orend (1999), p.270, Orend (2000), p.141, Orend (2000), p.228 Orend (2002), p.49 and Orend (2006), p.169. However his point is only briefly touched upon in each case.

⁵⁷ Barnhizer (2001), p.220

⁵⁸ Please see Chapter II.

Therefore, in order to internally *Secure Freedom from Strife*, in the case of a humanitarian intervention the victorious nation might be required to move rapidly down the scale of aggression, explained in Chapter II, and occupy and forcibly change the brutal regime responsible for the widespread loss of life and internal chaos. In this way this principle could work in tandem with the principle of *Ensuring the Protection and Safety of Non-Combatants and Innocents*. To summarise, in the case of humanitarian intervention the victorious just power will most likely have to occupy a country and change a regime to, firstly, *Ensure the Protection and Safety of Non-combatants and Innocents* and, secondly, to prevent internal aggression and chaos and to internally '*Secure Freedom from Strife*'.⁵⁹

As a related point, it was explained quite forcefully that any just occupation following a war of self defence would need to have a just cause and a just motive, either to ensure peoples safety or to prevent future outbreaks of aggression. Whilst that point was stressed in Chapter II it is equally important in relation to this backdrop. A victorious nation state would not be justified in occupying a country, following a humanitarian intervention, if its motives were secretly territorial expansion or empire building. This again echoes the important *jus post bellum* principle that any occupation should be a temporary arrangement and not permanent, and importantly related to just war terminology 'limited'.

In addition, one could also question the war termination practice of an occupation which replaced one aggressive and harmful regime with another one equally unjust. As stated by Teson 'A government that topples a repressive regime in order to impose its own repression... does not perform a humanitarian intervention.'⁶⁰ These issues will be looked at in more depth within Chapter VI.

Another aspect of the *jus post bellum* framework presented in Chapter II that obviously relates to cases of humanitarian intervention is the principle of *Peace First*. Under the guidance of *Peace First* it was explained that in order for a war termination to be just it had to be concluded at the appropriate time, i.e. when the just defending state had fulfilled the just goals and aims it had set itself. In order to satisfy this thesis rules of *jus post bellum*, the war of self defence should never exceed those just goals but, as

⁵⁹ Orend (1999), p.270.

⁶⁰ Teson (2006), p.101

importantly, it should not fall short of them either.⁶¹ This principle as well as being relevant to wars of self defence can be directly applied to cases of humanitarian intervention and, I will argue, can, in some instances, actually be more applicable.

A humanitarian intervention, like all just wars, has to be limited. It should begin in the *jus ad bellum* stage with a clear set of aims and objectives which should be motivated by the need ‘to protect human life and basic human rights [from] internal chaos, repression and widespread loss of life’ as explained by the Catholic Bishops.⁶² In order for a war termination to be just, in exactly the same way as in an interstate war of self defence, as soon as those goals have been fulfilled, and the just aims complete, then the just victorious side should conclude the war.

It was explained that, in the context of a war of self defence, the defending nation should not continue the war when it has fulfilled its original just war aims. As an example this thesis cited the defence of Kuwait. In the case of humanitarian intervention it seems as important, if not more so, that a state does not exceed its original just war aims. This is because one of the many fears that surrounds the issue of humanitarian intervention is that military action is, in many, cases simply a cover for powerful states to excuse imperialistic or neo-imperialistic invasions.⁶³ This relates primarily to the principles of *jus ad bellum* by making sure that the victorious power does not exceed its initial goals. It will ensure that humanitarian intervention is undertaken for a just cause and not to covertly increase the size and wealth of an empire. So stopping the war for the right reasons and at the right time validates the justice of the *jus ad bellum* reason for intervention.

In addition, one of the principles outlined within Chapter II was *Complete Cessation of Conflict*. This, quite clearly, has relevance in this case as it should always be remembered that in any war, even one for a humanitarian cause, it is likely that a certain degree of damage will be done to non-combatants. By stopping the war at the right time, and not fighting in the war termination, you will stop needless death and destruction in the country that you are trying to help. So to make sure that there is a

⁶¹ Please see Chapter II and Fotion and Elfstrom (1986), p.228. Please also see Williams and Caldwell (2006), p.313 who similarly state that a state must ‘confine itself to the pursued ends’. This thought is also echoed by Haden (2005), p.169, Bass (2004), p.386, Orend (1999), p.267, Orend (2000), p.225 and p.273 and Bosanquet (2007), p.2, Pendergast (2004), p.64

⁶² Johnson (1999), p.92

⁶³ Orend (2006), p.92. He also cites Walzer in this section.

complete cessation of conflict in the war termination is as vital in the case of a humanitarian intervention as it is in an interstate war.

Another vital feature of *Peace First* that, again, has direct relevance to humanitarian intervention is the principle that a war termination, in order to be just, should only begin when the *jus ad bellum* goals have been completed. As explained in Chapter II, to fall short of ones goals is just as bad as to exceed them.⁶⁴ In many ways, whilst this aspect of the principle had some degree of significance in relation to a war of self defence, it has greater relevance when put in the context of humanitarian intervention.

To explain; in the classic case of a war of self defence, one just nation is defending itself from an unjust aggressor. A just goal therefore would be to adequately defend itself and to drive away that aggressor. If the just nation fell short, or abandoned, its just aim then it could in most circumstances be invaded, or forced to give up land and possibly be fully conquered. For this reason the defending nation has a clear motivation, other than a moral imperative, to ensure that its just aim is seen to a full and complete conclusion.⁶⁵ In other words, the just aim might mean its survival and in many ways seeing the war to its conclusion is forced onto the defending state.

In the case of a humanitarian intervention this is often not the case. Humanitarian interventions are quite often ‘wars of choice’⁶⁶ as explained above. It would not be unrealistic to imagine a case that a nation might have a just aim and a reasonable chance of success, but could pull out of such an intervention if the going got tough. By developing this understanding of *Peace First* towards humanitarian intervention, ‘pulling out’ and walking away in this manner would be unjust. This is due to the fact that the state has recognized that a just cause exists, with a reasonable chance of success, and then has taken on responsibility by making that ‘choice’ and intervening. If the situation is so bad that it warranted a just intervention, and violation of state sovereignty, then it must require appropriate post conflict action and, importantly, should simply be abandoned.

⁶⁴ Pendergast (2004), p.54. However it must be recognised that Pendergast draws upon the work of Lackey and does not actually discuss humanitarian intervention, only ‘just wars’ in general terms.

⁶⁵ Importantly this is not always the case as an aggressive nation could simply invade an island or a colony that would not threaten the main land and in such cases it would be more possible for the defending side to ‘walk away’. For example one could look at the war in the Falklands.

⁶⁶ Walzer (2004), p.167

To repeat the words of Pendergast ‘we cannot accept peace as long as justice has not been served. In such times and in such cases, we are morally obligated to continue fighting for justice’.⁶⁷ This position is, to a degree, also found within a *jus ad bellum* chapter of Orend who when discussing humanitarian intervention states that ‘if you go in, you must go in with the goal of winning’.⁶⁸ So whilst it is clear that this principle relates to wars of self defence, it could perhaps be asserted that it has greater relevance when a war is not forced upon you as in the case of humanitarian intervention.

In order to demonstrate the real dangers that exist in relation to *Peace First* and failing to achieve the just goals that a nation sets itself this section will turn to another case study.

American Intervention in Somalia, 1992

In 1992 the United States of America launched Operation Restore Hope, designed to restore order and prevent the genocide and starvation that was taking place in Somalia. The response was designed to be both swift and effective. American soldiers seized the capital’s airport and planned to undertake wide scale humanitarian relief operations in conjunction with the UN, based upon Security Council resolution 751.⁶⁹ An essential part of the operation was the capture of the Warlord Mohammed Farh Aideed who controlled the capital city of Mogadishu, and to then remove his regime of terror which revolved around him restricting food from the people to retain power.

However, all did not go according to plan. After a much publicised clash between American soldiers and Aideed’s militia, 19 American soldiers and many Somalis died in what was called the battle of Mogadishu. It soon became clear that this Operation was not to be the swift and decisive response for which the American government had hoped and on 31st March 1994 the President ordered all US troops to leave Somalia.⁷⁰ When the American soldiers left, Aideed was still the most powerful Warlord in Somalia and still retained control of the capital city. For this reason the killing and lawlessness continued.

⁶⁷ Pendergast (2004), p.63

⁶⁸ Orend (2006), p.94. This point is also briefly touched upon in Reed and Ryall (2007), p.173

⁶⁹ Strednansky (1995), p.33

⁷⁰ Strednansky (1995), pp.31-33

Importantly it should be realised that America's intervention in Somalia was not a total and widespread debacle. It did produce some good effects, notably the fact that it greatly helped the agriculture of the land and supplied many with much needed food and the ability to sustain themselves. Furthermore 'The UN Children's Fund' protected by the US involvement 'vaccinated some 753,000 Somali children, built 3,700 wells and put about 62,000 children into schools'.⁷¹

Whilst it could be claimed that the American involvement in Somalia was not all bad, it still failed to fulfil the humanitarian goals that it had set itself in the *jus ad bellum* phase. In light of some relatively stiff resistance that cost the American government both money and, more importantly, lives, it pulled out⁷² leaving many to fend for themselves in a largely lawless country. It may be claimed that America helped stop the starvation to a limited degree; it certainly did not fulfil its just aims and restore order to Somalia. As explained above, it actually left Aideed in control with no legitimate government in place. As quite aptly put by John Balzar of the Los Angeles Times 'The final mission in Somalia proved one thing: Somalia was easier to abandon than it was to help'.⁷³ This is why this aspect of the principle of *Peace First* is so relevant for a humanitarian intervention as in many cases when things become difficult or costly it is far easier to 'abandon'⁷⁴ a country in despair through a fast exit strategy than it is to stay. For this reason Somalia is a clear case that shows why a state, if it has a just goal with a reasonable chance of success, must, in order to remain just, see it to a full and adequate conclusion.

As an aside, it should be recognised that not fulfilling the principle of *Peace First* caused a strategic, as well as a moral, problem for the United States. After the failed humanitarian intervention in Somalia the 'Mogadishu effect'⁷⁵ began, which showed the world that the US government, when it came to wars of choice, was not totally committed to fulfilling its aims and could, potentially, fold if casualties were severe or resistance was met. As explained by Strednansky 'What happens when a nation decides to pull out of a conflict short of accomplishing its goals? The prevalent military thought in answering this question seems to be that trying to disengage ... can cost the United States credibility'.⁷⁶ This had an adverse effect on American foreign

⁷¹ Strednansky (1995), p.36

⁷² Orend (2006), p.94

⁷³ Strednansky (1995), p.31

⁷⁴ Strednansky (1995), p.31

⁷⁵ Munkler (2005), p.26

⁷⁶ Strednansky (1995), p.9

policy and in fact has been claimed to be the view of Osama bin Laden when planning the September 11th attack. This again demonstrates that in many cases justice and morality do not always run contrary to national self interest and the balance of power.⁷⁷

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It should be recognised that *Ensuring the Protection and Safety of Non-Combatants and Innocents*, *Securing Freedom from Strife and Peace First* are certainly not the only principles of *jus post bellum*, set out in Chapter II, which can have direct relevance to a case of humanitarian intervention. Another principle that can directly apply without too much adaptation and moderation is the principle of *Impartial War Crimes Trials*.

In Chapter II it was explained that, in a standard war of self defence, three types of war crimes can exist; war crimes of *jus ad bellum*, of *jus in bello* and, importantly, of *jus post bellum*. In exactly the same way that these are critical to ensure that justice is done in the wake of a war of self defence the same applies to a war of humanitarian intervention. Quite rationally, if you have a just cause to engage in a war due to crimes violating human rights then you should surely prosecute such violations in the war termination stage. In the same way that, in a war of self defence, those who have started an aggressive war and fought unjustly should be punished for their unjust actions, the same principle must correlate to those who violated these laws and norms in the case of a humanitarian intervention. Moreover, when such breaches do occur, war crimes trials must still be conducted in a fair, just and impartial way for exactly the same reasons as were outlined within Chapter II.

It should also be pointed out that much of what was stated within the section of *Impartial War Crimes Trials* in Chapter II will directly transcend to this ‘backdrop’, and this subsection does not wish to simply repeat covered material.⁷⁸ In fact it should not go unnoticed that, when Chapter II discusses *Impartial War crimes trials*, the case study that is employed is in fact ‘The War Crimes Trials of Serbian President Slobodan Milosevic and the actions of The Hague’ which clearly relate to a case of humanitarian intervention. However, it should be recognised that this principle to relate fully to cases of humanitarian intervention requires some clarification and amendment.

⁷⁷ Please see Chapter III for further details on this conceptual point.

⁷⁸ For further details please see Chapter II.

Firstly, it was explained that, in the case of a war of self defence, if the defending side is protecting itself from aggression then its leaders will not be guilty of *jus ad bellum* war crimes. In addition, it was also explained that the aggressive invading nation is liable to such *jus ad bellum* crimes. So, in the standard just war case, one side was liable for *jus ad bellum* prosecution and one side was not.⁷⁹ This demonstrates a simple and easy principle to follow. However, this was not the case for *jus in bello* where it was explained that simply because a nation has a just cause, and had not violated the rules of *jus ad bellum*, that does not mean that its soldiers should be automatically immune from prosecution from crimes that breached the principles *jus in bello*⁸⁰ or indeed of *jus post bellum*. In short, both sides in the standard case can breach the rules of *jus in bello* and of *jus post bellum* and, so, both should be liable for prosecution and punishment.

In the case of a humanitarian intervention the situation may not be quite so simple and straightforward. For instance, if a state intervenes for clear humanitarian purposes then that states leaders have not violated the rules of *jus ad bellum* (see previous section for assumption that humanitarian intervention can in some instances be just) and as such should not be prosecuted for crimes of *jus ad bellum*. In essence that side takes the ‘defenders’ position in our standard case. However the ‘aggressor’ position, in the case of a humanitarian intervention, might involve more than one group of leaders or moral agents and this is where certain clarifications need to be made. For example, if you intervene for humanitarian reasons to stop a civil war that is involving genocide and ethnic cleansing, then you should ensure that if *jus ad bellum* crimes are being committed, by leaders of multiple sides, that all sides are punished. This also relates to *jus in bello* crimes. If a civil war is divided between various factions and groups then all of these groups, if they commit crimes that violate *jus in bello*, should have a fair trial and be liable for punishment.⁸¹

The danger is that, in cases of ethnic cleansing and humanitarian intervention, an intervening nation may see one group as the ‘aggressor’ and another group as the ‘victim’ due to the fact that the ‘victim’s’ side is losing badly and has suffered massive losses. In essence, there is an attempt to place the losing or weaker side in the ‘defender’ place of our previous equation. However it should clearly be noted that just because one

⁷⁹ Wells (1984), p.25

⁸⁰ Orend (2000), p.148. However this same thought can be seen in Orend (1999), p.272, Orend (2000), p.231, Orend (2002), p.54 and Thurley (2007), p.2

⁸¹ Walzer (2004), p.71 makes this point in general, outside the discussion of war crimes.

side is the victim of atrocities, that does not necessarily mean that certain members of that ethnic group or side have not committed certain crimes themselves.⁸²

Bosnia April 1992- 1995

If we look again at the situation in former Yugoslavia, it is clear that Slobodan Milosevic, his government, and his soldiers and para-military groups committed crimes which breached the principles of both *jus ad bellum* and *jus in bello*. For these crimes they should, quite rightly, have an impartial trial and face punishment if found guilty. However, whilst there is no doubt that many Serbs committed crimes against their Croat and Muslim neighbours, it is also recorded that some Croats and Muslims committed equally vile and terrible acts, breaching every rule of *jus in bello*, against the Serbs as well. For example, as explained by Hartmann ‘Muslims certainly committed violations of international humanitarian law’.⁸³ Hartmann provides details of Bosnian military units that carried out ‘summary executions of some Serbs in Sarajevo, and the establishment of several concentration camps in which sexual assaults, assassinations, and torture were reportedly practiced’.⁸⁴ Despite the fact that war crimes were committed by various parties of different ethnic groups only the Serbs have ever been punished for their crimes. Importantly this section is not claiming that it was wrong or unjust to punish the Serbs responsible through impartial war crimes, but, if impartiality and fairness are the guiding lights of this principle, then surely such war crimes must be extended to all those involved in such dreadful acts.

It should also be noted that, in cases of Humanitarian disaster, it is not uncommon for several opposing factions each to be committing crimes of war. For instance in Mozambique ‘although most atrocities are attributed to the rebel RENAMO forces, the government led by FRELIMO is not guiltless’.⁸⁵ A similar dark state of affairs was also the case in Rwanda during 1994.⁸⁶ These cases demonstrate that this type of situation is certainly not unusual, and should be recognised and prepared for.

Care must be taken to avoid ‘putting the boot on the other foot’. If you punish and take away one set of unjust leaders responsible for crimes against humanity you should take care that you do not let others on the once losing side remain and perhaps

⁸² Walzer (2004), p.71 makes this point in general, outside the discussion of war crimes.

⁸³ Hartmann (1999), p.56. Taken from Crimes of War by Gutman and Rieff.

⁸⁴ Hartmann (1999), p.56. Taken from Crimes of War by Gutman and Rieff

⁸⁵ Mani (2002), p.90

⁸⁶ Mani (2002), p.90

become the dominant power. This could easily relate to the *jus post bellum* principle of *Securing Freedom from Strife* which aims to prevent another war starting as soon as one war is concluded. If you remove the power of the dominant aggressive side and do not prosecute the weaker one, when the scales are tipped in the opposite direction you may well get another surge of violence with the roles switched.

To summarise, the principle of war crimes trials is as important and pertinent for humanitarian intervention as it is for our standard case of war and self defence. However care must be taken to ensure that, during these potentially more complicated scenarios, the values of impartiality and fairness are not overlooked by focusing solely on one group of perpetrators.

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Humanitarian Intervention and the Ethical Dilemma of the Unjust Coalition

It was explained in the introduction that the interstate war of self defence, used as a model within Chapter II, could be criticised for its simplicity and straightforward nature. One potential reason for viewing such a case as clear cut is that it only involved two leading protagonists. On the one side was a just defending state, and on the other side was an unjust aggressive invader.⁸⁷

However, in the case of a humanitarian intervention it is quite commonplace for the intervening party to be made up of a collection of states or a ‘coalition’. Only occasionally does such action involve only two nations. Of course whilst this is commonplace within a humanitarian intervention it is also perfectly possible for a coalition or alliance to exist in a war of self defence. Therefore, whilst the issues raised within this brief subsection will relate strongly to cases of humanitarian intervention, the ethical dilemma and implications presented below could relate to a variety of different ‘backdrops’ and cases. For clarity, however, this ethical issue was avoided in Chapter II as it ‘muddied the water’ somewhat. It is therefore more appropriate to introduce this issue within this chapter, now that a firmer foundation has been laid.

The dilemma is that a just state could begin a humanitarian intervention (or indeed any just war) with a coalition of different states with a just motive and fulfil the

⁸⁷ Although limited information was provided as to how to conclude a war if you were the unjust aggressor as well as the just defender.

requirements of *jus ad bellum*, this state will be referred to as State A. Moreover, all of the states within that coalition could declare ‘humanitarian reasons’ for the intervention during the build up to the conflict and during the combat itself. However, it could then become apparent, in the war termination, that whilst State A entered the conflict motivated by the moral responsibility to stop genocide or ethnic cleansing, that in fact another state in the coalition had other motives that were far from just, this state will be referred to as State B. For example, State B could have voiced humanitarian concerns to legitimize an occupation but, during the occupation, could be primarily concerned with empire building or gaining control of key natural resources. Another possible scenario that raises the same problems is that State B could have been motivated by a just cause at the wars inception but, as the war progressed, began to move away from its ally in this regard.

These types of situation would not be difficult to imagine and raise significant ethical issues as to what State A should do in order to act ‘justly’ during such a war termination. The situation could be made even bleaker for State A if they were strategically much weaker than State B or did not pack as much of a ‘political punch’. State A would also be in a similarly difficult position if the coalition in question involved four or five states, where the majority were like State B, who had all actually intervened for selfish or unjust ends concealed behind moral prose which only became apparent during the war termination phase.

As a related point, friction between allies during a war termination is not uncommon. When a conflict begins an alliance is often brought together by a common enemy and can work quite well during the *jus ad bellum* and *jus in bello* stage of the war, as each member is united by a common cause. This supports the popular phrase ‘the enemy of my enemy is my friend’. However, in the war termination that ‘common cause’ no longer exists and as such alliances have the possibility of becoming weaker and even fragmenting. An obvious case study would be America and the USSR during the war termination of World War II. Whilst these allies worked reasonably well together during the fighting, united by the common enemy of the Nazis, when Germany was defeated this affected their relationship and in turn the war termination.

This section will now return to the problem faced by State A. As with many ethical dilemmas, State A is confronted with difficult choices that need to be addressed. It should be noted that, whilst this situation seems potentially likely, the issue of mixed motive coalitions and war termination has yet to be raised by any *jus post bellum* thinker

outside this thesis. Perhaps because most just war thinkers look at the overall justice of the war to evaluate it, these thinkers would see all of the agents acting in the wars aftermath as one. However this thesis is designed for a more proactive role and, therefore, the questions as to how a state should act if it is in alliance with a state who wishes to ignore the principles of *jus post bellum* is a central issue.

The first issue to address is what proportion of the moral blame should State A take for any unjust actions that occur in the war termination? As they helped State B take power, should they be equally responsible for any unjust actions which unfold? It seems that State A's level of moral responsibility would depend greatly on how much they could predict the unjust actions of State B. For instance, if State B made a weak attempt to hide its planned unjust actions then State A should perhaps have realised the potential outcome of the conflict and therefore have to take some of the moral blame (obviously to a lesser degree than State B). However, if State B had taken great care to conceal its unjust war termination plans then it would appear that little moral blame can be levelled at State A. Despite the fact that State A could have little moral blame in such cases it still would have a moral responsibility. This will be discussed in due course.

Additionally this case study also demonstrates why it is vital that war termination plans are generated at the start of the war and not left until the end to work out. That way State A would then be able to have some kind of 'contract' of expected activities agreed upon with State B.

The next section must now deal with how State A should act given this difficult scenario. Before outlining positive guidance for action this section will first outline what State A should not do.

State A should not pull out and walk away (or hide) from the situation in question. There may well be a motivation to not have anything to do with the events that are occurring due to the unjust nature of the other states (especially if State A has little moral blame). Some might suggest that by walking away State A would be able to wash its hands of the affair and continue to be 'just' at home or elsewhere and look on and scorn those unjustly terminating the conflict in question. However, distancing oneself from the situation does not appear to be the appropriate response as State A will then have left the fallen state in the hands of the unjust. As the just intervening state takes on

moral responsibility for the action when it first engaged in the ‘war of choice’⁸⁸, to again repeat the position explained above, State A can not then disregard that responsibility if the war termination proves to be challenging either due to outside difficulties or from problems within its own coalition. By drawing on the understanding of *Peace First*, that a state, in order to be just, is required to fulfil the just goals it sets itself. To cut and run in the case outlined above would be an unjust act.

Having explained that a just state should not abandon the war termination situation described above, the next step in this subsection will address what State A should actually do in such difficult circumstances. This thesis will suggest that, in order to act as justly as is possible, State A should follow a two-fold course of action.

Firstly, State A should do its utmost to follow the guidance of *jus post bellum* and push as much as it can for a just war aftermath. By stressing justice post war it could have a potentially offsetting effect on the proposed actions of states such as State B. As an example, this thesis will return briefly to an interstate war and re-examine the case studied of World War I utilised in Chapter III.

In the aftermath of World War I the French government wanted to destroy the German state and proposed a course of events motivated by its own interests as it had suffered great losses during the war. The American government under Woodrow Wilson, which had suffered less, proposed actions much more in line with the principles of *jus post bellum*, designed to promote peace. When one looks in-depth at the war termination, and the Treaty of Versailles, Wilson’s 14 point plan for peace was not followed to the letter and, in fact, many of the measures included within the post war peace could be viewed as ‘unjust’. However America, and to some extent Britain, had a ‘counterbalancing’ effect on the war termination that did have a tangible effect. In fact the amount of reparations payments imposed on Germany were reduced by these types of pressure over time. So, by striving for justice in such situations, State A may be able to counter balance the actions of State B to stop a wholly unjust war termination and make any war termination as just as is possible given the circumstances.

Related to this point one should note that, in such difficult cases, State A will be incredibly unlikely to create a completely just war termination guided by every principle of *jus post bellum*. In such a situation State A, and indeed just war analysts, need to be

⁸⁸ Walzer (2004), p.167

realistic as to what could be achieved in such arduous conditions. This dilemma could then raise a severe problem for thinkers who deal with justice as an absolute, essentially explaining that a war can be categorized as either 'just' or 'unjust'. For this type of thinker all of the principles of *jus post bellum* (or any category of the just war tradition) would need to be fully adhered to in order for a war to be 'just'. However this thesis takes the position, built from Chapter IV, that, in fact, justice, in many cases, should be a matter of degree. In the situation outlined above, State A could ensure that a war termination has 'greater justice' without it necessarily adhering to every requirement of *jus post bellum* or even being what State A would want to happen. Whilst this situation could lead to a war termination that is not ideal, to put it simply, it will probably be better than if State A had just left and done nothing because it did not want to be mixed up in an 'unjust' war termination.

The second course of action that should be undertaken, if the first course has either failed or was doomed to failure, involves State A publicly declaring the unjust actions of the other members of the coalition. This should also be coupled with identifying such injustices to international bodies such as the United Nations. It could be suggested that this action could be combined with the previous 'counterbalancing argument' and, in some unique cases, it might be. However if State A publicly condemned the actions of State B during the open stages of the war termination then it may have far less impact in its counterbalancing role as State B may no longer view State A as a 'reliable' ally.

The aim of the public demonstration is to show that State B began an intervention (or any other just war) for seemingly just reasons but is now breaching, or ignoring, the requirements of *jus post bellum* within the war termination. The purpose of this activity would be to bring about international pressure to try and prevent State B from carrying out its unjust agenda, and attempting to steer the course of the war termination back in line with *jus post bellum*.

Again, this thesis must stress that this course of action is not guaranteed to be effective and one needs to be pragmatic as to what can be achieved. For instance, State B could claim that it was motivated by humanitarian reasons and that it was still attempting to bring about a just result, again hiding behind words of justice. Another example could be that State B is not only more politically powerful than State A, but is more powerful than many other states and, as such, the international community may be powerless to prevent the imbalance of justice in the war termination. Having said all of

that, for State A this course of action may well have a reasonable chance of success and, in order to pursue justice within a war termination, it may be the only feasible option.

In many ways this second course of action could be adapted from the just war principle of 'Public Declaration' traditionally associated with *jus ad bellum*. This principle as explained by Orend 'has tended to fall by the wayside'⁸⁹ in the eyes of many just war thinkers, including Johnson who does not even list it as a requirement of *jus ad bellum*.⁹⁰ This again demonstrates the earlier point that just war thinking is a tradition rather than a set theory. Orend goes on to state that, in order to be just, a war 'must be declared, in the appropriate fashion'.⁹¹ Interestingly he also applies Public declaration to *jus post bellum* clearly explaining that 'The terms of peace must be publicly proclaimed'.⁹² This principle, whilst traditionally linked with proclaiming justice, so that all can see that the nation state is about to engage in a just war or a just war termination, could be 'inverted' so that in the case of the ethical dilemma explained above, State A could publicly declare the injustice of the action of State B.

Another potentially complex scenario could be that State B voiced humanitarian concerns at the start of the intervention, and still held those views in the war termination, yet did not see a problem with mixing humanitarian aid with individual self motivated gain. State B could simply believe that, despite building a profit for itself and helping its own situation, by acting in the humanitarian crisis the end result for the people of the intervened state is still better than it would have been if State B had not intervened at all. In such cases State A has to act in a similar way to the above, drawing on the first and, if that fails, the second principle. State A has to, in this way, not be preoccupied with reaching an idealist just position, but instead should take a mediating role. The 'Commanders of the Peace' for State A should make sure that the principles of *jus post bellum* are not totally ignored in the war termination and that State B does not abandon the moral side to its intervention in favour of power and gain. Again, if this fails, and State B goes down a darker road despite the mediation, then State A should begin to publicly declare the unjust actions of its former colleague. This short example continues to demonstrate that, in war termination, situations to attempt to uphold a rigid set of

⁸⁹ Orend (2000), p.192

⁹⁰ Johnson (1999), p.28. Johnson lists the principles of *jus ad bellum* as Just cause, Right Authority, Right intention, Proportionality of Ends, Last Resort, Reasonable Hope of Success and The Aim of Peace.

⁹¹ Orend (1999), p.264

⁹² Orend (1999), p.272

norms will be practically impossible and that to provide a positive and proactive account of *jus post bellum* these norms have to be utilised in a flexible and pragmatic way.

However what should occur if, given any of the above scenarios, State B continues to act unjustly and the actions of State A fail to have any impact? In such cases State A should continue to press along the route described above, relying on international pressure to come to its aid. Finally, it should remember the actions that have occurred and be wary about joining a coalition or engaging in a ‘just’ war with State B again. This situation demonstrates, as with many ethical dilemmas, that for State A there is no easy and straightforward moral way out.

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Humanitarian Intervention for an Unjust Cause

Thus far this chapter has primarily concerned itself with the case of a humanitarian intervention that had a ‘just cause’ and followed the rules of *jus ad bellum*. However, it was explained previously within this thesis that *jus post bellum* was a separate, albeit linked, aspect of just war thought. Therefore some guidance needs to be set as to how a state should act if it wants to act justly within the war termination even if it began the intervention with unjust motives.

The first important point to stress is that even if a state began a war with unjust motives it does not automatically mean that the intervention must end unjustly.⁹³ For example, a state could exist where internal chaos, repression and widespread loss of life are all common. Another state could then intervene in that country but do so for unjust reasons, wanting to obtain key natural resources or expand its territory. However, these real reasons for the conflict could be concealed behind humanitarian concern. Clearly if a state intervened for these reasons, despite the humanitarian crisis, it would have breached the requirements of *jus ad bellum* and be considered ‘unjust’ by most understandings of the just war tradition. Such a situation, would unfortunately, not be difficult to imagine.

It was explained above that a state could have been motivated by a just cause at the war’s inception but, as the war progressed, began to move away from its ally in this regard. It also seems clear that the converse is also true; that a state could begin a war

⁹³ Please see Chapter I. Also see Boon (2005), pp.290-291 and Walzer (2004), p.163

unjustly but then wish to conclude the conflict in a just manner. For instance, if the government of the intervening state changed, the new regime might genuinely want to help the humanitarian problems in the region, or if public and international pressure prompted a change of attitude in the intervening state, creating a desire to end the war justly. In such cases the principles set out in Chapter II and developed in this section can still be utilised as a guide for action. Under the guidance of *Peace First*, if any combat is being undertaken for an unjust cause then it should be stopped immediately. Then the rest of the principles can be applied as normal. So, despite the unjust motivation for engaging in the intervention, the principles of *jus post bellum* can still be utilised.⁹⁴

Even if the country concerned is not undergoing a humanitarian crisis, the principles of *jus post bellum* still retain relevance. In many ways such *jus post bellum* action could be seen as akin to leaving a colony. Even if the actual obtaining of the colony was unjust and aggressive, there is a right way and a wrong way that one can leave. If a state engaged in an unjust intervention and pulled out, leaving a trail of devastation in its wake, leaving dangerous munitions, punishing and sending in air strikes as it left and letting those responsible for the conflict go unpunished then that would be the wrong way. If the principles of *jus post bellum* were followed it would instruct the intervening state to stop the fighting immediately, remove its forces ensuring that it cleaned up after itself, ensured that it did not harm innocents and non-combatants, and make sure that its own leaders responsible for the attack were put to trial. This would seem the right way but, of course, it would not ever undo the breach of *jus ad bellum* that had occurred at the start of the conflict.⁹⁵

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To summarise, many of the principles of war termination outlined within Chapter II could be relevant to cases of humanitarian intervention. However it is equally important to recognise that many of the principles either required a certain degree of adaptation or greater explanation in order for them to become fully useable. This demonstrates that the framework of *jus post bellum* could be applied to different ‘backdrops’, however the unique features of that backdrop need to be taken into account.

To return to view of Godfrey, outlined in the introduction, that *jus post bellum* needs to be revised upon every type of conflict,⁹⁶ this chapter has demonstrated that a list

⁹⁴ Please see Boon (2005), pp.290-291 and Walzer (2004), p.163

⁹⁵ Walzer (2004), p.163

⁹⁶ Godfrey (2006), p.8

of generic principles is applicable, as the same principles devised for an interstate war still played a useful role. Despite that observation, Godfrey's point that different types of war have different character,⁹⁷ also needs to be taken into account so that these generic principles of *jus post bellum* can be interpreted, expanded and slightly modified where necessary. In fact, if one looks at the principles of *jus ad bellum* and *jus in bello* (as well as this thesis's understanding of *jus post bellum*) the principles themselves are incredibly generic and unspecific. For instance, a war in order to be just has to have a 'just cause' and be 'proportionate'. One reason for the principles having this general and unspecific nature is that it does allow them to be utilised in relation to a variety of different circumstances.

In addition, the reason that the just war tradition has survived since the time of Augustine is that, firstly, it has altered and changed, but, secondly, it is because the principles it holds are generic enough so that they can relate to differing circumstances as the nature of warfare changes. Interestingly these points appear linked, as the reason the just war tradition is able to adapt is due to the general nature of its teachings. In many ways the ideal of a just war philosopher is to write something which, of course, relates to current affairs (as Augustine did), but also something general enough to stand the test of time and still retain utility after many years.

This chapter has also served to give greater depth to the individual principles found within Chapter II and, to some extent, fill out the 'sketch' provided earlier. Finally, this chapter engaged with the difficult issue of mixed motive coalitions in regard to war termination and outlined the ethical dilemma that goes hand in hand with such a situation.

⁹⁷ Godfrey (2006), p.8

Chapter VI – The Ethics of Regime Change

'America, Iraq and the Moral Principles of Changing a Government'

Introduction to Regime Change

When the term 'regime change' is used it refers to the deposing of a nation's government and replacing it with another. A regime change differs in form from a 'coup d'état' or a 'revolution' as the change of regime is not directly initiated by the nation's own inhabitants but, instead, is forced upon the country by an external power. It should be noted that this chapter will not investigate the ethical implications of every type of regime change; for instance regime change caused by election rigging, foreign propaganda, covert military operations or assassinations¹ will not be analysed. Rather, this thesis will only investigate those regime changes that occur during a war's aftermath.

Until now the crucial issue of regime change has only been mentioned in passing throughout the various chapters within this thesis; however this issue raises serious ethical considerations that need to be addressed, in significant detail, in order to formulate a more complete understanding of justice post war.

This thesis has made the claim, in several sections, that, following a conflict, changing a regime could be legitimate, and indeed just, given various radical circumstances.² It should be made clear, before these circumstances are outlined, that simply because a defeated nation is led by a dictator, or has a style of government that is different to a liberal western democracy, that does not automatically make the regime open to change during the war termination process. As rightly illustrated by Himes 'Victory in war does not create a victor's right to fix another nation according to the winner's preference'.³ Moreover, as Bass states 'Neither Walzer nor Rawls seem to believe that mere dictatorship is sufficient grounds for remaking a regime.'⁴ Bass then goes on to claim that only in one type of circumstance would it be permissible to change

¹ Challans (2006), p.6

² Walzer (2004), p.149

³ Himes in his speech on 21/03/05 at Fordham University

⁴ Bass (2004), p.398

a regime, in cases of genocide.⁵ Nonetheless this section will outline three extreme cases where a regime change could be considered justifiable.⁶

Firstly, regime change could be permissible in order to *Secure Freedom from Strife* in certain extreme situations. For instance, if disarmament, peace keeping, securing borders etc. were all doomed to failure and another harmful war was likely, then, in order to foster peace and prevent another immediate outbreak of international violence, the victorious state could justly change the belligerent's regime.⁷ This position is stressed by DiMiglio who states that 'Conditions in the aggressor state must be altered, but states do not create wars; people, and in particular, regime elites, initiate them. Thus, a ...more lasting peace may require replacing regime elites and politically reconstructing the aggressor nation.'⁸ This position was fully outlined with Chapter II.

Secondly, a regime change could be considered as justifiable if the old regime was involved in some form of ethnic cleansing or was the controlling force behind a humanitarian disaster as explained by Fisher and Bass.⁹ Walzer takes this position further, explaining that not only is a regime change permissible in cases of humanitarian intervention, but it is actually a strong requirement. As Walzer explains 'When a government is engaged in the mass murder of its own people, or some subgroup of its people, then any foreign state or coalition of states that sends an army across the border to stop the killing is going to have to replace the government'.¹⁰ This point is seconded and supported in more detail within Chapter V. Chapter V also illustrated that these legitimate regime change reasons could work in conjunction with one another. So, for example, the defeated regime might need to be changed if it is likely that without doing so the regime will begin another aggressive war and also mass murder a minority group

⁵ Bass (2004), p.398. This view is also supported by Himes and Elshain in the speech on 21/03/05 at Fordham University.

⁶ Thurley (2007), p.2 briefly states, in relation to Bass, that 'his view that reconstruction is only permitted in cases of genocide is too narrow'.

⁷ Orend (1999), p.270. Orend makes a very similar claim on this point stating that 'if the nature of the regime in Aggressor at the end of the war is still so heinous or threatening that its continued existence still poses a serious and credible threat... then –and- only then may such a regime be forcibly dismantled'. Orend (2000), p.142 Orend (2000), p.229 Point also made by Bass (2004), p.396, Meierhenrich (2006), p.101 and DiMiglio (2005), p.150.

⁸ DiMiglio (2005), pp.146-147. However whilst this thesis would agree with DiMiglio to a degree, DiMiglio offers no other way of securing peace without the need for regime change. Please see the chapter *Securing Freedom from Strife*.

⁹ Fisher (2007), p.115. Please also see Moore (2006), pp.66-67

¹⁰ Walzer (2006), p.2 and p.149. This point is also made by Walzer in 'Arguing about War' (2004), p.19 and p.149 and during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.15. Please also see Bass (2004), p.400 and Orend (2000), p.229

within its own nation or the conquered nation.¹¹ This, again, is in line with classical just war tradition as spelt out by Vitoria.¹²

Thirdly, whilst technically not a regime change in the same sense, a victorious government would not be unjust to install a new regime if the previous regime no longer existed and no viable alternative was forthcoming. It is not inconceivable that, after a long war, a defeated government might have crumbled away leaving no immediately obvious successor government in its wake. As pointed out by Iasiello ‘War often leads to the dissolution of established governments’.¹³ In this case the victorious nation would be just in installing a new regime, to fill the vacuum left by the previously aggressive government, and to avoid the defeated nation falling apart at the seams. This third justification is certainly not common, or discussed, by most contemporary *jus post bellum* thinkers.

Additionally many *jus post bellum* theorists explain that a regime change can only be considered just if it followed a war that had a ‘just cause’ and fulfilled the strict criteria of *jus ad bellum*. One example would be Orend who states in his chapter on Coercive regime change that ‘*jus ad bellum* failure corrupts the whole resulting project’.¹⁴ At first glance it is perhaps clear why some thinkers hold this view, because if a state began a war for an unjust cause, like say territorial expansion or ethnic cleansing, then if they were victorious it would continue to be unjust if they were to overthrow the defeated government and replace it with a new one. The injustice of their cause seems to permeate the entire post bellum scenario.¹⁵

However, if a regime change can only be considered just in wars that fulfilled the criterion of *jus ad bellum* it seriously damages the position, held previously in this thesis, that *jus post bellum* principles should be independent of (although linked to) both *jus ad bellum* and *jus in bello*.

Whilst, initially, it would appear that just regime changes can only follow wars that fulfilled the criteria of *jus ad bellum*, this thesis will in fact suggest otherwise and continue to hold the position that *jus post bellum* should be an independent, albeit

¹¹ Orend (1999), p.270. Meierhenrich (2006), p.100 However Orend does not make this quite as explicit as in the previous reason for changing a regime. Orend (2000), p.142

¹² For further details on this please see section ‘Securing Freedom from Strife’.

¹³ Iasiello (2004), p.6. Also see Bass (2004), p.403

¹⁴ Orend (2006), p.195

¹⁵ Orend (2006), p.195

related, category within the just war tradition. This next subsection will therefore apply the more generic philosophical arguments for the separation of just war categories (found in Chapter I) to the pressing issue of regime change¹⁶.

Imagine a case where a state began a war but failed to fulfil all the requirements of *jus ad bellum*. Perhaps the war was not publicly declared? Would it automatically prevent any kind of just regime change, in any shape or form, if the decision to begin the war at the start was not made public? Another example of a breach of *jus ad bellum* would be if a state began a war but without a reasonable chance of success (a standard principle of *jus ad bellum*).¹⁷ If, however, through some unforeseen circumstance, as mentioned in Chapter I that side was to somehow then be victorious, would that in itself automatically make a regime change unjust? It would seem bizarre to state that because a war did not seem to have a reasonable chance of success during the initiation stage of the conflict that, by itself, could prevent any kind of justifiable regime change.

Taking perhaps, a different breach of *jus ad bellum*, let us assume that a war was started for an unjust cause, for instance some sort of punishment attack hidden behind just war prose. If, towards the end of that war, the aggressive state wanted to conclude the war justly and at the same time the state they were fighting had a change of government itself and then became involved in internal widespread ethnic cleansing, would it not be just for the once aggressive state to change the government of its opponent in the war termination. Or, to take another example, if the government of the defeated state broke down altogether and the country was in ruins, what would be just? For the once aggressive state to help install a new just regime, guided by the principle of self determination, or to walk away due to the unjust start and let the country destroy itself. It seems obvious that, in such cases, to introduce a just regime would be of greater justice than to simply walk away. Therefore justice can be achieved in a war termination regime change, even if that war began in an unjust fashion.¹⁸

At the beginning of this section three extreme reasons for regime change were spelt out, and that regime change should be avoided in all but the most pressing circumstances. With this in mind, it would certainly not be a common occurrence for a state which started an unjust war to find itself in the extreme situation where a change of

¹⁶ Please see Chapter I

¹⁷ Please see Chapter I

¹⁸ Whilst not related to regime change the position that *jus post bellum* should be separate to *jus ad bellum* can be found in Boon (2005), p.290 and Walzer (2004), p.163

regime in the wake of war would be justifiable. It would be a reasonable rare occurrence following a war that began justly. However, that being the case, it is not logically impossible to conceive of a situation where a state which began an unjust war might find itself having to replace a regime with just motive. This demonstrates that there is some relationship between the principles of *jus ad bellum* and the principles of *jus post bellum*, but that they are not fully dependant on one another, and to make the claim that they are seems to generalise a rather more complex relationship.

Despite all that has been outlined above, in past chapters and this section, central issues remain unanswered. For instance, if a change of regime is required, ‘what’ type of government do you replace the old regime with? Also ‘how’ would the victorious just nation go about changing a regime and remain just? It seems evident that a regime could be changed for a just cause (as outlined in the previous section) but could either replace one unjust regime with another unjust regime or go about changing the regime using an unjust method. Moreover, in certain cases both of these ethical failings could occur. These questions of ‘what’ and ‘how’ to change a regime ethically will be addressed below. However, it will become clear as this chapter progresses that these types of moral questions are certainly not straightforward or easy to answer.

Illegitimate types of Regime Change to put into Power

Michael Walzer correctly explained that a ‘theory of justice-in-endings will have to include a description of legitimate occupations, [and] regime changes... [But] also, obviously, a description of illegitimate and immoral activities in these areas’.¹⁹ Before tackling the arduous questions of legitimate regime change, and what type of government would be just to install, this section will begin by investigating the ‘illegitimate and immoral’²⁰ types of regime change. By using this method it will be possible to narrow down our search for a just regime by first eliminating any unjust possibilities.

As a starting point, the reasons that justify a regime change, outlined within previous chapters, offer some initial guidance as to what kind of regimes to avoid and are indeed unjust. So, by looking into the reasons for the change in the first place, it may illuminate which regimes would be unjust to put into power in the defeated state.

¹⁹ Walzer (2006), p.22

²⁰ Walzer (2006), p.22

To begin with, a regime change would be unjust under the principles of *jus post bellum* if it replaced one murderous regime with another. Under the guidance of *Ensuring the Safety and Security of Innocents and Non-Combatants* it was explained that in extreme situations a humanitarian intervention could justly change a regime.²¹ If this was a state's 'just cause' for regime change then it would not be just and would breach the strictures of the same principle if an equally vile regime was then put into power. So, in order for a regime change to be just, it must have a just cause, legitimate authority and reasonable chance of success (like *jus ad bellum*) but moreover it also requires rules akin to the principles of *jus in bello* of non-combatant immunity and proportionality.

In the same way, a victorious state would not be just if they placed into power a regime that was committed to a cause of external violence or international aggression. Under the guidance of the principle *Securing Freedom from Strife*, if you are forced to replace a regime due to its violent nature, it would be absurd to replace it with an equally belligerent government.²² However, as Orend asks, what if the choice of the local population is to have in power a government or regime that is externally aggressive or is committed to a policy of persecuting some minority group within its own borders?²³ This difficult question will be dealt with in the forthcoming section.

Moreover a central tenet of standard just war thought is that a war must have a just cause. This 'just cause' does not typically include territorial expansion or wars of conquest, to invade and gain control of another state.²⁴ This principle was then developed further for *jus post bellum* in the section *Peace First*. This being the case, in both traditional just war thought and in the *jus post bellum* thought presented within this thesis, a state would be unjust if it put into power a puppet leader, submissive regime or created a 'satellite state'.²⁵ This notion would also extend to the victorious power putting in place a government simply because it helped their own countries economic prosperity.

If such a regime was put into place it would make the victorious power little better than a self-centred invader. Even if the victorious nation's initial motives had been

²¹ Fisher (2007), p.115. Please also see Moore (2006), pp.66-67, Walzer (2006), p.2 and p.149. This point is also made by Walzer in 'Arguing about War' (2004), p.19 and p.149 and during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.15. In addition this point is made by Bass (2004), p.400 and Orend (2000), p.229

²² Orend (2006), p.202

²³ Orend (2006), p.203

²⁴ Walzer makes this point during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, p.3

²⁵ Walzer (2006), p.163. This point is also made by Bass (2004), p.391

just, for instance defending themselves from aggression, by introducing a regime post war in line with the above paragraph the victorious state has acted unjustly as if they had started a war of conquest. A regime change, in order for it to be just, must have a just cause. Such changes should be motivated by the desire for peace and security both internally to the state and internationally. A regime change motivated for a selfish reason, like a war motivated for a selfish reason, would be considered illegitimate. Bass also develops the points listed above on the grounds of respecting the defeated state's national autonomy and authority. He states that once the war is over the defeated nations 'sovereignty must now be respected again ...victorious states have no right to reconstruct a conquered polity simply out of self interest: no right to impose puppet regimes'.²⁶

As a case study, this thesis will comment on the American regime change in Cuba. Following the conflict in Cuba a local indigenous government was put into power but, in order to end the American occupation, that government had to agree to the Platt Amendment. This amendment had massive constitutional effects for Cuba such as allowing 'the United States the right to maintain military bases in Cuba; the right to veto any treaty between Cuba and any other country; the right to supervise the Cuban treasury; and "the right to intervene for the preservation of Cuban independence [or] the maintenance of a government adequate for the protection of life, property and individual liberty."'”²⁷ In short, it is an example of how a dominant military power could control a country 'without running it directly, [but] by maintaining a submissive local regime'.²⁸ Under the above principle this type of regime change would be considered unjust. Additionally it highlights the dangers that such regime changes and unjust post war peace settlements are not only conceivable but have occurred in the past.

Legitimate Regime Change

'The Four Considerations'

The next section of this chapter will begin to address what types of regime it would be permissible to introduce. This section will also deal with how you put such a regime justly into place. In order for a new regime to be just, and in line with the tenets of *jus post bellum*, it will have to balance a variety of important considerations.

²⁶ Bass (2004), p.390. This position is supported by Meierhenrich (2006), p.106

²⁷ Kinzer (2006), p.43. Orend (2006), p.192 mentions this example among many.

²⁸ Kinzer (2006), p.43

Many of these considerations have been sketched out by Walzer in his text ‘Just and Unjust Occupation’²⁹ and these considerations will be expanded upon and developed further in this section. Additionally it should be recognised that this set of considerations should also work hand in hand with the principles of war termination set out within Chapter II. However, despite the fact that thinkers such as Orend and Walzer have set out similar principles in relation to regime change, this thesis would claim that a difficulty arises when we look into these considerations in relation to one another. Whilst all the principles of Walzer appear important and straightforward individually, in certain cases they do not work in harmony with one another but, instead, can actually be opposed. This goes against the idea, inherent in many ethical debates, that assume that all ‘good’ things are automatically compatible.³⁰ As previous thinkers have already outlined suitable considerations of regime change, this section will instead focus on the potential disharmony between these principles, and in turn, demonstrate how to apply these norms in a useful and pragmatic fashion. So whilst, on the surface, the considerations of regime change might be similar to Walzer and others the actual application of the principles will be potentially quite different.

It is at this stage that the problem of legitimate regime change becomes all too clear. It should be noted that the ‘Commanders of the peace’, if a regime change is required, must prepare and think through their actions before the war ends and the war termination phase begins. Issues of regime change are difficult and complex. Therefore decisions should not be made off the cuff and a clear plan with specific objectives should be developed by the commanders of the peace and scrutinised in public before it is placed into action.³¹ This would hope to avoid part-solutions to difficult problems.³²

To return to the topic of the previous section, a regime change could potentially be considered unjust if it was doomed to abject failure from the start. As the collapsed regime could then cause further harm both internationally and to the people within the nation. If a regime change is not properly thought through, and is instead developed as it goes along, it reduces its chances of success.³³ So in many ways the traditional just war principle of reasonable chance of success plays a role. A regime change could only be

²⁹ Walzer (2004), pp.162-168

³⁰ Walzer does comment on this briefly. He states during a speech held at the Heinrich Böll Foundation, Berlin, July 2nd, 2003. Transcript, p.18 that ‘there are times when prudence and morality come into sharp contradiction’.

³¹ Meierhenrich (2006), pp.109-110

³² Orend (2000), p.221 and Orend (2006), p.164. Also see Oren (1982), p.152 and Walzer (2004), p.165

³³ Orend (2000), p.221

legitimate if it has a reasonable chance of success and one can only start to determine this if the issue is analysed before the events unfold.

The first consideration is one upon which most *jus post bellum* thinkers tend to agree, that the new regime is chosen by the people of the defeated nation. Whilst it was stated in the introduction that a regime change is, by definition, imposed on the defeated nation, nevertheless it should still be their choice as to what regime it is. As an example, one need but look at Walzer's article on regime change where he states that 'We want wars to end with governments in power in the defeated states that are chosen by the people they rule – or at least recognised by them as legitimate'.³⁴ The notion of self-determination as a central aspect of *jus post bellum* is also stressed by the writers Williams and Caldwell.³⁵

As this thesis is built from the roots of the just war tradition, how does self-determination relate to just war thought? It is certainly not listed by any of the just war texts as a requirement of just war. When Vitoria is discussing 'legitimate reasons for...taking over the government'³⁶ he does not go on to say that the defeated government should be replaced with one chosen by the people. However, as stated above, a just war is not a war of conquest or expansion. This being the case, a submissive or puppet government should not be forced into power.

Therefore, how do you ensure that a new government or installed regime is one that is chosen by the people it is designed to rule? Which political system allows people to choose who governs them and, if needs be, change who governs them? The most obvious answer is democracy. If the new regime is democratic that would allow the people within the defeated nation state to have control over their own government and are ideally able to exercise a policy of self-determination.

This position is a common one, widely supported by just war thinkers. If one looks into the work of Walzer he explains that democratic political theory should be of central importance when determining principles of *jus post bellum*. He explains that 'once the intervening forces are engaged in the work of political reconstruction there are very good reasons why they should aim at democracy'.³⁷ Walzer describes these 'good

³⁴ Walzer (2006), p.164. Walzer makes a similar point (2004), p.161 as does Orend (2006), p.203

³⁵ Williams and Caldwell (2006), p.318

³⁶ Reichberg, Syse and Begby (2006), p.331

³⁷ Walzer (2006), p.2. This point is supported by Elshstain (2005) at the Fordham University conference 'The Ethics of Exit'. Please also see Orend (2004), p.174 and Walzer (2004), p.19

reasons'³⁸ by explaining that 'The reasons have to do with legitimacy of democratically based regimes, which are established through a literal (and ongoing) self-determination'.³⁹

However, if democracy is decided upon as the most appropriate form of government to introduce in the wake of war, central questions remain. For instance, what type of democratic government should be introduced? The idea of a democratic government includes a selection of types of democracy ranging from systems of direct democracy, popular in ancient Athens, to deliberative democracy and delegative democracy.⁴⁰ Moreover, how democratic should this imposed system of democracy be? Should it begin its political life as a fully blown western liberal style democracy with every citizen over the age of eighteen having the right to vote? Should women always have the right to vote? How should the Prime minister or the President of the nation be selected?

Whilst these types of question clearly have a strong practical importance they are not, perhaps, central to the ethical questions of this thesis and would best be left to other political based texts.⁴¹ However certain central themes must be made clear. In order for the democracy to work it must be implemented, as stated within Chapter IV, by people who have what was described as 'situational awareness'.⁴² For instance, the level of democracy to be introduced should not be set in stone by ethical rules, but, instead, should be based upon the situation in the country. If, for instance, the defeated country has a long history of democracy, perhaps before it was taken over by a dictator, with traditions to fall back on, then those traditions should be looked into and reinstated. This was the case in Germany after the fall of Hitler.⁴³ However, if the country in question has no history of democracy then perhaps a less extreme form of democracy would be more practicable. So listening to the pulse of the country and paying heed to the situation is the first point to make in relation to the above questions. As quite rightly stated by Light 'Governments that aim to export democracy should ... be particularly

³⁸ Walzer (2006), p.2

³⁹ Walzer (2006), p.2. This thought is also stressed by Evans (2005), pp.85-87. Evans explains that a bias towards democracy exists in just war thinking.

⁴⁰ Light (2001), p.80

⁴¹ For an informative discussion on the type of electoral system to introduce post war please see 'Postconflict Elections: War Termination, Democratization, and Demilitarizing Politics' (2002) by Terrence Lyons.

⁴² Please see Chapter IV

⁴³ Walzer (2006), p.1

concerned to advocate the model that best suits the conditions of the country to which they wish to export it'.⁴⁴

The second key issue to raise is that the central aspect of this consideration is self-determination. If any decisions are made during the change of regime such as electoral system; selecting a leader etc, then the people of the nation should, through some form of polity or democratic system, be able to change these choices over time. That way the native people are working in conjunction with the change of regime and are best able to exercise this principle of self-determination. This is another adaptation developed from Walzer's notion that democracy is the most appropriate form of government as it requires an 'ongoing self-determination'.⁴⁵

Some might criticise the above position on the grounds that democracy might not always work. These thinkers could claim that to impose democracy is not just as, in some cases, the defeated nation might not have any history of democracy, and that the very idea of 'peoples rule' might be an alien concept which does not fit with the way the nation currently operates. For example, when discussing the current situation in Afghanistan, Thurley states that 'the democratic-reconstruction programme that is currently on-going does not accord well with the regionalized ethnocultural roots of the country'.⁴⁶ Thurley then goes on to claim that 'the peddling of a westernized style of democracy... ignores the complex ethnocultural relationships of the Afghan people'.⁴⁷ Interestingly Thurley does not actually provide any positive guidance as to what type of regime to actually install in Afghanistan.

Another claim could be made that self-determination could actually be exercised by the people of a defeated nation without the need for any form of democratic system or polity.⁴⁸ For instance, within the defeated state a popular warlord or dictator might exist and that self-determination can be recognised through tacit consent or patriotic actions. In such cases an argument could be presented that the leadership of this warlord or dictator is the will of the people, and that to introduce an alien democratic system would be unnecessary, and damaging, to the country in question.

⁴⁴ Light (2001), p.82

⁴⁵ Walzer (2006), p.2

⁴⁶ Thurley (2007), p.5

⁴⁷ Thurley (2007), p.5

⁴⁸ Moore (2006), p.61. Also see Godfrey (2006), p.14

However certain problems exist within the notion of a ‘popular dictator’. To begin with, it should be noted that, if a warlord or dictator is coming to power, it is often difficult to determine whether the ‘tacit consent’ in favour of their governance comes from genuine support of the rule, or whether the consent comes from fear and intimidation.

If the consent is genuine, and the leader is popular, then through an election that same leader could be put into power. But if the tacit consent was not genuine then an election of some sort could potentially stop them forcing their way into power. Another good reason for preferring the democratic system to the idea of implied consent is related to the vital point made by Walzer about the ‘self assuring’ nature of the democratic political system.⁴⁹ If a warlord or leader is put into power in the defeated regime, because of demonstrated support and tacit consent for that leader, then when the occupying force has left the country no system exists for the people of the once defeated state to continue to have any political say, or for a policy of continual self determination. It would not be inconceivable that a dictator could come to power with the tacit consent (genuine or forced) of his people and then, when securely in power, after the war termination, change their policies and engage in persecuting some group within its own borders or indeed launch some form of aggressive war not supported by the majority of the people.

A related aspect of the democratic system is that it allows the people to change the government in power if they disagree with its policies or actions. This is not the case where dictatorships are concerned. So the benefit of democracy is that not only does it ensure self-determination in the short term, but also for ongoing self-determination in the longer term.⁵⁰ It is for these dangers that this thesis would not support a change of regime that put into power an unelected ‘popular’ dictator. However, it should be noted that because a dictator is in power that is not always a just motive to change the government (please see previous section).

Another ‘good reason’ for a democratic regime change is that it might secure a more lasting peace, especially with other democratic nations. This popular current theory, explained in detail by Bruce Russett, is that democratic nations rarely, if ever,

⁴⁹ Walzer (2006), p.2

⁵⁰ Walzer (2006), p.2

fight one another.⁵¹ As stated by Langan, democracies ‘clearly wage defensive wars against aggression and threats by non-democratic states, but the claim is that they do not choose to attack each other’⁵². So as the central aim on the just war tradition is the aim of harmony, if the commanders of the peace introduced a democratic regime you are building towards that more lasting peace. As stated by Wheatley in reference to the regime changes discussed by the UN ‘the security council has consistently expressed its support for the introduction of democracy as a necessary element in the re-establishment of international peace and security’.⁵³

It should be noted however that the notion of ‘democratic peace theory’ does not guarantee peace and, in fact, democratic governments have fought each other in the past, and are belligerent in the present.⁵⁴ For instance, the Greek city states operated under the rule of direct democracy and yet still warred with one another. Still, one should not ignore the principles of democratic peace theory during the regime change as another important component. However due to limited scope of this section the role of democratic peace theory will not be looked at in-depth as this is the topic of many other works.

By mirroring the insights gained in the previous section, this thesis can identify its second consideration of a legitimate regime. That a new regime must protect and defend its entire people, no matter what ethnic group they come from, that reside within its borders. So where an unjust regime would persecute and harm such individuals, a just regime has a duty to protect them.⁵⁵ This is clearly an expansion of the principle of *Ensuring the Safety and Security of Innocents and Non-combatants* and again seems to appear in several accounts of just regime change.

Yet immediately it is clear that a clash could exist between the consideration of self-determination, absolutely central to Williams and Caldwell, and the second consideration that the new regime has a responsibility to protect every person within its borders. How could this be? In a true, unlimited and free democracy the government in power is chosen by the majority of people through an unbiased and free electoral system.

⁵¹ Langan (2007), pp.225-227. Langan briefly discussed this issue in relation to jus post bellum. For a more detailed examination of Democratic Peace theory please see Russett (1993), *Grasping the Democratic Peace* (Princeton: Princeton University Press). Please also see Orend (2004), p.174 for a description as to how this idea links to Kant’s principles of jus post bellum.

⁵² Langan (2007), p.225

⁵³ Wheatley (2006), p.532

⁵⁴ Godfrey (2006), p.5

⁵⁵ Walzer (2004), p.164 and Orend (2006), p.197

However, if the defeated country in question is made up of two antagonistic ethnic groups, with one group making up the overwhelming majority, then a government could be legitimately voted into power that has a central agenda of persecuting the minority group. In this situation, which would not be unlikely following cases of humanitarian intervention, then the first consideration of self-determination and democracy would be at odds with the second consideration of safety for all in a just peace.

In such cases it would appear that a completely open form of democracy may not always be the most appropriate course of action as it might fully satisfy one consideration but massively violate another. In order to balance the two considerations, outlined above, it might be more prudent to introduce a democratic system but with certain adjustments made to protect minority groups. For instance, when deciding which electoral system to use if one system greatly favours one ethnic group over another it should perhaps be disregarded for an electoral system that ensures certain groups have a political voice. Another, perhaps more extreme, measure to ensure the safety of all those within the borders of the country might include making sure the minority group is guaranteed a certain number of parliamentary seats so that they form part of the political decision making process. Again, rather than making hard and fast rules such as, 'minorities should always have a certain number of seats' which could potentially violate the consideration of self determination with no good reason, the commanders of the peace must instead bear the overarching principles in mind so that a regime change can be planned to fit the situation and take appropriate action to secure the safety of those within the defeated nation.⁵⁶

The third consideration is that a just regime will stabilise and help the future peace process and not be committed to policies of external aggression or violence.⁵⁷ Instead the new regime should be committed to a policy of *Securing Freedom from Strife*.

However the consideration of self determination through a democratic system could also clash with the consideration of *Securing Freedom from Strife*. Here we return to Orend's difficult question as to what to do if the people of the defeated nation want an aggressive government in power? Orend answers this question by explaining that 'A people never have the right to establish an aggressive or human rights-violating

⁵⁶ Moore (2006), p.72

⁵⁷ Walzer (2004), p.164

regime'.⁵⁸ Orend in fact goes on to stress that even if the locals wanted an aggressive government they could 'be forced to accept a new, minimally just regime in the post-war period'.⁵⁹ However, this clearly goes against the notion that the defeated state should have a totally free, self determining government immediately post war. It seems wise to give some guidance on how to stop a people selecting an aggressive government.

Again it seems prudent to attempt to counter balance the antagonistic elements of both considerations by looking into the situation in question and restricting the practice of self-determination in order to secure a more lasting peace. This should involve a balancing of the mentioned considerations leading to, that this thesis has described as 'democracy with limits'. For example, post World War II a democratic system was reintroduced to Germany by the allies to replace the dictatorial regime of Hitler. However, the Nazi party and the fascist government had not lost all of its support over night and still harboured some support amongst the German people. In order to avoid Orend's dilemma that a defeated nation might want in power an aggressive government, the allies banned the Nazi party from the political system⁶⁰. Clearly this was a decision that attempted to balance the considerations of peace on one hand and democracy on the other.

This type of action is also supported by Rawls who states that 'once peace is securely re-established, the enemy society is to be granted an autonomous well ordered regime of its own'.⁶¹ This shows support of the self-determination consideration. However, Rawls goes onto explain that 'For a time, however limits may be rightly placed on the defeated society's freedom in foreign policy'⁶² which shows support for the potential for limits. It is this aspect of limits to the self-determination that is crucial to the understanding of regime change set out within this section.

However, it should be realised that political parties should not be banned or outlawed simply because they happen to be at one end of the political spectrum.⁶³ Moreover, it would not be just to place limits on a nation's democracy simply because it

⁵⁸ Orend (2006), p.203

⁵⁹ Orend (2006), p.203

⁶⁰ Orend (2006), p.193. Also see Godfrey (2006), p.12 and pp.25-26

⁶¹ Bass (2004), p.388, Orend (2006), p.197

⁶² Bass (2004), p.388

⁶³ Light (2001), p.89. Light explains that 'Western governments appear to deem it more important that communists or extreme nationalists do not win elections than that democracy is established... But by condoning corruption and the use of undemocratic means in the name of establishing democracy, they discredit their own liberal credentials'.

suit the victors own political or socio-economic ends. To return to the example cited above, during the war termination of World War II the Fascist party was banned in order to secure freedom from strife. For the described reasons this action could be considered just. However, the allies also outlawed the Communist party as a legitimate political entity. Now if this decision was made due to the communist party demonstrating a clear intent for an aggressive war, then such an action could possibly be considered just. However, if the party was outlawed due to fear of the spread of communism by a government that was ideologically opposed to extreme left wing politics, then such an action would not be considered just.

It seems unwise to attempt to list a strict set of rules to follow in order to create the perfect model for regime change. Instead, it seems more appropriate that any commander of the peace should be aware of all of the ethical considerations of such actions and try to balance these considerations in relation to the circumstances. For instance, to make a rule 'Certain Political parties need to be outlawed' could be unjust given some situations and just in others. In exactly the same way as described in Chapter IV the 'Commander of the Peace' needs to be educated by the cluster of principles of a just regime change and with these principles in mind needs to balance the difficult equation of the just regime change as best they can.

Finally, there is a fourth important consideration that the Commanders of the Peace need to be aware of; that in order to act justly they must always do what is practically possible given the circumstances. This harks back to the both the traditional just war tenet of 'reasonable chance of success' and indeed the description of situational awareness found within Chapter IV. A Commander of the Peace, as well as being a champion of justice, must also be realistic and to a certain degree pragmatic. Due to the difficult nature of a regime change and often arduous circumstances, what is best and indeed 'ideal' may not always be possible given a certain situation.⁶⁴ In such cases, if the commanders of the peace were to push and strive for this idealist regime change that does not paid heed to the situation, then it would simply fail and create a multitude of serious problems, both politically and ethically, ranging from sectarian violence to full blown civil war. Therefore the commander of the peace should look at what is a 'possible' solution. By attempting to apply the cluster of considerations as fully as possible but also be sensitive to the circumstances, based upon their education in situational awareness.

⁶⁴ Orend (2006), p202-208, Walzer (1977), p.122 and Donnelly (2000), p.167

Regime change in Iraq

It was stated within Chapter I that this thesis was not written to relate purely to the current and ongoing situation in Iraq. Instead, wanting to draw upon war termination examples that covered a variety of conflicts through out history. However, it would perhaps seem unwise to neglect this area completely; this section will therefore address the issue of regime change in post war Iraq. It should perhaps be noted that due to the small size of the section it will be unable to investigate the issue of Iraq in as much depth as some texts that have post war Iraq as its sole topic, and in no way is this section claiming to provide a comprehensive study of war termination in Iraq. Additionally, this section will only address the principles specific to regime change separating them from the more general principles of *jus post bellum*, which is in fact an artificial divide as the considerations of regime change should work hand in hand with these more general principles set out within Chapter II. Nevertheless, this section will apply some of the above considerations to concisely evaluate the regime change and ongoing war termination process.

The first stage of this section will be to see if the regime change in Iraq was indeed morally permissible given the above discussion. This, in many ways, is not an easy task as it is difficult to identify the true reason for the regime change behind the smoke of political rhetoric. Moreover, a plethora of different reasons for the regime change were given and it is these that must be sifted through in relation to the above principles.⁶⁵

The first observation to make is that Iraq had in place a working government during the conflict and to the end of the war, until it was forcibly removed by coalition forces. Therefore the installation of a new regime could not be considered legitimate and just for the reason of filling a vacuum. That is easy and straight forward to ascertain.

Next it was explained that a victorious nation could change a regime justly in cases of genocide and humanitarian disaster in order to *Ensuring the Safety and Security of Innocents and Non-Combatants*. This motive for regime was put forward as one of the reasons for regime change, due to the past attacks by Saddam Hussein on the Kurds, including the use of chemical weapons on Kurdish villages in 1988.⁶⁶ If wide scale

⁶⁵ This point is also made by Himes (2005) at the Fordham University conference 'The Ethics of Exit'.

⁶⁶ Orend (2006), p.79 and Moore (2006), p.57

ethnic cleansing was occurring in Iraq and the motivation for the war was to prevent such atrocities then it could have been permissible to change a regime. However, horrendous as those attacks were, they certainly were not recent and, in fact, the conflict in Iraq was clearly not a response to those internal attacks. Therefore an extreme situation of genocide and ethnic cleansing was not the case when the regime change took place. Therefore this reason can not be utilised to justify the deposing of Saddam Hussein and the installation of a new regime.⁶⁷

The third and final reason that this thesis set out as a just reason for regime change was to *Secure freedom from strife* in extreme situations, if all other methods of maintaining peace had either failed or were obviously doomed to failure. This reason was commonly cited for the invasion and change of regime. It was claimed that Saddam Hussein and the Iraq nation had developed weapons of mass destruction which could be a threat to international peace and that the only way to foster a post war peace was to change to change the regime.⁶⁸ If this were so then again a regime change could have possibly been justifiable.

However, it has now become clear, after a detailed investigation, that weapons of mass destruction have not been found within the Iraq borders. Moreover, as stated by Kinzer, Saddam's military 'was a pitiful shell, devastated by eight years of war with Iran and more than a decade of economic sanctions, and armed mainly with weapons old enough to be museum pieces'.⁶⁹ It seems that Iraq was not the imminent threat to international stability that was initially claimed and, therefore, that a change of regime change cannot be justified on the grounds that without doing so the coalition forces would be unable to secure freedom from strife. Even if Iraq had rearmed or developed weapons of mass destruction Walzer makes a strong case that Iraq could have been disarmed without the need for a regime change or even full scale combat.⁷⁰

This next section will look at Iraq in light of the illegitimate reasons for regime change explained prior. It was made clear that a regime change for economic benefit or territorial expansion would be considered unjust. In relation to the Iraq case a wide array of conspiracy theories have been raised stating that the regime change in Iraq took place not for motives of securing peace or protecting Kurdish minority groups, but rather to

⁶⁷ However there are arguments put forward by Moore (2006), p.67 which would disagree with this position.

⁶⁸ Walzer (2006), p.3

⁶⁹ Kinzer (2006), p.290

⁷⁰ Walzer (2004), p.160

secure oil wells and to make money.⁷¹ To repeat some of these theories, ‘With Iran in hostile hands and the government of other Persian Gulf states becoming less stable, control of Iraq’s vast reserves, which comprise 10 percent of the world’s supply, would guarantee the United States a steady flow of oil’.⁷² However, Donald Rumsfeld has stated that the regime change and occupation of Iraq had ‘nothing to do with oil, literally nothing to do with oil’.⁷³ The facts of the matter are still not one hundred percent for certain however, in conclusion of this issue, if the regime change did take place in Iraq in order to gain further economic prosperity and to gain control of oil reserves then such a regime change would be unjust.

This section also made the claim that a regime change would be considered unjust if it was carried out purely to install a type of regime that was more in line with the chosen government or ideology of the victorious nation. This charge has also been levelled at the regime change to take place in Iraq. Certain commentators, such as Kinzer, have claimed that the regime change was motivated by the ‘conviction that the American form of government, based on capitalism... is as President Bush asserted, “right and true for every person in every society”’.⁷⁴ Again the facts of the matter are far from clear, but if this was the case it would not constitute an acceptable motive for regime change under the guidance of *jus post bellum*. This thesis has continually stressed that a regime change should only be carried out given certain extreme and radical situations. Unless new information is revealed, such extreme action was not justified in the Iraq case.

Despite the unjust nature of the regime change this thesis will now investigate whether the type of regime introduced to post war Iraq was of a just nature based on the collection of considerations outlined above. At first glance it does appear as if much of what was described above has been put in to place in the war torn Iraq. For instance, through the Iraq constitution a democratic system was introduced to the country, this potentially gave the Iraqi people the chance to determine their own government. As stated by Condoleezza Rice ‘Let me state that the goal of everyone, the coalition and the international community, should be to return sovereignty to the Iraq people as soon as is possible’.⁷⁵

⁷¹ Gordon (2006), p.92

⁷² Kinzer (2006), p.291

⁷³ Kinzer (2006), p.291

⁷⁴ Kinzer (2006), p.315. Please also see Walzer (2004), p.93

⁷⁵ Iaisello (2003), p.7

Moreover the Iraqi constitution, which was put into place following a referendum on 15th October 2005, also made the system a federal one in an effort to give the Kurds, Sunnis and Shiites a certain degree of political autonomy.⁷⁶ It could also be claimed that strong efforts were made to ensure that minority groups were protected and were given political representation. This was coupled with political movements to ban aggressive and potentially belligerent political parties. Again all of this is very much in line with the considerations outlined above.⁷⁷

However, despite all of these observations, and adherence to some of the considerations explained in this chapter, the regime change in Iraq has led to disaster. The situation has resulting in civil strife, wide spread sectarian violence, suicide bombings and insurgency. The number of troops required to maintain order has increased and many wonder how, having got into this spiral of violence in the gulf, it will be possible to get out of it.

Despite the fact that some of the considerations described above have been put into practice, other important considerations of ethical regime change were ignored or neglected in the Iraq case. For instance, one consideration stressed in both Chapter IV and this Chapter is the need for Commanders of the Peace to be guided by ‘situational awareness’. In the case of the Iraq regime change, one could argue that those involved in the decision making process lacked this vital understanding and, perhaps more importantly, ignored those who did have such knowledge.

As an example; before the fall of Saddam Hussein the American State Department began work on a project with the title ‘Future of Iraq’, which was designed to work out how democracy could successfully be implemented in a post war Iraq. As explained by Kinzer ‘Large teams of experts, including more than two hundred Iraqis representing almost every ethnic and political group... produced thirteen volumes of recommendations about how to rebuild everything from the country’s oil industry to its criminal justice system... Secretary of Defence Rumsfeld summarily rejected them’.⁷⁸

Of course it is impossible to ascertain whether these volumes of information would have prevented the ongoing problems in Iraq. However it does seem that a deep

⁷⁶ Moore (2006), p.73

⁷⁷ Although political criticisms of the constitution and of banning political parties in Iraq are investigated by Moore (2006), pp.74-76

⁷⁸ Kinzer (2006), p.314. This is also commented on by Meierhenrich (2006), p.118

understanding of the situation was lacking when the regime change plan was devised. This could have been remedied if these Arabic speaking experts had been listened to.⁷⁹ This is but one example of how the ‘Commanders of the Peace’, responsible for the regime change in Iraq, could be seen to lack situational awareness.

Linked to this point is the position that the regime change in Iraq may have aimed towards the ideal of democracy without fully considering what was possible given the fragmented situation. That, despite the unjust motivation for the regime change, when changing the government a movement was made to introduce a democratic system before laying the foundations for that system within the country. Again it also might be that the failings of the regime change in Iraq were due, not to the ignorance of these considerations of regime change specifically, but has encountered great difficulty as the more general principles of *jus post bellum* (set out in Chapter II) were not adhered to. However it is not the place of this short section to investigate every aspect of *jus post bellum* in reference to the Iraq case as many texts exist which discuss these types of issue in great depth.

Due to the neglect of these regime change considerations the problem in Iraq is what to do now. Now that a mess has been created in the war termination stage, how should it be cleaned up ethically? Leaving the events of Iraq aside, how a state should carry on with its actions in the wake of war, if it created an ethical mess at the start of its war termination phase, is an interesting ethical query. Obviously this is a massive problem that, whilst relevant to a discussion of *jus post bellum*, is one that goes beyond the confines of this chapter and indeed this thesis.

However it should be mentioned in closing that, if one looks at the lessons of history, the road to democracy is rarely ever a smooth one. Moreover that the road is not always a straight one with a country gradually becoming more democratic as each day passes by. Rather, once a country has started down the path of democracy it often has a difficult journey to make before it becomes a fully democratic nation. For instance, England had to undergo a civil war, France had to endure three revolutions before democracy took root and America had to have a civil war. As a closing thought, one should not forget how difficult this road can be and should not expect Iraq’s transition to democracy to be any smoother.

⁷⁹ Kinzer (2006), p.314

In conclusion this chapter has set out explicitly under what conditions a regime change can be undertaken. In addition it has also demonstrated when a regime change would be an unjust and indeed what types of regime, if introduced would be considered immoral. More importantly, this section has set out a cluster of considerations that despite their opposed nature, need to be kept in mind and used to prompt guidance by the Commanders of the Peace. It has shown that the ethical principles are not always compatible and do not always sort into a neat package to be applied absolutely. This has led to the conclusion that even by following many of these considerations that regime change is a morally and politically arduous task as shown in the ongoing predicament in Iraq. This is one of the reasons why it is to be avoided in all but the most extreme of situations.

'The End of a Just War'

The Parable of the Prince

The King strode wearily along the corridors of his palace, his faithful advisers and servants running after him, hanging on his every word. The King had been forced into making strong and hard decisions of late, decisions which had taken their toll upon him. Yet, despite the hardships, he was once again convinced that he had done the true and right thing, he was terminating the war in a just and noble manner. The main body of his work was complete and all that remained on his mind was the joyful thought of his son returning from the front line, that and the desire to rest and perhaps even sleep, a luxury that he felt he had done without during the entire war and, so far, in its termination.

'Sire... Sire' a voice shouted down the magnificent corridor. The King turned to witness the Governor of the capital city pursuing him down the hallway.

'Yes Governor, what do you need?' the King asked lazily.

'My lord King, forgive me for disturbing you but I have certain pressing issues which need attending to'.

The Kings heart sank, was there still more that his naïve mind had overlooked?

'Please speak' the King responded.

'My King, you instructed my herald to inform the city, and indeed the nation, that the end of war celebrations would have to wait. My lord we have waited now for a long time, please tell me when, and indeed in what form, should these victory celebrations take place?'

The King visibly sighed with relief, such a trivial matter he mused, yet a chance for him to rest his mind, sit down and talk with the Governor

'Of course Governor, let us discuss this matter of great magnitude'.

The two men reconvened in the Kings private chambers and sat opposite each other in front of a roaring fireplace. The King was the first to speak,

'So, Governor, what types of celebration do you think appropriate to mark not only our great and just victory, but the way that we are currently handling the way we exit the war?'

'Well, sire, I have planned victory parades through the capital, with feasting, fireworks and celebrations for all. This will be followed the next day by a victory march performed by our brave soldiers now that they are returning triumphant from battle. Furthermore, I have arranged for you to publicly address the nation'

The King interrupted the Governor's detailed listings of his planned festivities, 'But these things appear so temporary. I agree that they should, of course, take place but I think that this just victory should be remembered by something more stable, more permanent, and most important something lasting.'

'What do you have in mind great King?'

'I propose that to honour the end justice of this war that we have constructed a monument.'

'What kind of monument sire?' the Governor enquired.

'A monument of truly epic proportions. A monument that celebrates that good overcame evil, to remind all our future generations that a just war can be fought with both dignity and pride. A monument which will stand forever as an eternal celebration of this nation's justice and character.'

'That sounds like a truly remarkable idea your majesty. I will call immediately for our nation's finest architects' said the Governor.

As the Governor was about to bid farewell to the King the door swung open and captured within the frame was the King's eldest son and prince of the nation, still wearing his uniform. The King and the Prince approached one another and embraced each other warmly as the Governor looked on at the sight of father and son reunited after a long war.

'It is wonderful to see you, father' said the Prince.

Wanting to leave the Prince to his homecoming, the Governor excused himself and explained that

'These details of the war's ending can be discussed at another time your highnesses'.

The King agreed but the Prince spoke up 'Please father, do not let me disturb you when performing your public duty. I would be honoured to assist in any way I can, as I assisted in the battles to defend this country'.

The King looked proudly at his son, and noticed his face seemed older and darker than once it had, he then turned to the Governor and spoke 'Very well then, let us continue to discuss our celebrations'.

The Prince asked 'What celebrations father?'

The Governor answered in place of the King 'My prince we are discussing the celebrations to mark the end of the war. We are arranging feasting, marches, parades and most importantly the King in his eternal wisdom wishes to commission a statue of some kind to grandly demonstrate our noble and just victory'.

The Prince displayed a look of both confusion and disappointment in his dark features ‘After all of your efforts, father, do you really want to conclude the war in this manner?’

‘What do you mean son. We acted justly and we must now show that justice has been served. Surely you understand that justice must be seen to be done as well as being done. What is wrong with celebrating such wonderful achievements?’

‘Father, during the course of this war we have both done our utmost to ensure that this conflict, forced upon us by the ruler of our neighbours, was fought and concluded in a just and fair way.’

‘That is true, and then surely we should celebrate such noble action?’

The Prince continued his narrative un-fazed ‘The guide to help ensure our actions has been fair throughout all of these elements of the war and now its termination has been the guidance of our forefathers, our ancestors. Do you not agree?’

‘Why yes of course, but what relevance does that hold?’

‘One of the messages from our earliest ancestors is that war, even one as ‘just’ as this, is a tragic and sad event.’

The King and the Governor remained silent

‘I, for one, wholeheartedly agree with that observation. When I walked safely from the battlefield I knew that I had fought for a just cause and followed the rules and laws of war which you yourself taught me. I also saw the terrible price of the war, paid in blood, all around me. I saw men broken and blooded, men not only from our own kingdom, but men forced and press ganged into fighting for our neighbour. Men forced to battle and then were killed for one evil ruler’s greed and vaulting ambition. I ask you, Father, should we celebrate the fact that we were called upon to kill these men?’

The King sat down uncomfortably on his chair and listened.

‘In the conclusion of our combat I saw crippled soldiers, women and children murdered by retreating bands of our enemies troops. I even saw the land, the trees, the crops of our borders burned to the ground and left as a charred mess. I ask you again Father, should we build monuments to celebrate and congratulate ourselves upon these deeds?’

The King replied ‘My son, there surely have been evils committed in this war, and men have died and been maimed because of it. However, if we look at the whole, at the wide and big picture then could we not say that a greater good was achieved that outweighed the evil that was caused. Could that greater good not then be celebrated?’

‘Father we did not fight this war so that we could one day celebrate and marvel at our own magnificence. All of our actions have been prompted by what is fair and what is just. If you act in the manner that you describe would that not then question the motives

for all our previous actions? More importantly, we lost good men in an effort to ensure that we respected our neighbour and their lands whilst we were fighting the war, always remember that to fight justly is often harder on the soldiers in combat than if any means could have been employed, therefore should we really abandon that respect and humility as soon as the war is over?’ⁱ

The Governor who had been watching the King and his son converse spoke up against the Prince. ‘I have to say, my Prince, I am not totally convinced by what you say. I fail to see any tangible harm that celebrating our victory could potentially create. What evil could a huge party cause?’

The Prince looked towards the Governor and replied to his challenge.

‘I can foresee that the celebrations that you speak of could cause quite serious harm in several ways, other than what I have already explained. For instance, would you not agree that the way that we learn about things is by analysing the past. As such, we create a broad understanding of what warfare is like based upon past records and past experience. Do we not?’

‘I fail to see the relevance my Prince’ said the Governor shaking his head.

‘If we celebrate this war rather than mourn it, then we are recording it as an event worthy of recognition, praise and festivity. When times are hard for future generations, and war might become a possibility, they might then see this mighty statue that you speak of and be prompted into battle. By celebrating war in such a way we could sow the seed for those in the future to resort to it without searching out every alternative to avoid it. In effect, we are siding against one of the most important teachings of our ancestors which show us that war should be an utter last resort. By building a monument we are, in a certain way, building against our own tradition’.ⁱⁱ

‘I am beginning to see your point’ said the King in place of the Governor.

‘There is more, my King. We must remember that we have in fact terminated the war and the ruler of our neighbour who led the attack upon our nation is being tried for his crimes. The people, and indeed the newly appointed government, of our neighbour are no longer our enemies. Whilst I still believe that we should be vigilant in case of further attack, thus far our neighbours seem happy to foster peace.’

‘Please do continue’ said the King.

‘If we begin to publicly celebrate our wonderful victory over our weak and utterly unjust enemy then that will only take steps to harbour any aggression and bad feeling that remains in our neighbours and indeed in our own people. By celebrating our supremacy it may create a larger divide between our two nations. Surely, as one of our strongest

aims is to create peace in this land, we want to be on good terms with our neighbours and not gloat over their defeat. As a Prince it seems that the most important skill is not to learn to war and fight but to build for peace. Therefore by acting ethically we are also acting in the best interests of our own nation’.

The King replied to his troubled son ‘Then what would you have me do son? Should we simply return to our normal life, if indeed we even can, pretending that such toil had not happened? Or should we hang our heads in shame perhaps because we have defended our country?’

‘I do not agree with any of those options Father’ the Prince responded.

‘What then is the answer?’

The Prince lent against the wall by the fire, still visibly weary from battle, and began his narrative

‘We should continue to act in the way that we have from this war’s commencement. We should be guided by the teachings of our law, our ancestors and our conscience which tell us that warfare is a terrible and tragic thing. Whilst it might be necessary in extreme conditions it should be avoided and recognised for the horrific thing that it is. Rather than celebrating our actions within it we should instead mourn those who did not return from it. Pride should be replaced with remorse and celebration should be exchanged for regret. We should remember all those who died, not only the soldiers under our own banner but those of our neighboursⁱⁱⁱ. We should recall and seek forgiveness of all the innocent people that we have hurt in the course of the war and we should do all we can to remember just how bad warfare can be. That way rather than making warfare appear grand and poetic, we warn future generations away from it.’

The King solemnly looked on but still said nothing

‘Father... if we are to construct a monument or statue let it be a symbol of remembrance for all, no matter what nation, rather than an icon of victory for some people and defeat for others’.

The King nodded his head with agreement and sadness. He recalled how hard he had tried to avoid conflict and how sad he had been during the course of the war with all the losses it had entailed. He wondered how he could have been distracted away from such things so quickly. However the Governor, who had long been planning these celebrations, was not in such total agreement as the King.

‘My Prince if I may be so bold as to speak once more’ the Governor asked.

‘Please do, good Governor’.

‘You make a very convincing case against our planned celebrations of victory but I remain to be fully convinced. I have a son that is returning from the war as do many fathers and families. We have stayed up at night concerned about his safe return and soon he should be back home and safe. Surely you would not object to us celebrating our brave sons return? Or would you? Do you seek to prevent our honest citizens from celebrating at their loved ones home coming? Do you think that is even possible to prevent our honest citizens celebrating the home coming of there family? Or do you propose that we create some kind of law to prevent it? As your father embraced you as you arrived as a display of affection surely we should be allowed to publicly do the same’.^{iv}

The Prince was about to speak but the Governor had more to say ‘As you pointed out dangers in the actions that we had chosen let me point out the inherent dangers in your position.’

‘Very well, perhaps I have missed some important point’ said the Prince.

‘If we reject those that return, do not publicly celebrate their achievements and fail to recognise the just cause that they served we run the risk of turning our own people away from them. These men fought for a just cause and if we follow your guidance we should on there return be wrapped up in mourning for those they were forced to kill’.

‘I see what you mean Governor’ said the King.

The Governor continued his words

‘These soldiers will expect to come home as heroes and instead you seem to propose forgetting their noble deeds. They even could become alienated if we view the war through such a lens. What do you say to that Prince?’

The Prince looked towards the Governor and replied ‘I understand the joy that you have Governor to see the safe return of your son, of course I would not have you or any members of the kingdom hide their delight at the return of a loved one after such dangerous and tragic events.’

‘Then you speak with two tongues. You have just stated then that your previous position is false. How on the one hand can you shun your father’s plans of celebration and on the other hand support them’ the Governor explained leaning back in his chair.

The Prince however was quick to respond

‘Good Governor, I can see nothing wrong in celebrating the homecoming of soldiers however there seems to be a massive and important ethical difference between celebrating the return of a son and celebrating a victorious war and the fact that we have defeated our neighbour^v. Whilst I would condemn as unjust the celebrations of

defeating our neighbour and instead suggest that we remember the dead that does not mean that we have to forget and not show respect for the living. I would certainly not promote a backlash against the men I fought with and commanded on the battlefield. I admit that perhaps I was wrong to suggest we cease all celebrations, just those which celebrate war and victory’.

‘I see what you mean now Prince’ said the Governor ‘You are indeed right. What I really wish to celebrate is the safety of my son and not that fact that we were forced to do such foul deeds.’

The King rose from his chair and addressed the Prince and his loyal Governor ‘Then let us change our planned course of action. Let us forgo our plans for the huge celebrations which I spoke of before and instead mourn these most tragic events. However we must do so without forgetting the safe home coming of our soldiers.’

The Governor and the Prince both nodded

‘A statue will be constructed but it will be a monument to show respect and remorse for those that fell in battle. I hope that it will be a reminder to all, not just those from our country, of the evil of war and that one of the most important aspects of our end of war actions is to make sure that it is remembered as such’.

The King turned and faced the Prince

‘Make sure that you remember such things in your rule’^{vi}

‘I will Father. I will’ the Prince replied.

ⁱ Iasiello (2004), p.5

ⁱⁱ Iasiello (2004), p.12.

ⁱⁱⁱ Schuck (1994), p.1. Schuck lists the ‘Principle of repentance’ as the first criterion for *jus post bellum*. He explains, within one short paragraph, that the victor in a war should ‘conduct themselves humbly after a war’. He makes this point by drawing, albeit very briefly, from Augustine by stating that ‘Did Augustine not say that even a just war constitutes a mournful occasion?’ Whilst Schuck’s work has been drawn on within this short story this thesis would not agree that ‘repentance’ can be included within war termination as a ‘principle’ in the same way as something like ‘Ensuring the Protection and Safety of Innocents and Non-Combatants’. Therefore it forms an important part of war termination but could not rightly be explained as a principle. Additionally for a detailed account of the importance of forgiveness in war termination please see Rigby (2005), pp.177-200

^{iv} Schuck (1994), p.1

^v Schuck (1994), p.1. However a crucial difference exists between this thesis and Schuck. Schuck describes this distinction between these two celebrations as ‘marginal’. However this thesis strongly explains that this distinction is vast.

^{vi} Iasiello (2004), p.12. Whilst Iasiello lists ‘The Lessons of War’ as a criterion for *jus post bellum* it is in a very different context to the above. Iasiello (2004), p.5 also explains that Plato ‘urged the Greeks not to construct monuments to honour the victor’.

Conclusion

'Final thoughts on the End Game'

This thesis has been written with a linear structure, each chapter following on from the next. Additionally every chapter has been concluded within its own right and for this reason a final section is not required to bring together separate strands of thought. Therefore, the purpose of this conclusion will be two fold. Firstly to recap the progress made over the course of this work and highlight the originality of the piece. Secondly, to demonstrate that whilst this thesis has provided a comprehensive examination of *jus post bellum* scores of questions about justice in the wake of war still remain unanswered. This section will provide some information about research that I believe is required to further *jus post bellum* understanding.

This work has continually described just war thinking as an evolutionary and ever changing tradition. Therefore to deal with justice in the wake of war one does not have to develop a 'new' theory but rather should adapt and continue the evolution of the current just war tradition to incorporate the period of war termination. From this stance this thesis has proposed that an understanding of *jus post bellum* be developed from various sources. Firstly, *jus post bellum* can be built by expanding upon the principles of *jus ad bellum* and *jus in bello*.¹ Secondly by utilising contemporary musings on justice post war and finally by drawing war termination guidance from those classic just war texts that do discuss such issues. It should be recognised that this third type of source is particularly important as this method of research goes against the current trend in war termination ethics.

Using these sources this thesis developed a set of standard *jus post bellum* principles that related initially to an interstate war of aggression and was later applied, and slightly modified, to fit with cases of humanitarian intervention. Of particular importance are those areas not widely discussed in current literature. For instance, two examples amongst many include the sections on war crimes of *jus post bellum* and detailed analysis of cultural change. Additionally this thesis discussed the ethical dilemma of a just state involved with an unjust coalition. This again appears to be a first in the literature on *jus post bellum* which separates this thesis from other texts on the subject.

¹ This task is also performed by Orend (1999), p.259 and Orend (2002), pp.44-45

Perhaps the most prominent shift away from current *jus post bellum* thought can be seen in the approach this thesis takes to the application of its principles. Rather than presenting these principles as a set of absolute moral laws, this thesis stressed the importance of a flexible set of ethical principles. A set of principles not to be used for purely evaluative and academic purposes, but one which could have a ‘real’ and practical output. In order to determine how such principles could be used in a functional way this thesis examined, through the lens of Clausewitz, the specific phenomena that *jus post bellum* norms should deal with, war and war termination. This thesis then determined that in order for the principles to have any usefulness they had to take into account the phenomena to which they were being applied to.

In order to be effective this thesis then suggested that the principles of *jus post bellum* needed to be applied in a adaptable and educational way by a group named ‘The Commanders of the Peace’. Again this provides a different approach to *jus post bellum* compared to mainstream literature as it actually commented on the moral agents who would be putting such principles into action. This section also discussed the need for such individuals to have a ‘situational awareness’ as well as ethical training. Additionally, this section suggested that this method of using the principles best suited war termination due to the antagonistic nature of the principles themselves, this notion was reinforced and developed in the chapter related to regime change.

Despite the apparent comprehensive approach of this thesis many issues and questions of *jus post bellum* have not been dealt with, primarily due to the finite space of the thesis. Rather than attempting the Herculean task of dealing with every issue surrounding war termination this thesis has selected central topics which could be expanded upon in due course. For instance, when analyzing the ‘backdrops’ of war this thesis only dealt with cases of humanitarian intervention. In order to ensure that the principles of war termination remain current and applicable the work set out in this thesis needs to be applied to numerous other scenarios as they arise. For this reason the study of war termination and *jus post bellum* will be an endless task as over time more situations and backdrops will occur. Again this illustrates an important trend in the just war tradition.

Secondly, this thesis only examined two potential critics of *jus post bellum*. It is quite possible that over time other individuals or schools of thought may disagree or argue against the principles and application of war termination ethics presented in this work. Therefore *jus post bellum* philosophy should pre-empt other schools of thought as

best it can through future research, but, also deal reactively to other critics as they emerge.

Thirdly, this thesis has investigated ethical issues surrounding war termination from a historical perspective, drawing its information primarily from classical western sources. Another potential area of research would be to see if other traditions contained moral guidance on the subject of war termination. If other traditions did contain war termination advice then that could be compared and contrasted with the *jus post bellum* principles developed from western thinking found within this thesis.

Fourthly, this thesis created guidance on war termination almost exclusively for those victorious in war. The question of what a just side is to do if they lose a conflict is a crucial issue that, up until now, has only been commented on in a single foot note by Orend². In addition, I am yet to find a commentator who deals with the possibility that a conflict could be brought to a stalemate or a draw. This is another gap in war termination ethics that requires substantially greater investigation that goes beyond the scope of this thesis.

More importantly Orend also discusses ‘Long-term Structural Reform’³ in his earlier works on *jus post bellum*. Again due to size constraints this thesis has deliberately been restricted to a discussion of ‘immediate’ war termination concerns and not longer term actions post war which could lead to a lasting peace. Having established an understanding of immediate war termination my own future research will revolve around expanding the principles within this thesis to deal with these longer term questions and also show how these immediate principles not only terminate a war justly but will actually foster a longer term, or to use Kant’s phrase, ‘Perpetual Peace’⁴. Obviously such issues are incredibly complex and cannot be adequately dealt with in passing; as such this topic has been left for a further separate work. In my opinion these five areas, and in particular the last, should be the focus of future texts on *jus post bellum*.

Having made this observation it is difficult to know exactly how to conclude this project, and so to aid me I will once again turn to the writing of the classic just war scholar Grotius. It is these few lines, taken from Grotius’s chapter on war termination

²Orend (1999), pp.282-295 and Orend (2000), pp.257-258

³ Orend (2000), pp.240-255 and Orend (2004), p.175. Coates (1997), p.284 also expresses a similar goal.

⁴ Kant (1991), p.93

and peace that seem to adequately sum up my thoughts upon reaching the end of this thesis.

‘At this point I think that I can bring my work to an end, not because all has been said that could be said, but because sufficient has been said to lay the foundations. Whoever may wish to build on these foundations a more imposing structure will not only find me free from envy, but will have my sincere gratitude.’

-Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*⁵

It seems that as long as these lines are adhered to the just war tradition will always have a future. I hope than in some extremely limited way this thesis has helped to build for that future.

⁵ Grotius (1646), p.860

Bibliography

Anscombe, G.E.M (1981), *Ethics, Religion and Politics: The Collected Philosophical Papers of G.E.M Anscombe Volume Three* (Oxford: Basil Blackwell)

Augustine, A (1897), *The City of God* (Edinburgh: T and T Clark)

Bailey, Sydney (1982), *How Wars End: The United Nations and the Termination of Armed Conflict 1946-1964 Vol.1* (Oxford: Clarendon Press)

Barash, David and Webel, Charles (2002), *Peace and Conflict Studies* (London and Delhi: Sage Publications)

Barnhizer, David ed. (2001), *Effective Strategies for Protecting Human Rights* (Aldershot: Dartmouth Publishing Company)

Beitz, Charles, Cohen, Marshall, Scanlon, Thomas and Simmons, John, ed. (1985), *International Ethics* (Princeton: Princeton University Press)

Brown, Seyom (1994), *The Causes and Prevention of War* (Basingstoke: Macmillan Press)

Chesterman, Simon (2001), *Civilians in War* (London and Colorado: Lynne Rienns Press)

Clausewitz, Carl von (1989), *On War* (Princeton: Princeton University Press)

Clausewitz, Carl von (1943), *Principles of War*, tr. and edited by Hans Gatzke (London: John Lane The Bodley Head Limited)

Coates, A (1997), *The Ethics of War* (Manchester: Manchester University Press)

Covell, Charles (1998), *Kant and the Law of Peace: A study in the Philosophy of International Law and International Relations* (Basingstoke: Palgrave)

Dockrill, M and Paskins, B (1979), *The Ethics of War* (London: Duckworth)

Donnelly, Jack (2000), *Realism and International Relations* (Cambridge: Cambridge University Press)

Elfstrom, G and Fotion, N (1986), *Military Ethics Guidance for Peace and War* (London: Routledge and Kegan Paul plc)

Evans, Mark, ed. (2005), *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press)

Forbes, Ian and Hoffman, Mark (1993), *Political Theory, International Relations and the Ethics of Intervention* (Basingstoke: McMillan Press)

Freedman, Lawrence, ed. (1994), *War* (Oxford and New York: Oxford University Press)

Frost, Mervyn (1996), *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press)

Gallie, W.B. (1978), *Philosophers of Peace and War: Kant, Clausewitz, Marx Engels and Tolstoy* (Cambridge: Cambridge University Press)

Gentili, Alberico (1612), *De Jure Belli Libri Tres: Volume Two*, tr. John C. Rolfe (Oxford: Oxford University Press)

Glover, Jonathan (1977), *Causing Death and Saving Lives* (London: Penguin Books)

Greene, Robert (2006), *The 33 Strategies of War* (London: Profile Books Ltd)

Grotius, Hugo (1646), *De Jure Belli Ac Pacis Libri Tres*, tr. Francis W. Kelsey (Oxford and London: Clarendon Press and Humphrey Milford)

Gutman, Roy and Rieff, David (1999), *Crimes of War* (New York and London: W.W. Norton and Company)

Hampson, Fen (2001), *Madness in the Multitude: Human Security and World Disorder* (Toronto: Oxford University Press)

Hasegawa, Tsuyoshi (2005), *Racing the Enemy: Stalin, Truman and the Surrender of Japan* (Cambridge Massachusettes and London: The Belknap Press of Harvard University)

Hare, R.M (1972), *Applications of Moral Philosophy* (London and Basingstoke: Macmillan Press)

Hegel, Georg (1942), *Philosophy of Right*, tr. Knox, T.M (Oxford: Clarendon Press)

Heuser, Beatrice (2002), *Reading Clausewitz* (London: Pimlico Random House)

Hinde, Robert and Rotblat, Joseph (2003), *War No More: Eliminating Conflict in the Nuclear Age* (London: Pluto Press)

Holmes, R (1989), *On War and Morality* (Princeton: Princeton University Press)

Honderich, Ted, ed. (1995), *The Oxford Companion to Philosophy* (Oxford and New York: Oxford University Press)

Howard, Michael (1983), *Clausewitz* (Oxford: Oxford University Press)

Ikenberry, G. John (2001), *After Victory* (Princeton and Oxford: Princeton University Press)

Ikle, Fred (1971), *Every War Must End* (New York and London: Columbia University Press)

Johnson, James (1984), *Can Modern War be Just?* (New Haven and London: Yale University Press)

Johnson, James (1999), *Morality and Contemporary Warfare* (New Haven and London: Yale University Press)

Kant, Immanuel (1970), *Political Writings*, tr. Nisbet, N (Cambridge: Cambridge University Press)

Keckskemeti, Paul (1964), *Strategic Surrender: The Politics of Victory and Defeat* (New York: Athesneum)

Kinzer, Stephen (2006), *Overthrow: America's Century of Regime Change from Hawaii to Iraq* (New York: Times Books)

Leckie, Robert (1962), *Conflict The History of the Korean War, 1950-53* (New York: G.P Putnam's Sons)

Machiavelli, Niccolo (1961), *The Prince*, tr. Bull, George (London: Penguin Books)

Mani, Rama (2002), *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press)

Mapel, David and Nardin, Terry, ed. (1992), *Traditions of International Ethics* (Cambridge: Cambridge University Press)

Munkler, Herfried (2002), *The New Wars* (Cambridge: Polity Press)

Oderberg, David (2000), *Applied Ethics a non-consequentialist approach* (Oxford: Blackwell Publishers)

Okin, Susan (1999), *Is Multiculturalism bad for women?* (Cambridge: Princeton University Press)

Opie, Redvers (1951), *The Search for Peace Settlements* (Washington DC: The Brooklyn Institution)

Oren, Nissan (1982), *Termination of Wars* (Jerusalem: The Magnes Press, The Hebrew University)

Orend, Brian (2006), *The Morality of War* (Toronto: Broadview Press)

Orend, Brian (2000), *Michael Walzer on War and Justice* (Cardiff: Cardiff University Press)

- Orend, Brian (2000), *War and International Justice: A Kantian Perspective* (Ontario: Wilfred Laurier Press)
- Orford, Anne (2003), *Reading Humanitarian Intervention: Human Rights and the use of Force in International Law* (Cambridge: Cambridge University Press)
- Orwell, George (1968), *The Collected Essays, Journalism and Letters of George Orwell Volume 3 As I Please 1943-1945* (Middlesex: Penguin Books)
- Plato (1994), *Republic*, tr. Robin Waterfield (Oxford: Oxford University Press)
- Phillips, Robert and Cady, Duane (1996), *Humanitarian Intervention* (London: Rowman and Littlefield Publishers)
- Potter, Ralph (1970), *War and Moral Discourse* (Virginia: John Knox Press)
- Primoratz, Igor (2004), *Terrorism: The Philosophical Issues* (Basingstoke: Palgrave MacMillan)
- Pudendorf, Samuel von (1927), *De Officio Hominis Et Civis Juxta Legem Naturalem Libri Duo: Volume Two The Translation*, tr. Frank Gardner Moore (New York: Oxford University Press)
- Ratti, Oscar and Westbrook, Adele (1973), *Secrets of the Samurai* (Rutland, Vermont, Tokyo: Charles E. Tuttle Company)
- Rawls, John (1999), *A Theory of Justice* (Oxford: Oxford University Press)
- Reed, Charles and Ryall, David, ed. (2007), *The Price of Peace: Just War in the Twenty-First Century* (Cambridge: Cambridge University Press)
- Reichberg, Gregory, Syse, Henrik and Begby, Endre (2006), *The Ethics of War: Classic and Contemporary Readings* (Oxford: Blackwell Publishing Ltd)
- Rodin, David (2002), *War and Self Defence* (Oxford: Oxford University Press)
- Sandler, Stanley (1999), *The Korean War: No Victors, No Vanquished* (London: UCL Press)
- Schivelbusch, Wolfgang (2001), *The Culture of Defeat* (London: Granta Publications)
- Singer, Peter (2004), *The President of Good and Evil: Taking George W. Bush Seriously* (London: Granta Books)
- Smith, David (1974), *From War to Peace essays in peacemaking and war termination* (New York: Columbia University)
- Smith, Karen and Light, Margot (2001), *Ethics and Foreign Policy* (Cambridge: Cambridge University Press)

Stephen, Chris (2004), *Judgement Day The Trial of Slobodan Milosevic* (London: Atlantic Books)
Sunoo, Harold Hakwon (1975), *Japanese Militarism: Past and Present* (Chicago: Nelson Hall)

Tooke, Joan (1965), *The Just War in Aquinas and Grotius* (London: S.P.C.K)

Vattel, Emmerich (1758), *The Law of Nations or the Principles of Natural Law: Applied to the Conduct and to the Affairs of Nations and of Sovereigns Vol.3*, tr. Charles Fenwick (Washington: Carnegie Institution of Washington)

Walzer, Michael (1977), *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books)

Walzer, Michael (2004), *Arguing About War* (New Haven and London: Yale University Press)

Journal Articles

Alford, Roger (2002), 'On War as Hell', *Chicago Journal of International Law*, Vol.3, No. 1, pp.207-218

Bass, Gary (2004), 'Jus Post Bellum', *Journal of Philosophy and Public Affairs*, Vol.32, No.4, pp.384-412

Bellamy, Alex and Williams, Paul (2006), 'The UN Security Council and the Question of Humanitarian Intervention in Darfur', *Journal of Military Ethics*, Vol.5, No.2, pp.144-160

Boon, Kristen (2005), 'Legislative Reform in Post-conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers', *McGill Law Journal/Revue De Droit De McGill*, Vol.50, pp.285-326

Carson, Thomas (1988), 'Perpetual Peace What Kant should have said', *Journal of Social Theory and Practice*, Vol.14, pp.173-214

Chan, Steve (2003), 'Explaining War Termination: A Boolean Analysis of Causes', *Journal of Peace Research*, Vol.40, No.1, pp.49-66

Cook, Steven (2005), 'The Right Way to Promote Arab Reform', *Foreign Affairs*, Vol.84, No.2, pp.91-102

DiMeglio, Richard (2005), 'The Evolution of the Just War Tradition: Defining Jus Post Bellum', *Military Law Review*, Vol.186, pp.116-163

Dobbins, James (2005), 'Iraq: Winning the Unwinnable War', *Journal of Foreign Affairs*, Vol.84, No.1, pp.17-25

- Gordon, Joy (2006), 'Accountability and Governance in Iraq since the First Gulf War', *Ethics and International Affairs*, Vol.20, No.1, pp.79-98
- Ilesomni, Simeon (2003), 'So that Peace many Reign', *Journal of Society of Christian Ethics*, Vol.23, No.1, pp.213-226
- Kamm, F.M (2001), 'Making War (and its continuation) Unjust', *European Journal of Philosophy*, Vol.9, No.3, pp.328-343
- Luttwak, Edward (2005), 'Iraq: The Logic of Disengagement', *Journal of Foreign Affairs*, Vol.84, No.1, pp.26-36
- Massound, Tansa (1996), 'War Termination', *Journal of Peace Research*, Vol.33, No.4, pp.491-496
- Mathew, John M (1920), 'The Termination of War', *Michigan Law Review*, Vol.18, pp.819-834
- Meierhenrich, Jens (2006), 'The Ethics of Lustration Under Occupation', *Ethics and International Affairs*, Vol.20, No.1, pp.99-120
- Mertens, Thomas (2002), 'Warring to End War', *The Review of Politics*, Vol.64, No.3, pp.558-560
- Moore, Margaret (2006), 'The Ethics of Secession and the Iraqi Draft Constitution', *Ethics and International Affairs*, Vol.20, No.1, pp.55-78
- Moseley, Alexander (2005), 'John Locke's Morality of War', *Journal of Military Ethics*, Vol. 4, No.2, pp.119-128
- Muldoon, James (2006), 'Francisco De Vitoria and Humanitarian Intervention', *Journal of Military Ethics*, Vol.5, No.2, pp.128-143
- Orend, Brian (1999), 'Terminating War and Establishing Global Governance', *Canadian Journal of Law and Jurisprudence*, Vol.12, Part.2, pp.253-295
- Orend, Brian (2002), 'Justice After War', *Ethics and International Affairs*, Vol.16, No.1, pp.43-56
- Orend, Brian (2004), 'Kant's Ethics of War and Peace', *Journal of Military Ethics*, Vol.3, No.2, pp.161-177
- Pendergast, Michael (2004), 'Jus ad Pacem', *Journal for the study of Peace and Conflict*, Vol.1, pp.51-67
- Picciotti, Lieutenant Colonel Romulus (1966), 'Legal Problems of Occupied Nations after the Termination of Occupation', *Military Law Review*, Vol.33, pp.25-64

Rayburn, Joel (2006), 'The Last Exit from Iraq', *Foreign Affairs*, Vol.85, No.2, pp.29-40

Reisman, Michael (1998), 'Stopping Wars and Making Peace: Reflections on the Ideology and Practice of Conflict Termination in Contemporary World Politics', *Tulane Journal of International and Comparative Law*, Vol.6, pp.5-56

Rice, Condoleezza (2000), 'Promoting the National Interest', *Foreign Affairs*, Vol.79, No.1, pp.45-62

Rivkin, David and Bartram, Darin (2003), 'Military Occupation: Legally Ensuring a Lasting Peace', *The Washington Quarterly*, Vol.26, No.3, pp.87-103

Rodin, David (2006), 'The Ethics of War: State of the Art', *Journal of Applied Philosophy*, Vol.23, No.3, pp.241-246

Roth, Kenneth (2006), 'Was the Iraq War a Humanitarian Intervention?', *Journal of Military Ethics*, Vol.5, No.2, pp.84-92

Sa'adah, Anne (2006), 'Regime Change: Lessons from Germany on Justice, Institution Building, and Democracy', *Journal of Conflict Resolution*, Vol. 50, No.3, pp.303-323

Stasson, Glen (2003), 'The Unity, Realism, and Obligatoriness of Just Peacemaking Theory', *Journal of Society of Christian Ethics*, Vol.23, No.1, pp.171-194

Teson, Fernando (2006), 'Eight Principles for Humanitarian Intervention', *Journal of Military Ethics*, Vol.5, No.2, pp.93-113

Wheatley, Steven (2006), 'The Security Council, Democratic Legitimacy and Regime Change in Iraq', *European Journal of International Law*, Vol.17, No.3, pp.531-551

Williams, Robert and Caldwell, Dan (2006), 'Jus Post Bellum: Just War Theory and the Principles of Just Peace', *International Studies Perspective*, Vol.7, No.4, pp.309-320

Internet Sites used

'Stanford Encyclopaedia of Philosophy', <http://plato.stanford.edu/entries/war> , 12/07/04

'Jus in Bello', <http://people.wcslc.edu/faculty/m-markow/312/justwar.htm> , 11/10/01

'Jus Post Bellum: The Importance of War Crimes Trials by Davida Kellogg', www.army.mil/usawc/Parameters/02autumn/kellogg.htm , 18/07/05
18/07/05

'Justice After War',
www.carnegiecouncil.org/viewMedia.php/prmtemplate.php/prmTemplate,
18/07/05

'Carthage',
www.channel4.com/history/microsite/c/cathage/chronology.html 04/01/06

www.barca.fsnet.co.uk
04/01/06

'Jus Post Bellum: The Moral Responsibility of Victors in War' by Iasiello, Louis
<http://www.nwc.navy.mil/press/Review/2004/SummerAutumn/art3-sa04.htm> ,
27/02/06

'Disarmament, Demobilization, and Reintegration of Ex-Combatants' by
Massimo Fusato
//C:\DOCUME~1\MRSCAN~1\LOCALS~1\Temp\OG1518Go.htm
26/07/06

'When the Shooting Stops: missing elements in the just war theory' by Michael
Schuck. Original published in Christian Century, Oct 26, 1994
http://www.findarticles.com/p/articles/mi_m1058/is_n30_v111?ai_15897645
11/09/06

'Birth of a Nation: Planning for Regime Change Operations' by Dr. Timothy L.
Challans
www.usafa.af.mil/jscope/JSCOPE05/Challans05.html
10/09/06

Stahn, Carsten ' Jus ad bellum... Jus in bello... Jus Post Bellum: Towards a
Tripartite Conception of Armed Conflict'
www.esil-sedi.eu/english/pdf/Stahn2.PDF
08/01/07

'War Termination and our Cultural Heritage' by Major Daniel Cushing
www.globalsecurity.org/military/library/report/1992/CDE.htm
08/01/07

'Jus Post Bellum and the Current Conflict in Afghanistan' by Peter Thurley
<http://artsweb.uwaterloo.ca/~pthurley/index/JustificationOutline.pdf>
15/01/07

'The Concept of Jus Post Bellum in Humanitarian War: A Case study of the
Aftermath of the NATO Intervention in Kosovo' by Owen Godfrey
www.bisa.ac.uk/2006/pps/godfrey.pdf
31/05/07

Walzer, Michael (2006), 'Regime Change and Just War', Dissent, Summer
<http://www.dissentmagazine.org/article/?article=663>
31/05/07

Seminars and Talks

'Fordham University: "The Ethics of Exit: The Morality of Withdrawal from Iraq"

Transcript by: Federal News Service. Washington, D.C

Speech made by Michael Walzer at Heinrich Boll Foundation, Berlin, July 2, 2003

Title: 'Judging War'

Refining Jus Post Bellum by Camilla Bosanquet. International Symposium for Military Ethics, 25 January 2007

Soucy, Robert, Schwedo, Kevin, Haven, John (1994), 'War Termination criteria and JOPES: A dangerous Omission in U.S. crisis action planning'. Armed Forces Staff College