

The just war tradition usually revolves around two crucial points: the justness of a war, and the justness of the way that war is fought. These two points—*jus ad bellum* and *jus in bello*, respectively—define the debate over whether a war is moral.

Much less has been said about what happens after a war. But the aftermath of war is crucial to the justice of the war itself. Political leaders often invoke postwar developments like bringing democracy or stability as part of justifying or condemning a war;¹ but political theorists have not yet fully come to terms with which of these arguments are morally compelling.² It is important to better theorize postwar justice—*jus post bellum*—for the sake of a more complete theory of just war.

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1. In 1919, for instance, the editors of *The New Republic* wrote of the Treaty of Versailles, “If a war which was supposed to put an end to war culminates without strenuous protest by humane men and women in a treaty of peace which renders peace impossible, the liberalism which preached this meaning for the war will have committed suicide.” (“Peace at Any Price,” *The New Republic*, May 24, 1919, p. 101.)

2. To take a distinguished example at random, see Robert L. Holmes, *On War and Morality* (Princeton, N.J.: Princeton University Press, 1989), pp. 146–82, for a splendid discussion of *jus ad bellum* and *jus in bello*, but with nothing said about postwar outcomes. The same can be said about the pastoral letter by the National Conference of Catholic Bishops, *The Challenge of Peace: God’s Promise and Our Response* (Washington, D.C.: United States Catholic Conference, 1983), pp. 28–48. For compelling thoughts about postwar justice, see James Turner Johnson, *Morality and Contemporary Warfare* (New Haven, Conn.: Yale University Press, 1999), pp. 207–18. The most comprehensive effort on *jus post bellum* I have found is Brian Orend’s helpful *War and International Justice: A Kantian Perspective* (Waterloo, Ont.: Wilfrid Laurier University Press, 2000), pp. 217–63. He lists five principles: a just termination of the war once its objectives have been largely met; right intention, meaning no revenge; working with a legitimate domestic authority that respects human rights; discrimination, meaning no collective punishment; and proportionality.

Soon before the Iraq war, George W. Bush said of the United States' reconstruction of Germany and Japan after World War II, "After defeating enemies, we did not leave behind occupying armies, we left constitutions and parliaments."³ Jimmy Carter, an opponent of war in Iraq, asserted that the Christian just war tradition includes postwar obligations: "The peace it establishes must be a clear improvement over what exists."⁴ In their different ways, both presidents imply that in order for a state to wage a just war, it must demonstrate not only that it went to war for good reasons, but also that its postwar conduct was consistent with those ends: helping to make the region more stable and secure, and leaving the affected populations less subject to violence and oppression. Both Bush and Carter suggest that if a dictatorship is, thanks to such a war, replaced simply by anarchy and widespread material deprivation, observers should hesitate to call the war itself just. Like all just war theory, *jus post bellum* is not an absolute bar to war, but a way of focusing it, hoping to temper the righteous and discourage the reckless.

This article aims primarily to demonstrate that *jus post bellum* is an important component of just war theory. To do so, I make a preliminary exploration of the issues surrounding the justice of wars' aftermath and of the criteria at the core of *jus post bellum*. Specifically, this article focuses on three questions central to the justice of a belligerent power's postwar conduct. First, what obligations are there to restore the sovereignty of a conquered country and what limitations do these obligations impose on states' efforts to remake the governments of vanquished countries? Second, conversely, what are the rights and obligations that belligerent states retain in the political reconstruction of a defeated power? Are these rights limited to the reconstruction of genocidal regimes, or can a case be made for the political remaking of less dangerous dictatorships? Third, what obligations might victorious states have to restore the economy and infrastructure of a defeated state? And conversely, do victorious states have a right to demand some kind of reparation payments from defeated states who were aggressors in the concluded war?

3. "In the President's Words: 'Free People Will Keep the Peace of the World,'" *The New York Times*, February 27, 2003, p. A10.

4. Jimmy Carter, "Just War—or Just a War?" *The New York Times*, March 9, 2003, Week in Review section, p. 13. In fact, the just war tradition originally only mandated a return to the status quo ante.

This article will proceed in four sections. In Section I, I will connect the idea of *jus post bellum* with the existing strands of just war theory. In Section II, I will argue that there should be a presumption against reconstruction. In Section III, I will examine cases that cut against that presumption—in particular, the case of genocidal states, where I will argue that there is a duty to reconstruct their polities. This section will also weigh the treatment of aggressive states, sketching out the dimensions of the debate but not resolving it definitively. And this section will argue for war crimes trials, although not at the expense of peacemaking. Finally, in Section IV, I will turn to the problems of economic reconstruction, looking both at obligations on the victors to restore wartime wreckage and obligations on the vanquished to make reparations.

I. JUST WAR THEORY AND *JUS POST BELLUM*

Existing just war theory provides some guidance for theorizing *jus post bellum*, because certain rights and obligations of postwar conduct stem from the requirements for the just cause and conduct of wars. Once one sees the category of concern for postwar justice, a number of conclusions about the demands of *jus post bellum* follow from extant just war theory.

Jus post bellum is connected with *jus ad bellum*, for instance, in that the declared ends that justify a war—whether stopping genocide or preventing aggression—impose obligations on belligerent powers to try, even after the conclusion of the war, to bring about the desired outcome. If a state wages war to remove a genocidal regime, but then leaves the conquered country awash with weapons and grievances, and without a security apparatus, then it may relinquish by its postwar actions the justice it might otherwise have claimed in waging the war. *Jus post bellum* also may be connected with *jus in bello*. The *jus in bello* requirement of proportionality suggests that, just as there must be restraint even in combat, there must be restraint in the goals on behalf of which the fighting is being done—meaning that both total war and total conquest are, at the very least, suspect. Finally, states' actions in bringing the war to a conclusion are clearly connected to their conduct during war's aftermath, and so the obligations that a theory of *jus in bello* imposes on victorious states regarding the content of peace treaties, acceptable terms of surrender, and permissible reparations will have implications

for the actions of those victorious states in the months and years following the war's conclusion.

The existing literature considers *jus post bellum* largely in the context of *jus ad bellum*. In *City of God*, Augustine closely links war with the postwar goal of peace: "it is an established fact that peace is the desired end of war. For every man is in quest of peace, even in waging war, whereas no one is in quest of war when making peace."⁵ Although Michael Walzer does not specifically write of *jus post bellum* in his classic *Just and Unjust Wars*, he does take pains to note that there is justice in the goals of war, which implies that the postwar execution of those goals might weigh in the overall judgment of the war's justice:

The theory of ends in war is shaped by the same rights that justify the fighting in the first place—most importantly, by the right of nations, even of enemy nations, to continued national existence and, except in extreme circumstances, to the political prerogatives of nationality. The theory incorporates arguments for prudence and realism; it is an effective bar to total war; and it is, I think, harmonious with other features of *jus ad bellum*.⁶

This article mostly follows the liberal approach to just war theory championed by Walzer, whose work properly remains the most influential on the topic. This piece emphasizes, with Walzer and against realists, the importance of *jus ad bellum* and *jus in bello*, but it seeks to expand upon his approach by incorporating *jus post bellum*. I hold with Walzer's "legalist paradigm," in which political communities derive their rights from the consent of their individual citizens. Sovereignty and territorial integrity are the bedrock of international relations, except in a few rare cases, such as those where a polity engages in genocide. Walzer's emphasis on individualism, sovereignty, and territorial integrity leads, as I argue below in Section II, to a *presumption* that victorious states should seek to limit their occupation of conquered countries to the shortest time possible. This model also suggests that victorious states should work throughout any occupation of foreign soil to make their actions account-

5. St. Augustine, *Concerning the City of God Against the Pagans*, trans. Henry Bettenson (London: Penguin, 1984), bk. 19, ch. 12, p. 866.

6. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992), p. 123.

able and transparent to the citizens of the vanquished state and to win the consent of the conquered population.

John Rawls's discussion of just war in *The Law of Peoples* also offers some resources for thinking about postwar obligations of belligerent states. As with Walzer, Rawls's emphasis on sovereignty and the integrity of political communities leads him to argue for the importance of tolerating nonliberal societies, so that even liberal states must "refrain from exercising political sanctions—military, economic, or diplomatic—to make a people change its ways."⁷ As a result of this emphasis on sovereignty, Rawls, like Walzer, insists that occupation be as brief as possible:

once peace is securely reestablished, the enemy society is to be granted an autonomous well-ordered regime of its own. (For a time, however, limits may be rightly placed on the defeated society's freedom in foreign policy.) The enemy's people are not to be held as slaves or serfs after surrender, or denied in due time their full liberties.⁸

Rawls further insists that the *ending* of war carries with it specific moral duties for states who would claim to fight a just war:

well-ordered people are by their actions and proclamations, when feasible, to foreshadow during a war both the kind of peace they aim for and the kind of relations they seek. By doing so, they show in an open way the nature of their aims and the kind of people they are. . . . The way 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. It is always the duty of statesmanship to take this longer view.⁹

Although Rawls does not explicitly present a notion of *jus post bellum*, such passages suggest that liberal or well-ordered peoples and their leaders have a duty to consider the long-term effects of a war, and their

7. John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 59. See also pp. 122–23.

8. Rawls, *Law of Peoples*, p. 98.

9. Rawls, *Law of Peoples*, p. 96. Italics added.

conduct during war's aftermath will surely play an important role in this respect. Rawls's rather sweeping arguments do not offer much guidance regarding particular obligations that bind a victorious state in war's aftermath. For how long may limits be imposed on a society's foreign policy? What exactly does it mean to say an enemy society "is to be granted an autonomous regime": who is obliged to help it secure such a regime, and how? Nonetheless, Rawls's admittedly fragmentary remarks suggest that he would have agreed that an account of *jus post bellum* should form a part of a theory of just war.

Tellingly, it has not only been just war liberals like Walzer but also realists who have worried about postwar complications. Although realists are typically concerned about the feasibility of war and its implications for the state's strategic interests rather than about its justice, many of the pragmatic worries expressed by realists about postwar planning should be taken into account by just war liberals—if only so that they can be properly rebutted. Somalia's continued chaos has been held up by realists such as Colin Powell as a reason why humanitarian military interventions are unwise.¹⁰ The strategist Edward Luttwak made a similar claim about Kosovo.¹¹ Similarly, in recent debates about a second U.S. war against Saddam Hussein, Iraq's post-Ba'ath future was held up as a powerful argument for and against war.¹² This suggests that a better theorization of *jus post bellum* would contribute to many debates between liberals and realists.

In both Walzer and Rawls' senses, *jus post bellum* is somewhat akin to *jus in bello*—a crucial and related addendum to the category of *jus ad bellum*. Even if a war has a just cause, it still must be fought justly. If *jus post bellum* is incorporated into just war theory, then if a war has a just cause, and is fought justly, the war still must lead to a just postwar settlement. Or, to put it less hopefully, just postwar actions cannot redeem

10. Colin Powell with Joseph E. Persico, *My American Journey* (New York: Random House, 1995), p. 588.

11. Edward N. Luttwak, "No-Score War," *Times Literary Supplement*, July 14, 2000, p. 11. For a more nuanced argument about moral duties in postwar Kosovo, see Stephen Holmes, "Looking Away," *London Review of Books*, November 14, 2001.

12. Michael Ignatieff, "The Burden," *The New York Times Magazine*, January 5, 2003, pp. 26–27; Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002), pp. 328–39, 386–410; David Remnick, "Making a Case," *The New Yorker*, February 3, 2003, p. 31; and Barham A. Salih, "Give Us a Chance to Build a Democratic Iraq," *The New York Times*, February 5, 2003, p. A27.

a war that was unjust to begin with, but we think somewhat worse of an aggressor state that annexes conquered territory than of an aggressor state that evacuates it, just as we think worse of an aggressor state that targets civilians in the war it started than of an aggressor state that does not.

II. RESTRAINING CONQUEST

Once a war is over, the enemy country must be seen in a radically different light. Its sovereignty must now be respected again. There are three main arguments for restraint. First and most clearly, victorious states have no right to reconstruct a conquered polity simply out of self-interest: no right to impose puppet regimes, or to reconstruct a polity for the victor's economic, military, or political gain. Second, the obligation to exercise restraint in transforming a society can be seen as related to the *jus in bello* requirement of proportionality that states fight limited wars, using the minimum violence necessary to achieve their just ends. And third, victorious states have no right of cultural reconstruction.

To give perhaps the least controversial example of the way that respect for an enemy's sovereignty should govern postwar conduct, consider prisoners of war. During the war, they were dangerous soldiers who had to be killed or captured; but once the shooting stops, assuming there is no imminent expectation of more fighting, these prisoners abruptly shift status. They are no longer fighting men and women, but simply citizens of another state, who cannot properly be held against their will. Walzer starts with a general human right not to be killed, with soldiers in wartime as a special exception¹³—an exception that must evaporate the second the soldiers are no longer at war. One reason this point is relatively uncontroversial is that it rests on reciprocity, with self-interested states understanding that they share an interest in treating the other states' soldiers as one would want one's own to be treated.¹⁴ Thus, in a broad sense, it is clear that there is some kind of *jus post bellum* duty to repatriate prisoners of war.

It is in this vein that one can argue against reconstruction of a defeated society as a policy that may render the recent war one of con-

13. Walzer, *Just and Unjust Wars*, pp. 25–32.

14. James D. Morrow, "The Institutional Features of the Prisoners of War Treaties," *International Organization* 55 (2001): 971–91.

quest and acquisition, which by definition is an unjust war. That is why George W. Bush was profoundly wrong to claim that France, Germany and Russia should be excluded from lucrative contracts for the U.S.-led reconstruction of Iraq since they had not fought in the war. Bush said, "The taxpayers understand why it makes sense for countries that risk lives to participate in the contracts in Iraq. It's very simple. Our people risk their lives. Coalition, friendly coalition folks risk their lives, and, therefore, the contracting is going to reflect that."¹⁵ But this position would reduce what Bush claimed was a just war into a money-making proposition for U.S. corporations.

With *jus ad bellum* in mind, Walzer makes a compelling argument that would be equally true of *jus post bellum*: "The burden of proof falls on any political leader who tries to shape the domestic arrangements or alter the conditions of life in a foreign country."¹⁶ Not all postwar reconstruction will be unselfish nation-building; it will just as often involve plunder or economic domination, or worse. Stalin said, of World War II: "This war is not as in the past. Whoever occupies a territory also imposes on it his own social system. Everyone imposes his own system as far as his army can reach. It cannot be otherwise."¹⁷ Not just dictators but also broader public opinion can be bitterly vindictive, as in Great Britain and Prussia after the Napoleonic Wars, in Germany after the Franco-Prussian War, and in the victorious Allied countries after both world wars.

The imposition of a new government is not always a benevolent or democratic maneuver. It is just as likely to be an installation of a puppet regime or an illegitimate one. After the Napoleonic Wars, the triumphant Allies reinstated a Bourbon king, Louis XVIII, on the French throne, making the world safe for absolutism. Throughout the nineteenth century, the reactionary Russian and Austrian courts squelched liberal revolts and imposed pet autocrats instead. Ariel Sharon, as Israeli defense minister in 1982, had a grand design for installing a Maronite-led government in Lebanon that would freeze out the PLO and make

15. Elisabeth Bumiller, "Bush Defends Barring Nations From Iraq Deals," *The New York Times*, December 12, 2003, p. A1.

16. Walzer, *Just and Unjust Wars*, p. 86.

17. Josef Joffe, "After Bipolarity: Eastern and Western Europe between Two Ages," in *The Strategic Implications of Change in the Soviet Union* (London: International Institute for Strategic Studies, winter 1989–90), Adelphi paper no. 247, p. 71.

peace with Israel.¹⁸ That is why the restrained diplomat is praiseworthy, since one could so easily score political points at home by demagoguing against a defeated foe or by using one's position of power to remake the defeated country to serve the victor's military or economic interests. Even well-intentioned reconstruction projects, when they defy the will or consent of the defeated population, may go badly awry. Winston Churchill noted, "The Weimar Republic, with all its liberal trappings and blessings, was regarded as an imposition of the enemy. It could not hold the loyalties or the imagination of the German people."¹⁹ The duty to respect to the greatest extent possible the sovereignty of the defeated nation and to seek the consent of the defeated in any project for reconstruction is thus both an obligation of justice and a counsel of political prudence.

One tidy example of *jus post bellum* here would be the French-led deployment of French troops and British sailors to Ottoman Syria in 1860, after massacres of Christians. With both the Ottoman Empire and the rest of Europe suspicious of French motives, Emperor Napoléon III was pressured into a formal declaration that the European forces "will not seek for, in the execution of their engagements, any territorial advantages, any exclusive influence, or any concession with regard to the commerce of their subjects, such as could not be granted to the subjects of all other nations."²⁰ When the French wanted to stay for longer than their mandated deadline of the end of February 1861, they had to convene an international conference to get a three-month extension.²¹ The French got in and got out.

Second, theories of *jus in bello* suggest why a war fought with the aim of reconstituting the defeated society particularly risks being an unjust war. If political transformation of the enemy is the objective of a war, then that war will likely be a total war, for one cannot remake a country unless one has taken it over militarily. A *jus in bello* insistence on pro-

18. Ze'ev Schiff and Ehud Ya'ari, *Israel's Lebanon War*, trans. Ina Friedman (New York: Simon & Schuster, 1984), pp. 42–43, 48–49, 52–61.

19. Winston S. Churchill, *The Second World War: The Gathering Storm* (Boston: Houghton Mifflin, 1948), p. 11.

20. Cowley to Russell, August 3, 1860, in Great Britain, Foreign Office, *Correspondence Relating to the Affairs of Syria 1860–61* (London: Harrison and Sons, 1861), pp. 38–39.

21. French Foreign Ministry archives diplomatiques, Quai d'Orsay, Paris: Mémoires et documents, Turquie, vol. 122, "Note sur les Causes de l'évacuation de la Syrie par la France, 1860–61."

portionality in the fighting might be seen as applying to *jus post bellum* too. As George Kennan argued, “A war fought in the name of high moral principle finds no early end short of some form of total domination.”²² Total war, of course, takes a terrible toll in human lives. Augustine, while worrying that different languages separated men from each other, could not stomach Rome’s imposition of Latin on subjugated people: “think of the cost of this achievement! Consider the scale of those wars, with all that slaughter of human beings, all the human blood that was shed!”²³ A.J.P. Taylor wrote, “Bismarck’s planned wars killed thousands; the just wars of the twentieth century have killed millions.”²⁴

This argument against total war, while usually coming from realists, is at times made just as forcefully by liberals.²⁵ Walzer understands World War II as a special case, where Germany’s unconditional surrender really was the only way to end the war.²⁶ But 1945 is not the only way to end a war, and certainly not a typical way: wars are usually not so decisive.²⁷ As Walzer convincingly argues, “Except when they are directed against Nazi-like states, just wars are conservative in character; it cannot be their purpose, as is the purpose of domestic police work, to stamp out illegal violence, but only to cope with particular violent acts.”²⁸

If one’s goals are mere self-defense, the paradigmatic case of just war, then there is little justification for reshaping a defeated society. One does not have to completely change an enemy country’s domestic arrange-

22. George F. Kennan, “Diplomacy in the Modern World,” in *American Diplomacy* (Chicago: University of Chicago Press, 1984), p. 101. See also Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton, N.J.: Princeton University Press, 1976), pp. 603, 579–81, 603–37.

23. St. Augustine, *City of God*, bk. 19, ch. 7, p. 861.

24. A.J.P. Taylor, *Bismarck: The Man and Statesman* (New York: Knopf, 1955), p. 79. See Michael Howard, *The Franco-Prussian War: The German Invasion of France, 1870–1871* (London: Routledge, 1988), pp. 441, 449, and, for a rebuttal, Holmes, *On War and Morality*, pp. 147–48.

25. Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Relations* (Syracuse, N.Y.: Syracuse University Press, 1981), pp. 50–51; Rawls, *Law of Peoples*, p. 101.

26. Walzer, *Just and Unjust Wars*, p. 117.

27. Dan Reiter and Allan C. Stam, *Democracies at War* (Princeton, N.J.: Princeton University Press, 2002), pp. 164–92; H. E. Goemans, *War and Punishment: The Causes of War Termination and the First World War* (Princeton, N.J.: Princeton University Press, 2000), p. 7.

28. Walzer, *Just and Unjust Wars*, p. 121. Orend disagrees: “There is . . . no such thing as a morally mandated unconditional surrender” (*War and International Justice*, p. 233).

ments in order to make sure it will not attack again. By winning the war, one has already attrited the enemy state's capabilities, so its intentions are quite likely already a second-order concern. (Bismarck did not insist on limiting the size of France's army or navy after 1871.)²⁹ John Ikenberry, in an influential recent book on postwar order, argues convincingly that it was the self-imposed institutionalized restraint of powerful victors that created a stable world order.³⁰ A restrictive posture on postwar reconstruction would justify some demilitarization, arms control, or perhaps even border adjustments to make them less tempting for would-be conquerors, but would not justify sweeping internal political reconstruction.

On this account, the first Bush administration was right not to roll on to Baghdad; once Iraq's aggression against Kuwait had been undone, and the security of the Gulf states from potential Iraqi attack pretty well assured, the United States' job was done. Similarly, the United States would be justified in as much nation-building as it takes to make sure that Al Qaeda cannot return to Afghanistan, but not, for instance, in the sweeping reconstruction programs in place now in Bosnia and Kosovo. (I will return in Section III to the question of what degree of reconstruction might justly be done by victorious nations.)

Realists' awareness of the security dilemma leads them to caution diplomats against seeking perfect security: this will only scare other states, and be self-defeating.³¹ They warn that those who insist that no compromise with a dictator can ever be honored are not just incorrect, but also are inviting a global war of democracies against authoritarianism of all stripes, from the most monstrous to the least. This is not only dangerous for everyone—the realists' main concern—but also unjust. As Walzer writes, "Just wars are limited wars; there are moral reasons for the statesmen and soldiers who fight them to be prudent and realistic."³²

Finally, there is a cultural objection to reconstruction. What right does one have to impose one's political or cultural values on a conquered

29. Howard, *Franco-Prussian War*, p. 449.

30. G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton, N.J.: Princeton University Press, 2001).

31. Robert Jervis, "Cooperation under the Security Dilemma," *World Politics* 30 (1978): 167–214; Robert Jervis, *Perception and Misperception in International Politics* (Princeton, N.J.: Princeton University Press, 1976), pp. 58–83; and Stephen Walt, *The Origins of Alliances* (Ithaca, N.Y.: Cornell University Press, 1987), pp. 147–80.

32. Walzer, *Just and Unjust Wars*, pp. 121–22.

country? The mere fact of military victory is hardly a demonstration of superior political organization or cultural values. In a world with many divergent cultures, the *mission civilisatrice* must be construed as narrowly as possible. In Judith Shklar's words, "The very refusal to use public coercion to impose creedal unanimity and uniform standards of behavior demands an enormous degree of self-control."³³ Otherwise one risks winding up following John Stuart Mill's retrograde and unsatisfactory justification for imperialism over allegedly primitive peoples: "nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners."³⁴ While the Allied courts had a right to see that post-Napoleonic France was not about to go to war with its neighbors,³⁵ they had no obvious *jus post bellum* right to remake the French government to their reactionary liking. France's political institutions were properly the business of the French, not of Lord Castlereagh, Prince Metternich, and Tsar Aleksandr I, except insofar as French radicalism directly threatened Great Britain, Austria, and Russia.

If, with Walzer, one defines aggression as the supreme international crime, the end of war must entail the restoration of national sovereignty, even for aggressor states.³⁶ Even in the case of Hitler's genocidal regime, it was not Germany qua Germany that was intolerable, but Nazi Germany. As Walzer rightly puts it,

Pending the establishment of a post-Nazi and an anti-Nazi regime, the Germans were to be placed in political tutelage: it is a consequence of their failure to overthrow Hitler themselves, the chief of the ways in which they were collectively held responsible for the injuries he and his followers caused to other nations. The forfeiture of independence, however, entails no further loss of rights; the punishment was limited

33. Judith N. Shklar, *Ordinary Vices* (Cambridge, Mass.: Harvard University Press, 1984), p. 4. See also Clausewitz, *On War*, p. 80.

34. John Stuart Mill, "A Few Words on Non-Intervention," in *Dissertations and Discussions: Political, Philosophical, and Historical*, vol. 3 (London: Longmans, Green, Reader, and Dyer, 1867), p. 167.

35. Walzer, *Just and Unjust Wars*, p. 123.

36. Other theorists are more skeptical about the weight of sovereignty. See Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979), p. 71.

and temporary; it assumed, as Churchill said, the continued existence of a German nation.³⁷

It would have been wrong to have carved Germany into agrarian cantons, as envisioned in the Morgenthau Plan. So one could, as a first cut, try a simple rule of *jus post bellum*: there should be a presumption against any right of the victors to reconstruct a defeated country.

III. POLITICAL RECONSTRUCTION

Genocidal States

That is the case for a strong presumption against reconstruction. But a simple outright rule against reconstruction cannot be adequate. First, *jus post bellum* must permit foreigners to interfere in the defeated country's affairs in ways that can reasonably be expected to prevent a new outbreak of an unjust war. If, by failing to provide sufficient support to the new Afghan government, the United States permitted Al Qaeda to regroup in Afghanistan and launch new terrorist attacks, then the death and destruction wrought in the war against the Taliban would have been pointless, and that war would lose much of its justification. But beyond this minimum, to what extent are victorious states justified in the political reconstruction of a society? Are there moral grounds for getting rid of threatening politicians and their supporters, reorganizing a society so that it will be less prone to aggression or slaughter—making it something very different from what it was before the war? Further, the nature of the defeated state makes a difference. In which cases is reconstruction justified?

In the most extreme cases, there is a compelling argument for a *jus post bellum* duty for foreigners to reconstruct a defeated country. This is not to be a matter of vengeance; it must be pedagogical or reformist, not simply retributive.³⁸ There must be limits to how far one can go, and occupation must not last indefinitely, but reconstruction is, as Walzer has argued, justified as a temporary period of political education for the followers of a nightmare regime. After World War II, the Allies could not

37. Walzer, *Just and Unjust Wars*, p. 115.

38. "Revenge is strictly ruled out as an animating force" (Orend, *War and International Justice*, p. 232).

possibly have offered a settlement as generous as that given to France at the Congress of Vienna in 1815. Nazi Germany could not have been left alone once defeated. It would have been ludicrous to end World War II by restoring Poland's independence and leaving the Nazis in power, with an admonition to behave themselves.

The threat of Nazism and German militarism was something with deep roots in German domestic institutions, and the Allies could hardly just walk away. At a bare minimum, Germany needed to be reshaped so that it would not launch a third world war. Since the Allies would have been justified in waging a humanitarian war to stop the Holocaust (if that, rather than the invasion of Poland, had been the trigger for World War II), one cannot imagine leaving a genocidal Nazi regime in power after that war. Everyone in Franklin Delano Roosevelt's administration, most importantly Henry Morgenthau, Jr., the treasury secretary, and Henry Stimson, the war secretary, was acutely aware of the need to create a new Germany, although Morgenthau and Stimson disagreed bitterly about how to do so.³⁹ Without some reconstruction, there would be another war, and that is an injustice in itself.⁴⁰

But Walzer claims that *only* in the case of Nazi Germany are the victors entitled to reshape a country. Nazism, Walzer thinks, is

outside the (moral) world of bargaining and accommodation. We can understand the right of conquest and reconstruction only with such an example. The right does not arise in every war; it did not arise, I think, in the war against Japan. It exists only in cases where the criminality of the aggressor state threatens those deep values that political independence and territorial integrity merely stand for in the international order, and when the threat is in no sense accidental or transitory but is inherent in the very nature of the regime.⁴¹

Clearly Walzer has in mind something beyond aggression and the violation of sovereignty. Territorial integrity is the heart of Walzer's theory of

39. Morgenthau to FDR, in *Morgenthau Diary—Germany* (Washington, D.C.: U.S. Government Printing Office, 1967), vol. I, pp. 631–32; *Henry L. Stimson Diaries* (at Yale University, New Haven, Conn.), vol. 48, pp. 36, 44.

40. Walzer, *Just and Unjust Wars*, p. 123.

41. Walzer, *Just and Unjust Wars*, p. 113.

jus ad bellum. But the Imperial Japanese threat to the political independence and territorial integrity of its region was clear enough, at least since the invasion of Manchuria. This Japanese aggression seemed to be rooted deeply in the imperial state.⁴² So why Hitler's Germany but not Hirohito's Japan?⁴³

Walzer's definition of intolerable criminality is thus more restricted than mere aggressiveness. It is something, he believes, that Germany did and Japan did not do. His phrasing is not simple, and therefore invites more explication. As Walzer later argues, the "patterns of accommodation and restraint" among states, which provide stability, "have a moral dimension. They depend upon mutual understandings; they are comprehensible only within a world of shared values. Nazism was a conscious and willful challenge to the very existence of such a world: a program of extermination, exile, and political dismemberment. In that sense, aggression was the least of Hitler's crimes."⁴⁴

What is it about Nazi radicalism that leads Walzer to deem Nazi Germany the only regime whose crimes justified the reconstruction of the society by its victorious enemies? Neither Walzer nor Rawls seems to believe that mere dictatorship is sufficient grounds for remaking a regime. Even in some dictatorships, both believe, there is a low level of public acquiescence or patriotism that makes its internal affairs the business of its people, not of foreigners. Not so a genocidal state. The radicalism of genocide unmakes any claim to legitimacy. The genocidal state has lost the moral personality that normal states have; it has lost its claim to be recognized and respected as a state.⁴⁵ Whatever conception one might have of the positive "deep values" of a political community, genocide is undoubtedly a threat to them.⁴⁶

Genocidal states fall into a special category.⁴⁷ Reconstruction is the final piece of business of a humanitarian intervention to stop

42. On the United States' reconstruction of Japan, see John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: Norton, 1999).

43. Ian Buruma, *The Wages of Guilt: Memories of War in Germany and Japan* (New York: Meridian, 1994).

44. Walzer, *Just and Unjust Wars*, p. 116.

45. Walzer, *Just and Unjust Wars*, p. 106.

46. Genocide epitomizes what Judith Shklar would have called the *summum malum*. As Shklar wrote, "Cruelty is different—and not, I think, just because we are too squeamish" (Shklar, *Ordinary Vices*, p. 3).

47. Walzer, *Just and Unjust Wars*, pp. 51–55, 58–63, 101–08.

genocide.⁴⁸ My argument, then, is that there is a *jus post bellum* duty to reconstruct genocidal states. Because these regimes have sought to exterminate their citizens, they have no international standing. Some form of authority must be constituted instead, free (as much as possible) from the taint of the previous genocidal regime.

But if the case for a duty to reconstruct genocidal states is the most clearly compelling, the question remains whether any state not as obviously a “willful challenge to the very existence” of a “world of shared values” as was Nazi Germany might justly be subject to reconstruction by other states that have won a war against it.⁴⁹ Would, for instance, radical Islamists or communists, who seek a fundamental reorientation of international politics, be similarly slated for conquest and reconstruction? Would vicious but relatively localized butchers, without global transformational objectives, such as Mobutu Sese Seko of Zaire or Franjo Tudjman of Croatia, not be so slated? This is a difficult position, because it rests on goals rather than actions (except insofar as the actions are expressive of the goals). Sheikh Hassan Nasrallah, the secretary general of Hezbollah, undoubtedly has sweeping aspirations to reorder international politics, but he acts out those fantasies in southern Lebanon and in overseas terrorist operations that have not (yet) caused catastrophic death tolls.⁵⁰ Tudjman only cared about the Croats, which limited the scope of his bloodshed; but in those areas where he did put Croatian military and political power to work for the goals of a monoethnic Greater Croatia, such as the Serb-populated Krajina and Bosnia’s Lasva Valley, he

48. Robert O. Keohane, “Political Authority after Interventions: Gradations in Sovereignty,” in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), pp. 275–98.

49. Recent scholarship suggests that even on Walzerian grounds, the reconstruction of Imperial Japan was indeed justified. To be sure, there is no precise analogue to the Holocaust, but Imperial Japan was nevertheless cruel beyond reason. Most historians would probably argue that Japan was sufficiently murderous in Nanjing and elsewhere that it would qualify for inclusion alongside Milosevic’s Serbia—and probably in even worse company. See Ian Buruma, “War and Remembrance: Memories of the Nanjing Massacre Are Drenched in Politics,” *Far Eastern Economic Review*, September 5, 1991, pp. 51–52; *The Nanjing Massacre in History and Historiography*, ed. Joshua A. Fogel (Berkeley: University of California Press, 2000).

50. Hezbollah claims to be poised to launch a wider international campaign against the United States and the West. (Neil MacFarquhar, “Hezbollah Becomes Potent Anti-U.S. Force,” *The New York Times*, December 24, 2002, pp. A1, A12.)

was staggeringly brutal. The same is true of Théoneste Bagosora in Rwanda. It is hard to see how Nasrallah goes in one category and Tudjman and Bagosora in another.

Even in the case of genocidal states, the constitution of fresh state authority does not mean that one can start completely from scratch. Germany was allowed to remain a country, although partitioned and with only probationary sovereignty. But even if the state was radically modified, there was still a sense of an enduring Germany, in keeping with John Stuart Mill's cautious view of nationhood: "But the strongest of all is identity of political antecedents: the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past."⁵¹ Even in the case of Nazi Germany, Walzer suggests, there are limits to punishment. States can never be wholly snuffed out, except by "the most severe and extraordinary measures—extermination, exile, political dismemberment. . . . But such measures can never be defended, and so enemy states must be treated, morally as well as strategically, as future partners in some sort of international order."⁵² For Walzer, sovereign countries should run their own affairs, and thus even Germany in 1945 had to be seen as a potential normal member of the international community. Since one therefore cannot destroy a country, as the Morgenthau Plan would have done, it is all the more imperative to rid the country of its genocidal leadership.

Thus, the victors of just wars against genocidal countries have a *jus post bellum* duty to reconstruct. It is tempting to resist pressing this claim of a *jus post bellum* duty of reconstruction, because it seems that most governments are already amply discouraged from humanitarian wars in the first place,⁵³ without adding to the burden. Still, if a state has satisfied the demands of *jus ad bellum* and *jus in bello* in its war against a state committing a genocide, but did not reconstruct the genocidal country afterward, then a strong case can be made that the justice of the overall effort would be compromised—much as one would regard a just war as compromised if it were not fought according to the strict

51. John Stuart Mill, "Representative Government," in *Three Essays* (New York: Oxford University Press, 1975), p. 380.

52. Walzer, *Just and Unjust Wars*, p. 116.

53. Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Basic, 2002).

demands of *jus in bello*.⁵⁴ The longer the international community knowingly allows the slaughter of innocents, or abets it (as in the case of the arms embargo that prevented Bosnians from defending themselves against Serb heavy weaponry), the greater the obligation to a reconstruction program that aids the victims.

When the victorious state fails to assist in reconstruction in such post-genocidal cases, it calls into question its claim to have waged a just war of humanitarian intervention, for it has failed to finish what it began in waging the war. *Jus post bellum* in this regard will resemble some of the classic criteria for *jus in bello*, such as proportionality. The means deployed must be proportionate to the just end for which the war is waged: if this implies restrictions on the use of certain kinds of weapons in waging the war, for instance, it will also mean assistance during the aftermath of war to stabilize the society and protect its most vulnerable members. These duties will be more difficult to specify in the abstract than the criteria of *jus in bello*, because the obligations in question here are duties of positive assistance, whereas *jus in bello* tends to impose negative duties of justice (such as prohibitions on use of excessive force or on targeting civilians). But respect for individual consent as well as a presumption in favor of sovereignty will require that victorious states assiduously render themselves accountable to the population they purport to assist, seeking to gain their consent for the actions taken on their behalf.

There is a crucial addendum to be made here. In just war theory, one would ordinarily insist not only on moral action but also on a moral agent. Ideally, the agent would be a liberal state, the kind of country that Rawls most approves of. But when a genocide is going on, almost any savior will do; when lives are being lost every day, we cannot afford to be too picky about who stops the slaughter. Still, if it is an illiberal state that carries out the humanitarian intervention, one would not like to see it also undertake a political reconstruction afterward.

A few examples may help to clarify this point. In the Ottoman Empire after the Armenian genocide of 1915, the Allies, having fought something less than a total war against the Ottomans, did not have a sufficient military presence to impose a wholly new government; but they did have a duty to insist, as the British somewhat fitfully did, on a government that

54. Shklar, *Ordinary Vices*, pp. 15–23.

purged itself of the Young Turk leadership responsible for the Armenian atrocities.⁵⁵

Cambodia is a tougher case. It was a profoundly illiberal state, Vietnam, that finally went to war and stopped the Khmer Rouge's murderous policies. Vietnam had the right to create a post-Khmer Rouge government in Cambodia, although given Vietnam's own communist regime, one could not expect a new Vietnamese-created Cambodian government to have any democratic legitimacy. So Vietnam's actions in ousting the Pol Pot regime were justifiable,⁵⁶ as was the installation of a non-genocidal government. But beyond that, its actions, such as arbitrary arrests and torture,⁵⁷ were despicable, although better than Pol Pot's.

In Rwanda, where the world let the genocide happen,⁵⁸ the reconstruction was done by the Rwandan Patriotic Front (RPF), the Tutsi-led movement that toppled the genocidal Hutu Power regime. In its place, it installed RPF rule, and has, if anything, been overenthusiastic in its rush to sweep the country of *génocidaires*.⁵⁹ In Bosnia and Kosovo, where NATO did lead two humanitarian wars, the international community set up two massive reconstruction efforts, covering everything from rebuilding infrastructure to economic growth to refugee return to prosecuting war criminals. This is laudable but in a sense insufficient; perfect justice would require remaking the Serbian state, which was more than any NATO government wanted to take on. NATO's Bosnia and Kosovo wars were both limited wars, seeking only to end the slaughter but not to oust Slobodan Milosevic's regime. The job of remaking the genocidal Serbian state has therefore been left in the hands of the people of Serbia, who admirably revolted against Milosevic, and less admirably have largely not repudiated his brand of Serb nationalism.⁶⁰

55. British Public Records Office, Kew, London: FO 371/4172/12905, January 7, 1919.

56. Michael Walzer, "Lone Ranger," *The New Republic*, April 27, 1998, pp. 10–11.

57. Floyd Abrams, *Kampuchea, After the Worst: A Report on Current Violations of Human Rights* (New York: Human Rights Watch, 1985).

58. Power, *Problem from Hell*, pp. 329–89; Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda* (New York: Farrar, Straus, & Giroux, 1998), pp. 104–07.

59. Alison Des Forges et al., *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), pp. 747–65.

60. National Democratic Institute report on Serbia, May 2002; the International Republican Institute, "Serbian National Survey," November 2002.

There may also be a case for a more limited kind of foreign reconstruction in cases where a just war has left a defeated country on the verge of anarchy. The defeat of a dictatorial regime will sometimes leave a population that wants political change but cannot by itself create a stable and peaceful political system. So the victors will have at least a right, and perhaps an outright duty, to assist in political, economic, and technical reconstruction. Their failure to do so would threaten to leave the defeated population in a state of anarchy, or at the mercy of armed factions, as well as prey to the misery and disease that haunt postwar societies. The society need not be built up into a stable liberal democracy, but it cannot be left in chaos. The standard would probably be the Rawlsian category of well-ordered peoples—far from perfection, but also far from anarchy.

Reconstruction is, of course, a horribly difficult task. Even an occupying army will rarely be in total control of events, but the effort is nevertheless important to the moral justification of the war. There are three provisos about reconstruction. First, one need not attempt to be neutral. This was UN peacekeeping doctrine in the 1990s, with morally disastrous results in Rwanda and Bosnia, and can safely be put to rest.⁶¹ The reconstruction should be done with an eye to chastening the perpetrators and comforting the victims. Second, where possible, reconstruction should include the participation of a broad array of other governments. This makes it clear that one is not engaged in a war of conquest, since specific diplomatic or economic gains will be much less likely if the rest of the international community is watching closely. The presence of Russian troops in the NATO-led mission in Bosnia was a powerful statement that NATO's goals were humanitarian, not imperial.⁶² Thus, the internationalization of the current overwhelmingly U.S. occupation of Iraq is not just prudent, as Democrats and some Republicans have argued; it is also morally obligated. Finally, the task is to create a non-genocidal society, not to create a perfect one. To return to Shklar, the point is to dispose of cruelty, not to build a utopia. We have our work cut out for us simply avoiding the *summum malum* of cruelty, without wor-

61. David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (New York: Simon & Schuster, 1996); Richard K. Betts, "The Delusion of Impartial Intervention," *Foreign Affairs* 73 (1994): 20–33.

62. Ikenberry, *After Victory*, pp. 3–7, 233–56.

rying too much about what *summum bonum*s might be out there to tempt us to overreach.

War Crimes Trials

A central element of an account of *jus post bellum* will be the question of war crimes trials. After all, *jus post bellum* must take seriously the demands of *jus ad bellum* and *jus in bello*; when they have been violated, the violators should be punished.

War crimes trials are morally mandated because they place blame on individuals, stripping away the veneer of statehood to reveal human beings making choices. It no longer matters what high offices Slobodan Milosevic or Saddam Hussein held (except insofar as that office allowed them to carry out the kind of destructiveness that normal criminals cannot attain); they are only men facing trial for the actions they freely willed. There are also strong consequentialist arguments for war crimes trials. The trials can remove dangerous leaders from politics and stigmatize them for their brutality, minimize denial of past atrocities, and preempt vigilantism by victim groups. Shklar justified Nuremberg for its educational impact on the German public view of Nazism, with the Allies using legalistic idiom to drive home to a legally minded German elite the horror of Nazi crimes against humanity.⁶³

But the *jus post bellum* imperative of punishing the guilty is not the only moral principle at stake.⁶⁴ Unless the war is for unconditional surrender, negotiating the end of a war may mean negotiating with war criminals. It is too pat to say, as many human rights activists do, that there is no real peace without justice. Peace often means accepting a host of injustices.⁶⁵ Nuremberg is therefore almost always the wrong

63. Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass.: Harvard University Press, 1986). There is little empirical evidence for the common claim that war crimes trials will deter future perpetrators. See my *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, N.J.: Princeton University Press, 2000), pp. 290–95.

64. Kant argues against pardons in *The Metaphysics of Morals* (in Kant, *Practical Philosophy*, ed. Mary J. Gregor [New York: Cambridge University Press, 1996], pp. 473–78). Alexander Hamilton takes the opposite position in *Federalist* no. 74 (James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*, ed. Isaac Kramnick [New York: Penguin, 1987], pp. 422–24).

65. Edmund Burke, *Reflections on the Revolution in France* (Oxford: Oxford University Press, 1993), p. 141.

precedent to invoke, since the Allied decision to hold trials was taken well after the 1943 decision to demand the Axis's unconditional surrender. Wars are more likely to end in exhaustion than in total triumph, and their settlements follow that pattern. This is why Yitzhak Rabin was right to shake hands with Yasir Arafat on the White House lawn, even though Rabin was privately disgusted.⁶⁶ The failure of the Constantinople and Leipzig war crimes tribunals after World War I, for Ottomans and Germans respectively, does not mean that it was wrong of the Allies to accept the surrender of the Central Powers in 1918. Insisting on criminal prosecutions could make bloodstained leaders fight to the bitter end, at a terrible cost to soldiers and societies.⁶⁷

The duty of peace must outweigh the duty of justice—although this is an excruciating tradeoff, and not one to be taken lightly. This problem applies to many of the crucial issues in the world today, from Colombia to Liberia. Anthony Lake, Bill Clinton's national security adviser, said, "There's always a balance between achieving justice and understanding the importance of setting precedent for the future, so that other future war criminals will reflect, and sacrificing future lives on the altar of justice for the past. And I think that to arrive at an absolutist answer on either side of that argument is wrong."⁶⁸ Before the Iraq war, Donald Rumsfeld, the U.S. secretary of defense, floated the idea of exiling Saddam and other top Ba'athists, with *de facto* impunity from war crimes prosecutions as "a fair trade to avoid a war."⁶⁹ This would have meant selling out Saddam's forthcoming trial, but Rumsfeld's suggestion was something that U.S. and Iraqi soldiers would presumably have agreed upon.⁷⁰

It is important to remember that legal justice is one political good among many—like peace, stability, democracy, and distributive justice.

66. George Stephanopoulos, *All Too Human: A Political Education* (New York: Little, Brown, 1999), pp. 193–94. Arafat's subsequent rejection of the Camp David peace proposal makes Rabin's decision look more tragic.

67. Raymond Aron, *Peace and War: A Theory of International Relations*, trans. Richard Howard and Annette Baker Fox (New York: Praeger, 1967), p. 115.

68. Bass, *Stay the Hand of Vengeance*, p. 232.

69. Steve R. Weisman, "Exile for Hussein May Be an Option, U.S. Officials Hint," *The New York Times*, January 20, 2003, p. A1.

70. For an argument against such an amnesty, see "No Exit," *The New Republic*, February 3, 2003, p. 7.

Jus post bellum should be understood as a part of the determination of whether a war is just, not as a duty that trumps all others.

But the fact that sometimes one must reluctantly sell out justice for the sake of peace does not mean that there should never be justice. Realists, especially the ones who do not believe in international justice at all, often exaggerate or overestimate the difficulty of pursuing war criminals. Recent peace deals in Sierra Leone and Côte d'Ivoire seem in hindsight to have given too much leeway to brutal rebel groups.⁷¹ True, it might have made sense to put justice on hold while Milosevic was still in power and seemed to be the only Serb politician capable of ending the war in Bosnia.⁷² But no dictatorship lasts forever. After Milosevic was toppled by a Serb revolution in October 2000, some commentators argued against demanding his extradition to the UN war crimes tribunal for ex-Yugoslavia, for fear that this might undermine the fledgling government of Vojislav Kostunica. This was too pessimistic. Milosevic was powerless and disgraced; there was little popular protest at his extradition; and as obnoxious as Milosevic has been while on trial in The Hague, he would have been far worse—and more threatening politically—back in Belgrade.

Postwar justice, for all the difficulties, remains an important part of the work of political reconstruction. War crimes trials represent a powerful instantiation of the principles of just war theory, formally calling leaders to account for their violations of those tenets at the heart of *jus ad bellum* and *jus in bello*.

IV. ECONOMIC RECONSTRUCTION

Duties of the Victors: Restoration

Beyond the question of political reconstruction lies that of economic restoration: to what extent are the victors of a war obliged to assist in the restoration of a shattered economy and society to its prewar status, or at least to aid in pulling it out of the rubble? It is easier to argue for economic restoration—some obligation to restore wartime damage—than

71. Ryan Lizza, "Where Angels Fear to Tread," *The New Republic*, July 24, 2000, p. 22.

72. Richard Holbrooke, *To End a War* (New York: Random House, 1998), p. 98.

for transformative political reconstruction. Wartime damage inflicts a collective harm on the citizens of a country,⁷³ including upon citizens who did not consent to the war or who played a trivial role in the decision to go to war that does not merit the kind of suffering they endured as a consequence of policies adopted in foreign ministries and cabinet meetings. The theologian Michael Shuck posits a “principle of restoration”: at least cleaning up the battlefields, and at most helping to rebuild the country’s infrastructure, as well as caring for innocent victims of the war.⁷⁴

As an example of the principled rebuilding of wartime wreckage, one of the major U.S. initiatives at the close of World War II was the work of the United Nations Relief and Rehabilitation Administration (UNRRA), which after the war brought together such figures as Jean Monnet of France and Jan Masaryk of Czechoslovakia to finance the rebuilding of a ravaged Europe. Since much of the money came from those countries fortunate enough not to be invaded, UNRRA relied largely on moral suasion. As Dean Acheson wrote, some Latin American countries were so reluctant that a diplomat “suggested an evangelical meeting in my sitting room during which, after giving the brethren spiritous sustenance, I should recall to them their Christian duty.”⁷⁵ This obviously was unimpeachable, although the Latin Americans probably were not under a positive obligation to rebuild. The Marshall Plan took this generous spirit a step further.

When wars are not clearly fought in self-defense, then these economic obligations may shift. Wars of simple self-defense are, ideally, the easiest to recognize and to justify; they are, for Walzer, the basic example of just war. When wars are more controversial, then perhaps there should be extra burdens to accompany them. The most obvious current example is the Iraq war. When a state is the aggressor—even the aggressor in a good cause—it assumes more of the burden of reconstruction than it would if it entered the war in self-defense. George W. Bush’s White House

73. Hazem Ghobarah, Paul Huth and Bruce Russett, “Civil Wars Kill and Maim People—Long after the Shooting Stops,” *American Political Science Review* 97 (2003): 189–202.

74. Michael J. Shuck, “When the Shooting Stops: Missing Elements in Just War Theory,” *The Christian Century*, October 24, 1994, p. 983.

75. Dean Acheson, *Present at the Creation: My Years in the State Department* (New York: Norton, 1969), p. 77.

undertook to make Iraq and thus the world safer by imposing “regime change” on Iraq. In voluntarily taking up this project, the White House imposed on itself an obligation to ensure the economic and infrastructural foundations of this regime change: supporting police and military units, restoring water and power and hospitals, rebuilding infrastructure directly damaged in the war. There can be debates about how much economic responsibility lies with the victors and how much with the vanquished, but one must insist on stringent requirements of consent and accountability to the Iraqi people. For instance, there must be effective structures of oversight and shared economic decision making in place—all the more so if some of the resources are Iraqi, as will be the case if Iraqi oil is used to help with the restoration. There cannot be any hint of profiteering, which underscores again why Bush’s comments about contracts were immoral. If one has not convinced the world that one was acting according to *jus ad bellum*, then impeccable behavior in terms of *jus post bellum* is all the more critical.

Duties of the Vanquished: Reparation

Presuming that the war was a just one, won by the country that had *jus ad bellum*, then duties of the vanquished to the victors may be considerable; after all, they probably started the war in the first place. (This sub-section will, for the reasons just stated above, stick to cases of clear aggression, where *jus ad bellum* is relatively uncontroversial.) Economic devastation was probably wrought on both sides. If there is a burden of economic restoration, why should it fall only on the victors? This is an important part of the logic behind reparations paid to the victorious.⁷⁶

The costs of economic restoration must be paid by *someone*, after all; it might as well be the aggressors. Of course, “aggressors” could encompass a large group of people. Ideally, the bill would be footed directly from the bank accounts of the aggressor leaders, but that will be difficult practically, and anyway would not be anywhere near enough. So some kind of broader taxation will be required. Since the defeated aggressor state retains its sovereignty, this could be seen as a partial national price for that sovereignty. The burden should fall as much as possible on war supporters and profiteers—Junkers and the Krupp oligarchs, for

76. For a similar argument, see Orend, *War and International Justice*, pp. 227–28.

instance. If a dictatorship has fallen, then the bank accounts of the thugs, probably lined by the exploitation of state power, could also properly be turned over to the freed public. Economic restoration must be kept within limits: there would be little point in taxing Afghans to pay for the reconstruction of lower Manhattan, but if somehow the assets of the Taliban and Al Qaeda could be captured and spent on rebuilding New York and Washington, D.C., and on the families of Osama bin Laden's innocent victims from Kenya to Indonesia, that would be just.

The same basic principle would hold for a genocidal state. Reparations from the coffers of the Nazi state and from German companies like I. G. Farben (which made the gas for the death camps) could be paid out to the survivors and their families. War crimes trials can never punish all the guilty, since the Nazis and Hutu Power *génocidaires* relied on vast numbers of killers, collaborators, bureaucrats, and bystanders; so reparations offer another way of punishing those who, while perhaps not criminally guilty, bear some responsibility for abetting a genocide.

To be sure, there are real dangers here, and not just that of exploitation by triumphant states. Victorious governments must exercise restraint in imposing restorative obligations on losers who were aggressors in the war, but such restraint often falters in the face of war's devastations. Economic obligations can easily become harshly punitive. The need for economic reconstruction was the intuition behind the U.S. public's shockingly widespread approval of the Soviet policy of dragooning millions of German prisoners into spending years rebuilding Soviet cities after World War II.⁷⁷ This was of a piece with Stalin's brutally punitive approach to postwar Germany, and, like so much of that policy, was wildly excessive, even if one could sympathize with Soviet fury at their suffering at Nazi German hands. Economic reconstruction can only do so much. As the legal scholar Martha Minow correctly argues, "money can never bring back what was lost. Even the suggestion that it can may seem offensive."⁷⁸ Reparations should be compensatory, not vindictive.

77. In March 1945, a Gallup poll found that fully 71 percent of Americans thought that three or four million German men should be forced to spend two or three years rebuilding Soviet cities. (*The Gallup Poll: Public Opinion 1935–1971*, ed. George H. Gallup [New York: Random House, 1972], vol. I: 1935–1948, vol. I, pp. 491–92.)

78. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon, 1998), p. 93.

Reparations, of course, are most notoriously associated with the Treaty of Versailles, which forced the Central Powers to accept blame and make reparations for World War I. Thanks in large part to the blistering critique by John Maynard Keynes, and the subsequent collapse of the Weimar Republic, reparations have acquired a stigma of vindictiveness.⁷⁹

But the idea of war as a bad economic prospect has been an integral part of liberal attempts to discourage warmaking. This is more an appeal to prudent self-interest than to principle, but it is a powerful strand in classical liberal thought, made by thinkers including Montesquieu, Norman Angell, and John Rawls.⁸⁰ Immanuel Kant wrote, in *To Perpetual Peace*, “The spirit of trade cannot coexist with war, and sooner or later this spirit dominates every people.”⁸¹ James Madison suggested in 1792 that “each generation should be made to bear the burden of its own wars, instead of carrying them on at the expense of other generations,” so that “avarice would be sure to calculate the expenses of ambition.”⁸² In the same spirit, reparations are a way of showing to would-be aggressors that war literally does not pay.

Despite Keynes's critique, economic reparations are an increasingly accepted means for making amends to victimized groups.⁸³ (They used

79. John Maynard Keynes, *The Economic Consequences of the Peace* (London: Macmillan & Co., 1920). Shuck might frown on reparations as immorally punitive (“When the Shooting Stops,” p. 982).

80. Montesquieu, *Spirit of the Laws*, trans. Anne Cohler et al. (Cambridge: Cambridge University Press, 1989), bk. 2; Rawls, *Law of Peoples*, p. 46; Norman Angell, *The Great Illusion: A Study of the Relation of Military Power in Nations to their Economic and Social Advantage*, 3rd ed. (New York: G.P. Putnam's Sons, 1911). For skeptical notes, see Alexander Hamilton, *Federalist* no. 6, in *Federalist Papers*, pp. 106–07; William James, “The Moral Equivalent of War,” in *War: Studies from Psychology, Sociology, Anthropology*, ed. Leon Bramson and George W. Goethals (New York: Basic Books, 1968), p. 22; A.J.P. Taylor, *The Struggle for Mastery in Europe 1848–1918* (Oxford: Oxford University Press, 1971), p. 255.

81. Kant, “To Perpetual Peace: A Philosophical Sketch (1795),” in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis, Ind.: Hackett, 1983), p. 125. His fourth preliminary article is that there should be no national debts for the purpose of gaining power; that is, states cannot run up debt as they fight long, bruising wars.

82. Madison, “Universal Peace” (1792), in *The Mind of the Founder: Sources of the Political Thought of James Madison*, ed. Marvin Meyers (Hanover, N.H.: University Press of New England, 1973), p. 193.

83. Minow, *Between Vengeance and Forgiveness*, pp. 91–112; Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: Norton, 2000), pp. 317–22.

to be fairly standard arrangements. Prussia demanded indemnification from France after Napoleon's final defeat at Waterloo,⁸⁴ and Germany imposed a crippling war indemnity of 200 million francs on France at the end of the Franco-Prussian War, and slapped even more punitive reparations on Russia at Brest-Litovsk.⁸⁵ David Ben-Gurion, Israel's founding prime minister, won reparations from West Germany, over the furious opposition of rightists such as Menachem Begin, who saw this as blood money.⁸⁶ In the 1980s, the United States paid reparations to Japanese-Americans who had been detained in camps during World War II.⁸⁷ South Africa's Truth and Reconciliation Commission (TRC) had a committee on economic reparation. Croatia's moderate president, Stjepan Mesic, has asked for 15 million euros in war damages from Yugoslavia.⁸⁸ Since the task of postwar economic restoration must be undertaken, surely it is better that the perpetrators pay than the victims.

There is an emerging consensus among historians that reparations were not a fatal blow to the Weimar Republic; they were an issue for Hitler to exploit, to be sure, but not the only one.⁸⁹ With the Dawes plan and the Young plan, and by easing up their demands, the Allies and Americans actually made some efforts to help Germany recover.⁹⁰ When a country wages an unjust war, it risks assuming economic restoration costs if it should lose the war.

84. Gneisenau to Müffling, June 27, 1815, in Baron von Müffling, *Passages From My Life; Together with Memoirs of the Campaign of 1813 and 1814*, ed. Philip Yorke (London: Richard Bentley, 1853), p. 273.

85. Howard, *Franco-Prussian War*, pp. 441, 447; Donald Kagan, *On the Origins of War and the Preservation of Peace* (New York: Doubleday, 1994), p. 292.

86. Tom Segev, *The Seventh Million: The Israelis and the Holocaust*, trans. Haim Watzman (New York: Hill & Wang, 1994), pp. 189–252; Barkan, *Guilt of Nations*, pp. 3–29.

87. Leslie T. Hatamiya, *Righting a Wrong: Japanese Americans and the Passage of the Civil Liberties Act of 1988* (Stanford: Stanford University Press, 1993); Barkan, *Guilt of Nations*, pp. xxiv, 30–45; Minow, *Between Vengeance and Forgiveness*, pp. 94–102.

88. B92 news report, January 24, 2003.

89. Sally Marks, "The Myth of Reparations," *Central European History* 11 (1978): 231–55; Marc Trachtenberg, *Reparation in World Politics: France and European Economic Diplomacy, 1916–1923* (New York: Columbia University Press, 1980); Kagan, *Origins of War*, pp. 288–93, 303–07; and Margaret Olwen Macmillan, *Paris 1919: Six Months That Changed the World* (New York: Random House, 2002).

90. Kagan, *Origins of War*, p. 291.

V. JUS POST BELLUM

Just war theorists focus on the outbreak of war as a crucial moment: when state-controlled mass killing becomes morally acceptable, up to a point. But the moment at which the war ends is equally a crucial one. The return to peacetime must carry with it moral duties.

I have argued that in most cases the primary *jus post bellum* responsibility of a victorious state is to get out as soon as is possible. Broad political reconstruction is mandated only for genocidal states, which cannot be said to have any legitimacy. In such cases, foreigners have a duty to reconstruct the genocidal state: by imposing more stable political institutions; by arresting and trying war criminals; and even by intervening in the educational system to promote a more humane next generation. Except in such extraordinary cases, a state victorious in a just war ought not to *force* any political changes on its defeated foe beyond those necessary to prevent a fresh outbreak of war. Sometimes this does involve a certain amount of reconstruction, but the burden of proof rests heavily on those who advocate doing more reconstruction, which may become just another way of masking a war of conquest or empire.

Prudence and proportionality should also dictate the degree to which the costs of reparation are borne by the defeated (and presumably aggressor) state versus by the victorious state that claims to have fought a just war. Some reparations are justifiable, since someone must pay the costs of repairing wartime damage; but reparations should not be blindly vindictive or crippling, and where possible the costs should be borne by the leadership.

This article has only made a first cut at some of the issues that fall under *jus post bellum*. A better developed theory of *jus post bellum* would be important as a way of stigmatizing conquest, of discouraging foreign policy crusades, and of imposing order on postwar reconstruction. The addition of *jus post bellum* as a category creates a third condition for a just war, and tends to restrict further the number of just wars. As in so many issues in public life, those who would act well bear a heavy burden, and *jus post bellum* duties only add to that burden. People who somehow manage to act decently before and during war are rewarded only by being required to act decently again afterward.