Just War and Human Rights
Burkhardt, Todd

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Reasonable Chance of Success
Analyzing Postwar Requirements in the *Ad Bellum* Phase

Just because a war ends, it does not necessarily mean that the death and dying are over. Repeatedly, civilians are harmed during the postwar phase by foreseeable but unintended consequences, the residual effects of war, and poorly planned postwar occupation. Not only is it important that states realize that postwar obligations pertain to all parties, but even more so, states should be cognizant of these demanding obligations even before the fighting begins. This is consistent with the idea of right intention.

Moreover, *jus post bellum* (justice after war) obligations must be considered not in isolation, but alongside and integrated with *jus ad bellum* (justice of war) and *jus in bello* (justice in war) considerations. Analyzing the likelihood of successful military operations as the only consideration for the *jus ad bellum* reasonable chance of success tenet is inherently shortsighted and problematic, because a state can win the war but still make a moral mess of the aftermath. The benefits of incorporating *jus post bellum* obligations into a state’s reasonable chance of success calculation are twofold: (1) a state could limit or curtail specific types of military operations, thereby lending that state the ability to more effectively and efficiently fulfill its postwar obligations, and (2) the state would engage in postwar scenario planning in advance instead of waiting until the war is over (or nearly over), which is way too late to deal with the huge *post bellum* undertaking.
War encompasses three distinct phases: prewar, war, and postwar. However, the importance of the postwar phase has waned over the last two centuries. Only recently (over the last decade or so) have postwar concerns taken center stage, and still there is much to be done. Larry May, Brian Orend, and many other scholars have done considerable work in this area. However, as of yet, there is not any agreed-upon systematic set of principles governing *jus post bellum* roles and responsibilities, as there is for the prewar and war phases. According to the UN Charter, states have the legal and moral right to self-defense. Additionally, armed conflict is governed by international laws (the 1949 Geneva Conventions). However, currently there is not any set of universally recognized or instituted *post bellum* norms.

Michael Walzer concludes that there are three legitimate wartime ends: to resist aggression, to restore the peaceful *status quo ante*, and to reasonably prevent future aggression.¹ However, Walzer does not expound upon any specific framework governing how states might actually attempt a legitimate restoration of the peaceful *status quo*. It is possible to enter a war for just reasons and fight it justly but then be morally unjustified in postwar conduct.

With this in mind, the aim of this chapter is to discuss what is morally required of a state after major conventional combat operations have ended. To avoid giving thought and articulation to postwar considerations until the war has ended can have disastrous results. The residual effects of warfare continue to harm civilians long after the fighting stops. Larry May captures an important truth about the postwar period’s importance by stating, “If the object of war is a just and lasting peace, then all of Just War considerations should be aimed at this goal, and the branch of the Just War tradition that specifically governs the end of war, *jus post bellum*, should be given more attention, if not pride of place.”² Therefore, before a war begins we need to come to some resolution of what is required of the victor in regard to the vanquished. A state that resorts to war without a plan for postwar occupation and reconstruction ends up causing not only large amounts of suffering and loss of life among its enemies, but mention unnecessary sacrifice of its own lives and money.

May, Orend, and Gary Bass believe that rebuilding, rehabilitating, and reconstructing (respectively) is morally required. I also agree that repairing essential infrastructure and reforming degraded political institutions is seminal. However, something is missing in the just war literature, which seems to suggest that postwar concerns only manifest themselves
after the war is over or while it is coming to an end. That is, it is a sequential process—now that the fighting is over we should rebuild. For example, I am not sure if Orend’s rights vindication tenet or Bass’s restraining conquest tenet do as much work as envisioned. Orend mentions that “[t]he principle of rights vindication forbids the continuation of the war after the relevant rights has, in fact, been vindicated." This seems intuitive, and it does not really express any substantial depth or account for what is actually needed. Similarly, Bass states that warring parties must restrain their conquest: “They should use the minimum violence necessary to achieve just ends,” and, “once a state has surrendered, its sovereignty must be respected again.” However, Bass does not really explicate his point beyond suggesting that states should fight limited and not total war, although, again, this seems intuitive.

I believe that May does a great job of capturing an essential element of *jus post bellum* by incorporating the notion of proportionality into it. May states that “this involves the conditions necessary for achieving a just peace: they cannot impose more harm on a population than the harm that is alleviated by these postwar plans.” May suggests that whatever harm is done during the fighting phase should be rectified (so that it fits within the proportionality algorithm) in the postwar phase. However, May does not suggest that planning postwar obligations should be done concurrently with planning combat operations. Although many have discussed *post bellum* considerations, they have dealt with each phase separately. However, I want to make the case that all three phases of war need to be integrated and evaluated collectively instead of planning and dealing with postwar concerns in isolation and only after major combat operations have ended.

This chapter attempts to remedy a portion of that oversight by presenting the claim that a state should not only be cognizant of its postwar obligations but moreso should factor those obligations into its calculation of “a reasonable chance of success,” in order to bring to light the significant and challenging issues that will arise in the postwar phase. By incorporating postwar considerations into its reasonable chance of success calculation, the state is forced to be mindful of such demands before it finds itself in the postwar phase with no sense of direction. And by understanding what it will be responsible for in the postwar phase, even before the fighting begins, the state is best prepared to undertake those demanding obligations and make better choices that facilitate obligation fulfillment.
Most of the writers who examine just war refer to the *jus ad bellum* principle of reasonable chance of success as a calculation of a state’s chances of militarily winning the conflict, but this calculation of success is too limited and undercuts the significant analysis that should be taken into account. The case should be made that the *jus ad bellum* tenet of reasonable chance of success requires more than simply estimating the likelihood of military success alone during the war. It is possible for a liberal democracy to resort to war for just reasons and fight the war justly, but then completely fail—make a moral mess of the postwar phase—by not fulfilling necessary requirements (life-support necessities) to the vanquished. To rectify this, a state needs to analyze *jus post bellum* requirements as part of the reasonable chance of success tenet of *jus ad bellum*. That is, a state should recognize that it has *ex post* responsibilities that should factor into the *ex ante* calculation of determining its reasonable chance of success, because responsibility does not end just because major combat operations are over. Additionally, a two-tier approach as part of a solution to effectively fulfill postwar obligations should be implemented. I mention the example of a liberal democracy, because I assume that a peaceful liberal democracy is just, and that its action will be guided by what is right and reasonable, and furthermore, that it has resorted to war as a response to acts of aggression by an outlaw regime.

Responsibility for postwar rebuilding can be broken into two areas: (1) the just victor should be responsible for providing security to the citizens of the defeated country, and (2) the international community should be responsible for the reformation of the outlaw regime’s political and social institutions. This two-tier model represents the best way to mitigate harm to civilians while also effectively reforming the vanquished state’s institutions. Fulfilling both tiers of responsibility simultaneously is the best way to achieve, restore, or redevelop peace with justice.

Before explaining the two-tier model in more detail, I want to make it clear that I am in no way suggesting that a state must wait to defend itself against attacks by an aggressor state until it can calculate its probability of success. In this kind of example, postwar planning must be part of the concurrent planning. Of course, a state is morally and legally (UN Charter, art. 51) justified in stopping these attacks by using defensive and offensive operations. But even if a state is defending itself against such attacks, it should be cognizant that it still faces postwar responsibilities, which might range from removing the outlaw regime, rebuilding infrastructure, and reestablishing the rule of law to pursuing
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negotiations and resolving issues diplomatically. In certain cases, a regime change, although warranted, might not actually be possible.

I tried to elaborate on this earlier by citing the example of Poland during World War II. Poland’s goal was to push the Nazi forces out of the country in order to reclaim its boundaries, its autonomy, and its citizens’ human rights. Poland was not focused on postwar responsibilities nor should it have been; it was fighting for its sheer existence. There have been other cases, though, such as the 1991 Desert Storm incursion into Iraq and Kuwait, wherein a coalition of states more powerful than the aggressor state, Iraq, did not pursue a regime change as one of its postwar goals. The goal of the coalition forces was to reclaim and protect the rights of those who had been unjustly harmed by the Iraqi regime. Coalition forces pushed Iraqi forces out of Kuwait, thereby enabling Kuwait to regain its territorial integrity, political sovereignty, and human rights security. Coalition forces believed that Iraq’s aggressive nature could be contained without a regime change, and so decided that a full invasion of Baghdad was not proportionate, since Kuwait’s rights could be vindicated without the invasion of Baghdad. That is, the additional loss of hundreds if not thousands of coalition soldiers and the loss of thousands of Iraqi civilians and soldiers would not have been morally justified as being necessary for Kuwait’s subsequent self-defense. In addition, the loss of military equipment and the cost of the resources necessary to invade Iraq and overthrow Saddam Hussein in 1991 were not proportionate to the objectives of the invasion, which had been morally justified as defending Kuwait from acts of aggression.

However, when a just state decides to preemptively (as a form of self-defense) attack another, that state should have been planning postwar operations even before the hostilities began, as opposed to initiating the planning of postwar responsibilities at the tail end of the war.

Now, of course, the extent of postwar responsibilities must be consistent with the degree of complexity of the war itself. If the strategic goal is to only defeat the aggressor state’s offensive strike force as it rolls across the border, there is not really any significant postwar obligation required of the responding nation if it is victorious, because the outlaw regime’s civilian infrastructure was, presumably, not affected. That is, only military assets (military headquarters, tanks, planes, combatants, etc.) were targeted and neutralized, defeated, or destroyed. In such a scenario, postwar considerations are still important but much less demanding. They might only include the institution of no-fly zones or a demilitarized zone,
limits placed on weapons stockpiles, etc., which can be implemented and orchestrated by some combination of the just victor and international community. These operations are limited in scope and require relatively few resources to accomplish. However, pursuing unconditional surrender (which in extreme cases can be considered morally justified) or a regime change requires an exorbitant amount of resources.

Operations that require unconditional surrender or a regime change are quite demanding, especially during the postwar phase, so it should not come as a surprise that the victor has a morally demanding role in such a scenario. When a state’s goal is to change the government of an outlaw regime, it should take steps to plan such an endeavor instead of thrusting itself into only the military part of the operation without a plan for follow-on activities of the postwar phase. The inherent complexity of trying to plan wartime and postwar operations simultaneously might seem overwhelming, so that planners only focus on one phase at a time. With this in mind, planning is relegated to focusing on only how to force the enemy to capitulate, and this is usually done by incorporating a destructive strategy without much thought about anything else.

The inherent military strategy of operations such as regime change or unconditional surrender is to undermine the enemy state’s war-making capability (its physical ability as well as its resolve) by attacking its physical infrastructure. “Any act of force that contributes in a significant way to winning the war is likely to be called permissible,” as long as it is consistent with the notions of military necessity and proportionality. Attacking the enemy’s infrastructure is considered permissible because this type of operation still targets military assets. However, these targets are classified as dual purpose targets since they have dual purposes. They serve a purpose not only to a state’s military but also to the civilian population. Electrical grids, power plants, bridges, railroads, and major highway interchanges are considered legal targets and are targeted in order to significantly degrade a state’s ability to wage war and undercut its center of gravity and will to fight.

Armies do not have to adopt a dual purpose target bombing strategy, but they elect to do so for two reasons: (1) it brings war to the whole state, thereby crippling that state’s overall ability to function; and (2) this type of campaign will cause a state to sue for peace much quicker than just striking military assets. The implication of such a strategy is that civilians will be killed. Although not intentionally attacked, they suffer death as a residual effect of these operations, notwithstanding that
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“noncombatants, whatever their political affiliation, have the right not to have war waged on them.”

EMPIRICAL CASE

Although moral obligations may be based on rational reflection rather than empirical examples, empirically achieved facts are important because, presumably, they derive from real-world situations that one can apply to the realm of practical reason. Iraq in 2003 is a case of what can happen when postwar considerations are not entertained until major combat operations are winding down. The United States was so short-sighted in its articulation of a regime change in Iraq that it failed altogether to develop a plan that would facilitate even the perfunctory operation of an Iraqi government after its leadership had been removed. Richard Haas, U.S. State Department Director of Policy Planning, 2001–03, has stated in regard to the 2003 Iraq invasion that “[t]he initial phase of planning for the aftermath [postwar operations] took place just before and during the war itself.” This was far too late to develop an effective plan, especially inasmuch as major combat operations lasted only six weeks.

If the State Department had initiated a thorough mission analysis regarding reconstruction, humanitarian assistance, and political governance, the plan that resulted would presumably have been much different from what unfolded as a consequence of inadequate interagency coordination, nonexistent preliminary planning, and a lack of clear strategic guidance. Instead of a solid plan addressing postwar requirements, the lack of adequate preplanning and postwar engagement led to poor decisions that exacerbated undesirable conditions in Iraq.

For example, the removal of Ba’ath party members from government positions, the disbanding of the civil service, as well as the dissolution of the remnants of the Iraqi Army were absolutely detrimental to any normalcy or rebuilding efforts. By denying Ba’ath party members any employment in government positions, the United States created a power vacuum in Iraq. “The disqualification of so many Iraqis denied the country the experience and skills it desperately needed at the same time as it alienated many of the Sunnis who, without access to the new Iraq, supported or at least tolerated the insurgency.” The lack of any guideline or framework for postwar responsibilities led to uninformed and superficial analyses: the U.S. secretary of defense during the George W. Bush
administration, Donald Rumsfeld, believed that there was not going to be any need for a large occupation force since the Iraqis would welcome the overthrow of the Saddam Hussein regime.\(^\text{10}\) In addition, “Civilians in the Defense Department seemed determined to demonstrate that they could improve upon the previous Iraq war and in doing so render obsolete the Powell Doctrine and its call for large number of troops.”\(^\text{11}\) But this analysis by Department of Defense (DoD) civilians never took into account postwar needs—because combat strength was analyzed only for the fight and not for the occupation. U.S. civilian officials’ belief that the Iraqis would see the Americans as liberators might have had some merit before the fact, but it disintegrated in the face of the alienation, animosity, and fear triggered among Iraqi citizens by the power vacuum the U.S. occupation engendered.

Furthermore, the United States failed to follow its own guidelines (in particular, numbers five and six) found in the Powell Doctrine:\(^\text{12}\) A military force needs a coherent exit strategy with clearly defined and tenable objectives as part of a strategic end state that the president and secretary of defense formulate. Termination is critical in planning because, “it [termination] is discussed first among the elements of operational design because effective planning cannot occur without a clear understanding of the end state and the condition that must exist to end military operations.”\(^\text{13}\) Another important objective of developing postwar parameters and responsibilities is to benefit the defense and state departments’ planning cells. Before preliminary operations even take place, political leaders, military advisors, and planning cells should be cognizant of the robust normative requirements obligated of the victor after the war is over. Imposed postwar stipulations facilitate and enhance the planning process since certain tenets must be satisfied and planning committees, leaders, and advisors should be familiar with these before any planning is initiated.

The existence of recognized postwar guidelines provides for unified action, synchronization, and integration of intergovernmental, nongovernmental, and federal organizations, which is essential to taking advantage of the military disposition of forces—on the ground—in order to implement the postwar plan to achieve political aims and postwar stipulations. Otherwise, the plan becomes reactive, and military occupation forces attempt to compensate for its shortcomings. Iraq was a case of failure to unify and synchronize action. Because planning for combat operations was never integrated with planning for postwar operations in
Iraq, Haas concludes that “[t]actical and strategic decisions that made sense in one context (for example, having US units move with great speed and largely avoid cities) had large and adverse consequences for the other [postwar operations] as security vacuums emerged in urban areas that were quickly filled by hostile irregular forces.”

The postwar stipulations are specified tasks that need to be planned, resourced, and implemented. This has multiple benefits: more emphasis on negotiations by diplomats and world leaders, because postwar stipulations drain countries of men, material, and money; limitations on the scope and ambitions of military operations, because of the imposed postwar stipulations (the jus in bello tenet of proportionality in particular); and the concurrent pursuit of political and civil planning along with military planning, in order to develop an effective transition plan for postwar stability and reconstruction operations. For example, in Iraq, the United States would have had to keep units positioned near cities that had been bypassed, along with some units held back in order to retain ground they had previously seized, instead of moving all forces at breakneck speed toward enemy forces. This type of operation would have taken more than six weeks to complete but it might have prevented or at least mitigated the serious security vacuums that took place. Such an implementation would not only have achieved the militarily desired end state but also set better conditions to achieve what is morally required of the postwar parameters.

It is absolutely seminal that leaders and planners critically analyze not only jus ad bellum and jus in bello requirements but also jus post bellum requirements before any disembarkation of troops. The main takeaway from not analyzing postwar considerations as part of the ad bellum phase of the Iraq invasion is that civilians continued, and still continue, to die even though the war is nominally over, and the degraded and chaotic conditions created as a result of implementing a dual purpose target strategy became the perfect breeding ground for an insurgency.

THE VICTOR’S RESPONSIBILITY

I invoke a two-tier model of responsibilities because some obligations are not the victor’s responsibility whereas others are, just as some obligations are not the international community’s responsibility whereas others are. The victor should be cognizant of the restoration owed to the
vanquished as a consequence of having destroyed dual purpose targets. Once the opposing force surrenders, the war might be over but civilians continue to die because of the lack of basic necessities. Andrew Altman and Christopher Wellman state that, “the risks to the safety and security of noncombatants that arise from an intervention should not be disproportionate to the rights violations that the intervention helps avert.”16 Although they are discussing military intervention, Altman and Wellman raise a good point about the use of force in general: even if the victor is able to force the outlaw regime to capitulate, the very use of force could be considered disproportionate to the rights violations that the use of military force helps avert. If tens of thousands of noncombatants continue to die in a postwar situation because its state—overwhelmed and underresourced—is unable to quickly restore essential services, and the victor does nothing to alleviate the harmful situation, this might be classified as a disproportionate use of force.

Rather than suggest that a state should not bomb dual purpose targets, after the war the victor should acknowledge a responsibility to assist in repairing infrastructure that provides essential services to noncombatants. If the victor does nothing to alleviate the deleterious situation that civilians face in the postwar phase, then we can say that the victor is morally blameworthy for its failure to protect civilians. The victor is, therefore, morally required to assist in the repairing of infrastructure that provides essential services such as electricity, potable water, trash removal, sewage disposal, shelter, and medical attention to help the civilian population and secure their basic human rights. Doing so is the first step toward bringing normalcy to a war-torn people. Without an effective postwar plan, civilians continue to die as a result of a lack of necessities. For example, “by the end of 1992 [after Operation Desert Storm], more than a hundred thousand Iraqi civilians died from the lack of clean water and sewage disposal, and the breakdown of electrical service to hospitals,”17 and estimates for “the loss of civilian life from the [2003] Iraqi war has concluded that at least 100,000 Iraqi civilians may have died because of the U.S. invasion.”18

In his 1758 Law of Nations, Emmerich de Vattel mentions that women, children, and the infirmed (of the state that one is warring with) can be classified as enemies, “but it doesn’t hence follow that we are justifiable in treating them like men who bear arms, so we don’t have the same rights against all classes of enemies.”19 Vattel goes on to say, “These are enemies who make no resistance; and consequently
we have no right to maltreat their persons, or use any violence against them, much less to take away their lives.”

It is this foundation and underlying value that is the drive behind international positive law that dictates that civilians are not to be harmed during war. However, honoring the concept of right intention would also require this line of thought be carried over into the postwar phase, because the postwar phase can be just as devastating to noncombatants as war itself when it is in full swing. In the postwar phase, bombs no longer kill civilians but the residual effects of bombing campaigns do.

In *The Doctrine of Right*, Immanuel Kant discusses the rights of states regarding war and how states have rights specific to each phase (prewar, war, and postwar). Kant states that these rights after war specify that “neither the vanquished state nor its citizens [should] lose their civil freedom.” By this, Kant is referring to the point that citizens of the vanquished state have the right to be free from subjugation or enslavement, but history shows us that this is exactly what happens when a war-torn state is left to fend for itself. Maybe those citizens are not technically being subjugated as if they were colonized; however, “the suspension of hostilities does not provide the security of peace.” Although the cannons might have been muzzled, civilians still live in fear.

This fear is intensified by their lack of access to basic necessities. To be denied adequate access to basic necessities is a form of enslavement, under which citizens of a defeated nation are deprived of freedom and are forced to focus solely on mere survival. Innocent civilians—regardless of their political affiliation—should never lose the civic freedom entailed by the right to life and liberty, and the absence or denial of basic necessities undermines a person’s reasonable freedom and threatens his or her ability to live. Kant states: “Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law.”

Kant further declares that “[i]f, therefore, my actions or my condition in general can coexist with the freedom of everyone in accordance with a universal law, then anyone who hinders me in performing the action or in maintaining the condition does me an injustice, insomuch as this hindrance (this opposition) cannot coexist with freedom in accordance with universal laws.” What Kant is saying is that after a war is over, civilians should not lose their civic freedom, either. That is, civilians should be free from subjugation of an environment that does not afford
basic life-support necessities. Trying to exist in deleterious conditions hinders the freedom and autonomy of civilians. A lasting peace is not possible unless certain standards of justice are assured. Therefore, every attempt must be made to mitigate the harms that affect civilians during the aftermath of war. In order to set the conditions for a just and lasting peace, a state needs to allocate planners and resources as well as develop a reasonable plan of action.

In order to achieve meaningful reconciliation and develop a just peace, civilians must be not only protected against physical threats but afforded reasonable expectations for postwar life, such as the ability to return to work and to send their children to school. Firing and removing all government employees is inconsistent with this process and can often exacerbate a difficult or dangerous situation. It is essential that postwar obligations are recognized and reviewed before the fighting starts, in order to adequately plan and synchronize assets in the postwar phase. If a state recognizes that it has such obligations then it could very well lead to a postwar phase that is less chaotic. By doing some preliminary estimates, planning cells could (hopefully) conclude that a state cannot function without its government employees.

Disbanding the civil service completely shuts down all levels of government. In such a case, citizens cannot even apply for a driver’s license since there are not any employees working at the department of motor vehicles. Trying to hire and train new employees for all positions and at all levels of government would take months if not years. Additionally, disbanding the army (instead of using them in some type of security role and enforcing the rule of law) further exacerbates the problem. Disbanding the losing state’s army creates a significant challenge since tens of thousands of young men are now unemployed, alienated, and have nothing but idle hands. “The United Nations has even expressed concern that rising numbers of Iraqi youths have been recruited into militias and insurgent groups.”

Young men with no employment, living in decimated housing with garbage, standing sewage, and infestations, provide a terrific recruitment base for insurgents and jihadists. Someone living in these conditions has nothing to lose. After all, it is very easy to understand how someone living in abject, squalid conditions could enlist as an insurgent or turn to a life of crime in order to acquire scarce resources. Tactics such as young men quickly throwing grenades at occupation forces then fading back into a crowd of civilians “has been used in fighting before but takes on added significance as the
Americans have been trying to improve relations with the Iraqi public in a bid to stem support for the insurgency. But it is quite impossible to improve relations when civilians live in squalid conditions and suffer due to a lack of resources.

If a legitimate war time end is to return to a peaceful status quo as Walzer mentioned, but even more so to set the conditions for a just and lasting peace then steps need to be taken by the victor to ensure this. This belief of establishing a true and lasting peace as the only reason to fight is clear in Saint Augustine’s letter De Praesentia Dei Ep. 187 (On the Presence of God: Letter 187) to General Boniface, which states that “[p]eace should be your aim; one does not pursue peace in order to wage war; he wages war to achieve peace.” What St. Augustine was referring to was not necessarily returning to the status quo ante bellum (because that situation actually led to war), but a true and lasting peace as the actual aim or end of war. That is, certain conditions need to be addressed and remedied in the postwar phase as a sincere attempt to instigate a peaceful relationship that is governed by what is reasonable and right.

Winning the hearts and minds of the civilians of the war-torn state is the best way to formulate meaningful reconciliation and establish peace, and the best way to accomplish such a task is by restoring basic services, providing physical security, preventing alienation of a group or groups, and expediting employment opportunities, which not only help the country return to a state of normalcy but also, by fulfilling such obligations, is a panacea by significantly reducing the insurgent recruitment base. Just as the victor has certain obligations (such as mitigating the harmful effects of war during the postwar phase because these harmful effects continue to kill noncombatants even though noncombatants are not supposed to have war waged against them), so does the international community.

**THE INTERNATIONAL COMMUNITY’S RESPONSIBILITY**

The international community should be responsible for the reformation of an outlaw political regime and its social institutions, as well as for monitoring the victor’s behavior during the postwar occupation period. The political organization/government of an outlaw state must change, given evidence of its aggressiveness toward other states and/or its illegitimacy given its failings to its own citizens. If such a regime is permitted
to survive following its military defeat, peace with other states may not be possible; rather, a multilateral organization such as the United Nations or other regional organizations or coalitions of states, representing the international community, should be the ultimate authority and oversee postwar implementation to ensure a transition of institutions as well as ensure that the victor fulfills its obligations to the civilians of the war-torn state.29

First, with no oversight except by the victor how can justice in the postwar phase be guaranteed, and if it becomes unjust what is the recourse? Regardless, if a state attacks another state without approval from the United Nations, the UN or other another multinational union may usurp control of the aftermath. By overseeing such an endeavor, a multinational partnership could ensure that the occupation is legitimate and not self-serving in that the vanquished state is not used for the victor’s gains. To guarantee future legitimate occupations, the UN has to convince all countries, whether directly involved in the fighting or not, that it is inherently the responsibility of all independent states as members of the international community to oversee the postwar phase through the use of the United Nations or other multinational partnerships.

However, this is easier said than done. For example in the case of Iraq, neither did the UN demand that authority be relinquished to it, nor did U.S. officials want to relinquish authority. The U.S. State Department had mentioned that the UN had had a lot of experienced in postconflict situations and should be given a lead role in postwar Iraq, but this suggestion “was roundly rebuffed” by the U.S. National Security Council.30

The concern is that a hegemonic country having all the power and no oversight during the occupation could resist repairing essential infrastructure or force the vanquished into unfair contracts which provide kickbacks and favors to the victor’s corporations, lobbying groups, government officials, or even misappropriation of funds because the victor cannot properly handle the sheer scope of the operation by itself. For example, the Special Inspector General for Iraq Reconstruction (SIGIR), Stuart Bowen, “has found serious weaknesses in the government’s controls over Iraq reconstruction funds that put billions of American taxpayer dollars at risk of waste and misappropriation.”31 Additionally, SIGIR’s “audit of a Department of State contract for Iraqi police training program found that more than $2.5 billion in US funds was vulnerable to fraud and waste as a result of poor Department of State oversight.”32 These
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large-scale financial endeavors seem quite problematic and overwhelming to a state that attempts to do everything itself, not to mention trying to coordinate contracts with new, underqualified, and inexperienced Iraqi government officials, since the former government officials were removed from their position of employment by the United States, which only compounded the problems. Additionally, a single country should not have the authority to take ownership of the complete overhaul of another state. The victor should not be involved in nation building. With this type of unilateral and unchecked power coupled with the removal of government employees, the victor not only has undue influence on the vanquished state but also compounds the difficulty of trying to alleviate the chaos that the war created.

Brian Orend suggests that the UN should be “both watchdog and junior partner.” I agree with Orend that the UN should not only be a watchdog, but even more so it or some other multinational partnership should be the supervening authority (not a junior partner) for all postwar situations. Just as the UN has defined the circumstances under which a country has the legitimate right to resort to armed conflict and how armies should fight according to the law of armed conflict, the UN should also define postwar obligations and responsibilities, which might then be measured and regulated by the UN or another multinational body operating with, hopefully, an unbiased approach in order to prevent the victor from implementing unfair contracts, imposing undue political influence, or wielding victor’s justice.

Further, this should keep the postwar focus on the desired end state. A multilateral approach is also more beneficial because the outlaw regime will be assisted in reforming its political and social institutions in the way that the international community thinks is best instead of from the victor’s unilateral perspective (allowing for self-determination and illiberal decent regimes versus coercive democratization). Additionally, a multilateral approach should lessen animosity toward the victor and occupation force on the part of not only the vanquished state but also the international community since the victor’s role would be restricted to repair and security and not the institutional changes of the defeated state. After all, “[M]ultilateralism is more and more essential, not simply as a way to get others to share burdens, but also as a way to forge global arrangements that are essential to address global challenges such as the spread of nuclear weapons, terrorism, protectionism, disease, and climate change,” and reconstruction of a war-torn state is not any different.
CONCLUSION

During his Nobel Peace Prize address, President Obama noted, “No matter how justified the cause, war promises human tragedy.” It may be true that war promises death, or as George Santayana states, “Only the dead have seen the end of war,” but at least we can prevent the needless deaths of many innocent civilians by declaring that states should be responsible for restoring essential services and providing physical security during the postwar phase. A step in the right direction is for states to be aware of the obligations even before any fighting starts.

A significant reason for analyzing postwar requirements in the *jus ad bellum* phase is that this will, hopefully, shed light on what a state is responsible for even before a state invades or plans to invade another country. This is a huge endeavor, and it needs to be thought through and critically analyzed before any combat operations ever begin. It is way too late to think about *jus post bellum* requirements once the enemy has capitulated. I believe that by incorporating postwar considerations into a state’s reasonable chance of success calculation, it forces the state to be mindful of such demands before it finds itself in the postwar phase with no sense of direction or that it somehow believed that it is not accountable for postwar civilian deaths.

The tenet of reasonable chance of success is more demanding than just war gaming military strategies to see what might be successful. Rather, it should include the obligations that the victor has during the postwar phase. Success not only includes the fighting phase but the postwar phase as well. A state can only say that it has a reasonable chance of success by first identifying all demands then leveraging assets against them in order to determine if it can be successful. Doing so forces a state to explore preliminary considerations for postwar operations before shots are even fired.

It could be the case that the country resorting to war determines that they cannot achieve all that is morally required to do. Maybe this is a good thing. This might send those leaders back to the drawing board—so to speak. Maybe then politicians and statesmen can determine that there are other viable elements of national power regarding flexible deterrent courses of action (diplomatic, economic, and/or informational or a combination of these) besides a military solution that ultimately can achieve what is needed. Or at least the scale of military operations might be more limited in order to accomplish what is absolutely essential.
and nothing more. “To say that force may sometimes be necessary is not a call to cynicism—it is a recognition of history: the imperfections of man and the limits of reason.”

Further recognition of history is the fact that the postwar phase can be just as debilitating for the civilians of a beleaguered nation. In order to mitigate these inherent harms and residual effects of war, the scale, duration, and intensity of the conflict should be limited to the minimum necessary in that “[t]he means have to be commensurate with the ends, and in line with the original provocation” in order not to produce more harm than not going to war would have. Sensible steps must be taken during the postwar phase to ensure that the postwar phase does not become a moral mess. Furthermore, a truly multilateral force like the UN or maybe another type of international partnership must have ultimate authority in postwar operations. First, in order to ensure the victor complies with its obligations, and second that a multilateral approach to reforming decrepit political and social institutions is the best way to foster any type of peaceful status quo as a legitimate wartime end.