



***Jus Post Bellum: Post-War Responsibilities***

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## **Abstract**

The United States failed to consider the realities of post-war Iraq prior to entering the country in 2003. Policymakers assumed the dismantling of Saddam Hussein's regime and defense capabilities would bring immediate peace, stability and democracy to the country. These assumptions proved false. Lack of planning, insight and resources prevented the United States from addressing the community-level conflicts that plague the Iraqi state. As a result, in 2014, a terrorist organization killed and terrorized innocent civilians in unstable post-war Iraq. Even though members of the United Nations questioned the legality of the Iraq War in 2003, the international law of armed conflict does not hold the United States accountable for the hostile environment that plagues post-war Iraq today. The United Nations Charter developed after World War II as a means for regulating and limiting violence and war does not legally define expected post-war behavior or results. Lack of post-war legal standards allows preference and self-interest to dictate occupation and reconstruction plans. The transformative reconstruction of Japan from 1945-1952 highlights this reality. The United States after World War II, motivated by the communist threat, extensively calculated and contributed to the rebuilding of Japan. Over 50 years later, the occupation of Iraq, which required an equal or greater reconstruction campaign, was not economically or politically favorable. This thesis examines these two dichotomist cases of United States' occupations and reconstructions to elucidate the need for a critical examination of the peace-building and peacekeeping post-war period. Furthermore, the paper argues that post-war peace is not simply a legal issue but a moral matter. The tradition of Just War, which guided the United Nations' understanding of when a war is legal and

what actions during war are legal, is the moral background by which violence is ethically justified. If a war is morally justified because of its ability to bring about peace but that peace is never achieved, can the violence committed during the war be considered just? Without recognizing the moral importance of *Jus post Bellum*, justice after war, the international law of armed conflict has little motivation to promote legal standards for the post-war period. Amending the Just War Tradition to include a *Jus post Bellum* criterion can therefore begin the process of internationally recognizing the consequences of post-war behavior.

## **Preface**

As a politically conscious voter and citizen of the United States, I began closely following the Islamic State's rise to dominance in Iraq throughout the summer of 2014. I grew up in Northern New Jersey, right across the Hudson River from the New York skyline. Before the attacks on September 11<sup>th</sup>, the World Trade Center could be seen in the distance from the top of my street. I was 10 years old the day the planes flew into the towers, old enough to grasp the concept of terrorism but too young to understand how greatly this moment in American history would shape my understanding of the world. I would be lying if I said every time I boarded a plane my gut did not clench remembering the day when al Qaeda, terrorism and the Middle East began to dominate my daily conversations. My family, politically engaged, middle-class Irish Catholics, embraced the typical American post-9/11 identity, rearranging dinner schedules around media coverage of the War on Terror. My mother, a single-mom and Catholic School teacher, sent me off to school each morning proudly sporting an American flag pin. At night, I would stay up late with my grandparents listening to stories about Pearl Harbor and watching daily developments of our brave service men and women fighting for my protection, fighting against terrorism – our country's greatest enemy.

Our fixation on the wars in Afghanistan and Iraq motivated my pursuit for a bachelor's degree in Political Science. When the United States vacated Iraq in 2011, the middle of my junior year as a Duke undergraduate, I remember strongly voicing my opposition to my liberal peers who celebrated the end of a war that never should have happened in the first place. Although I, too, had my qualms concerning the beginning of the

War in Iraq, I greatly feared the consequences of an early exit of military forces. The United States could not go back in time and not enter the war; however, was leaving Iraq unstable and conflict-ridden post-war really the justice we fought and died for? Reflecting on former Secretary of State Colin Powell's remark to President Bush "If you break it, you own it," I was deeply troubled by the United States' decision to leave a country before neither meeting its goals nor fulfilling its promises.

I first studied the tradition of Just War in a senior ethics course on war and terrorism in the spring of 2013. Although as a Catholic I was aware of the Church's recognition of the necessity of war in certain situations, I had never before considered the international ramifications of morally justifying violence. Throughout the course we debated a number of ethical conundrums including torture, targeted killings and the War on Terror. It was during these discussions that I began to fully grasp my concern with vacating Iraq and the great moral responsibility of using force in the name of peace.

In the summer of 2014, as I watched ISIS kidnap Iraqi Kurds, behead journalists and destroy religious landmarks, I could not help but feel that we, the United States, were responsible for all of this. My final project for the Graduate Liberal Studies Program at Duke is my attempt to grapple with these sentiments. As a student of political science, I was appalled at Washington policymakers for allowing public opinion to dictate the length of the post-war occupation of Iraq rather than recognizing the needs of a country structurally destroyed by our war. As an American, who grew up in a post-9/11 world, I felt responsible for the rise of a new terrorist organization after emotionally supporting the War on Terror for over a decade. As a Catholic, well versed in Christian ethics, I was unnerved by the fact that the United States was not held accountable for the events in post-war Iraq. How could the

United States, the country I love, the country whose personal experience with terrorism framed my knowledge and passion for politics and policy, the country that is supposedly protecting me from terrorism, create the perfect situation for the rise of a violent terrorist organization? In the following paper, I endeavor to tackle my attitudes towards present-day Iraq. As so eloquently put in the Catholic Bishops' letter on War and Peace in 1983, during the heart of the nuclear war threat "the virtue of patriotism means that as citizens we respect and honor our country, but our very love and loyalty make us examine carefully and regularly its role in world affairs, asking that it live up to its full potential as an agent of peace with justice for all people" (1983, May 3, no. 327).

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## **Introduction**

The United States Armed Forces invaded Iraq in March of 2003 tasked with disabling Saddam Hussein's offensive military capabilities, destroying any weapons of mass destruction that may have been found and ultimately instituting comprehensive regime change. However, following the cessation of major combat operations in mid-2003, the United States' occupation of Iraq failed properly to prepare Iraqi political and security forces to autonomously defend the sovereignty of their state. Iraq's inability to eradicate extremist violence in the region post-occupation illuminated the absence of an extensive post-war reconstruction campaign. Although the United States intricately orchestrated the destruction and subsequent democratization of Japan after World War II, Iraq, although institutionally devastated, did not receive an equivalent hands-on transition. Despite confidently vacating the country in 2011, the United States Armed Forces returned to Iraq in 2014 after three years of escalating violence and instability. Although the United States intended fully to stabilize and reform Iraq in 2003, economic and political preferences coalesced with an absence of reconstruction plans, dictated the length and expansiveness of the occupation.

Catholic theologians and philosophers molded the tradition of Just War over centuries as countries continually relied upon war to achieve a range of domestic and foreign policy objectives. Recognizing a moral justification for self-defense and protection of the innocent, the Catholic Church developed an ethical criterion for understanding when and how violence can be a necessary evil. This understanding arose alongside international legal treaties and agreements binding countries to expected behavior during wars. Although the current international law of armed conflict, governed by the United Nations, seeks to balance the

self-interest of its members and humanitarian ideals, its legal assessments of war and war behavior is a reflection of the tradition of Just War's influence on legal thought.

Furthermore, the absence of a moral post-war criterion is reflected in the absence of legal standards for behavior after conflict. Post-war occupations and reconstructions of war-torn states or lack thereof, predict future stability and autonomy. Although the tradition of Just War ethically assesses motives for entering into a war, as well as conduct during a war, there lacks moral clarity concerning post-efforts. Consequently, countries are correspondingly not held legally accountable for their post-war efforts even when instability and conflict ensues.

The United States occupied and reconstructed Japan between 1945 and 1952. The economic capabilities and political preferences of the United States dictated their post-war behavior after World War II. However, the consequences of the occupation are rarely assessed, as the United States policymakers continually commend Japan's effective post-war transition. Even though the United States strategically designed the destruction during the war to create the ideal environment for an all-encompassing reconstruction campaign, there lacks both a moral and legal criterion for assessing these post-war actions. In 2003, the Iraq invasion sought to achieve similar institutional damages to Saddam Hussein's regime. However, the planning for the post-war reconstruction of Iraq, unlike that of Japan, lacked the substantial resources and reforms needed for autonomous stability after the end of occupation. Yet, despite the evident instability and chaos of post-war Iraq created by the destruction of the war, the United States remains unaccountable for their failed post-war strategies and behavior.

Currently, a moral criterion for post-war behavior does not exist. Victor countries remain unaccountable for the state of war-torn countries after departure. Consequently,

countries such as Iraq experience periods of chronic conflict as long-lasting peace is never fully established, and countries such as Japan are physically obliterated in order to guarantee a political and social outcome that best suits its occupier. The dichotomy of these two occupations highlights the absence of *Jus post Bellum*, or justice after war. Equally so, the reconstructions of Japan and Iraq expose the great economic and political costs of post-war peace. Ideally a country measures and considers these costs long before entering war. Effectively exiting a war requires extensive pre-war planning. By my estimation, without considering the costs of post-war operations prior to combat, countries fail to participate thoroughly in the reconstructions necessary and enter countries without the resources required to ever establish true stability. The tradition of Just War justifies violence for this stability. Without achieving this stability, countries may not be breaking any international legal regulations but are certainly violating the tenets of a just war.

This paper intends to explore *Jus post Bellum*, the missing peace of the tradition of Just War. Through descriptive case studies of both occupations and reconstructions of Japan after World War II, and Iraq from 2003 to 2011, I will illumine the demand for a *Jus post Bellum* criterion. Although political philosophers agree that justice after war is vital for guaranteeing lasting peace, countries' economic and political preferences overrule the absence of a standardized formula for what is morally expected when a war is over. The occupations of Japan and Iraq, fifty years apart, exemplify why this addition to Just War tradition is relevant and necessary. Furthermore, the impact of the Just War criterion on the evolution of the international law of armed conflict exemplifies the potential impact of a *Jus Post Bellum* amendment. As military interventions continue in unstable, hostile countries, extensive reconstruction campaigns will be required to establish stability. Are world actors

economically and politically prepared for the costs of these campaigns? Are these campaigns ethically justifiable or do they at best seek the self-interest of the occupier country? Without a moral criterion for this post-war period, moral clarity on the peace-building period of war cannot be assessed. Should the United States be held accountable for ending the occupation of Iraq in 2011 without establishing a governing and security body that could protect Iraq's sovereignty? Is it moral to leave a country you entered into war with more vulnerable post-war, than it was prior to the conflict? These questions need to be morally addressed by tradition of Just War before the international law of armed conflict can assess the legality of post-war behavior.

I believe policymakers and the international actors will not evaluate the legality of post-war reconstructions and occupation without the presence of a moral criterion for post-war behavior. Well-planned and well-funded reconstructions, as in the case of Japan, as well as haphazard strategies that create states of chronic conflict, as in the case of Iraq, deserve equal moral assessment. This thesis advocates for a resolution to this gap in the tradition of Just War.

Due to the nuances of the tradition of Just War as well as the minimal literature on the recent Iraq War and post-war reconstruction, I draw heavily on the works of Michael Walzer and Richard R. Brennan. Walzer, author of *Just and Unjust Wars* (1977), is one of the leading political philosophers concerning in-war ethics. Brennan, a senior political scientist at the RAND Corporation and a career Army officer, collaborated with a number of significant colleagues, to assess Iraq's occupation critically as a means for addressing and influencing policymakers. In order to present the tradition of Just War and the Iraq War accurately and succinctly, I rely on both of these works extensively in my research.

## **I. The Occupation and Reconstruction of Japan**

Their whole world crumbled. It was not merely an overthrow of their military might not merely a great defeat for their nation – it was the collapse of faith, it was the disintegration of everything they had believed in and lived by and thought for. It left a complete vacuum morally, mentally and physically. And into this vacuum flowed the democratic way of life.

General Douglas MacArthur, Statement on the First Anniversary of the Signing of the Japanese Surrender Agreement, September 2, 1946 (Imparto, 2000, p. 146)

### **The End of the War**

On September 2<sup>nd</sup> 1945, Japan surrendered to the Allies, ending World War II.

Although this marked the end of the armed conflict between Japan and the United States, America's presence in the country was only beginning. For the next six years, the United States embarked on an all-encompassing political and social reconstruction. Fearing the threat of communist Russia, securing democracy in Japan was crucial for the United States' foreign policy interests in the region. Led by General Douglas MacArthur, the United States' long-term occupation fundamentally altered Japan's political, economic and social landscape. With lessons from World War I still fresh, the international community feared that post-war demilitarization alone would only lead to future animosities and violence. Despite the economic burden, the international community as well as United States policymakers supported a systematic reconstruction campaign. Even though the United States had no prior experience in leading an expansive long-term occupation, no other country had both the economic and military resources to remain in Japan indefinitely (Shibata, 2005, p. 60). In 1942, three years before Japan's surrender, the United States military launched a military government school and began developing their post-war agenda (McCready, 2009, p. 70).

Pre-war planning determined that democratization was the quickest route to stabilize and control Japan, nullifying the influence of communism and the military threat Japan posed prior to the war. From 1945 to 1952 the United States and General MacArthur transformed Japan into one of America's greatest allies. Although the occupation officially ended in 1952, today there remain 48,000 United States troops in Japan under the Treaty of Mutual Cooperation and Security (Arvizu, 2008, p. 40). The reconstruction of Japan is considered one of the greatest foreign policy successes in United States' history.

Japan was physically devastated during World War II. The combination of the fire-bombings, air raids, and atomic bombs left Japanese institutional and cultural structures utterly defeated and devastated. Despite the destruction, MacArthur's reconstruction campaign was not designed simply to repair the physical damages of the war. As far as the United States was concerned, there was very little of the old Japan that was worth preserving (Morris, 2014, p. 56). The rubble of Japan was not going to be rebuilt; Japan was going to be remade into an American ally (Shibata, 2005, p. 70). The violence during the war brought both shock and awe to the nation, a strategy the United States would re-adopt at the end of the 20<sup>th</sup> century (Klein, 2007, p. 472). This was the ideal situation for the occupation forces. In order to reconstruct Japan's social, political and economic structures to best suit American self-interest, the monarchy the Japanese people fervently respected for centuries needed to be devalued. However as a highly civilized and advanced country, Japan provided the United States with the perfect conditions for implementing democracy post-war through strategic and immediate political reforms steered by American foreign policy interests (Dobbins, 2006, p. 98).

## **Reforming Japan**

The reconstruction began immediately after the surrender of Japan's military (Jennings, 2003, p. 9-10). Originally, Japan fought the terms of the unconditional surrender required by the Allies. Japan's primary priority was to maintain control of their imperial institutions, military disarmament, and war crime trials (Nish, 2010, p. 37). However, the allies refused to accept these terms. Ultimately, in order to avoid further devastation to its country and to its people, Japan agreed to the unconditional surrender and placed their future into the hands of the United States and the Allies (Nish, 2010, p. 38). Although the Japanese did not necessarily welcome the occupation, the reforms took hold with little resistance (Nish, 2010, p. 73). In reality, Japanese nationalism diminished substantially soon after the war. The unconditional surrender in 1945 nullified Japan's rich history of military triumphs. Consequently, the reforms were not viewed as an imposition. Rather, MacArthur's campaign was accepted as a justified punishment for a failed military mission, a psychological and social consequence of the unconditional surrender (Nish, 2010, p. 73).

It should be noted that by the end of the conflict, Japan certainly benefited from cooperating with the occupation. The war had placed Japan in economic and political turmoil (Nish, 2010, p. 58). However, the cost of cooperation was also great. The reconstruction process entirely abolished the Japanese voice. Certainly, there were those who supported the democratization, the disarmament of the military and the newly promoted political freedoms in Japan. Nonetheless, the occupiers implemented the reforms from above and abroad (Nish, 2010, p. 72-73). Consequently, the shocking defeat, the diminished nationalism and the inability to negotiate for any type of authority post-war subordinated

Japan and left the country completely dependent upon their occupier (Morris, 2014, p. 65). The United States' international interests depended on this post-war subordination.

MacArthur's forces disarmed Japan's military without delay. Despite the country's militaristic history and pride, the United States' demilitarization policy remained inflexible. America controlled every aspect of the weapons removal process, tarnishing the identity of the Japanese soldier (Nish, 2010, p. 72). However, MacArthur's top priority was to squash the future threat of a Japanese attack. Japan surprised American soldiers on their own soil. The United States considered Japan a dangerous, hostile world power that could hypothetically attack at any moment (Morris, 2014, p. 61). The post-war agenda simply did not make honoring the former identity of Japan's military a priority.

The destruction of Japan's historical institutions during the war provided MacArthur with the ideal situation for top-down governance and transformation post-war. The surrender of Japan placed the authority of Japan's government fully in the hands of the United States (Morris, 2014, p. 104). The United States subsequently removed any dominant institutional obstructions that hindered the enforcement of democratic values, protection of personal liberties, establishment of a constitution, the building of a welfare state and the reformation of the education system (Morris, 2014, p. 104). General MacArthur and his team even strategically influenced the prosecution of war criminals post-war. For example, rather than prosecuting the Japanese emperor, the allies used him "as a tool to govern" in the way they deemed most appropriate and effective for democratic governance (Majima, 2013, p. 39). MacArthur firmly believed that ending the war with Japan was only the beginning of the fight (Morris, 2014, p. 280). The occupation of Japan proved that post-war transformation was not only possible but also an effective tool for guaranteeing foreign policy interests.



The United States secured their interests in Japan by implementing immediate democratic reforms. These reforms sought to align Japan's political and economic priorities with America's foreign policy in light of the communist threat abroad. Japan held elections and formed political parties within months; post-war Japan was utterly unrecognizable (Nish, 2010, p. 62, Hendry, 2013, p. 191). By 1947, Japan adopted a constitution that specifically promoted "sovereignty of the people, pacifism and a respect for basic human rights, which include quality, liberty and life" (Hendry, 2013, p. 209). These protections, along with security mechanisms, created a democratic atmosphere in the country that produced free and fair elections (Nish, 2010, p. 63). These strategic reforms created the ideal atmosphere for the United States to control and influence the political future of Japan.

## **The Occupation**

The easy implementation of immediate reforms in Japan did not dictate the length of the post-war occupation. The United States remained greatly concerned with the disposition of the Japanese people. Consequently, until the Japanese demonstrated a commitment to a democratic, peaceful lifestyle, the occupation remained a priority (Shibata, 2005, p. 61). It must be noted that antiquated and racist sentiments regarding Japanese culture predicated this concern. Policymakers presumed that Japan's Eastern tendencies prevented adaptation to a democratic way of life (Dower, 1986, p. 33).

MacArthur referred to his occupation as "the new form of war called peace" (Morris, 2014, p. 70). Although physical combat ended with the war, the General contended that peace required similar commitment, strategy and resources as the armed conflict itself. Peace was not a guarantee in the post-war environment; the United States had to fight for a

peaceful Japan. The occupation was the most costly and extensive American military endeavor to date (Morris, 2014, p. 243). However MacArthur refused to put a price or a timeline on peace and stability. In 1952, sovereignty was officially returned to Japan. In six years, the United States secured their foreign policy interests in Japan (Jennings, 2003, p. 19). Before ending the occupation, the United States established permanent military bases on Japanese soil (Arvizu, 2008, p. 40). These bases remain operational to the present day and house security forces that work in conjunction with the Japanese military, protecting the stability of Japan as well as the United States' interests in the country. Even though domestic and international public opinion greatly supported the long-term occupation and stabilization of Japan through expansive "military governance," the United States undertook an extensive task in establishing long-lasting peace because of their economic and political interest in doing so (Jennings, 2003, p. 10). Consequently, neither the United States nor MacArthur sought a short-term occupation. Entering World War II with plans to reform Japan, the United States allocated the proper resources and intentions to achieve the goals of the occupation. The strategic devastation of the country during the war combined with the specific reforms that both promoted a democratic way of life as well as a commitment to securing the United States' interests in Japan, nullified any threat posed prior to the war. The occupation forces correctly predicted the reconstruction opportunities of Japan's devastation and engaged in a systemized political, social and economic reformation that best served America's economic and political interests at the time.

## **II. Just War Theory and the International Law of Armed Conflict**

### **The Evolution of the Moral and Legal Law of War**

Laws of armed conflict have existed for thousands of years. Examples of political and religious actors limiting acts of war are present in the “Bible, the law of Manu, the Hamurabi Code, and Greek and Roman law” (Blum and Goldberg, 2013, p. 15). These early texts served a dual purpose: 1) recognizing the necessity of war and 2) limiting the evils of war. The Catholic Church is one of the oldest and most influential religions in the world. The Church provides a moral compass for all Catholics. By seeing herself as “the instrument of the kingdom of God in history,” the Church ethically guides its members on all world issues (1983, May 3, no. 22). Jesus Christ, Christianity’s central figure, preached principles of peace and passivism. In Jesus’ physical absence, the Church aspires to be the world’s tangible peacemaking activist. The Catholic Church’s Just War doctrine acknowledges war as a necessary evil of last resort. Aimed at morally directing both Catholics and non-Catholics alike, the Catholic tradition of Just War promotes a peace that would benefit all of humanity.

The tradition of Just War traces its roots back to Augustine of Hippo in the 4<sup>th</sup> century (May, 2013, p. 315). As a Catholic theologian, Augustine fought against the pacifism tradition that marked the early Church teaching. He boldly argued for the justification of war during instances of self-defense and in efforts to “protect the innocent” (May, 2013, p. 315). The Church adopted Augustine’s arguments during the 20<sup>th</sup> century. Recognizing its own historical engagement in violence during the Holy Wars as well as acknowledging the

difficulty in establishing and securing peace throughout the World Wars in the 1910s and 1930s, the Church defended “a right of self-defense for states in a centralized international order” during the Second Vatican Council in 1965 (1983, May 3, no. 232). This council subsequently produced a “modern” criterion for why and when a war is permissible as well as instructions for conducting oneself ethically during war. The Catholic Church’s Just War Criteria identifies the following instances when force is morally permissible.

1. *Just Cause*: War is permissible only to confront "a real and certain danger," i.e., to protect innocent life, to preserve conditions necessary for decent human existence, and to basic human rights. As both Pope Pius XII and Pope John XXIII made clear, if war of retribution was ever justifiable, the risks of modern war negate such a claim today.
2. *Competent Authority*: In the Catholic tradition the right to use force has always been joined to the common good; war must be declared by those with responsibility for public order, not by private groups or individuals.
3. *Comparative Justice*: Questions concerning the *means* of waging war today, particularly in view of the destructive potential of weapons, have tended to override questions concerning the comparative justice of the positions of respective adversaries or enemies. In essence: which side is sufficiently "right" in a dispute, and are the values at stake critical enough to override the presumption against war? The question in its most basic form is this: do the rights and values involved justify killing? For whatever the means used, war, by definition, involves violence, destruction, suffering, and death.

4. *Right Intention*: Right intention is related to just cause -war can be legitimately intended only for the reasons set forth above as a just cause. During the conflict, right intention means pursuit of peace and reconciliation, including avoiding unnecessarily destructive acts or imposing unreasonable conditions (e.g., unconditional surrender).
5. *Last Resort*. For resort to war to be justified, all peaceful alternatives must have been exhausted. There are formidable problems in this requirement. No international organization currently in existence has exercised sufficient internationally recognized authority to be able either to mediate effectively in most cases or to prevent conflict by the intervention of United Nations or other peacekeeping forces. Furthermore, there is a tendency for nations or peoples which perceive conflict between or among other nations as advantageous to themselves to attempt to prevent a peaceful settlement rather than advance it.
6. *Probability of Success*. This is a difficult criterion to apply, but its purpose is to prevent irrational resort to force or hopeless resistance when the outcome of either will clearly be disproportionate or futile. The determination includes a recognition that at times defense of key values, even against great odds, may be a "proportionate" witness.
7. *Proportionality*: In terms of the *jus ad bellum* criteria, proportionality means that the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms. Nor should judgments concerning proportionality be limited to the temporal order without regard to a

spiritual dimension in terms of "damage," "cost," and "the good expected." In today's interdependent world even a local conflict can affect people everywhere; this is particularly the case when the nuclear powers are involved. Hence a nation cannot justly go to war today without considering the effect of its action on others and on the international community. (1983, May 3, no. 86-100)

These Just War conditions substantiate that violence, although immoral in nature, can be a moral good. As the international Law of Armed Conflict historically developed alongside religious tradition, morally permitting violence aided the legal progression of regulating war. If war could be morally measured, then it was believed that legal standards could also be established. As European dominance dictated world order in the 19<sup>th</sup> and 20<sup>th</sup> centuries, rules and principles guiding world actors naturally formed (Stephens and Lewis, 2005, p. 59). While religious leaders and philosophers verbalized the moral expectations of war, countries bound each other to international legal regulations concerning their in-war conduct (Blum and Goldberg, 2013, p. 17). Treaties and agreements dominated international negotiations in the 19<sup>th</sup> century limiting violence and brutality during war, serving first and foremost the political interests of world actors (Jin, 2008, p. 171).

After the atrocities that led to World War II and the unprecedented violence committed during the war, treaties and international agreements proved an inadequate means for controlling the actions of self-serving countries. A universal, standardized legal structure for expected practices during war needed to be established. The Just War tradition provided the guiding principles for the development of the United Nations in 1945. This international organization, originally comprising 51 members, promoted cooperation and reconciliation by

legally regulating war, promoting peace and limiting violence (Sweeney, 2003, p. 1878). The United Nations Charter, adopted in 1945, contains the purposes and principles of the organization itself, as well as agreed-upon standards and practices expected of the general assembly member countries. These standards legally define when war is permissible and what actions are permitted during permissible wars (Blum and Goldberg, 2013, p. 17). These regulations were adjusted in 1949 when the United Nations drafted the Fourth Geneva Convention, signed by 63 countries and then again almost 30 years later in 1977, when the Supplementary Agreements to the Fourth Geneva Convention was passed (Jin, 2008, p. 171). These adjustments aimed to directly protect the innocent victims of war.

Despite these international protections and legal regulations, according to political scientist M. Cherif Bassiouni, there have been an estimated 170 million casualties of war since 1945 (1998, p. 3). The United Nations ability to create a standard law of armed conflict is credited as one of the greatest humanitarian achievements of the 20<sup>th</sup> century. However, just as the moralization of violence led not to less violence but to the development of legal violence, legalizing violence does little to deter the act of war itself (Jochnick and Normand, 1994, p. 68). Legal violence is not necessarily moral violence. While moral violence recognizes that certain violence produces peace, legal violence recognizes that countries engage in wars for a various range of reasons other than to bring about peace. International law of war seeks to weigh the humanitarian protections for individuals with the rights of world actors (Schmitt, 2012, p. 474). The United Nations comprises states that want to protect their own self-interest. Although it is in their self-interest to legally hold all countries accountable for their actions during war, these legal regulations may cost political and economic aspirations.

International law experts Chris Jochnick and Roger Normand note, “there is a critical unspoken assumption that gives rhetorical power to the idea of a legal war—specifically, that a legal war is more humane than an illegal war” (Jochnick and Normand, 1994, p. 50). This perception highlights the ramifications of legally justifying violence and war. Under the guise of the United Nations Charter, a legal war is considered moral in nature (Jochnick and Normand, 1994, p. 56). This is not the case.

### **Law of War and Post-War Expectations**

Chapter VII, article 39 is the only section of the United Nations Charter that hints towards post-war expectations. This article states that when a threat to peace is determined and war is authorized, the Security Council shall “decide what measures shall be taken... to maintain or restore international peace and security” (Charter, United Nations, Chapter VII). The Security Council is the branch of the United Nations that directly mandates rulings on securing and maintaining peace. Similar to the expectation of reasonable success in the Catholic tradition of Just War, the legal regulation for the results of war is vague and fails to establish a true accountability mechanism for post-war conditions. As a result, post-war reconstruction strategies are not decided by legal or moral expectations of the international community but rather by the political and economic interests of the victor country. Foreign policy national security endeavors, economic capabilities, or political aspirations, take precedence over the humanitarian efforts that are internationally required post-war (Chayes, 2013, p. 298).

The law of armed conflict governs the actions of countries during and before war. Consequently, the post-war period is entirely unregulated (Brooks, 2004, p. 679). Rosa



Brooks remarks “in the traditional paradigm war is clearly defined, marked by the formal surrender of the defeated parties or by an armistice or other peace agreements” (Brooks, 2004, p. 726). This paradigm concludes that a war’s purpose is fulfilled during the war. Ironically, the tradition of Just War presumes the same timeline. The Just War Doctrine as well as the law of armed conflict, according to Gabriella Blum, still evaluates war in terms of the World War II experience. It is presumed that wars will proceed as followed: “invasion, defeat of armed forces, capitulation of the defeated, capture of the capital and leaders, and installation of a new government” (Blum, 2013, p. 392). It is assumed that post-war strategies are developed and engaged in as needed, without a need for a legal regulation. Blum contends “the modern expectation is that the occupier will reconstruct the country and improve the lives of its inhabitants” (Blum, 2013, p. 405).

This is a dangerous expectation. Considering the context of the formation of the international law of armed conflict after World War II, it is alarming that countries can be trusted to choose humanitarian efforts over self-interests during the post-war period. Just because the armed conflict has ended that does not mean the war effort is over. General MacArthur’s post-war strategy for Japan is the perfect example of this. He saw the end of the war in 1945 as the beginning of the real fight in Japan. Yet, in the fifty years that have passed since this all-encompassing reconstruction post-war activity remains unregulated. Furthermore, the absence of a moral criterion for what should be ethically expected in the post-war, peace-building period appears contradictory to the purpose of the Just War doctrine. Pope John Paul II profoundly said in 1982 “peace is not just the absence of war. It involves mutual respect and confidence between peoples and nations. It involves collaboration and binding agreements” (Holy Mass of Pentecost in Coventry, Homily of John

Paul II, 30 May 1982). Without an amendment to the tradition of Just War and an international moral recognition of the critical nature of the post-war period, legal adjustments to regulate post-war behavior will not be made. The moral argument for why peace in the post-war period is critical to the moral nature of war is necessary for a similar evolution of the international law of armed conflict understanding of why legal regulation is necessary for post-war behavior.

### **III. Post-War Justice**

“No peace that sows the seeds of the next war can be considered just or, in any meaningful sense, peace.”

*Ethics Beyond War's End* (Williams, 2012, p. 78)

#### ***Jus Post Bellum***

The Catholic Church developed the tradition of Just War as means for limiting violence, war, and atrocities while recognizing the necessity of self-defense and protection of the innocent (Walzer, 1977, p. xvi). Religious figures, church hierarchy and philosophers over time created a set of moral criteria consisting of justified reasons to enter into war, *Jus ad Bellum*, as well as justified behaviors during war, *Jus in Bello* (Walzer, 1977, p. xx). Ultimately, the traditions of Just War determined how and when violence could be used to establish lasting peace and stability. However, despite the limits placed on world actors before and during war, by my estimation the theory fails to address the critical period after conflict that is often overlooked: post-war. Although this period occurs after the termination of hostilities, post-war behavior predicts the possibility of future war or future peace. If a lasting peace and stability is used to justify the morality of the violence permitted under the tradition of Just War, then I believe the peace-building actions, or lack thereof, are equally as morally compelling.

The tradition of Just War contends that successfully “winning a just war does not guarantee a just peace” (Williams & Caldwell, 2006, p. 317). Although just wars are expected to produce amity and stability, both just and unjust violence is harmful. The

tradition of Just War defends the use of violence in situations when “the fundamental rights to life and liberty cannot be secured in any other way” (Williams & Caldwell, 2006, p. 316). Justified violence may secure these rights, but it does not automatically protect and promote them. Consequently, even though the violence of just wars may produce the opportunity for long-lasting peace, peace itself is not a guarantee. The cessation of hostilities, when soldiers have put down their weapons and combat has concluded, is not the beginning of peace; this is simply the end of the armed conflict (McCready, 2009, p. 67).

Peace does not come until restitutions have been paid, stability had been established, and the threat of future conflict has been greatly diminished. If establishing a long-lasting peace is the fundamental justification for the war, and violence is morally justified in establishing this peace, then by my estimation the *Jus ad Bellum* and *Jus in Bello* periods are only the beginning of a moral war. *Jus post Bellum*, or the moral criteria for conduct after a war has ended, plays the ultimate role in determining the morality of a war. While *ad Bellum* and *in Bello* considerations promote moral military policies, *Jus post Bellum* embraces a resolution of the “political, economic and social matters” that disrupt post-war peace (McCready, 2009, p. 67). If world actors enter a just war, conduct themselves justly *in Bellum*, but fail to establish a lasting peace post-war, I believe the war cannot be considered just.

### **A Pattern of Conflict**

The criterion for *Jus ad Bellum*, or the justice of war, includes a set of conditions that justify the use of intentional violence (Walzer, 1977, p. 21). The tradition of Just War cites self-defense and countering aggression as distinguishing characteristics of a justified war

(Walzer, 1977, p 21). However, more often than not an incident of aggression is not entirely isolated. Traditionally, aggression is linked to regions marred by conflict and volatility. Historically “troubled,” unstable countries or regions, therefore, require not only a reconciliation of the current conflict but also a commitment to addressing the political, cultural, and social factors that constitute the root cause of the repeated acrimony (Royal, 2012, p. 69). If policymakers do not recognize and address these innate and distinctive issues at the beginning of a war, future, similar conflict is inevitable. Furthermore, this recognition requires countries to consider that they may not have the economic resources or the political desire to address the unique social nuances that creates the chronic conflict.

Patterns of conflict and aggression therefore directly link *Jus ad Bellum* to *Jus post Bellum*. In order to establish peace, policymakers need to resolve the barriers that predicated the violence. Since these barriers justify a war during *Jus ad Bellum* considerations, the *Jus post Bellum* period needs to address those same hindrances (Williams, 2012, p. 89). Consequently, *Jus post Bellum* is essentially nullifying any future *Jus ad Bellum* conditions. By removing the present impediments to peace, moral post-war operations deal with any conditions that may result in future justified wars (Williams, 2012, p. 90). This is not a small task. However is this not the tradition of Just War’s argument, to permit violence to establish lasting peace, rather than short-term peace? The tradition of Just War recognizes the potential moral good of justified violence. This moral good separates a moral war from a legal war.

Michael Walzer, an American anti-war philosopher of the 1960s and 1970s, re-conceptualized the tradition of Just War in modern, tangible terms. He sought to tangibly examine where morality and legality unite to regulate the law of armed conflict (Orford,

2013, p. 86). According to Walzer, international law legalizes the use of force in cases of “imperial expansion,” territorial disputes and sovereignty aspirations (1977, p. xi-xii). The international community assesses the legality of a use of force rather than the morality of the intentions, efforts and successes of intentional violence. This is because the tradition of Just War lacks a moral understanding of post-war consequences. Although Just War doctrine permits force to be used to “establish order, justice, and peace,” the current lack of established moral criteria for post-war behavior creates a breach for nefarious world actors to justify their actions through personal preference (Johnson, 2012, p. 31). However, as addressed above, the world lacks a substantial set of legal regulations or expectations for the post-war period. As a result, policymakers do not consider *Jus post Bellum* responsibilities and justify severe economic sanctions, military disarmaments, and regime changes based on what they deem best for the war-torn country they created. Consequently, economic and political preferences dictate post-war behavior, as the law of armed conflict only requires countries to assess their in-war behavior. Rather than engaging in costly reconstruction operations, countries more often than not issue general reprimands for aggressive behavior post-war. Countries rely on economic and political sanctions to deter future hostilities, rather than providing comprehensive rebuilding efforts that can truly tackle the root of the conflict and hostility. As a result, the potential for long-term peace is bleak.

Michael Walzer contends that victors fail to consider the individual and community level burdens created by broad, collective reparation campaigns (Walzer, 2012, p. 42). A *Jus post Bellum* can require a rebuilding as much as it can require punishment. In order to establish a lasting peace, the prosecution of war criminals is not enough. Justice after war would seek to dismantle the situations that created the war criminals. Top-down approaches

to post-conflict operations overlook bottom-up nuances that create cycles of instability and conflict. Repeated unlawful and unjustified aggression fuel chronic conflict (Walzer, 2012, p. 44). Simultaneously, by my estimation lack of proper *Jus Post Bellum* reconstructions reinforce this chronic conflict. Unstable and unassisted war-torn countries are politically and economically vulnerable. Historically this vulnerability leads to an escalation of crime, violence and hostility, all of which reinforce the instability. This instability is exactly the type of violence the tradition of War originally sought to address. Protecting individuals from constant volatility is a moral good of justified violence. However, without committing this violence in conjunction with a post-war period that balances combat with reconstruction, wars that do not establish peace after conflict remain fundamentally immoral.

### **Post-Conflict without Jus Post Bellum**

*Post Bellum* campaigns that solely seek retribution fail to address the necessary stabilizing elements crucial to the post-war period. Weakening Germany's economic and military power after World War I led to the rise of Adolf Hitler in the 1930s. "Germany suffered the imposition of onerous reparations, loss of territory in Europe and overseas, and occupation by allied armies" limiting Germany's post-war political opportunities (McCready, 2009, pg. 69). The international community established "peace" through top-down universal measures. Consequently, each and every German citizen encountered post-war punishments. These punishments did not distinguish "the state" from "the individual" (May, 2012, p. 46). Weakening a country post-war may appear to be the proper response to unjust aggression, but ultimately a reliance on retributive measures fails to address the structural issues that initially led to this aggression. As a result, those least responsible for the injustices continue

to suffer. Equally so, the situation in Germany only diminished any mobility opportunities for non-elites, crippling the lower classes. This limited top-down approach after World War I overlooked the potential damages of retributive justice and failed to introduce the necessary stabilizing elements for creating long-term, lasting peace.

As a result of the failed post-war efforts in Germany, the United States' destruction and subsequent reconstruction of Japan was far more extensive and strategic. After Japan's surrender in 1945, the United States stabilized the region through democratization, protection and promotion of individual rights and liberties, as well as a period of long-term occupation (Johnson, 2012, p. 25-26). The reconstruction successfully secured the United States' foreign policy interests and Japan remains America's ally to this day. The utter obliteration of Japan both physically and socially during the war created the perfect situation for the United States to rebuild the country from the ground up during the post-war period. America's war efforts created a situation where simple restitution would not be enough. The shock and awe of the firebombing and atomic bombs readied Japan for complete reconstruction.<sup>1</sup> Despite Japan's post-conflict success, the United States introduced democracy to the country through "undemocratic" and arguably immoral means as they best served America's foreign policy interests rather than the needs of Japan (Majima, 2013, p. 43). If the United States' was not morally held accountable for their extensive post-war behavior how can the legal realm find fault in the United States' decision to remake Japan?

Post-conflict operations after World War I and World War II were dramatically different. One focused on punishment, while the other on reconstruction and political transformation. Both exemplify a historical demand for a *Jus post Bellum* criteria. The

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<sup>1</sup> This strategy was readopted during the Iraq War invasion in 2003. I will discuss in length the consequences of this military tactic in Iraq in the third chapter.



rebuilding of Japan was both a result of the failed tactics to dismantle Germany after World War I and a consequence of the United States' political and economic aspirations after World War II. I believe if both wars had been conducted in a manner that included post-war reconstruction considerations, *ad Bellum*, *in Bello*, and *post Bellum* behavior may have been greatly altered.

### **An Ideal Jus Post Bellum**

*Jus post Bellum* is the missing piece of the tradition of Just War. It is the period of war where the international law of armed conflict can hold the victor responsible for its actions. Even justified moral violence has consequences. For war-torn countries, these consequences include long periods of instability and volatility. Just actors during war are equally as responsible for the post-war realities of war-torn countries as are unjust actors. When international entities engage in an armed conflict, post-war responsibilities need to be at the forefront of *Jus in Bello* considerations. If nations engage in violence to create peace, but fail to participate in the necessary peace-building activities, the international community fails to hold that nation accountable for the instability that was created post-war. Even though the United States reconstructed Japan, the occupation was determined solely on the basis of the United States' self interest to do so. Both the moral and legal system failed to recognize the true nature of Japan's reconstruction.

What does justice after war look like exactly? The past reveals little guidance on the answer to this question. Looking again at the post-conflict reconstruction of Japan, it is clear that the United States overlooked Japan's moral goods in the process of reconstruction. Japan's national identity before World War II greatly rested on a strong military history, the

authority of their empire and their highly advanced culture. The United States did not give consideration to these defining features of Japanese society. Policymakers defined Japan as the hostile country that desperately needed democracy in order to peacefully function within the international community. Without a criterion for post-war activities, the international community finds no legal objection to self-determined reconstruction policies. More so, economic and political preferences continually regulate post-war campaigns subjecting peace-building and peacekeeping campaigns to foreign policy interests.

If the Just War tradition permits violence to bring about a lasting peace, then a moral war is an armed conflict that is followed by a proper peace building and peacekeeping period. I advocate that a just war requires policymakers to plan for this long-lasting peace prior to the initiation of violence. This plan therefore can directly influence a war's military strategy. Such a just military strategy reconciles the conflict between morality and self-interest by giving post-war humanitarian efforts precedence over economic and political motivations and capabilities (Johnson, 2012, p. 26). Responsibility to rebuild not only what was destroyed during the war but also what was damaged before the war must be considered the upmost consequence of entering into a war and bringing about long-lasting peace and stability.

### **The Transition from Conflict to Peace**

The question then must be asked, "How can a war transition from a time of conflict to a time of peace?" Philosophers Carsten Stahn and Jann Kleffner contend that historically, countries have mishandled post-war peace-building operations. Unfortunately, the international community has oversimplified the concept of "peace," defining peace as simply an absence of war (Kleffner, 2008, p. 2). Consequently, victor states dictate the terms of

post-war reconstructions based upon their political and economic preferences. These preferences favor short-term implementations of post-war reforms rather than hands-on implementations that extend occupation periods. When a country agrees to commit violence in order to bring about peace, is it just to not bring about that peace?

The transition from the time of armed conflict to the time of post-war peace requires countries to take responsibility for their in-war behavior. This responsibility is contingent on the reconciliation of the victors' post-war preferences and the needs of the war-torn country. According to Freeman and Djukic, international law experts, "peace, democracy, security, and economic growth" cannot be devalued based upon preference (2008, p. 216). Post-war peace is therefore not only peace-building but, more importantly, peacekeeping. This peacekeeping aspect is what keeps occupying victor countries accountable. Stahn and Kleffner argue that this can "serve as an instrument to encourage self-restraint or to limit the exercise of international authority" and to allow the demands of the reconstruction to dictate the occupation (Stahn, 2008, p. 235). Too often victims from the losing country are short-changed post-war. A *Jus post Bellum* criterion can vouch for and protect these victims (May, 2012, p. 36). Although corrective and retributive measures are necessary, too often the general population is punished. Building up communities, investing in local leaders and intentionally balancing punishments with empowerment is the just means necessary for the transition from conflict to peace during the post-war period. Post-war reconstruction requires the victor state as well as the occupied state to take collective responsibility for their actions (Murphy and Radzik, 2012, p. 31).

## **IV: The Iraq War**

We will begin to responsibly leave Iraq to its people.

President Barack Obama, Inauguration Speech 2009 (Iraq Timeline)

### **Saddam Hussein and the First Gulf War**

In 1979, Saddam Hussein's reign began in Iraq (Saddam Hussein | biography).

Throughout the next two decades, a one-party authoritarian political system gained and maintained absolute power through economic and social manipulation and control. Saddam Hussein's greatest political tools were violence and fear. He successfully created an unstable yet docile state with a subservient populace. Despite Iraq's lucrative oil reserves, centralized control of the national revenue impoverished Iraqi citizens (Jennings, 2003, p. 11). Poverty, inequality and an inability to mobilize economically plagued the Iraqi populace and contributed to the embattlement of the various ethnic groups in deadly local disputes and age-old conflicts over land and scarce resources. The relationships between the Arab and Kurd population, as well as the Sunni and Shi'te Muslim communities in Iraq, are historically violent. As a result, local tribes and families operate autonomously in the region (Arabs). These embattled factions of the Iraqi population not only hindered the formation of a collective national identity under Saddam Hussein's reign but also reinforced his fear-based methods for controlling a regularly warring nation.

Reacting to the Iraqi invasion of the autonomous neighboring state of Kuwait, the United States entered the First Gulf War in 1991 with stabilizing interests (Persian Gulf War | 1990-1991). The military intervention sought to deter future "Iraqi aggression," as well as

require disposal of any “unconventional weapons” or weapons programs (McCready, 2009, p. 70). “Within just over 100 hours” the United States military successfully nullified Saddam’s forces and occupied the country (Fitzgerald & Libro, 2013, p. 87). This type of swift display of military dominance was characteristic of post-Vietnam America (Fitzgerald & Libro, 2013, p. 90). At the time, United States’ foreign policymakers favored “strikes and raids...peacekeeping, peace enforcement, antiterrorism, and support for insurgency and counterinsurgency” over long-term, systemized military campaigns (Fitzgerald & Libro, 2013, p. 95). After the failure in Vietnam a decade prior, Washington prioritized avoiding the parameters and responsibilities of war. The First Gulf War reaffirmed the strength and success of this military policy. Furthermore, the 1991 short-term intervention in Iraq dictated the expectations of the 2003 invasion (Fitzgerald & Libro, 2013, p. 205).

The volatile characteristics of the Iraqi state were considered in 1991 major obstacles to peace in the region. In 2003, Iraq’s volatility was not merely considered an obstacle to a successful military operation: it was regarded as the justification for the war itself. The operation would be just as swift as in 1991, but far more destructive. In order to guarantee a collapse of Saddam’s entire system, all military fronts embraced the promising “Shock and Awe” strategy (Fitzgerald & Libro, 2013, p. 111-112, Klein, 2007, p. 472). This military tactic strives to achieve immediate military “dominance” through unlimited use of initial force in an armed conflict. Ultimately, the theory contends that ending a conflict rapidly requires an overwhelming violent invasion that “paralyzes” institutional structures into instant dissolution (Klein, 2007, p. 184). Consequently, when the Bush administration and the State Department purported that Iraq had not only developed weapons of mass destruction but also maintained ties to al Qaeda and other extremist terrorist organizations in

the Middle East, removing Saddam from power, reconstructing the Iraqi state and liberating the Iraqi people quickly and effectively warranted an execution of the shock and awe theory. However, this purpose failed to provide guidance for the United States' intervention strategy as policymakers allowed the Vietnam and First Gulf Wars to promote a limited reconstruction campaign post-war.

Even though stabilization and regime change were clearly defined as objectives before the war, post-war reconstruction strategies failed to take hold in Washington until 2006 (Brennan, 2013, p. xxii). Due to pressure from negative public opinion concerning the length of the military operation, three years into the occupation of Iraq, during the height of the insurgency campaign, the State Department and the Bush administration finally concerned themselves with developing a systemized agenda to establish long and lasting peace in the region. Although the United States entered the armed conflict with the purpose of "re-making" Iraq, policymakers did not develop a concrete plan for doing so prior to commencing hostilities. Consequently, the first three years of the war failed to address the necessary stabilizing components of reform that would be crucial to the post-war success of this policy.

### **Post-War Planning in 2006**

When plans to stabilize Iraq were discussed in 2006, planners identified four factors as hindrances to peace post-war:

communal and factional struggles for power and resources within Iraq, insufficient capacity of the government of Iraq, the activities of violent extremist groups, and external interference from such countries as Iran and Syria. (Brennan, 2013, p. xxiii)

Three years into the war, the identical struggles that motivated the United States' initial involvement remained unresolved (Brennan, 2013, p. xxii). To make matters worse, Iraq's sovereignty was now vulnerable if the United States' was to end the occupation of the country. Despite the brutality and injustices that plagued Saddam Hussein's reign, he successfully defended the autonomy of the Iraqi state. Without a respected ruling class, Iraq was in 2006 and remains to this day susceptible to the influence and power of bordering states, particularly Iran. The absence of a post-war reconstruction campaign allowed the United States to oversimplify the consequences of removing Saddam Hussein from power. Liberation rather than stabilization defined the focus of the initial military operation (Jennings, 2003, p. 31).

General Douglas MacArthur would not have recognized the Iraq occupation. MacArthur comprehended the impact of the damaged structures of a country defeated on its own soil (Morris, 2014, p. 65). He recognized the need to establish immediate, sweeping reforms that repaired the numerous impaired components of the Japanese state and culture while simultaneously establishing a new status quo. In 2003, the United States unrealistically assessed the capability and capacity of post-war Iraq to adjust to their new reality. Japan in 1945 was a "highly developed, economically advanced" society that was not marred by historical ethnic conflict (Dobbins, 2006, p. 98). More importantly, however policymakers prepared and systemized the post-war efforts in Japan far more than in the Iraq campaign over 50 years later.

The chaotic, violent and increasing instable characteristics of post-war Iraq were not historically unique. These characteristics have, according to Minxin Pei, an expert in the establishment of democracy in developing countries, "impeded democratic transitions

elsewhere” (Pei, 2003, p. 55). “A large, impoverished population deeply divided along ethnic and religious lines; no previous experience with democracy and a track record of maintaining stability only under the grip of a strongly autocratic government” have plagued unsuccessful liberation efforts in the past (Pei, 2003, p. 55). The questions then must be asked: Why was the United States so ill prepared to face the challenges of Iraq’s liberation? Why did the United States wait until three years into the war to discuss plans to stabilize the region, when stabilizing efforts could have been in place pre-war? Why did the United States not look to the occupation of Japan for an example of the challenges of post-war democratic transitions?

### **Post-War Assumptions and Realities**

In part, the administration’s inability to plan post-war Iraq reflected the overly optimistic plans of the Bush Administration and the State Department. Policymakers wrongly presumed that within days “there would be significant numbers of Iraqi soldiers and police available to help provide security, that there would be significant foreign assistance in the way of peacekeepers, and that an Iraqi government would quickly spring back into being” (Fitzgerald & Libro, 2013, p. 130). However, with the shock and awe nature of the invasion, none of these assumptions were accurate (Fitzgerald & Libro, 2013, p. 130). Without ability to control the violent outbreaks in the region, any financial resources that Washington allocated for reconstruction efforts were used to combat continual insurgency hostilities (Klein, 2007, p. 438). By broadly applying the strategy of the First Gulf War, Washington failed to recognize the chaotic impact of large-scale destruction without a proper



reconstruction formula. Consequently, the armed conflict in Iraq remained fluid and unpredictable during the first three years.

The RAND Institute produced a comprehensive study researching Iraq's reconstruction and transition from an occupied country to an autonomous state. Led by Army Officer Richard Brennan, the report critically examined the plans, operations, and activities that led to the 2011 withdrawal of United States Armed Forces from Iraq. This report provided critical information for my assessment of Iraq's reconstruction and contributes extensively to my research on post-war responsibility.

Technically, the United States established the Iraqi interim government in 2004 (Brennan, 2013, p. xxxiii). This establishment ended the formal United States' occupation of the country. From this point forward, United States Armed Forces officially aided security efforts alongside Iraqi forces. However, American-dominated combat operations remained necessary and frequent. Even when Washington began discussing the necessity of post-war plans, policymakers could not develop a distinct timeline for troop occupation or peace-building efforts during counterinsurgency campaigns, the rise and decline of ethnic conflict, and pending terrorist activity (Brennan, 2013, p. xxii). Consequently, having to adjust and update security measures placed plans to vacate the country on the backburner (Brennan, 2013, p. xxii). As a result, the United States' post-war strategy for stabilization centered on decreasing violence in the regions rather than implementing reforms. Policymakers concluded that once the United States' embassy along with Iraqi security forces could successfully maintain security operations in the country, American troops could vacate Iraq (Brennan, 2013, p. xxii). However, with drastically declining domestic support for the

enduring war, the military's goal of securing the region remained continually challenging (Fitzgerald & Libro, 2013, p. 143).

When the United States entered the war in 2003, toppling Saddam's regime and liberating the Iraqi people seemed like a fairly simple task. In actuality, the United States Armed Forces achieved this mission and destroyed Saddam's military fairly early on in the campaign. However, the majority of combat operations were not required until after the surrender of Saddam Hussein's military forces. Policymakers presumed that the Iraqi government, without Saddam in power could still "function and provide many necessary services to the population with only limited disruption from combat change" (Brennan, 2013, p. 23). This was not the case.

Due to the shock and awe nature of initial military operations, Iraq required far more hands-on direction and aid post-war (Klein, 2007, p. 438). The Bush Administration prioritized the development of a Western-style democracy in Iraq (Brennan, 2013, p. 8). Yet, policymakers failed to allocate the sufficient resources to do so (Morris, 2014, p. 298). With the continued war effort in Afghanistan, not only were military personnel limited, but so was Washington's attention. Furthermore, the plan to rely on the embassy to conduct all security operations at the end of occupation exemplifies a fundamental lack of understanding of the continued violence in Iraq at the time. Brennan contends,

a preference for planning the major combat operations first and foremost, leaving stabilization efforts (some of which have to be undertaken during the war) to be planned afterward, left the military unprepared for the post-war task of winning the peace - the ultimate object of war. (Brennan, 2013, p. 23)

The fact was without a “central government control” any plans to leave Iraq stabilized remained impracticable and precarious (Fitzgerald & Libro, 2013, p. 161). Brennan remarks, that the way in which “a war is fought will contribute to the postwar security environment” (Brennan, 2013, p. 6). The strategies implemented in the Iraq War created a situation where stabilization required a long-term occupation period. However, the United States remained ill prepared to address the consequences of its in-war behavior.

The United States Armed Forces mismanaged the violence in Iraq until the development of General David Petraeus’s comprehensive counterinsurgency campaign. The massive increase in resources and personnel in late 2007, referred to as “the Surge,” brought temporary relief to the beleaguered people of Iraq, specifically in Baghdad (Fitzgerald & Libro, 2013, p. 174 & 176). Shops reopened, commerce increased; the Iraqi economy appeared promising (Fitzgerald & Libro, 2013, p. 139). After four years of struggling to maintain the fluid situation in Iraq, Washington finally abandoned its limited intervention policy of the 1990s (Fitzgerald & Libro, 2013, p. 116). Peacekeeping operations conducted by military commanders provided “security for the local population” in order to combat extremist violence from within (Fitzgerald & Libro, 2013, p. 139). Due to the momentum of the increased security measures, public services expanded and increased the economic mobility of a previously impoverished country. Finally, policymakers adopted an effort similar to MacArthur’s policies in Japan. However, this progress was short-lived.

As ending the occupation captivated domestic discussion during the 2008 presidential election, Washington developed strategies that allowed for withdrawal of “military forces and capabilities in a manner that would enable follow-on organizations to advance U.S. national interests, goals, and objectives” (Brennan, 2013, p. 81). Essentially the focus of the

2003 Iraq war evolved from concentrating on decreasing violence, to ending the occupation. No period of reconstruction took place. According to Brennan's report, "a small number of critical decisions made by the White House (under both President Bush and Obama) and by select Cabinet-level members of the Department of State and the Department of Defense" determined Iraq's transition from an occupied country an independently "functioning" state (Brennan, 2013, p. 97). These decisions failed to address the needs of post-war Iraq. Furthermore, the "domestic political discourse regarding Iraq" defined Washington's agenda (Brennan, 2013, p. 120). For example, Brennan notes

the U.S. military worked with the government of Iraq in an effort to enhance border control, an effort that was largely ineffective because of corruption and lack of political will on the part of local-, provincial-, and national-level governments. (Brennan, 2013, p.143).

Policymakers failed to resolve this issue prior to the end of occupation.

The United States ended the occupation of Iraq in December of 2011 (Iraq Timeline). The reconstruction report testifies, "By the third quarter of 2012, violence escalated to levels not seen in more than two years. A total of 4,568 civilians were killed by violent attacks in 2012, up from 4,144 during the previous year" (Brennan, 2013, p. 298). Once again, political and economic preference determined the United States effort in the country and Washington deemed the security capabilities of the Iraqi forces wrongly proficient.

### **Post-occupation Terrorist Activity**

Eliminating the violence of the terrorist factions in the region remained one of the United States' biggest challenges during the occupation period in Iraq. A number of factors,

including Iraq's physical location, its underdeveloped security infrastructure, a lack of respect for the centralized government, and constant foreign incursions, left Iraq a safe haven for terrorist factions. Saddam Hussein's method of control instilled fear equally throughout the entire Iraqi populace, including the extremist organizations, resulting in a protected yet hostile state that lasted for decades. However, Saddam's prolific use of violence protected and secured the country from any outside enemies (Kfir, 2014, p. 5). As a result, liberating Iraq not only toppled Saddam's regime but also eliminated the security protections Iraq's sovereignty desperately relied upon. Reconstruction efforts failed to establish more stable social and political structures to combat Iraq's vulnerability. Without properly understanding the ethnic and religious factions in the country, the United States failed to provide necessary autonomy and authority to local leaders. Misinterpreting the potential effects of top-down governance in the region created the opportunity for the rise of terrorist factions post-occupation.

Recently, the terrorist group commonly referred to as "The Islamic State of Iraq and Syria" (ISIS), or "The Islamic State of Iraq and the Levant" (ISIL) rose to prominence in Iraq and the surrounding region (Kfir, 2014, p. 7 & 8). According to the White House, this organization originally formed as an "al Qaeda's affiliate in Iraq" (AQI), later transitioned into its own terrorist faction (Hudson, 2014). The organization relies on torture, murder, and physical destruction of historical and religious landmarks in the region, as well as the planning and funding of terrorist attacks in different parts of the world as their methods of implementing terror (Terrill, 2014, p. 14).

In 2014, the Iraqi security forces could no longer deter the violence of the Islamic State of Iraq and Syria. President Barack Obama ordered 1,600 US service members to Iraq

to serve as “military advisors, intelligence analysts, and other needed specialists” (Terrill, 2014, p. 13). Recognizing the potential domestic threat to the United States homeland, President Obama declared that the United States would “degrade, and ultimately destroy, ISIL through a comprehensive and sustained counter-terrorism strategy” (Hudson, 2014). With a combined effort from other world actors, air raids, drone strikes and ground efforts, the coalition continues their attempt to degrade and deter the Islamic State in both Iraq and Syria. However, without addressing the fundamental structural defects in Iraq that generated the opportunity for the rise of the Islamic State, contending with terrorist factions in the region will continually require engagement from the United States Armed Forces (Terrill, 2014, p. 21). As long as the nation of Iraq remains unstable and insecure without a substantial occupying force, violence is inevitable (Kfir, 2014, p. 10-11). Ideally, the United States would have considered this reality prior to the beginning of the conflict in 2003. However, even after entering the war, the United States’ failed to take responsibility for the destroying the dysfunctional but stable system in Iraq.

The United States created a situation in Iraq in 2003 that required a post-war reconstruction. However, without the plans or resources to properly occupy and reform Iraq, the United States conflated political progress and decreases in violence with stability. The political, economic and security uncertainties that remained in the region post-occupation in 2011 invited and encouraged the rise of terrorist activity in the country. Politically, the United States failed to stabilize the country post-war. Morally, however the United States produced the ideal chaotic environment for the Islamic State. Without a legal standard for regulating the United States’ behavior and enforcing a proper reconstruction of the country, the political and economic interests of the United States’ dictated post-war efforts. Without a

*Jus post Bellum* criterion, the international community assesses the United States reconstruction of Iraq as a policy failure. By my estimation, the botched Iraq reconstruction and subsequent terrorization of Iraqi citizens is not just a policy failure; it is a moral failure. I believe an amendment to the tradition of Just War prescribing post-war responsibilities, articulates moral accountability for the evils post-war instability produces. This accountability is vital for morally ending a war, ethically justifying violence and ultimately establishing long-lasting peace.

## **V: Conclusions**

### **From Japan to Iraq**

The case of Japan's reconstruction after World War II depicts a post-war occupation campaign that produced a country transformed into an American ally, directly serving United States' foreign policy interests. The magnitude of Japan's utter destruction along with the lack of moral considerations during the "remaking" process highlights the immoral nature of this post-war reconstruction. Indiscriminate military might with uncompromising post-war demands outweighed humanitarian considerations in the case of Japan (Schnick, 2012, p. 39). Nonetheless, the United Nations did not consider including post-war regulations in the law of armed conflict while drafting the United Nations Charter during the heart of the Japanese occupation. Post-war strategies continually anticipate political, economic and social transformations. Even if these strategies completely transform the culture of a country and require violent obliteration, the formula used in Japan was and remains to this day legally unregulated and morally unaccounted for. The unsystematic replication of Japan's reconstruction in Iraq illuminates the consequence of assessing post-war operations in terms of political and economic preference. The United States' inability to stabilize Iraq however was not simply a foreign policy failure. Its consequences led to the rise of a number of dangerous and deadly terrorist organizations. In the absence of a systematic approach and well-defined plan that includes specific benchmarks and expectations pertaining to stability and security post-war, reactionary political and economic interests dictate occupation timelines allowing victor countries free reign over the future of the countries they destroy during war.



After World War II, the international community considered the occupation of Japan both a political and economic necessity. Consequently, the United States readily sacrificed resources and time for the merit of a democratic transition. Continuing the Iraq occupation, marred with controversy, declining public support, and a looming national deficit, was not politically or economically advantageous for the United States in 2011. Without standardized post-war responsibilities, political and economic preferences dominated the United States' post-war policies. Although an all-encompassing transformation remained the goal of the Iraq war, Washington continually minimized the means to enact this transformation. A long-term, systemized, hands-on reconstruction program was not practicable. It is historically observable that Japan's occupation left a mark on post-war foreign policy. However, the structural destruction of World War II was the only part of MacArthur's strategy replicated during the Iraq War.

The dichotomy of MacArthur's reconstruction program and the events that led to the rise of terrorist organizations in Iraq in 2014 underscore the necessity of a *Jus post Bellum* criteria. It is perplexing how the United States could obliterate Japan during World War II in order to participate in an all-encompassing, indefinite occupation, yet conduct similar shock and awe military tactics without planning for an equal or even greater reconstruction campaign in Iraq over 50 years later. When President Obama first visited Iraq in 2010, he stated, "It is time for us to transition to the Iraqis. They need to take responsibility for their country and for their sovereignty" (Iraq Timeline). However, when did the United States take responsibility for confiscating Iraq's sovereignty? The White House website notes that supporting an "effective governance in Iraq" is the most proficient way to support Iraq as it

continues to transform post-war (Hudson, 2014). However, the support given after occupation ineffectively prevented the terrorization of Iraqi citizens.

Political philosopher Brian Orend contends, “when wars are wrapped up badly, they sow the seeds for future bloodshed” (Orend, 2008, p. 36). Post-war reconstruction programs, or lack thereof, historically fail not only to repair the destruction of wars but also unsuccessfully rebuild the structural components that created the initial need for hostilities. Consequently, when countries overlook reconstruction operations or enact post-war reforms though haphazard means without moral considerations, future violence and instability is inevitable. The alternative is that countries who cannot fulfill the requirements of post-war peace-building and peacekeeping choose to not enter the war at all. Currently, the extremist organizations inhabiting war-torn Iraq are a consequence of the country’s improper reconstruction.

Due to the political and economic insecurities that remained in the region post-war, pre-war volatilities reemerged after the end of the United States’ occupation. Instability invites chaos, and chaos invites more violence, more crime and subsequently more instability. The United States aimed to stabilize Iraq in 2003. Other than for a short time after the “Surge” in 2007, that was effort was largely unsuccessful. By my estimation, victory and successfulness is not the only goal of a moral war: peace is the greater goal. For this reason, I believe without a *Jus post Bellum* criteria, peace and stability will remain a fleeting and elusive objective for post-war operations. However, objectives are influenced by politics and preferences. Lasting peace should be the absolute goal of war, and inability to bring about peace should not be viewed as an unsuccessful mission. I believe failure to do so

should be viewed as a moral wrong. Furthermore, legal expectations for post-war efforts will remain absent as moral recognition is continually evaded.

### ***Jus Post Bellum Critics***

Critics of *Jus post Bellum* contend that if we require responsibility and justice for every act and consequence of war, the rectification process post-war will never end (Lazar, 2012, p. 220). They argue that peacekeeping is simply an unrealistic goal. Rather, a just war is a war that alleviates suffering rather than compensating for suffering (Lazar, 2012, p. 222). Yet when countries are left unstable, post-war suffering, instability and chaos are inevitable. It may not be the same suffering that the justified war sought to initially alleviate, but it is likely to be a suffering that results from economic, political and social unrest. What is just about leaving all citizens of a war-torn country subject to post-war specific suffering? Regardless of the aggression a war-torn country may have engaged in, deciding to respond to this aggression requires a moral contract. The tradition of Just War highlights the moral conditions of this contract. Why must these conditions end when the armed conflict ends? Why does moral responsibility only matter before and during the war, when post-war instability directly leads to future conflict? MacArthur said it best: post-war occupations are “the new form of war called peace” (Morris, 2014, p. 70). Although critical concerns over the definitions and parameters of peace and stability are warranted, I contend that these concerns should not prevent a moral post-war criterion from forming. Common philosophical discussions about post-war requirements “include providing security and stability for the defeated society, holding morally culpable leaders accountable, and establishing legitimate national government” (McCready, 2009, p. 73). Essentially these

requirements are determined by defining “What is not peace.” What about internationally recognizing the dangers and prophecies of post-war instability? Should there not be a requirement at least to mitigate the chaos that an armed conflict directly causes? Or should world actors continue to enter wars without the insight or commitment necessary to leave a country better off than it was found?

### **The Future of *Jus Post Bellum***

Unfortunately, very little is written on properly and peacefully ending a war or an occupation (Brennan, 2013, p. 7). Iraq began its journey as an autonomous state with very little economic or political security (Brennan, 2013, p. xxvii). As a young, unpredictable democracy, Iraq’s stability was already at risk. The ethnic and religious conflict and violent extremism in this region only exacerbated Iraq’s instability. Without the United States’ presence, sole security responsibilities fell on Iraqi forces and structures (Brennan, 2013, p. xxxiv). Iraq was ill prepared for the battle ahead. Richard Brennan describes Iraq’s post-war condition as an “internal struggle for power among competing groups and factions,” with “high levels of corruption” and decaying border control (2013, p. xxviii). This is certainly not the proper condition to leave a country in post-war.

The United States’ aspirations for Iraq’s transition remained optimistic until the end of the occupation in 2011. The 2010 national election was certainly a sign of Iraq’s ability to function as a working democracy (Brennan, 2013, p. xxxii). However, the United States underestimated the power of the United States military presence. Iraq may have transitioned to a democracy with elections but electoral activity does not equal stability. Consequently,

Brennan contends, “the dramatic Iraqi political events that followed the transition were sobering reminders of the limitations of the transition” (Brennan, 2013, p. xxxii).

The greatest challenge to the development of a *Jus post Bellum* criterion is the recognition that all post-war environments require different types and levels of support. As a result, argues Brennan, “each transition therefore must be planned for given the unique opportunities and constraints associated with the particular conflict at hand” (2013, p. xlii). Even when post-war plans are developed before the commencement of hostilities, “the unpredictability of violent conflict” will require constant adjustment to these strategies (Ginty, 2010, p. 610). Consequently, by my estimation standardizing reconstruction campaigns may not be possible. However, I believe standardizing the expectations of reconstructions can be. Although Iraq’s ethnic conflict, extremist violence, lack of autonomous governing and corruption define its post-war environment, the expectation of long-lasting peace and stability, whatever that may look like for Iraq, can be morally expected (Brennan, 2013, p. xxxiv).

I believe including a moral expectation of a *post Bellum* in the tradition of Just War can compel international legal support for countries to plan for peace prior to entering an armed conflict. According to Roger Mac Ginty, a professor of peace and conflict, *post bellum* regulations can provide for “forward planning in terms of the pre-positioning of supplies, of establishing systems for the coordination of relief agencies, and setting aside funds for the expected emergency” (Ginty, 2010, p. 609). Requiring countries to evaluate and dictate their in-war behavior in light of post-war expectations can dramatically alter their military tactics, allocation of resources and implementation of reforms. As a result, countries can prepare both economically and politically for potential post-war costs by aligning the

goals and missions of combat with the potential realities of volatility and instability and subsequently adjusting strategies along the way (McCready, 2009, p. 72). Conversely, these costs may completely deter countries from entering into the armed conflict.

The hostilities present in Iraq today are a direct result of a fundamental lack of planning for the post-war realities at the beginning of the war (Klein, 2007, p. 473). Proper stabilization reforms, economic stimuli, or even a basic understanding of the ethnic conflict challenges in the region may have given the United States more time to address these conditions. Rather, lack of planning only increased the amount of violence the United States armed forces needed to contain. Consequently, already limited time and resources were allocated to military operations rather than reconstruction efforts. When economic and political preferences no longer favored an occupation, the United States vacated the country before stability and long-lasting peace was achieved. The rest is history. If it is agreed that violence can be morally justified, then by my estimation, the results of this violence must be a moral good. Justified violence does not bring about more bloodshed, more instability or more war. Without a *Jus post Bellum* amendment to the tradition of Just War, the conclusions of wars will continually be assessed by political and economic preference, not by degrees of lasting peace. Due to the direct link between post-war instability and future war and hostilities, requiring stability and reconstruction after a war is crucial for the establishment of long-lasting peace. The tradition of Just War can, as it did in the 20<sup>th</sup> century, guide the international law of armed conflict to similarly govern post-war behavior and expectations.

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