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## **JUS POST BELLUM**

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### **The Moral Responsibilities of Victors in War**

*Rear Admiral Louis V. Iasiello, Chaplain Corps, U.S. Navy*

*The dogmas of the past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise to the occasion.*

ABRAHAM LINCOLN

**C**oalition nations enjoyed swift and decisive military victories in Operations DESERT STORM, ENDURING FREEDOM, and most recently, IRAQI FREEDOM.<sup>1</sup> At first look, these decisive military victories should prove that in regard to America's application of military force, it is no longer a question of *if* its military will win its major battles but of when and how:

The outcome of war used to be the overriding question. Nowadays, when it is West vs. non-West, the vast disparity in economics, technology, materiel, training and organization virtually assures a Western victory. This assumed, the attention focuses on very different matters, such as the duration of hostilities and the number of casualties.<sup>2</sup>

Unfortunately, the post-battle experiences of these same operations illustrate the difficulty of achieving *post bellum* objectives and, in particular, the ultimate goal of all just conflicts—the establishment of a just and lasting peace.

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Two years have passed since the collapse of the repressive Taliban regime in Afghanistan. Despite the swift and decisive battlefield victories of Operation ENDURING FREEDOM, some critics point to the fact that less than half the country is under the firm control of the newly established Kabul government.<sup>3</sup> In Iraq, despite the swift defeat of the army, the subsequent collapse of the tyrannical government, and the capture or death of many key military and political leaders, many Iraqis still live in fear and do not enjoy what coalition officials anticipated, the exhilaration of liberation. Why has the *post bellum* phase of these

conflicts proved such a challenge to the victors of battle? Perhaps the reason is, in part, a failure to update and revise the just war theory, a theory that has survived for millennia because it is “an historically conditioned theory,” one in a state of perpetual transition.<sup>4</sup> It is a theory that has been continually adapted to reflect changes in civilizations, cultures, religions, politics, and even military strategy.

This article examines a relatively undeveloped aspect of just war theory, *jus post bellum*, or the post-battle considerations of war. In an era when military victories on the battlefield are virtually assured for the United States and its allies, we must recognize the critical nature of *post bellum* operations and devote more attention to the development of a theory that will drive operational concerns in the post-conflict stages of occupation, stabilization, restoration, and other aspects of nation building. Thorough planning for this sometimes neglected aspect of war may ultimately save thousands of combatant and noncombatant lives, and quite possibly billions of dollars. The lessons of recent U.S. operations and today’s geopolitical realities demand nothing less. Let us proceed to a review of the traditional understanding of the theory of just war.

#### THE TRADITIONAL CATEGORIES OF JUST WAR THEORY

*We want no war of conquest. War should never be entered upon until every agency of peace has failed.*

WILLIAM MCKINLEY

Humanity has long pondered the morality of war and the ethical conduct of combatants in war. Moral persons who hold to the ethical and religious principle that killing is wrong view the unjustified taking of another human life as murder. While most cultures hold to the principle that the taking of human life is indeed wrong, the question must be asked whether any killing is ever justified. Are there situations or conditions in which killing is required as a moral obligation? If killing is ever justifiable, what moral limits must be placed on it to ensure that it remains justified throughout the conflict? Civilized persons, recognizing the tragic nature of war and the various dicta prohibiting killing, question not only whether war is just but also whether it is avoidable:

The standard poles of morality—good and evil—seem inadequate when we talk about war, or perhaps too adequate: they are words that leap to mind, but they obscure more than they illuminate about what actually happens in war. These words are too certain; they allow too little room for the moral compromise at the very heart of war—the brutal acts for the sake, one hopes, of a good outcome. And so, for the past two thousand years at least, the Western vocabulary for the moral nature of war has

revolved around the idea not of the “good” war but of the “just” war, a notion that suggests reluctant duty to do battle and hints at the tactical advantages of having God on one’s side.<sup>5</sup>

*Continued on page 36*

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Since ancient times, philosophers, theologians, statesmen, lawyers, and warriors have debated the nature of warfare and have struggled to define the ethical boundaries of the justified use of force in conflict scenarios (*jus ad bellum*) as well as the appropriate, just, humane, or legal parameters of ethical behavior in war (*jus in bello*). This critical body of work is reflected in the sacred writings of the world's major religions, in the laws of ancient civilizations, in ecclesiastical pronouncements, international law, and the treaties, agreements, and charters

of organizations and conventions regulating the conduct of nations. It is also found in the body of ethical reflection called the “just war tradition.”

Some of the morally defensible and historically accepted criteria or principles for declaring war (a matter of *jus ad bellum*) include: just cause, right intention, just authority, potentiality (potential for success), proportionality, last resort, and, for some just war theorists, a formal declaration of war. Just wars are not justified merely by utilitarian criteria; they are justified by their means and by principles and virtues as well. The criteria presented by theorists are not to be used as some sort of just war checkoff list or moral calculus, and they are not to be viewed as justifications to wage war.

The second category of just war, *jus in bello*, addresses itself specifically to the moral conduct of those who prosecute war. While the criteria applied to *jus in bello* are not as numerous as those of *jus ad bellum*, they are just as vital to the attainment of the ultimate goal of any just war (*bellum justum*)—the establishment of a just peace. The major criteria of *jus in bello* include proportionality, discrimination, and a continued focus on right intention. In the words of one military theorist, “The centerpiece of military ethics should be the moral application of military force.”<sup>6</sup> Taken together, the categories of *jus ad bellum* and *jus in bello* define what is traditionally considered the theory of just war. It is a theory that transcends creed, culture, and politics, an ever-evolving philosophy historically adapted and revised to reflect the ever-changing geopolitical realities faced by those who apply its principles. Current events in Afghanistan and Iraq pose a new and challenging set of such realities. Therefore, we must ask the question: Has the time come to expand the theory of just war and to develop a third category—the *post bellum* dimension of war?

### *JUS POST BELLUM—AND THE EVOLUTION OF A THEORY*

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

MICHAEL J. SCHUCK

The global wars of the twentieth century illustrate the criticality of war-termination policy and of operational planning for the *post bellum* stage of war. Consider the apparent absence of a war-termination vision for the belligerents of the twentieth century’s first global war:

The definition of war aims proved divisive among and within nations. The French demands were deceptively reasonable: they wanted the restoration of Alsace-Lorraine that only a defeated Germany would yield; the English vowed to destroy Prussian militarism and terminate the German threat to the European balance of power. Colonial gains would be incidental rewards. Germany harbored the most ambitious war aims—aims that would have, in fact, established her as the hegemonial power in Europe, hence, a world power in England's place.<sup>7</sup>

Almost eleven million people died in the first global war, and at least twice as many were wounded or injured. Although the war affected the hearts, minds, and politics of most survivors, little was done to foster personal, familial, societal, or national healing or the rebuilding of defeated societies.

The Treaty of Versailles, signed on 28 June 1919, ended World War I. It directed Germany to give up some of its most valuable territories, place the Rhineland under an allied protectorate for fifteen years, and bear both occupation costs and painful postwar reparations. These agreements were to be monitored under the presumably enlightened oversight of the newly created League of Nations. This absence of postwar vision negated, for all practical purposes, any hope of a just and lasting peace. Some would blame Europe's subsequent economic chaos and wounded nationalism, the birth of totalitarianism, and ultimately World War II itself on this lack of war-termination vision.

Both major categories of just war, *jus ad bellum* and *jus in bello*, include *right intention* among their criteria. Within the context of going to war, right intention refers to the justice of the war itself (*jus ad bellum*). For example, Augustine wrote that wars fought with the intention of achieving or restoring justice, or otherwise doing good, produced good for both neighbor and enemy alike. In this sense, right intention directs that war be waged with the intention of establishing good order (a just and lasting peace) or of correcting an unjust one. For Augustine, right intention also meant the love of both neighbor and enemy alike, and that war never be waged for reasons of hatred, anger, or revenge. Just wars, then, are not waged to promote tyranny, oppression, or domination, or conducted for a nation-state's economic or political gain: "True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good."<sup>8</sup>

Throughout the centuries, other conditions or intentions have been used to justify war. For example, wars have been waged to stop or punish aggressors or to reestablish civil order. Offensive operations have been justified as preemptions of anticipated unjust uses of force and as interventions to stop genocide or other grave injustices. It has been argued that these are just intentions and that just war theory should accommodate the concept of just intervention and, quite

possibly, just preemption. Professor J. Bryan Hehir has suggested that today's political climate demands we move from a presumption *against* the use of force to a presumption *for* justice, and he cites injustices in Rwanda, Somalia, and Bosnia as examples of why the presumptions must change.<sup>9</sup> Certainly these interventions appear to have been motivated by concern for the welfare of others and therefore have been in the spirit of right, or just, intention.

When applied to the second major category of just war, *jus in bello*, right intention relates to just behavior in war—the tactical, operational, and strategic decisions made for and by combatants. Commanders must continually weigh the principles of discrimination and proportionality against the demands of military necessity. In 1863 Francis Lieber defined military necessity as “those measures . . . indispensable to securing the ends or goals of war.”<sup>10</sup> Military necessity, then, refers to actions that must be taken if military objectives are to be achieved; *jus in bello* demands these goals be achieved with minimal loss of life and resources. Decisions made by operational commanders directly impact the lives of their troops, the lives of the enemy and of noncombatants in the theater of war; these decisions and the behavior of belligerents will ultimately enhance or lessen the likelihood of a just peace. In the United States, combat personnel receive, at a minimum, limited training in the principles of just warfare, the just war tradition, and military standards of conduct and core values, and before combat they are familiarized with rules of engagement for that specific operation. This type of ethical orientation will ordinarily enable warriors to remain morally focused and righteous in their intentions, even in the fog of war and under the psychological pressures of combat.

From war's inception (*jus ad bellum*) and throughout its prosecution (*jus in bello*), the goal of all should be the establishment of a just and lasting peace. Therefore, the long-term consequences of even a justified use of force require that just intention extend into the *post bellum* stage, thus demanding our consideration of a third category of just war theory (*jus post bellum*).

As recent events in Afghanistan and Iraq attest, nations must fight wars with a war-termination vision and plan carefully for the post-conflict phase. Doing so, or failing to do so, may make or break efforts to restore order, heal hostilities, and rebuild societies. Nations must recognize the sensitive nature of postwar operations and train their troops to participate in these operations—including facilitating, when appropriate, an honorable surrender, rebuilding infrastructure, reestablishing societal institutions, restoring the environment, providing for *post bellum* justice and the rule of law, and building a spirit of reconciliation and cooperation with former enemies.

*Post bellum* activities should be guided by both legal and moral precepts. There are two primary sources that address the legal conduct and activities of a



victorious armed force in the postwar phase of occupation: the Fourth Geneva Convention of 1949 (concerning the protection of civilian persons in time of war, articles 47–79), and the Hague Convention IV of 1907 (respecting the laws and customs of war on land, articles 42–56). Are there also moral precepts to guide the *post bellum* activities of victors, and if there are, what principles or potential criteria should set the moral parameters of behavior in the post-combat phase of war? Seven come to mind: a healing mind-set, just restoration, safeguards for the innocent, respect for the environment, *post bellum* justice, the transition of warriors, and the study of the lessons of war. Let us use these potential criteria as departure points for our discussion of *jus post bellum*.

### A HEALING MIND-SET

Defeat carries with it a trauma that is experienced on many levels: personal, familial, communal, societal, and national, even international. However justifiable a war might be, however many other avenues of statecraft were tried and failed, any use of deadly force will ultimately result in the death of both guilty and innocent alike, and the destruction of property. It would be constructive if both the victors and the defeated entered this post-conflict phase in a spirit of regret, conciliation, humility, and possibly contrition. Such a mind-set may further the healing of a nation's trauma and thus enhance efforts to seal a just peace.

The *post bellum* period usually begins with a cease-fire, armistice, or surrender; if the terms and circumstances are just, they may help a former enemy move beyond the devastation of the present to eventual healing and success *post bellum*. We have just such an example in American history, the surrender of General Robert E. Lee's Army of Northern Virginia in the waning weeks of the Civil War. General Ulysses S. Grant, commander of the Union armies, offered Lee an instrument of surrender reflecting a spirit of conciliation and regret. General Lee remarked that the terms of the surrender would go far toward healing both the defeated and the victors.<sup>11</sup> At the direction of General Grant, Union troops extended to the defeated Confederate soldiers every military courtesy and respect. Grant reminded the victorious troops, "Gentlemen, the war is over; the rebels are our countrymen again."<sup>12</sup> In the final proceedings at Appomattox Court House, officers on both sides of the conflict displayed a poise, insight, and grace that became legendary:

On 12 April [1865] came the formal laying down of arms. Two Union brigades were drawn up on each side of the road near Appomattox Court House. At the right of the line, mounted, was Major General Joshua L. Chamberlain, former colonel of the 20th Maine, chosen by Grant for this honorable post since he had fought nobly in the last campaign. At the head of the tattered, mud-caked Confederate column rode General [John B.] Gordon, one of Jackson's old captains. . . . As the column approached the

Union lines, a bugle spoke; General Chamberlain had given the order “Carry Arms”—the marching salute. General Gordon raised his downcast eyes when he heard the familiar snap and rattle of the muskets, gave Chamberlain the cavalryman’s sword salute, and passed the word to his own men, “Carry Arms!” In complete, awed silence the Confederate column passed at the salute; then, in perfect order, the men stacked arms and cartridge boxes and laid down their flags. At that final symbol of defeat, many broke ranks and, sobbing, pressed the beloved colors to their lips. General Gordon, with moist eyes, addressed the men from horseback, urging them to depart in peace, to obey the laws and work for the future of a reunited nation.<sup>13</sup>

Grant and his officers understood the significance of an honorable surrender and, therefore, the moral responsibilities of victors in the first phase of a *post bellum* environment. Grant’s enlightened leadership inspired Federal soldiers to conduct themselves toward their defeated countrymen with respect and humility. Powerful gestures such as allowing Robert E. Lee to retain possession of his sword and horse translated into healing in the midst of a powerful defeat.

More than two thousand years ago, Plato urged Greeks not to construct monuments to honor the victors of war. In doing so he displayed extraordinary insight into the *post bellum* psyche. He apparently understood the dynamics of a constructive *post bellum* environment, fearing that such public observances might fuel hard feelings and thus impede the healing progress. Perhaps celebrations meant to convey the profound thanks of a grateful nation to its troops might translate into the unintended consequence of prolonging hostilities or fueling insurgencies. Plato further recommended that enemies “[fight] as those who intend someday to be reconciled.” He offered specific examples of what not to do if a just and lasting peace is the final objective:

They will not devastate Hellas, nor will they burn houses, [nor] suppose that the whole population of a city—men, women, and children—are equally their enemies, for they know that the guilt of war is always confined to a few persons and that the many are their friends. And for all these reasons they will be unwilling to waste their lands and raze their houses; their enmity to them will only last until the many innocent sufferers have compelled the guilty few to give satisfaction.<sup>14</sup>

The fact that this guidance was offered for Greeks fighting Greeks should in no way diminish the force of his argument.

Victorious soldiers sometimes return from combat with mixed emotions, and oftentimes with a spirit of regret and sadness, and rarely do they leave with a high level of job satisfaction. Few feel that they may now return to life as usual. Warriors can carry the weight of combat on their shoulders for months, years, or even for life. Mind-sets reflecting humility, regret, and perhaps contrition acknowledge this ambivalence and may actually ease a warrior’s transition to peacetime existence.

American military personnel are well prepared to fight wars and fulfill their responsibilities as warriors, but perhaps less so for their potential involvement in the highly sensitive and specialized *post bellum* environment. Operations in Afghanistan and Iraq illustrate that it is not sufficient to train only specialized units (military police or civil affairs teams) for their critical role in the *post bellum*. All warriors should be trained for these *post bellum* operations.

## JUST RESTORATION

*Our goal is nothing less than the transformation of Iraq into a functioning, stable state that poses no threat to its own citizens or its neighbors and serves the interests of the Iraqi people.*

DAVID MORRIS

War often leads to the dissolution of established governments and civil order, and the destruction of critical elements of a society's infrastructure, and this dissolution or destruction may result in the *post bellum* suffering or death of many in the defeated society. Victors have a moral obligation to ensure the security and stabilization of a defeated nation. Whenever practical and possible, they must provide the essentials of life (food, clothing, shelter, medicine, etc.) to those without them and repair or rebuild infrastructure essential to a vulnerable population's health and welfare. Let us describe these rebuilding initiatives as just restoration.

Although every *post bellum* scenario presents its own unique operational challenges and every defeated society its own indigenous needs, it may be helpful to consider a model for just restoration that reflects factors common to most *post bellum* scenarios. While each *post bellum* operation must be crafted to address the specific challenges generated by a particular conflict, most scenarios appear to progress through three general, yet interrelated, stages: protectorship, partnership, and ownership.

### ***Phase One: Protectorship***

The first phase of a just restoration is marked by a victor's efforts to provide immediate security for both the occupying forces and the defeated society. In this *post bellum* phase victors ordinarily establish a condition resembling a historical protectorship. Great care must be taken to provide both security and life support to all, and special attention must be afforded a society's most vulnerable groups: children, the elderly, women, displaced persons, and the infirm. Many of these at-risk groups will be totally dependent on others for food, water, medicine, shelter, and, of course, their security. Once an acceptable level of security is provided, distribution points should be established to dispense relief supplies and register

refugees. The occupying force should also guard against mob violence and acts of retribution, and protect even the most notorious of suspected criminals. Public utilities critical to the sustenance of life may need repair or reconstruction, and attention must be given to identifying, neutralizing, and removing unexploded ordnance, mines, chemicals, and other materiel that may threaten the lives of innocents.

While victors retain primary responsibility for the planning and execution of this protectorship stage, a conscientious effort must be made to include members of the defeated society in the process. This involvement might accelerate the healing process and instill a sense of trust and confidence at this critical stage of occupation.

### *Phase Two: Partnership*

*A just conflict should result in material and social prosperity for all the people in a region and, most importantly, it should lead to proper systems of government by consent. These should not be imposed from outside, but should take account of a people's tradition and culture.*

NAZIR-ALI

In the second phase of restoration, all sides work together to rebuild the defeated society. By the time the transition to Phase Two takes place, occupying forces should have established meaningful relationships and, as a result, should enjoy some meaningful degree of trust and goodwill among the local peoples. Occupiers should take care to identify credible partners in this *post bellum* phase, partners with the expertise, experience, and credibility necessary to contribute to the process. Both sides should take great care not to compromise partners and all must avoid all semblance of collaboration.

Phase Two recognizes that the military and its civilian partners must build and share a common vision for the reconstruction of the nation and work together to prosecute an execution plan approved by all. All sides must cooperate to distribute quality-of-life essentials to those with the greatest needs and work together to repair or rebuild public utilities or other such facilities destroyed by war. They must work to provide critical services such as basic police and fire protection and other emergency services. As schools, civic centers, and places of worship are repaired, reconstructed, and reopened, the once-traumatized society gains a sense of normality. Farmers will need assistance as they plant and harvest crops or prepare livestock for market. The partners now move to begin the more daunting tasks of restoration: rebuilding the economy, establishing a credible judicial system, and reestablishing transportation and communications systems to reconnect and reunite the country.

All these efforts will ideally result in a sense of prewar normalcy; it will also reassure those occupied that the military presence is indeed temporary and will continue only as long as absolutely necessary. Everyone should anticipate some level of tension at this phase, and tensions should be identified and dealt with before they escalate into crises and subsequent violence. Throughout this period of *post bellum* activity, military commanders must walk a fine line as they continue to balance the demands of force protection against the necessity of creative engagement and humanitarian outreach to their former enemies.

Attention turns now to the daunting challenge of establishing an interim political authority, one with sufficient skill and credibility to enhance stability, provide national direction and vision, and give voice to members of the society. When these goals are achieved, the occupied society will perceive that it now plays a substantial role in its own reconstruction and destiny as it moves to the third and final phase of occupation.

### *Phase Three: Ownership*

*“Government for and by the people,” it has been said, “is a central requirement to jus post bellum.”*

MICHAEL WALZER

The national security advisor, Dr. Condoleezza Rice, has recognized the ultimate goal of any *post bellum* occupation: “Let me state that the goal of everyone, the coalition and the international community, should be to return sovereignty to the Iraqi people as soon as possible.”<sup>15</sup> Phase Three marks the final stage in the just restoration of a nation—the return of its sovereignty and reentry into the community of nations. In this period, all aspects of political, economic, and social life are returned to the control of the indigenous population. Interim political authorities are eventually replaced by elected officials, and these political figures assume full responsibility for security, critical infrastructure, and nation building. Just restoration is complete when full sovereignty is returned to a once-defeated people and former enemies become allies.

### SAFEGUARDING THE INNOCENT

The percentage of noncombatants affected by warfare has risen since the eighteenth century, and the number of noncombatant casualties rose significantly throughout the last century’s wars. Some analysts claim that by the end of that bloody century a frightening proportion (70–90 percent) of all the victims of war were noncombatants. Of particular note is war’s impact on children: “Although they do not start the wars, children experience the negative consequences of conflict as their lives are disrupted, shattered, or lost.”<sup>16</sup>

Children in war zones suffer the direct and indirect consequences of conflict; they lose family, friends, life-support mechanisms, and a sense of normality. Young lives are at least temporarily, if not permanently, disrupted as war takes its physical and emotional toll on these innocents. The victors in war should focus special attention on children in the *post bellum* phase of war. Of equal importance is the direction of *post bellum* care to other at-risk groups and those who cannot easily care for themselves, most notably the sick, the elderly, and some groups of women.

Armed conflict sometimes leads to the displacement of peoples and the creation of waves of human refugees. When persons are forced to flee homes, villages, or country, these individuals become especially vulnerable. Children and women become targets for rape, sexual exploitation, prostitution, slavery, and, quite possibly, forced conscription into guerrilla groups, terrorist organizations, insurgent militias, or regular armies. At times, children and elderly refugees are denied life-sustaining resources like food, water, clothing, medicine, and shelter; as a result, many die in disproportionate numbers. Basic resources become even scarcer if, in *post bellum* times, more influential or powerful segments of a society appropriate these items for themselves.

Children and other noncombatants are also vulnerable to the unintended effects of military technology, proving wars kill even after the fighting ends. For example, some munitions contain depleted uranium, and while these rounds prove extremely effective in piercing armored vehicles, critics claim they remain hazardous to humans long after the battle ends. According to some scientists, residue from these depleted uranium rounds ultimately releases uranium oxide into the air; this poisonous by-product may cause stillbirths, childhood diseases, cancers, birth defects, and other such conditions.

Armies have long used toxic chemical agents to provide for their security or to clear foliage in order to conduct operations. These defoliating agents, although effective in the short term, may degrade the health of all who come in contact with them and may ultimately render local ecosystems unusable for years. It is therefore imperative that those exposed to the dangers of these agents receive special care and attention in the *post bellum* stage of any war.

#### RESPECT FOR THE ENVIRONMENT

While some progress has been made in protecting the environment in war, the issue still begs our attention in *post bellum* planning. All sides in a conflict should assume responsibility for the protection of the environment in war, and they should be held accountable for both the treatment of the environment during hostilities and the subsequent restoration of the environment after the fighting has ended.

The *jus in bello* criterion of discrimination directs that warriors discriminate combatants from noncombatants, and that they make a conscious effort to minimize the impact of war on these innocents. For example, noncombatants may never be directly targeted in any combat operation. Most Western combatants understand that it is their military duty and moral responsibility to respect the rights of noncombatants and to shield them, whenever and wherever possible, from the effects of war. Many would willingly put their own lives in danger to uphold this principle. Unfortunately, the principle is rarely applied to the environment. Sonja Boelaert-Suominen has written that there is no commonly accepted definition of the concept of environment in international law.<sup>17</sup> The environment, therefore, is largely unprotected and highly vulnerable, quite often both a target and a victim of war. This undefined status may be indicative of the fact that the environment still needs to be sheltered, whenever and wherever possible, from the impact of war.

More than two millennia ago, Rome fought a series of its longest and bloodiest wars against the Carthaginians in the Punic Wars (264–41, 218–202, and 149–46 BC). At the conclusion of the last Punic war, Romans conquered and then destroyed the city of Carthage itself. Its men were killed, women and children were sold as slaves, and salt was sown into its fertile farmlands. Historians believe that it took the land more than a century to recover from this wanton act of ecological destruction.

Historical incidents of environmental destruction are not restricted to the scorched-earth tactics of the wars of antiquity. In the last century, defoliating agents were used extensively in the Pacific campaigns of World War II, and Agent Orange was the defoliant of choice in Vietnam. While these agents may have served tactical needs and saved friendly lives in the short run, in the long run they have been blamed for catastrophic environmental damage, and for impairing the health and quality of life of both combatants and noncombatants for generations to come.

More recently, the oil-well fires of the Gulf wars, the targeting of biological/chemical weapons stockpiles, and the sicknesses reputedly associated with uranium-tipped munitions all highlight the vulnerable state of the environment in war. People rely upon the environment from a personal, agricultural, industrial, and even recreational perspective. Further, the environment has a direct relationship to personal well-being and, for some, it represents a critical component of their personal or corporate spirituality. The environment is therefore tied to the totality of the person's spiritual, mental, and physical health.

In early 2002 the government of Afghanistan and a special United Nations commission studied the impact of decades of continuous war on the Afghan people, their national resources, and their environment. The UN Environmental

Program reported that Afghanistan's ecological damage resulting from war was so extensive its restoration would likely not be completed for generations to come.

All sides in a war have a responsibility to protect the environment whenever and wherever possible. Naval doctrine addresses this issue prescriptively:

The commander has . . . an obligation to avoid unnecessary damage to the environment to the extent that it is practicable to do so consistent with mission accomplishment. To that end, and so far as military requirements permit, methods or means of warfare should be employed with due regard to the protection and preservation of the natural environment. Destruction of the natural environment not necessitated by mission accomplishment and carried out wantonly is prohibited.<sup>18</sup>

Naval commanders appear to have significant latitude in regard to decisions impacting the environment. Therefore, careful consideration must be given to the morality of using the environment as a means of waging war. For example, is it moral to destroy dams to flood an area, to defoliate a jungle to target fighters, or to target nuclear power plants in order to achieve military objectives? These are all questions that warrant future discussion.

While all must applaud the Navy's initiative to include an environmental clause in the *Commander's Handbook*, the discretion given to commanders in regard to the destruction of the environment is still broad in scope, and the publication never addresses *post bellum* responsibilities.

Belligerents should be held accountable for the destruction or adverse treatment of the environment both during and after the conflict, and both the victors and the defeated should share the responsibility of restoring the battlefield to its pre-battle condition and then of making the environment safe for human habitation as soon as possible in the *post bellum* stage.

### **POST BELLUM JUSTICE**

If reconciliation is an essential of *post bellum* healing and the establishment of a just peace, is it better to offer alleged criminals amnesty or immunity from prosecution or to try them in tribunals or courts of law?

The prosecution of suspected war criminals and political regimes should be treated as a critical dimension of any successful *post bellum* dynamic to further *post bellum* healing.<sup>19</sup> Why? If just war is prosecuted for the sake of justice—that is, it is waged to do justice and right the wrongs done by one group to another—it follows that justice must be done at every level.<sup>20</sup>

Individuals accused of alleged crimes must be held accountable for their actions in the post-conflict stage of war. One author has suggested that the



nonprosecution of crimes is tantamount to condoning evil and has likened it to ignoring a dangerous cancer or infection.<sup>21</sup> Holding people accountable for their behavior in war facilitates the reconciliation process:

The establishment of lasting peace is better served by the doing of justice in the wake of war. . . . If the morally weak, the preferentially wicked, the cynically self-styled brute are responsible for the harm caused by their part in planning, directing, carrying out, advocating, or tolerating crimes against humanity, war crimes, and atrocities, then it follows by moral reasoning that they may be held criminally liable for punishment for the infliction of that harm.<sup>22</sup>

Should the prosecution of such justice be left to the victors, or handled by an international organization like the World Court? Some believe that the more international in nature the orchestration, administration, and prosecution of justice, the more the potential for real justice and not a victor's justice, and the more probable the acceptance of the tribunal's judgments by both the defeated nation and the world community at large. Keeping the mechanism of enforcement and regulation of *post bellum* justice in the hands of the victors may ultimately compromise the success of any efforts at *post bellum* justice.

Let me suggest two broad principles to guide *jus post bellum* justice. First, justice is rarely served by ignoring injustice; in fact, such neglect may compromise any potential to establish a just and lasting peace. Second, the prosecution of post-conflict justice is, in most cases, better left to an international group or organization, not the victors themselves. This latter principle may also apply to the detainment or imprisonment of suspected war criminals.

## WARRIOR TRANSITION

*People fight wars in the name of nations. The uniform appearance of uniformed soldiers metaphorically displays the truth. It is not qua human being, thinker, rational agent, or sentient creature that a soldier kills an enemy soldier. Rather, soldiers kill soldiers in the same way in which they deactivate enemy mines and destroy storage and weapons facilities. . . . Soldiers act as weapons against enemy soldiers, who are also acting as weapons. Soldiers qua soldiers are the tools of the leaders of nations.*

LAURIE CALHOUN

Contrary to Calhoun's depiction, combatants are not amoral agents or machines, nor are they mere weapons to be placed in combat against the enemy's weapons of war.<sup>23</sup> Warriors are persons—they are body-mind-spirit. They are complex moral agents who must live and fight within the context of military protocol and duty; warriors are rarely the unthinking weapons or tools of

nation-states. Combatants must operate under orders, but an important dimension of their professional duty is to study and weigh the legality of those orders against the rules or laws of war and then formulate the proper responses, procedures, or tactics for fulfilling or challenging those orders.

Combatants are human beings who operate with reason and usually with moral direction, people who are rarely so focused or intent on completing the mission (military necessity) that they factor out human emotions like empathy and sympathy, even in sometimes brutal conditions of combat. While warriors submit to the authority of their superiors, they never submit so completely that they surrender or forfeit their moral personhood, legal responsibilities, or personal sense of honor. In fact, the character and motivation of the combatant often factor most significantly in the outcome of a military operation. It is to the point that warriors are soldiers, marines, sailors, and airmen who must kill when legally ordered to do so but must live with those decisions for the rest of their lives.

While Augustine is usually associated with the formulation of the just war theory as we know it, he was also a pastor, and as such he was just as concerned with war's impact on people as he was with defining the parameters of a just war. In his monumental work *The City of God*, Augustine addressed a believer's dual responsibilities to the city of God and the city of men; it was his opinion that as believers and as citizens persons must fulfill the obligations of both. One modern scholar has observed, "Politics, Christian or otherwise, is the art of compromise."<sup>24</sup> In *The City of God*, Augustine raised compromise to an art form and reminded readers that living in both cities creates obligations and tensions that may remain unresolved long after decisions are made. Like other citizens, warriors live in both the city of men and the city of God; their obligations as combatants and believers may create tensions, and these tensions are never more pronounced than in combat. Augustine viewed war as both a consequence and a remedy for sin. Therefore, whenever he referred to war, he did so with a sense of regret and sadness. He expressed concern about the impact of wars and especially their impact on those who fought in them. This case is eloquently stated in his letter to Faustus the Manichean:

What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjection? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, . . . the lust of power, and such like; it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake such wars, when they find themselves in such position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act, in this way.<sup>25</sup>

Augustine reminds us that wars are devastating to both noncombatants and combatants alike, and deadly conflicts may leave emotional scars that last a lifetime. Modern society has ascribed many titles to this emotional scarring: combat stress or fatigue, battle trauma, and most recently, post-traumatic stress disorder (PTSD). The reality is that wars inflict wounds that are visible, and others, perhaps more numerous, that are invisible. This leads, then, to our final criterion. Nations that wage war have a responsibility to those who fight in wars, to their families, and to society at large. In the *post bellum* phase of war, belligerents have a moral responsibility to address and heal the wounds of war. Augustine was concerned that in the midst of the chaos of war people might lose their human focus. In expressing this concern, he displays the heart and sensitivity of a military chaplain; chaplains understand from firsthand experience that in the chaos and uncertainty of war, one of the unstated yet critically important missions of a chaplain is to help warriors retain their humanity and deal with their visible and invisible wounds *post bellum*.

Then the Lord will guide you always  
 and give you plenty even on the parched land.  
 He will renew your strength and you shall be like a watered garden,  
 like a spring whose water never fails.  
 The ancient ruins shall be rebuilt for your sake,  
 and the foundations from ages past you shall raise up.  
 "Repairer of the breach" they shall call you,  
 "returner of ruined homesteads."

ISAIAH 58: 11-12

This criterion addresses a nation's moral obligation to heal the visible and invisible wounds of its warriors by adequately preparing them for their inevitable return and reentry into the society. When warriors return to their society they must be physically and emotionally equipped to handle life outside the war zone; it is, therefore, the military's obligation to ensure that every combatant transitions from a hostile-fire environment to the normalcy of life in garrison, at home, and in the society.

The Marine Corps takes this criterion seriously, affording its Marines and sailors returning from combat the benefit of a warrior transition program, specifically those programs offered through the Navy's "Chaplains Religious Enrichment Development Operation" (CREDO). Further, the Commandant directs that every Marine, every sailor serving with Marines, and when appropriate, family members receive such training *before* return and reentry into civilian society. While combat operations still raged in Operation IRAQI FREEDOM, General Michael Hagee, thirty-fourth Commandant of the Marine Corps, issued the following order in his White Letter 03-03:

With deployments in support of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), the return of our Marines and their reunion with loved ones is marked by significant combat experience. This experience complicates the challenges Marines must face in the return and reunion process. To ease the transition from battlefield to home, our returning Marines and their loved ones require adequate preparation and supportive services to ensure their welfare. It is imperative that all service members returning from OEF/OIF deployment receive comprehensive return and reunion services.<sup>26</sup>

With the issuance of this White Letter the Commandant officially initiated USMC warrior transition programs and recognized the Corps' responsibility to transition Marines from a combat environment to the relative normalcy of life in garrison. These proactive programs ensure that those returning from war are physically, emotionally, and spiritually equipped to handle the responsibilities of citizenship outside the combat environment.

#### THE LESSONS OF WAR

Nations that wage war have a moral responsibility to study their decision to use force, and the way force was used in the conduct of war. Military personnel have long understood the importance of lessons learned on and off the battlefield. Each service has its own mechanisms for collecting lessons learned after every war, every military operation other than war, and most major military exercises. Exploring the lessons learned may help nations avert future conflict and build a culture of peace. Warriors benefit from the experience of others who have been tried and tested in battle; their study of the action and decisions of others facing the fog and inhumanity of war may help them retain a moral and humane focus when they are called to serve in war.

Current geopolitical realities make it plain that the time has come to establish and develop a new major category of just war—*jus post bellum*. Just war theorists will eventually benefit greatly from an in-depth study of lessons learned in Afghanistan and Iraq, and specifically the *post bellum* dimension of these complex operations. Outlining the moral guidelines or criteria for this dimension of warfare may ultimately save lives and enhance chances to secure a just and lasting peace for all.

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#### NOTES

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