

**Colleen Murphy and Linda Radzik, “*Jus Post Bellum* and Political Reconciliation,” in Elizabeth Edenberg and Larry May (eds.), *Jus Post Bellum and Transitional Justice* (New York: Cambridge University Press, 2014), pp. 305-325.**

The category of *jus post bellum* is a welcome addition to discussions of the justice of war. But, despite its handy Latin label, we will argue that it cannot be properly understood merely as a set of corollaries from *jus ad bellum* and *jus in bello*. Instead, an acceptable theory of justice in the postwar period will have to draw on a broader set of normative ideas than those that have been the focus of the just war tradition. While just war theorists have long argued that the only justification for war is the nature of the peace that it brings about, in order to conceptualize a just peace properly, we will have to go beyond traditional just war thinking. In this paper, we will argue that norms of political reconciliation provide some of the resources we need to address postwar justice.<sup>1</sup>

The subject matter of *jus post bellum* is only now coming to be defined. Indeed, there are conceptual issues about how we de-limit the time ‘after’ war that properly falls under the purview of *jus post bellum*. That is, it is unclear how far into the future events are properly demarcated as falling in the postwar phase. The literature on *jus post bellum* highlights three general questions that span the period ranging from the reduction of hostilities to points years or even decades in the future.

The first set of questions concerns the justice of the transition from war to the post-war period.<sup>2</sup> On what terms may war be justly ended? Are both conditional and unconditional surrender permissible? Is disarmament always or sometimes a permissible condition for war’s end? Can amnesty be a condition for ending conflict? What cannot be asked of losers in war by those who were victorious?

The second focus of *jus post bellum* concerns the justice of dealing with violations of the *jus ad bellum* and *jus in bello* principles of just war theory.<sup>3</sup> In other words, what is the proper way to deal with violations of the rules of war? One debate centers on the form that a response should take. Of particular interest is whether trial and punishment are required or other kinds of response, such as reparations and memorialization, will do. Another raises questions about who has the standing to pursue such responses. Does the response to violations of principles of just war fall under the authority of the victor in a conflict and/or the international community? There are furthermore questions about how collective responsibility for war affects our response to

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<sup>1</sup> Another kind of justice that can apply in postwar communities is transitional justice. Transitional justice refers to the requirements of justice for dealing with wrongdoing facing societies emerging from periods of repression or war and transitioning to democracy. While there can be some overlap between the ideas of *jus post bellum* and transitional justice, they are not identical. First, a broader set of contexts fall under the scope of transitional justice than under the scope of *jus post bellum*. Transitional justice applies not only to post-war contexts, but also to post-repression contexts. Second, implicit in the idea of transitional justice is an assumption that a community is transitioning towards the ideal of democratic government. By contrast, the aim of *jus post bellum* is a just peace. Thus, conceptually it does not depend on the assumption of a move toward democracy.

<sup>2</sup> See Brian Orend, “Jus Post Bellum,” *Journal of Social Philosophy*, 31, no. 1 (2000): 117-137; Brian Orend, *War & International Justice: A Kantian Perspective* (Waterloo, Ontario, Wilfrid Laurier University Press, 2000); Brian Orend, “Justice after War,” *Ethics & International Affairs*, 16 (2002): 43-56.

<sup>3</sup> Orend, “Justice after War;” Davida E. Kellogg, “Jus Post Bellum: The Importance of War Crimes Trials,” *Parameters* 32( 2002): 87-99.

violations of the principles of war. Issues that are implicated in the answer to this question include the treatment of bystanders and those complicit in wrongdoing.

A third area of concern emphasizes postwar reconstruction.<sup>4</sup> It is not obvious where responsibility for reconstruction in the postwar period falls. Does responsibility lie solely with countries or civil factions that were involved in war? Does it include, in addition or primarily, the international community? How are responsibilities to be distributed? What are our criteria for successful reconstruction? Should material, political and legal reconstruction aim at restoring a *status quo ante bellum*, or at meeting some independently defined standard? Who decides how to prioritize the tasks of reconstruction?

This paper focuses on justice in reconstruction.<sup>5</sup> War is inherently destructive--of people, institutions, and infrastructure. This destruction carries with it questions about the justice involved in cleaning up the mess that war leaves in its wake. We will consider these issues from the perspective of a reconciliation theory. Our primary thesis is that determination of the content of the responsibilities for just war reconstruction should be specified on the basis of the damage to relationships that needs to be repaired. We will concentrate on cases of reconstruction after civil conflict, but also suggest how our argument might be extended to address cases involving instances of international warfare as well as third party interventions in postwar periods. But first we should say why a move beyond traditional just war thinking seems to be called for in these contexts.

### **Beyond *Jus ad Bellum* and *Jus in Bello***

How is *jus post bellum* related to the long-established categories of just war thinking, *jus ad bellum* and *jus in bello*? Brian Orend's early and influential writings on *jus post bellum* tend to emphasize its continuity with these other doctrines.<sup>6</sup> How could a war be considered just, he asks, if it is legitimately begun and conscientiously fought but brought to an end with settlement terms that are patently unfair? If a particular war is justified by the need to defend sovereign territory or punish an aggressor, then the rights of the victors after the war should be limited by those aims. A postwar land grab or disproportionate demand for reparations would belie the alleged justification of the war. On this view, which, following Alex J. Bellamy, we might call a "minimalist" position on *jus post bellum*, principles of postwar justice are simply corollaries of traditional, juridical just war ideas that permit states to resort to war only to defend their rights (or to aid in the defense of the rights of others).<sup>7</sup>

However, as Bellamy points out, theorists of *jus post bellum* (including Orend) tend to stray from the minimalist position and instead appeal to a broader set of moral and political principles than those that animate *jus ad bellum* and *jus in bello*.<sup>8</sup> For example, some theorists argue that it could

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<sup>4</sup> Gary J. Bass, "Jus Post Bellum," *Philosophy and Public Affairs*, 32, no. 4 (2004), 384-412; Alex J. Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," *Review of International Studies* 34, no. 4 (2008): 601-625; Mark Evans, "Moral Responsibilities and the Conflicting Demands of Jus Post Bellum," *Ethics & International Affairs* 23, no. 2 (2009): 147-164; and Alexandra Gheciu and Jennifer Welsh, "The Imperative to Rebuild: Assessing the Normative Case for Postconflict Reconstruction," *Ethics & International Affairs* 23, no. 2 (2009): 121-146.

<sup>5</sup> This is not to suggest that the three sets of questions are wholly separable. Indeed, the answer we provide to the question of the justice of reconstruction will have implications for the first two sets of questions. On this point see Larry May, *After War Ends: A Philosophical Perspective* (New York: Cambridge, 2012).

<sup>6</sup> See, Orend's works listed in n. 1 above.

<sup>7</sup> Bellamy, "The Responsibilities of Victory."

<sup>8</sup> Bellamy, "The Responsibilities of Victory."

be impermissible for a victorious army to simply defeat their enemy and return home. If the war left the enemy state without a functioning government, then the victor may be obliged to set up a temporary occupation in order to stabilize the defeated state. While a minimalist could argue that such a postwar occupation was *permissible* in order for the victor to ensure its own future safety, thereby continuing the logic of self-defense, *jus post bellum* theorists sometimes insist that such an occupation is *obligatory* given the needs of the defeated people and the victor's role in causing the destruction, however justified their actions may have been.<sup>9</sup> This constitutes an extension beyond minimalist principles.

The motivation to expand beyond the minimalist conception of *jus post bellum* becomes clearer when we turn our attention to cases of unjust victors.<sup>10</sup> While Orend introduces the idea of *jus post bellum* as a matter of preserving the justice of a war justly begun and justly fought, postwar situations require justice even when (or especially when) the war itself was illegitimate. As the example of Iraq has made far too clear, whether or not a victorious state was justified, it faces difficult questions about the nature of its postwar relationship to the vanquished. As Bellamy argues, "If a war is manifestly unjust ... the minimalist approach to *jus post bellum* offers no way of distinguishing better from worse..."<sup>11</sup> When the aims that motivated the war were illegitimate, or even highly controversial, they cannot be used to guide or justify postwar decision-making.

So, in order to deal with cases of unjust victors and in order to respond morally to the destruction that war leaves behind, an acceptable account of *jus post bellum* must include principles of justice that go beyond the model of rights vindication that shapes the doctrines of *jus ad bellum* and *jus in bello*. But what are these additional principles? And how are they to be justified?

### **Supplementing Just War Theory**

Considerations like those above have led theorists to move beyond a minimalist conception of *jus post bellum*, especially with regard to questions of postwar reconstruction. For example, Michael Walzer supplements traditional just war theory with an appeal to democratic principles, specifically the goal of aiding defeated peoples to achieve self-determination.<sup>12</sup> Walzer defends the legitimacy of occupations that are aimed at (re)establishing self-determination, even in cases like Iraq where the occupying force may not have legitimately waged war in the first place. The value of self-determination itself comes to legitimate the postwar presence of the occupier. Others rely on distinctively humanitarian principles to assign permissions and even obligations to victors or other international actors to reconstruct war-damaged territories and aid survivors, independent of questions about the vanquished state's liability for the war.<sup>13</sup>

In this paper, we will not evaluate the democratic or humanitarian additions to just war thinking about postwar periods. Instead, we will explore whether principles of political reconciliation should be considered part of a conception of *jus post bellum*. We suggest that political reconciliation adds something new to the discussion. Traditional just war thinking defines the

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<sup>9</sup> See, for example, Evans, "Moral Responsibilities and the Conflicting Demands of Jus Post Bellum."

<sup>10</sup> Bellamy, "The Responsibilities of Victory," 609.

<sup>11</sup> Bellamy, "The Responsibilities of Victory," 610.

<sup>12</sup> Walzer "Just and Unjust Occupations."

<sup>13</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: ICISS, 2002); Michael J. Schuck, 'When the Shooting Stops: Missing Elements in Just War Theory', *The Christian Century*, 26 October 1994. On humanitarian interventions generally see, Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000).

permissions and obligations of the various parties to war by concentrating on their rightful claims and asking what they may do defend those rightful claims. Appeals to self-determination and humanitarian arguments instead focus on needs. They concentrate their attention on what damaged parties need in the postwar period in order to argue for more extensive permissions and obligations for other actors. For example, because a defeated state *needs* stability and political reconstruction, the victor (or a third party) may be permitted or even obliged to perform actions, such as occupation, that are not instrumental to the victor's (or third party's) defense of its own rights. In contrast, norms of political reconciliation take as their main focus neither the rights nor needs of individual parties, but *relationships* of a distinctive sort.<sup>14</sup>

The conception of political reconciliation with which we are working is developed in Colleen Murphy's book *A Moral Theory of Political Reconciliation*.<sup>15</sup> This work, like much of the contemporary discussion of political reconciliation, takes as its main case studies the aftermath of intra-state conflicts, specifically examples of states emerging from periods of repressive rule or civil conflict. Given that the overwhelming majority of wars over the last century have been civil wars, this is also an appropriate place to start for this study.<sup>16</sup> Later in the paper, we will briefly suggest how norms of political reconciliation apply to cases of inter-state warfare. But even if we decide that norms of political reconciliation are a part of postwar justice only in the cases of civil war, they will make for a significant addition to *jus post bellum*.

At the heart of Murphy's theory of political reconciliation is a moral conception of a realistically ideal<sup>17</sup> political relationship within a state, in which fellow citizens and officials stand in reciprocal relations of respect for agency. In a just political relationship, each party regards itself and the other as appropriately held responsible for their actions and answerable to one another. Each party is willing to restrict its behavior in accordance with just rules, on the condition that the other parties are willing to do the same. Each party trusts the other parties in the modest sense that it sees the other parties as reasonably competent with respect to the domain of their interactions as fellow citizens and/or officials, lacking in ill will, and inclined to take the fact that they are being relied upon as a reason for cooperative action.<sup>18</sup> A just political relationship is one in which the parties are dedicated to, and trust that other parties are dedicated to, maintaining a system of social cooperation in which each individual can choose from among valuable options how his or her life will go. Such a system of social cooperation must support fundamental capabilities of persons, which are necessary for a decent life for a moral agent. These

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<sup>14</sup> In this way, a theory of political reconciliation is akin to other relationship-centered approaches to questions of justice, including theories of restorative justice in criminal law and theories of moral reconciliation among individuals in the aftermath of private (i.e., non-legal) wrongdoing. See, respectively, Gerry Johnstone and Daniel W. Van Ness, eds., *The Handbook of Restorative Justice* (Cullompton: Willan Publishing, 2007); and Linda Radzik, *Making Amends: Atonement in Morality, Law and Politics* (New York: Oxford University Press, 2009).

<sup>15</sup> Colleen Murphy, *A Moral Theory of Political Reconciliation* (New York: Cambridge University Press, 2010).

<sup>16</sup> Charles T. Call and Elizabeth M. Cousens, "Ending Wars and Building Peace: International Responses to War-torn Societies," *International Studies* 9 (2008). "Between 1945 and 1976 a total of 85% of all wars occurred mainly on the territory of a single state and concerned mainly that state's affairs (the number remained at 95% in 2005), in contrast to the period 1900 to 1945, when 80% of all wars were fought between states." Michael W. Doyle and Nicholas Sambanis, *Making War & Building Peace* (Princeton, NJ: Princeton University Press, 2006); *The Human Security Report: War and Peace in the 21<sup>st</sup> Century* (Oxford, UK: Human Security Centre, 2005).

<sup>17</sup> The concept of the "realistically ideal" comes from John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Mass.: Belknap/Harvard University Press, 2001).

<sup>18</sup> Cf. Karen Jones, "Trust as an Affective Attitude." *Ethics* 107 (1996): 4–25.

considerations partially define an ideal of political relationship. The ideal is realistic in the sense that it does not require extraordinary degrees of moral virtue, selflessness or solidarity. The demands of these political relationships are grounded in reciprocity, such that no party is justified in demanding something from another that it could not agree to itself and such that the continuance of the relationship is predicated on the mutual satisfaction of the terms of the relationship.

Murphy's conception of political reconciliation addresses the problem of how this realistic ideal of political relationships can be regained (or perhaps truly established for the first time) in the aftermath of civil conflict or repressive rule. It identifies principles of justice for responding to the destruction that civil war necessarily carries in its wake and the fostering of just peace. To fill out this conception of political reconciliation, we first need to understand the nature of the destruction that is constitutive of civil war. All wars, even those justly begun and justly conducted, damage communities, most obviously by destroying physical infrastructure and killing civilians. However, the framework of political reconciliation helps us conceptualize the broader, and less immediately obvious, damage that war brings. By examining the basic framework of political reconciliation, then, we can develop a better sense of what most needs to be accomplished in the aftermath of war. In other words, political reconciliation provides resources for conceptualizing what the goal of *jus post bellum* should be, or the kind of just peace towards which just war theory aims.

### **The Damage of War and the Norms of Reconciliation**

The starting point for any analysis of political reconciliation, according to Murphy, is the dynamics of war, and the subsequent problems plaguing interaction following war. Murphy argues that war systematically undermines the conditions in which political relationships can express reciprocity and respect for moral agency, or "reciprocal agency." War erodes reciprocal agency in three primary ways, by diminishing central capabilities, undermining of the rule of law, and eroding trust. The goal of processes of political reconciliation is to cultivate political relationships premised on reciprocal agency by supporting capabilities, restoring the rule of law, and fostering trust. It is this goal that should inform the just peace of *jus post bellum*.

Violence, which in war takes many different forms, only some of which are sanctioned by the principles of *jus in bello*, firstly reduces capabilities. Capabilities refer to the genuine opportunities of individuals to achieve valuable doings and beings that are constitutive of well-being.<sup>19</sup> Examples of fundamentally important capabilities include being able to maintain one's bodily integrity, being adequately nourished and sheltered, being educated, being able to survive and escape poverty and being able to maintain self-respect. Whether an individual has a genuine opportunity depends on her internal and external resources and what she can do with her resources given, for example, laws, customs, and the physical infrastructure of her community.<sup>20</sup> To illustrate, consider mobility. An external resource like a bicycle enhances mobility only if an individual has the skills required to use a bicycle (an internal resource) and lives in an environment where biking is physically possible and socially as well as legally permissible.

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<sup>19</sup> The concept of capabilities was first articulated by Amartya Sen and later developed by Martha Nussbaum. See, for example, Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999) and Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge, UK: Cambridge University Press, 2001).

<sup>20</sup> Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007), at pp. 172-73.

Which capabilities a person has, and how secure she is in the possession of those capabilities, will depend significantly on whether her fellow citizens' relationships with her embody reciprocity and respect for mutual agency. Whether she will be able to express a political opinion, participate in markets, or choose where to live will depend on their granting her certain forms of recognition. So, to our list of fundamental capabilities we should add some that are distinctively relational: the capability to be recognized as a member of a political community; to be respected by others; and to participate in the social, economic, and political life of a community. A just political relationship must include a system of social cooperation that supports fundamental capabilities.

To illustrate the impact of violence on capabilities, we examine three different forms of violence often found in civil war: rape, torture, and killing.<sup>21</sup> The first two are not sanctioned by the principles of *jus in bello*, while killing can in some cases be permissible.<sup>22</sup> Consider first direct victims of violence. Violence reduces the personal and external resources of its victims. Death represents an absolute reduction of personal resources. Rape and torture constitute a violation of bodily integrity and when especially brutal, can permanently compromise bodily health, diminishing the ability of an individual to control urination and defecation or leaving chronic physical pain, for example. Psychological trauma from violence may undermine a victim's trust in others and sense of self-worth, both of which may diminish her willingness to engage in the social world. Costs from medical and/or psychiatric care lessen the resources available to satisfy basic requirements for nourishment and shelter. Physical injuries from violence may foreclose employment options and reduce the opportunity of victims to acquire income and wealth. Finally, violence often ruptures familial and community relationships and the resources such relationships provide to individuals, especially if being a victim of violence like rape constitutes grounds for social stigmatization and ostracism.

Violence also impacts the capabilities of its indirect victims, including family members of victims, members of a targeted social group, or the citizenry generally. For example, the additional costs from medical care and reduced employment options may reduce also the ability of family members of the victim to satisfy basic requirements for nourishment and shelter. Members of a targeted group suffer from the threat of violence. This threat highlights the insecurity of individuals' bodily integrity. The standing threat of violence can become a chronic source of stress and constrain action by creating an incentive for individuals to restrict their movements and the kinds of opportunities they will pursue, so as to avoid becoming a direct victim. Individuals may avoid participating in the political, social, or economic life of the community. Violence also reduces the security of the capabilities of citizens generally, because the potential for the threat of violence to become more widespread.

Finally, violence alters the social and material structure of a community. Education suffers during war. Indeed, in 2006, 43 million children could not attend school due to conflict-related reasons.<sup>23</sup> Health care suffers. Wars often devastate the health care infrastructure of a community, by destroying hospitals, reducing the availability of medical supplies, and contributing to an exodus

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<sup>21</sup> See, for example, reports on the violence of the 1991-2002 civil war in Sierra Leone. Human Rights Watch, "Sowing Terror: Atrocities Against Civilians in Sierra Leone," *A Human Rights Watch Report*, 10(3)(A) (July 1998), [www.hrw.org/reports/2004/sierraleone0904/1.htm#\\_Toc81830567](http://www.hrw.org/reports/2004/sierraleone0904/1.htm#_Toc81830567) (accessed October 9, 2012); and Human Rights Watch, "Getting Away with Murder, Mutilation and Rape," *A Human Rights Watch Report*, 11(3)(A) (June 1999), [www.hrw.org/reports/1999/06/24/getting-away-murder-mutilation-and-rape](http://www.hrw.org/reports/1999/06/24/getting-away-murder-mutilation-and-rape) (accessed October 9, 2012).

<sup>22</sup> The principles of *jus in bello* spell out when this is so.

<sup>23</sup> Save the Children, "Armed Conflict Creating Crisis in Education for 43 Million Children, New Save the Children Report Finds," September 12, 2006, [www.savethechildren.org/newsroom/2006/armed-conflict-creating-crisis-in-education.html](http://www.savethechildren.org/newsroom/2006/armed-conflict-creating-crisis-in-education.html) (accessed August 27, 2010).

of medical professionals.<sup>24</sup> Economies suffer. Economic institutions depend on a relatively stable social context. The disruption from war can lead to diminished investment, the closure of businesses coupled with increased unemployment, and the loss of human capital due to death and injury.<sup>25</sup> Such diminished economic activity erodes the opportunity individuals have to be part of the economic life of their community and, in turn, the external resources needed to satisfy basic capabilities.

There is one especially important impact that war often has upon the institutional infrastructure of a community: it contributes to the erosion of the rule of law.<sup>26</sup> Law refers to the governance of human conduct on the basis of rules. Such governance is possible only if officials and citizens generally respect the requirements of the rule of law. Officials must pass rules that are both capable of figuring in the practical reasoning of citizens (by being, for example, prospective, non-contradictory, and general) and that are actually enforced in practice. Citizens, for their part, must generally obey legal rules; widespread disregard or disobedience of legal rules renders futile the activities of government officials. Very often the governance of conduct by law, or on the basis of declared rules, breaks down during war. Citizens' disregard of legal rules may become common. More often, the restraint by officials dictated by the requirements of the rule of law erodes. Actions that are officially proscribed, such as torture, become part of the practice of law enforcement officials. Declared rules provide maximal flexibility for government officials and minimal practical guidance for citizens; for example, statutes may be so vague that they enable officials to appeal to them as a justification for targeting political dissidents.

The result of the erosion of the rule of law is an environment conducive to injustice and inhospitable to the exercise of agency and respect for reciprocity. The rule of law ensures a certain kind of transparency of official (and unofficial) action. Citizens and officials can look to legal rules to know what practices and actions are occurring (or not occurring). The rule of law forces us to confront and be held responsible for our actions, and in the process can constrain what we are willing to do. However, that transparency is diminished when official conduct is not guided by declared rules. The absence of transparency removes an important check on the pursuit of injustice.

The erosion of the rule of law frustrates individual agency because it prevents the self-directed action and interaction that law makes possible. When law governs conduct, citizens are treated as responsible agents, judged and responded to by officials on the basis of a standard of conduct that citizens have a real opportunity to follow. Decisions and actions of citizens, not the caprice of officials, determine the legal treatment citizens receive. Departures from the rule of law disrespect this agency. Such departures make it more difficult for citizens to know how to satisfy legal obligations. Furthermore, when congruence diminishes, citizens cannot predict how officials will respond to their actions by looking at the guidelines for law enforcement officials contained in declared rules. In addition, the framework of law enables citizens to pursue their goals because it enables them to formulate reliable and stable mutual expectations of how others will behave and respond to their actions. By contrast, the erosion of the rule of law creates an environment of uncertainty and destabilizes our expectations.

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<sup>24</sup> Hazem Adam Ghobarah, Paul Huth, and Bruce Russett, "Civil Wars Kill and Maim People—Long after the Shooting Stops," *The American Political Science Review*, 97(2), (2003), 189-202.

<sup>25</sup> Oxfam, "Africa's Missing Billions: International Arms Flows and the Cost of Conflict," October 2007, <http://policy-practice.oxfam.org.uk/publications/africas-missing-billions-international-arms-flows-and-the-cost-of-conflict-123908> (accessed October 9, 2012).

<sup>26</sup> For a detailed discussion of the rule of law see Chapter 1 of Murphy, *A Moral Theory of Political Reconciliation*.

Violence and the breakdown of the rule of law impact the attitudes of citizens and officials towards each other. In particular, systematic and deep distrust often come to characterize relations among citizens and between citizens and officials in communities at war.<sup>27</sup> Citizens and officials are pessimistic about each others' willingness and ability to abide by norms for interaction and fulfill their role-related responsibilities. Furthermore, citizens have little expectation that other citizens and officials will be trust-responsive, that is, moved to act if relied upon. Often distrust is reasonable; indeed trusting may put individuals' lives at risk. However, the presence of deep distrust, even when reasonable, is morally troubling because it signals a widespread corruption of political relationships. When reasonable, trusting involves a presumption of the competence, basic decency, and agency of others. Citizens are presumed to be capable of governing their lives and officials capable of governing a community. Such default trust can express a commitment to reciprocity, insofar as we presume of others what we would like them to presume of us. Being trust-responsive can be respectful insofar as it signals an acknowledgement of the right of others to make demands on us.

As this discussion suggests, the three central tasks of political reconciliation--the cultivation of the rule of law, the motivation of reasonable political trust, and restoring (or establishing for the first time) support for fundamental capabilities—are analytically distinct but practically intertwined. A particular postwar effort at reconciliation, such as the payment of reparations, will frequently address all three tasks at once, and its success in addressing anyone of these tasks will depend on the state of the other two aspects of the reconciliation project.<sup>28</sup> An appropriate system of reparations for a wartime injustices, for example, will accord with the rule of law, provide evidence of renewed trustworthiness, and support fundamental capabilities (such as the capability to find nurturance and shelter and the capability to be recognized as a member of a political community). However, a reparation process that disregards the fundamental capacities of some of the citizenry (for example, by letting some go hungry in order to compensate others who are considerably better-off) will both undermine political trust and undermine some citizens' willingness to respect the law.

### **Just Peace and Post-Civil War Reconstruction**

Having set out a conception of political reconciliation, we would now like to illustrate how this conception relates to questions about just reconstruction in the aftermath of civil war. Civil wars are notoriously destructive, both of human lives and infrastructure. The periods of reconstruction that follow civil wars can become continuations of the same conflicts and rivalries by other means. The winning faction may dominate decision making about processes of political and legal restructuring and physical reconstruction, prioritizing its own version of history and its own claims to reparation and punitive justice. It may ensure that whatever profits are to be earned from completing the work of reconstruction will be to the benefit of their members and allies. A theory of *jus post bellum* that conceives of a just peace simply in terms of the cessation of hostilities and the vindication of rights-claims seems to lack the resources to fully interrogate the justice of such processes.

Our discussion of political reconciliation, and particularly the conception of a normative political relationship upon which it is built, provides a different ideal of a just peace within a civil context.

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<sup>27</sup> Chapter 2 in Murphy, *A Moral Theory of Political Reconciliation*, discusses trust.

<sup>28</sup> For a comprehensive account of the role of reparations see David Gray, "Extraordinary Justice," *Alabama Law Review* 62 (2010): 1-86.

On this view, a mere cessation of violence is not peace because the consequences of violence, and especially politically motivated violence, continue into the future in the form of diminished capabilities, breakdowns of trust and the rule of law, and ruptured networks of social cooperation. Peace requires, not just an absence of actual violence, but also a sense of confidence on the part of agents that violence will not resume. The parties to the war need to come to a point where the facts of the past no longer threaten to tip the balance of reasons toward renewed aggression. The facts of the past war must no longer be the best evidence of what to expect in the future. For that to happen, evidence must be provided of a renewed (or new) willingness to participate in just political relationships. A just peace requires a social context in which agents can once again exercise their fundamental capabilities and trust in social, political and economic institutions that model reciprocal respect for agency. Importantly, a just peace will rarely, if ever, involve a return to the *status quo ante bellum*. After all, as Orend has pointed out, the *status quo ante bellum* lead to war.<sup>29</sup>

Reconciliation theory changes how we think about the relationship between postwar reconstruction and the goal of a just peace by providing a richer interpretation of the moral and political significance of the destruction that war leaves behind. As in a rights-oriented theory, we can continue to acknowledge that demolished buildings involve an infringement of property-rights, and consider whether this infringement was justified or unjustified, and who is or is not liable for that damage. But when we emphasize relationships, we see that a building demolished by a bomb is not just a damaged piece of property but also continuing evidence of past aggression, a reminder of fear and loss, an obstacle to the satisfaction of the basic human need for shelter, evidence of past disregard for that need, and thus a reason for continuing resentment and suspicion. How can I accept that the other party is willing to live on terms of reciprocal agency with me when I continue to face the evidence of that party's willingness to do me harm? So even in cases where the reconstruction of destroyed buildings is not required of parties to a conflict according to the rights paradigm, it might be required by the demands of reconciliation. Material reconstruction fosters the conditions that make political trust reasonable by concretely signaling trust-responsiveness, a lack of ill-will, and a readiness to engage in social cooperation with former enemies.

Similarly, demonstrating a willingness to abide by the rule of law requires not simply the non-violation of legal rights by officials (as is properly emphasized by a rights-perspective), but also a more robust interaction between officials and citizens. Officials need to pay attention to how citizens interpret rules and whether it is reasonable for citizens to put their trust in such rules, given their past experiences. Truth commissions are one strategy officials may use to acknowledge and address the doubts that hamper the reestablishment of the rule of law. By giving voice to victims to a conflict and a forum for their experiences, practices of truth telling can challenge stereotypes and promote a more inclusive conception of membership in a political community. In the process, truth commissions can cultivate the capacities of moral agents to care about, empathize with, and respond to the second-person reasons of others.<sup>30</sup> Such cultivation can enhance the reasonableness of viewing fellow citizens and officials as trust-responsive, encouraging the trust upon which the cooperative interaction at the heart of the rule of law depends. So, the establishment of a truth commission could be a requirement of justice in the sense emphasized by a reconciliation perspective.

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<sup>29</sup> Orend, "Jus Post Bellum," 122. See also Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4<sup>th</sup> ed. (New York: Basic Books, 2006), pp. 122-3.

<sup>30</sup> See Murphy, *A Moral Theory of Political Reconciliation*, Ch. 5.

On the other hand, reconciliation theory also can provide principled reasons to refrain from the participation in processes of reconciliation. There needs to be a minimal basis for presuming that a faction in warfare is committed to the pursuit of relationships based on respect for reciprocal agency. There are different conditions that could undermine the reasonableness of this presumption. For example, the continuation of violence and refusal to countenance a ceasefire provide little evidence of a willingness to engage with members of an antagonistic community on a peaceful basis. It may furthermore provide ongoing evidence of a refusal to be part of the same community, and so a refusal to develop relationships premised on respect for reciprocal agency within the community. Certain ideological commitments of a government or faction may also counter the presumption of the reasonableness of pursuing reconciliation. Examples of such commitments include an explicit denial of the humanity of members of a community or vow to exterminate members of a group.

By emphasizing relationships, reconciliation theory draws attention to the dynamic, interactive, and socially complex contexts in which rights (emphasized by traditional just war discussions) and needs (articulated in humanitarian principles of just war) come to be satisfied, ignored or held in contempt. In this way, reconciliation theory provides a more complete view of what is required for the establishment of a just peace.

### **International Warfare**

Our discussion to this point has been dedicated to questions of justice in the aftermath of civil war, in large part because theories of political reconciliation have typically been developed in response to cases of intra-state conflict. While we cannot pursue the point in much depth here, we do believe that it can also be helpful to think about the aftermath of inter-state wars from the perspective of political reconciliation. In these cases, too, we can interpret war as a breakdown in political relationships and the postwar period as one in which those relationships must be repaired. The realistically ideal political relationship between states will differ in significant ways from the relationship that should exist among fellow citizens and between citizens and officials. However, respect for reciprocal agency remains fundamental. Furthermore, international relationships, too, should be premised on mutual respect for the rule of law, reasonable trust, and relational capabilities; inter-state war damages such relationships by eroding capabilities, the rule of law and trust.

While states are rich forms of social cooperation in which the capabilities of fellow citizens are protected and nurtured, the members of one state have weaker duties with respect to the capabilities of citizens of other states. These duties will consist mostly of restrictions on actively damaging the capabilities of others.<sup>31</sup> However, the more extensive the contact between the states (because of, for example, geographical proximity or trade relations), the more vulnerable their interests are to one another, and the more demanding their duty to respect the capabilities of the other will be. The violence of war, of course, involves the direct destruction of basic capabilities, such as the maintenance of bodily integrity. As our discussion above indicates, these direct forms of violence also have indirect consequences that undermine capabilities, such as constraining opportunities for education and damaging economies. As in the case of civil war, it is unlikely

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<sup>31</sup> Insofar as makes sense to talk about group capabilities (which is the subject of some dispute), the capabilities of issue will be (1) to be recognized as a member of the international community; (2) to participate in economic, social, political international institutions; (3) to be respected; (4) to satisfy the basic needs of citizens. These will be a function more of international bodies than of particular states, and so the implications for belligerents in the aftermath of war will be weaker.

that only one party is in the wrong, with respect to both *ad bellum* and *in bello* considerations, and even the most conscientious campaigns result in collateral forms of damage. Here, too, a failure to repair damage to capabilities allows the harmfulness of war to continue and serves as fuel for continuing resentments, which threaten to lead to future violence.

War between states also leads to the erosion of the rule of law. Typically, this includes the erosion of the rule of international law. As is the case domestically, the maintenance of the rule of law internationally depends upon the cooperative interaction among all who are bound by international law. Legal rules govern conduct in practice only if parties are willing to act only in lines with what law permits. In almost all instances of war, at least one party is guilty of violating international rules, by, for example, waging an aggressive war itself or, in cases of humanitarian intervention, by failing to respect restrictions against certain forms of treatment of the citizens of a community. This in itself can contribute to the erosion of the rule of law, insofar as international law, like domestic law, depends for its maintenance upon the reciprocal cooperative interaction among members of the international community. Postwar actions should aim to reestablish and communicate allegiance to the rule of international law. They should communicate a willingness to abide by norms of international law and to restrict actions accordingly. Furthermore, especially in those states suffering defeat, civil law may also be destabilized in a way that prevents the achievement of a just peace. Any postwar occupation of the defeated state by the victor must attend to reestablishing the rule of civil law by, for example, contributing to the establishment or reform of legal institutions, and facilitating the cooperative interaction constitutive of mutual respect for the rule of law among citizens and officials.<sup>32</sup>

Finally, trust is also a factor in international relations. The form of trust held among states is weaker than that required for peaceful relations among citizens within a single state, because the scope of the parties' interactions is narrower. For example, in the international context, in order to be perceived as harboring no ill will, a state typically need only manifest a commitment to non-interference in certain affairs of another member state. By contrast, in the domestic context, in order to be perceived as lacking ill will, a party must show a willingness to abide by norms structuring interaction, which themselves will cover a greater domain of interaction and a greater degree of cooperation than in the international case. Yet peaceful international relations are marked by trust--trust that other states will adhere to international law and treaty obligations, that they are reasonably competent in the direction of their own affairs and their interactions with other states, and that they pose no threat toward other members of the international community. After a period of war, in which such trust has broken down, former enemy states must give one another reason to resume an attitude of trust. Furthermore, these states must regain the trust of the international community as a whole, whose relations to these former combatants may also have been shaken by their descent into war. As in cases of post-civil war discourse, the contribution of a theory of political reconciliation to questions of justice in the aftermath of international wars is to be found in its ideal of the nature of a just peace and in the side constraints it places on the pursuit of such a peace.

### **Third Party Interventions**

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<sup>32</sup> There is, of course, much more that must be said about the permissibility of occupation itself and the rights of occupier to instituting legal and political change. We are unable to pursue those questions here. But see Walzer, "Just and Unjust Occupations"; Mark Evans, "Balancing Peace, Justice and Sovereignty in *Jus Post Bellum*: The Case of 'Just Occupation,'" *Millennium: Journal of International Studies*, 36, no. 3 (2008): 533-544; and Dominik Zaum, "The Norms and Politics of Exit: Ending Postconflict Transitional Administrations," *Ethics & International Affairs* 23, no. 2 (2009): 189-208.

Over the last few decades, third party participation in postwar contexts has become increasingly common. Third parties frequently play a role in peace-keeping efforts, conflict mediation, institutional restructuring and the distribution of food and medical aid. These third party actors include, not only the representatives of other states, coalitions and official actors (such as the UN), but also international civilian actors.<sup>33</sup> This latter category encompasses, for example, volunteers working with NGOs, individuals brought in to give expert advice, and, notoriously, civilian contractors who might be engaged in anything from truck driving to security work. An important question for *jus post bellum* is what might permit or even oblige such third party interventions. Justifications are variously given in terms of general humanitarian duties to help those suffering from the consequences of war, a moral duty to support democracy or self-determination, and/or the third parties' need to defend themselves against the dangers that would be posed by renewed warfare or ineffective government.<sup>34</sup> The theory of political reconciliation neither advocates nor disallows these rationales for third party intervention. It does not assign responsibilities of reconstruction to third parties unless they somehow fueled the violence in ways that made them party to the conflict, despite not being combatants, and so in need of political reconciliation in their own right. However, the political reconciliation framework can contribute to the evaluation of third party interventions by recommending a way of thinking about the goal toward which intervention should be aimed, as well as pointing out ways in which intervention can be counterproductive or even unjust.

Our theory suggests that any (otherwise permissible) third party interventions should enhance political reconciliation among the former combatants, so that these parties come to show reciprocal respect for the agency of the other. This conception of what is broken in warfare and what must be repaired in the postwar period is one that puts the experience of the former combatants at center stage.<sup>35</sup> It is tied to their experiences of the conflict and the expectations that they form of one another in the postwar period. There is a danger that third party interveners, perhaps especially those motivated by ideals of spreading democracy, will approach the reconstruction with a very different narrative of the past and different aspirations for the future than those held by the parties themselves. To the outsiders, what looks like a universal struggle towards liberal democracy may well look to the insiders as a conflict over a very different set of values and histories, such as struggles between competing economic interests, or assertions of ethnic or religious identity. For this reason, third party interveners may fail to address the genuine sources of conflict. Worse yet, they may themselves violate the values of reciprocal agency by failing to acknowledge and engage with local points of view. The imposition of reform or reconstruction, without input from those to whom reform is directed, would constitute a violation of the duty to respect the agency of others. While persuasion towards democratic forms of government is permissible and even admirable, in the aftermath of warfare it is difficult in practice to distinguish between persuasion and less acceptable forms of influence.

Once again, it is helpful to attend to capabilities, the rule of law, and trust—the three factors that we have highlighted as aspects of political relationships that are eroded by warfare. Third party interveners may well be right that their participation is necessary to protect and preserve the capabilities of peoples affected by war. Indeed, the parties to the conflict themselves may be in no

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<sup>33</sup> Christine Bell, “Post-conflict Accountability and the Reshaping of Human Rights and Humanitarian Law,” in Orna Ben-Naftali, ed. *International Humanitarian Law and International Human Rights Law* (New York: Oxford, 2011), 328-370, at 329.

<sup>34</sup> Gheciu and Welsh, “The Imperative to Rebuild.”

<sup>35</sup> Here ‘combatant’ is broadly construed to include all those who are members of the communities that engaged in war.

position, either materially or relationally, to do the necessary work. So, from the perspective of capabilities, third party intervention can be crucial to *jus post bellum*.

Third party interveners can also play a valuable role in re-establishing the rule of law in the aftermath of war. They can enforce adherence to the law through policing and peace-keeping activities. However, we must ask whose conception of the law is to be enforced. Here, again, it is crucial that third parties respect the agency of local actors, however difficult it is in practice to discern what such respect requires. A special difficulty arises with respect to third party interveners and the rule of law, however. There is no definitive body of law that governs the behavior of third party interveners or specifies how (and *to whom*) they are to be held accountable for abuses.<sup>36</sup> Their duties with regard to governance, the distribution of capital and effort for reconstruction, and eventual exit from the territory are not set out in any way such that the citizens of troubled regions can form stable expectations defined by law or make legitimate and enforceable demands against the interveners. It is very difficult for third party occupiers to enable respect for domestic law, while themselves standing outside of a law-governed relationship with the population.

With respect to the goal of a renewal of trust among former combatants, third party interveners can play a positive role. In the immediate aftermath of war, direct trust is often unreasonable. By instead trusting that the third party will ensure that certain rules are followed, former combatants do not yet have to trust one another. The hope is that, once these mediated relations stabilize and prove successful over a period of time, direct trust of the former combatants of one another will become reasonable. Yet, as in questions of the rule of law, we must recognize that, by inserting themselves into the postwar conflict, third party interveners have added a new set of relationships that must be established or maintained. Do all of the former parties to the conflict trust the intervener, or is the intervener perceived by some to be biased? The cause of peace is also not well served when third party intervention simply provides former combatants with a common enemy.

To reiterate, the theory of political reconciliation neither advocates nor prohibits third party intervention in postwar contexts, because, insofar as they were mere bystanders to the conflict rather than complicit with or indirectly party to the conflict, their own political relationship with the combatants was not implicated. However, by thinking about the value of reciprocal agency, and by thinking about how the presence of third parties adds another layer of complexity to relational dynamics, a theory of political reconciliation does highlight some important considerations of justice.

### **Is Political Reconciliation Required by Justice?**

Political reconciliation sets out an attractive goal for postwar periods, one that places a premium upon the re-establishment of political relationships that respect reciprocal agency. But is political reconciliation a requirement of *jus post bellum*? In other words, does the failure to pursue and achieve political reconciliation in the aftermath of a war constitute an injustice? Or could the demands of justice be satisfied by a more modest outcome than the realistic moral ideal that animates this theory of political reconciliation?

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<sup>36</sup> Bell, "Post-conflict Accountability and the Reshaping of Human Rights and Humanitarian Law," 333. Bellamy, "The Responsibilities of Victors," 608-609, gives a helpful introduction to the body of international law governing occupation.

If one assumes that a demand of justice is something the violation of which is legitimately punishable by others, then, no, political reconciliation is not a requirement of justice in that sense. In the aftermath of war, the contending parties may establish a mere *modus vivendi* with one another, in which relatively stable means of interaction are found but where neither side trusts the other, or respects the agency of the other. Such a resolution does not lead to the violation of any side's constituted rights, and in that limited sense is not unjust. However, a mere *modus vivendi* certainly falls short of our more elevated ideals of justice—ideals which promise a more secure peace and better support for the protection and nurturance of human capabilities. This higher form of justice is something we do have the right to demand from one another, simply in virtue of our status as human beings, even if these demands cannot legitimately be backed up by force.

This line of thought helps us to see what the conceptual framework of reconciliation and its concentration on the reparation of relationships adds to our thinking about postwar issues. The reconciliation theory of justice emphasizes the future-oriented goal of (re)establishing a political relationship of reciprocal agency. The responsibility for meeting this goal is necessarily collective. This perspective provides resources for understanding the allocation of responsibility for reconstruction and for violations of the requirements of *jus ad bellum* and *jus in bello* in the aftermath of war. Reconciliation theory draws attention to the fact that responsibility for reconstruction is a collective responsibility, shared among all members of a community, especially in cases of civil war. Because the destruction and devastation war creates is only possible through collective effort, all parties fall under reasonable suspicion and distrust with respect to one another. Either by supporting, participating in, or being a passive bystander to violence, the members of a warring group have shown themselves willing to see violence done, in the name of their own group, to the members of the other group.<sup>37</sup> Even if the former group was entirely faultless in the descent into war (which is rarely the case), their relationship to the members of the other group changed into one where trust and respect for basic human capabilities broke down. Equally important, however, reconstruction is a collective responsibility because the institutions and practices that need to be established to cultivate just relationships are inherently dependent on cooperative interaction at the collective level. What most needs to be rebuilt can only be rebuilt together.

This is not to suggest that responsibility is only collective or that that a reasonable theory of justice can be purely future-oriented. The possibilities for future good relations are inextricably tied to responses to the past. Indeed, reconstruction might require holding certain specific individuals accountable for violations of the rules of war, and so for actions that created destruction beyond that which just war permits. Such accountability can be a demand of more traditional forms of justice as well as a demand of reconciliation. A condition for the possibility of trust, for example, might be the repudiation of actions that violated rules of just war and yet were officially sanctioned. The injustices of the past war (whether they are violations of *jus ad bellum* or *jus in bello* principles) must be addressed because a failure to leave them unaddressed is evidence of a failure of respect for the agency of the wronged people and for the rule of law, and so a source of reasonable suspicion with regard to the future. So, although reconciliation is oriented toward the future, it does not underestimate the importance of the past. Restitution for wrongdoing and the prosecution of war criminals are not simply consistent with an interest in reconciliation, they are frequently required for reconciliation. Yet, reconciliation theory also emphasizes the importance of practices of memorialization and rituals of truth-telling and renewal, which are harder to fit into a purely backward-looking or rights-based perspective.

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<sup>37</sup> Cf. Linda Radzik, "Collective Responsibility and Duties to Respond," *Social Theory and Practice* 27, no. 3 (2001).

Reconciliation theory can also draw attention to the responsibilities that members of the international community bear in postwar reconstruction. Reconciliation theory emphasizes the relationships among parties to a conflict, including their relationships with outside parties that were salient in the commission of conflict. Through such participation, members of the international community can, to varying degrees, bear some direct or indirect responsibility for the destruction which war wrought. Purely voluntary third party interventions may also be integral to the successful establishment of the economic, legal, and political institutions needed for relationships of reciprocal agency to become possible. As valuable as such third party interventions can be, however, the emphasis must remain on rebuilding the relationships among the former combatants. Peacekeeping forces must avoid centralizing their own priorities, and instead focus on reestablishing conditions under which local parties will resume the responsibilities of self-governance.

Finally, reconciliation theory can also explain why it is so difficult to specify how long the "postwar period" lasts. Given the complexity of the repair reconciliation requires, its pursuit must of necessity occur over an extended period of time. Its achievement will characteristically be gradual. Indeed, it may often be unclear whether reconciliation is complete. One can think a particular postwar period is over only to have it flare up again because of a violation of the kinds of norms that reconciliation demands.

By way of conclusion, we would like to emphasize that we offer a theory of political reconciliation as a supplement to and not a substitute for other ways of thinking about postwar justice. We do not reject more traditional theories of justice that concentrate on rights-vindication. However, our paper highlights that such theories articulate only one aspect of justice. Reconciliation theory articulates another. In theory, each can leave room for the other. In practice, the choice of whether to pursue political reconciliation or the vindication of rights is much more difficult. One goal of our paper is to enhance our appreciation of the complex nature of the choices involved in postwar justice, by drawing attention to the value and importance of a dimension of that justice to which little attention has been paid to date in the literature.