

# Justice at the End of War

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## Abstract

This paper aims to critically analyse two conflicting ethical orientations that dominate the debate on the issue of justice in the post-war phase: minimalism and maximalism. The former approach narrows down the scope of the third aspect of just war theory, known as *jus post bellum* (justice after war), to the restoration of peace and the prevention of future hostilities. In contrast, the latter emphasizes the importance of achieving political objectives via military triumph and the use of force. Furthermore, it underscores the need for conscientious state-building after a military triumph in order to guarantee the welfare of individuals and the effectiveness of the justly established state. In line with Immanuel Kant's philosophy, it argues for minimalism by giving importance to upholding the rights of civilians and prisoners of war while striving to achieve enduring peace. In addition, it analyzes the fundamental concepts of Orend's maximalist approach to peace accords. These principles give priority to social justice, equality, human rights, democratic government, and social and economic progress. Orend's criteria for a fair peace settlement after a morally justified conflict include the vindication of rights, proportionality, discrimination, punishment, compensation, and rehabilitation. It also discusses the justifiability of regime change in this context. In line with Walzer, it contends that instances in which a new regime will be significantly better compared to the old one should be the only ones in which regime change is appropriate.

**Keywords:** *Jus Post Bellum*, War, Minimalism, Maximalism, Peace.

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Minimalism and maximalism are two contrasting approaches to *jus post bellum*, which refers to the ethical and legal norms that regulate the time after a conflict. Minimalism advocates for restricting the scope of *jus post bellum* to prioritize the restoration of peace and the prevention of future conflicts. In contrast, maximalism advocates for a broader approach that includes imposing a comprehensive set of requirements and obligations on the victorious side, such as punishment, compensation, and reconciliation.

Advocates of minimalism contend that onerous *jus post bellum* obligations might impose disproportionate pressures on the postwar nation, impeding its capacity to reconstruct and sustain stability. They argue that it is crucial to prioritize tackling the underlying causes of the dispute and creating circumstances that will lead to long-term peace, rather than seeking revenge or imposing penalties.

In contrast, maximalists argue that the criteria for *jus post bellum* should be comprehensive and wide-

ranging, with the goal of not only establishing peace but also ensuring justice and fostering reconciliation. They contend that the side that has emerged triumphant has a moral responsibility to acknowledge and address any damage inflicted during the battle, as well as to actively work towards healing and restitution.

The ongoing discourse around minimalism and maximalism in the context of *jus post bellum* remains inconclusive, with academics presenting diverse viewpoints about the suitable extent and substance of this concept. There is debate over whether the moral duty of responsibility and compensation should only apply to direct harm from military action or whether it should also cover indirect harm from things like environmental deterioration or economic disruption. Irrespective of the method used, it is evident that *jus post bellum* is a crucial field of research for advancing justice and peace in the wake of a battle. Post-conflict reconstruction is not only vital for fostering justice and peace, but it also plays a pivotal role in the restoration of societies and the mitigation of future hostilities. Hence, it is essential to

set unambiguous standards and principles for the process of post-conflict rehabilitation and development.

The origins of minimalism and maximalism may be attributed to the evolution of just war theory and the subsequent rise of *jus post bellum*. The origins of minimalism may be traced back to the ideas of early just war theorists like Thomas Aquinas and Francisco de Vitoria. These thinkers stressed the significance of restricting the use of force and minimizing injury to non-combatants.

Maximalism, however, originated throughout the Cold War and the advancement of nuclear armaments. Scholars like Henry Shue and Michael Walzer contended that using force was sometimes essential to safeguarding against existential dangers. This perspective highlights the significance of achieving military triumph and using coercion to accomplish political objectives, even at the expense of inflicting substantial suffering on civilians.

Both minimalism and maximalism have an influence on contemporary discussions of just war theory and *jus post bellum*. Some scholars support a minimal approach that focuses on preventing harm, while others advocate for a maximal approach that highlights the significance of military triumph and the utilization of force to attain political objectives. As Alberico Gentili puts, "the nature of victory is itself insatiable ... if the will of the victor controlled everything and the vanquished could lose everything ... there would never be peace, and war would be to the death ..." (Gentili, 1933, bk.IIIp.ii). The use of coercion to attain political objectives often results in an incessant cycle of aggression and strife. Gentili's statement underscores the detrimental impact of such behaviors and the need to seek nonviolent resolutions to disputes.

The minimalist perspective asserts that *jus post bellum* should be maintained at a basic level to prevent the imposition of excessive obligations on the state after the conflict. This approach proposes that post-war rebuilding should prioritize meeting the urgent needs of the afflicted community rather than pursuing lofty objectives that might worsen tensions and prolong the conflict. By giving priority to stability and security, a minimalist approach to post-conflict justice may effectively avert a recurrence of violence and facilitate sustained peacebuilding efforts.

Conversely, the maximalist perspective advocates for a broader range of responsibilities for the winner in a morally justified conflict, including obligations of reparation, rebuilding, and harmonization. As Frowe says, "Maximalists understand the *post bellum* rules as imposing obligations upon the victors rather than granting them permissions. Their concern is not that states will do too much in victory and that these

excesses must be curbed. Rather, the worry is that victorious states will do too little, leaving behind them a dysfunctional state that cannot meet its citizens' basic needs." (Frowe, 2016, p. 240). This remark emphasizes the significance of conscientious and efficient state-building after a military triumph. It underscores the need for successful governments to give top priority to the welfare of their population and ensure that the newly established state is efficient and capable of fulfilling their requirements. Moreover, it emphasizes the reality that disregarding these fundamental needs may result in instability and strife, as people may lose faith in the new administration and choose other methods to fulfill their requirements. Hence, engaging in responsible state-building is not just a matter of moral obligation but also a crucial strategic need to guarantee enduring peace and stability.

Alex Bellamy says, "Drawing upon the quasi-judicial concept of the just war evident in the work of jurists such as Grotius and Vattel as well as philosophers such as Kant (who was otherwise deeply critical of the jurists, whom he labelled 'sorry comforters'), minimalists tend to view just wars in terms of rights vindication and argue that combatants are entitled to wage war only to the point at which their rights are vindicated" (Bellamy, 2008, p. 602). Minimalists advocate for the idea that conflict should be limited to the minimum degree required to accomplish the objective of upholding human rights. They oppose the notion of engaging in warfare for motives such as economic benefit or political influence.

The minimalist approach is based on the notion of sovereignty and refraining from interfering in the internal affairs of other governments. The statement underscores the need to limit the requirements imposed on the defeated nation and refrain from imposing excessive obligations that may result in more instability or war. Advocates of minimalism contend that the main objective of *jus post bellum* should be the reinstatement of peaceful and stable circumstances rather than the punishment or humiliation of the vanquished state.

Conversely, the maximalist perspective emphasizes the importance of holding the vanquished state responsible for its acts and ensuring that justice is delivered. Advocates of maximalism believe that the main objective of *jus post bellum* should be to avert future wars by tackling the underlying causes of the war and ensuring that those guilty are held accountable. This methodology is often linked to the literary works of Immanuel Kant and modern intellectuals such as Michael Walzer.

The beginnings of minimalism and maximalism may be attributed to the works of early modern intellectuals such as Vitoria and Grotius, who aimed to establish a legal structure for governing warfare and its

consequences. Vitoria's conception of "just war" prioritized the need for restraining the use of force and guaranteeing that conflicts were waged in pursuit of righteous motives. Vitoria says, "... we must not use the sword against those who have not harmed us. To kill the innocent is prohibited by natural law" (Vitoria, 1991, p. 304). Vitoria's viewpoint about the use of force and legitimate reasons is in accordance with the norms of contemporary international law, which prioritize safeguarding people and minimizing unwarranted damage during armed confrontations. This underscores the lasting significance of Vitoria's theories in influencing current discussions on the morality of warfare.

Grotius maintains that war is justified only in cases where there is irreparable harm that cannot be redressed via legal channels (Knight, 1925, p. 196). Grotius' argument underscores the significance of using warfare only after all other options have been exhausted and underscores the need for ethical deliberations in armed confrontations, including the mitigation of damage to non-combatants and adherence to international legal principles and standards. This strategy is essential for fostering peace and stability in the contemporary world. The author delineated three distinct perspectives on the concept of a fair war: as a legal action, as a legal dispute, or as a safeguarding of the collective welfare (Kingsbury & Roberts, 1992, p. 16). Hence, it is crucial for nations to meticulously contemplate the tenets of a fair war before embarking on any military endeavor. By doing so, individuals may guarantee that their acts are both lawful and ethically defensible, thereby avoiding avoidable disputes and fostering worldwide concord. In essence, war may be morally acceptable when it is used to safeguard or uphold rights in a global context when there is no centralized governing body to resolve conflicts. Nevertheless, the choice to engage in warfare should not be made casually, and it is important to contemplate the possible repercussions and expenditures. Prior to engaging in military action, it is imperative to fully explore and use diplomatic initiatives.

Immanuel Kant's "Perpetual Peace: A Philosophical Essay" espouses a minimalist perspective on *jus post bellum* (Bellamy, 2008). Kant maintains that military intervention should only be pursued after all other options have been exhausted, and even then, the primary objective should be to produce enduring tranquility rather than mere triumph. This technique highlights the need to carefully evaluate the possible ramifications and expenses of every military operation prior to its pursuit. Kant argues that the one valid objective of a fair war is to achieve enduring peace, and the principles of justice that are applicable during war should also be applicable in the time after the conflict. In addition, Kant held the belief that war should only be undertaken as a last option, with diplomatic endeavors

being pursued to their fullest extent before considering armed intervention. The speaker underscored the need to uphold the rights of non-combatants and detainees while also stressing the necessity of using force in accordance with the situation. He contends that the winner ought not to enforce severe conditions on the vanquished side, such as requiring reparations beyond the actual harm suffered or compelling the defeated party to relinquish land against their will. The concepts of just war theory also stress the significance of differentiating between belligerents and non-combatants, as well as the need to mitigate damage inflicted against civilians. Furthermore, the principle of proportionality dictates that the use of force must be restricted to the extent that is necessary for attaining a fair objective.

Contrarily, Kant suggests that the side that has been beaten should be offered the chance to engage in a treaty that produces enduring peace and reciprocal regard amongst the involved parties. This approach is consistent with Kant's conviction of the significance of logical discourse and diplomacy in settling disputes, as opposed to turning to violence. Furthermore, it underscores the need for enduring resolutions that favor collaboration and regard beyond immediate triumphs. The minimalist approach to *jus post bellum* is based on Kant's overarching philosophical endeavor to build a foundation for enduring peace among states. Kant's minimalist stance on *jus post bellum* acknowledges the significance of minimizing unwarranted damage to population and infrastructure in times of warfare. Furthermore, it underscores the need to hold individuals responsible and achieve harmony in the aftermath of armed conflict.

Kant's conception of *jus post bellum* prioritizes the significance of upholding the dignity and self-governance of all parties involved, both during and after a conflict. This approach acknowledges that the cessation of war does not signify the cessation of accountability and that achieving a fair and enduring peace necessitates addressing the fundamental reasons behind the conflict. Furthermore, it emphasizes the need for equitable and clear procedures for resolving complaints and guarantees that all stakeholders have an opportunity to influence the course of events. The approach emphasizes the need to refrain from laying superfluous responsibilities on the losing side and prioritize the establishment of a fair and enduring peace that benefits all parties. Moreover, he underscores the need for responsibility and reconciliation as means to avert future wars and foster stability in the area. His conflict resolution perspective places a high emphasis on the welfare of all parties and aims to provide a lasting route to peace.

The minimalist principles of *jus post bellum*, derived from just war theory, include ideas like just cause and proportionality, with a specific emphasis on preventing harm. On the other hand, maximalist principles are based on a wider framework of liberal

thought and international law. They not only focus on avoiding damage but also highlight the need for actively helping others and creating circumstances that allow people to live with a minimum level of decency. Maximalist beliefs prioritize the promotion of social justice and equality. The organization places a high value on safeguarding human rights and actively supports policies that tackle structural inequities and enhance the agency of underprivileged populations.

Brian Orend outlines the criteria for determining the acceptability of a fair peace accord after a just war (Orend, 2007, pp. 580–81). These recommendations include measures to safeguard human rights, build democratic government, and foster social and economic progress. In addition, Orend asserts that a fair peace must tackle the underlying reasons for conflict and strive for lasting reconciliation and restoration.

#### **Rights Vindication:**

The rights that were violated and led to the justified war must be safeguarded in the peace treaty. The matter at hand concerns the rights to life and freedom, as well as the collective rights to land and governance. The crux of every equitable peace agreement is ensuring that the conflict actually facilitates tangible improvements. Ultimately, both domestic and global societies depend on acknowledgment of and adherence to the principles of individual rights. The objective of justice is to achieve restitution rather than seek retribution.

#### **Proportionality and Publicity:**

Proportionality and publicity are the key factors to consider. The provisions of the peace accord should be equitable and just, and they should also be publicly disclosed. Employing a settlement as a means of revenge might result in a rather unpleasant sleeping arrangement in the future. Typically, this implies that requiring absolute capitulation is not feasible.

#### **Discrimination:**

The "principle of discrimination" stems from the need to distinguish between those engaged in conflict and those who are not (referred to as the "in Bello requirement"). Orend characterizes this as guaranteeing that people are granted "adequate protection" within the framework of the peace agreement. Adherence to this concept is crucial for safeguarding the human rights of civilians in times of war, and it also serves to minimize avoidable damage and distress. Nevertheless, its practical implementation might pose difficulties, particularly in scenarios where the differentiation between fighters and noncombatants is indistinct.

#### **Punishment:**

Orend argues that achieving a just peace requires both retribution against the aggressor and triumph over their unjust objectives. Therefore, it is imperative that officials be subjected to impartial public

prosecution for their transgressions of international law. Furthermore, it requires that combatants from both factions who are accused of committing crimes during the conflict be thoroughly examined and perhaps prosecuted. He says, "proper punishment can be an effective spur to atonement, change, and rehabilitation on the part of the aggressor. Finally, and most powerfully, failing to punish the aggressor degrades and disrespects the worth, status, and suffering of the victim" (Orend, 2007, p. 580). Hence, it is crucial to ensure that those individuals who are guilty of committing heinous acts are held accountable for their actions, as this will foster the principles of justice and deter the recurrence of such incidents in the future. Moreover, accountability may provide a feeling of resolution and restoration for the victims and their families.

#### **Compensation:**

The belligerent nation should provide restitution to the victims of its aggression as a component of a just resolution. Nevertheless, he reiterates the need for equity in these evaluations. Compensation plays a crucial role in upholding justice and deterring future instances of violence. It not only recognizes the damage inflicted but also aids in the recovery of the victims' lives and means of making a living. However, it is essential to guarantee that compensation evaluations are equitable and impartial for all parties concerned.

#### **Rehabilitation:**

Orend contends that *jus post bellum* might include the process of political rehabilitation. The objective of this restoration process is often to avoid more bloodshed, such as reinstating an overthrown government or implementing disarmament, although coercive demilitarization is typically seen as a punitive measure rather than a preventive one. The more-disputed issue is that if the present system is extremely abhorrent or coercive, it may need total dismantling and reconstruction in order for effective regeneration to occur. Walzer argues that a state has the legitimate authority to pursue both triumph in warfare and safeguard itself against further incursions (Walzer, 2006, p. 118). Nevertheless, the use of disproportionate force or the infringement upon human rights cannot be justified in the pursuit of these objectives. States engaged in conflict should adhere to the principles of just war theory to guarantee their activities are conducted with ethical and moral consideration.

Walzer contends that in some instances, post-war regime change may be warranted, but it should be restricted to situations where the preceding government was unequivocally unfair and the subsequent regime will exhibit substantial improvement. Furthermore, he underscores the need to guarantee that the procedure of transitioning to a new government is executed in an ethical and principled fashion while upholding the sovereignty and dignity of the individuals impacted by

the transition. He emphasizes the significance of providing the individuals impacted by the political transition with the opportunity to participate in the decision-making process of the new administration. He says, "...the Indians were in and out of the country so quickly, defeating the Pakistani army but not replacing it, and imposing no political controls on the emergent state of Bangladesh" (Walzer, 2006, p. 105).

Walzer expresses apprehension over the post-war regime transition due to its propensity to result in unforeseen repercussions. He observes that such acts often include a substantial amount of ambiguity and unpredictability and may not always result in a superior conclusion. According to Walzer, each suggested change in the government after a war must be thoroughly evaluated and its possible outcomes examined before it is implemented.

Orend argues that the justification for regime change arises when a government is exceptionally cruel or repressive and when there is a rational anticipation that such change would result in a substantial enhancement in the well-being of the populace impacted by the government. He says, "The goal of justified postwar regime change – that is, of coercive rehabilitation of a defeated aggressor – is the timely construction of a minimally just political community" (Orend, 2007, p. 581). Orend contends that the use of force to bring about a change in government may be morally acceptable if it results in the creation of a political community that meets the basic standards of justice and brings about substantial improvements in the well-being of those impacted by the previous regime. However, the achievement of such a transformation in government relies on a multitude of elements, which include the participation and endorsement of indigenous participants and global institutions. Furthermore, the justification for regime change arises when the targeted government poses a significant risk to global security and stability.

Nevertheless, Orend underscores the need to execute regime transition in a manner that upholds the norms of proportionality and discrimination. This implies that the use of force should be limited to the minimum required to accomplish the objectives of regime transition while ensuring the utmost protection of non-combatants from injury. In addition, Orend asserts that the process of regime transition should be conducted in a manner that upholds the rights and dignity of the individuals impacted by the regime while also considering the long-term interests of all parties concerned.

Establishing a fair government in a conquered nation could be advantageous for the winning power. The absence of a government or leader in a nation may result in civil unrest and the eventual rise of another

assertive authority. Moreover, this might incite animosity against the triumphant nation, resulting in subsequent confrontations. However, the justification for a state's need to remove and support an aggressive government after a successful defensive war remains ambiguous. This might provide a significant extra burden for a successful state that is already engaged in post-war rebuilding. One possible justification for such a responsibility is the recognition that defensive wars, even if morally justified, may cause injury to innocent citizens in the nation initiating the aggression. Physical injury, such as loss of life and property, and the collapse of a government, which exposes citizens to many abstract threats, are instances of adverse consequences.

Gary Bass contends that there is still harm inflicted upon individuals who are not responsible for the suffering they experience due to decisions made in foreign ministries and cabinet meetings. This harm is present even if the harm inflicted on non-combatants is deemed to be proportionate to the justified cause (Bass, 2004, p. 407). This statement acknowledges that collateral damage, while potentially acceptable under the principles of just war theory, has tangible repercussions for innocent people who suffer the effects of armed conflict. Bass argues that this situation prompts inquiries about the ethical and political obligations of those who instigate and carry out conflicts, particularly in relation to the restoration and support of impacted communities during the aftermath of the fight.

Michael Shuck presents a novel concept, referred to as the "principle of restoration" (Shuck, 1994, p. 983). Based on this concept, after a war has concluded, the triumphant side has the obligation not only to clear the battleground but also to aid in the reconstruction of the nation's infrastructure and provide assistance to the blameless victims of the conflict. Shuck contends that conventional just war theory often disregards this concept since it largely concentrates on the moral aspects of initiating war and the conduct of battle while disregarding the obligations of the winner after the conflict. Shuck argues that including the concept of restoration is essential for a more complete just war theory, which considers all the moral aspects of armed conflict. The author contends that the scope of just war theory should extend beyond the reason for initiating war and the conduct of warfare to include the consequences that follow the conclusion of the conflict. This covers the victor's duty to rebuild and restore the society that the war has affected.

This paper attempted to give a critical analysis of the ethical perspectives of minimalism and maximalism that relate to the issue of justice in the post-war period. It advocates for minimalism, a philosophy that prioritizes the restoration of peace and the prevention of new conflicts while also defending the rights of civilians and prisoners of war. It highlighted the

need to attain lasting peace by safeguarding individual rights, drawing inspiration from Immanuel Kant's views. Conversely, it examined Orend's maximalist perspective, which gives priority to social justice, equality, human rights, democratic governance, and social and economic advancement. His standards for a just peace agreement include criteria like vindication of rights, proportionality, discrimination, punishment, compensation, and rehabilitation. Furthermore, it evaluated the ethical justification of regime change after war, proposing that it should only be undertaken if the new government is significantly better than the previous one.

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