Jus Post Bellum:
A Case of Minimalism versus Maximalism?

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ABSTRACT. Jus post bellum is the ‘new’ part of just war theory that deals with questions of post war justice. While many argue for this extension of just war theory, there is no agreement on the content and scope of post war norms. The debate on jus post bellum is often presented as one between so-called ‘minimalists’ and ‘maximalists’. This article analyses these main positions and the supposed differences between them, and argues that this distinction is no longer relevant. There is no clear opposition between the two positions, but there are gradual variations in terms of content and scope of jus post bellum. In order to pinpoint these variations, a broader perspective is taken. The article thus aims to demonstrate that the content and scope of post war norms depends on two factors: the particular situation to which just war theory applies, and the general view on just war theory and international relations that is adopted. These factors explain the general shift towards a maximalist understanding of jus post bellum.

KEYWORDS. Just war theory, jus post bellum, post war justice, reconstruction

I. INTRODUCTION

‘Mission accomplished’. Former President George W. Bush’s famous speech, given on the aircraft carrier USS Abraham Lincoln ten years ago, is now infamous. The message to the world was clear: major combat operations had ended, Saddam Hussein had been removed from his post and the Iraqi people were free. It quickly became apparent that the message was, to say the least, premature. Numerous points of critique have been formulated regarding the justness of this war, an important example being the absence of a conscientious ‘exit-strategy’. There was no clear answer to the question: what needs to be done after the regime has been removed? In general, contemporary post war
situations seem to pose new challenges. What responsibilities and obligations arise after war? *Jus post bellum* is the welcomed ‘new’ part of just war theory that aims to answer questions of post war justice that have become so pressing in today’s political reality.\(^1\) In very general terms, the goal of *jus post bellum* is a just and durable peace after war. But while many argue for this extension of just war theory, there is no agreement on the content and scope of *jus post bellum*.

The current debate on *jus post bellum* is often presented as one between two opposing ‘camps’: the so-called ‘minimalists’ versus the ‘maximalists’ (e.g. Bellamy 2008; Evans 2012; Frowe 2011). Some have stated, however, that these positions make up two consecutive phases in the debate on *jus post bellum* (Gheciu and Welsh 2009, 117; Frowe 2011, 209).\(^2\) How are these two positions characterized and what is the difference between them? The minimalistic or restricted position on *jus post bellum* supposedly aims to restrict post war behaviour and thus consists mainly of negative moral imperatives (Frowe 2011, 209; Evans 2009, 150). There is a presumption, for example, against the reconstruction of the defeated state (Bass 2004, 387). Post war activities should be focused on “ [...] redressing the worst effects of military action, ensuring that enough resources and capability remain in place for the country to reconstruct itself” (Gheciu and Welsh 2009, 119). Victors are permitted to secure the cause that justified the war, but nothing more than that. This stems from the desire to prevent excesses by victors acting out of self-interest (Bellamy 2008, 602; Gheciu and Welsh 2009, 119). This restricted understanding of post war norms means that they are only relevant during a fairly short time-span: they apply to the end of war and its immediate aftermath (Evans 2012, 206; Gheciu and Welsh 2009, 119).

The maximalist or extended position on *jus post bellum* seems much more ambitious. *Jus post bellum* is said to consist mainly of positive obligations, determining what actors are allowed or even obliged to do after war. Instead of a fear of victors taking advantage of the defeated party after war, thus doing too much, maximalists fear that victors will leave
having done too little (Frowe 2011, 209). Maximalist *jus post bellum* thus goes beyond addressing the injustice that was the reason for the war and thereby securing the cause (Bellamy 2008, 612; Gheciu and Welsh 2009, 119). Certain post war norms, such as political reconstruction, are more broadly interpreted. Additionally different sorts of norms are also identified as part of *jus post bellum*. They entail, for example, the achievement of forgiveness and reconciliation, the reconstruction of infrastructure (Evans 2012, 207-208), economic development (Bellamy 2008, 612; Evans 2008, 541), and compensation for environmental damage. According to Alex Bellamy, the obligation to punish perpetrators of war crimes through organizing trials is also a requirement typical for maximalists (2008, 612). As a consequence of these broad and varied commitments, more time will be needed for the acquittal of these obligations. Therefore, maximalist *jus post bellum* continues to be applicable for a longer period of time after the end of the war (Evans 2012, 206).

In the present contribution, I want to critically examine this commonly made distinction. To this end, a general picture is painted in the second section of this article, analyzing representatives of both positions together with Brian Orend’s position, which might be situated ‘in between’. Despite the clear-cut characterization of the debate on *jus post bellum* in a minimalist and maximalist camp, it will quickly become evident that making this distinction is not as easy as it appears. More often than not, contributions to the debate can only be labelled as either minimalist or maximalist with difficulty. In the third section of this article, I will return to the common characterization of the two positions. It appears that the difficulty in distinguishing between minimalism and maximalism results from the fact that this characterization is not entirely accurate. Which of the supposed features indeed differentiate the two positions, and which fail to do so? And are we thus right to present the debate on *jus post bellum* as opposition between minimalists and maximalists? I will argue that this division is no longer relevant today. However, there are differences between the main positions. In order to pinpoint these
differences regarding the content and scope of *jus post bellum*, I will take a broader perspective in the fourth section of this article. It will be evident that these differences are in fact gradual variations that are determined by two factors: the particular situation to which just war theory applies, and the general view on just war theory and international relations that is adopted. These factors explain the general shift towards a maximalist understanding of *jus post bellum*.

II. POSITIONS ON *JUS POST BELLUM*

**Minimalism**

The most prominent representative of the minimalist conception of *jus post bellum* is Michael Walzer. When reviving moral just war theory in his classic *Just and Unjust Wars* (2000) a few decades ago, Walzer did not pay much attention to *jus post bellum*. However, some of his ideas evolved through the years, which he states is due to developments in the world since 1977, when his book first appeared. Together with his gradual acceptance of humanitarian interventions and long-term military operations, he now acknowledges *jus post bellum* as the third branch of just war theory (Walzer 2004, xiii). Another representative of the minimalist position is Gary Bass, who has taken upon himself the task of creating an important place for *jus post bellum* within Walzer’s theory (Bass 2004, 387). Bass stresses the importance of restraining conquest and argues that after war, there is a presumption against political reconstruction (2004, 396).

Walzer and Bass’s minimalist accounts of *jus post bellum* are determined by the considerable value they ascribe to sovereignty of states and the self-determination of peoples. A theory on the end of wars is shaped, Walzer states, by the same principles that apply *ad bellum*: the right to continued national existence and nationality. Just wars are conservative in character (Walzer 2000, 121). What follows is Walzer’s understanding of the ‘classic view’ on *jus post bellum*, which we could label ‘minimalism
When an aggressor breaks the normal order, that order has to be repaired. Consequently, in this view the restoration of the situation that existed prior to the war is the just outcome (Walzer 2012, 36). But contrary to traditional just war theory, this does not need to be taken literally according to Walzer: the goal of war is “[...] a better state of peace” (2000, 121). It is not necessarily the exact status *quo ante bellum* that must be restored, but victors should aim for a situation that is more secure, less vulnerable to territorial expansion and safer than it used to be for civilians (Walzer 2000, 121). It follows from this point of view that, after typical ‘just wars’ of self-defence, “[...] resistance, restoration, [and] reasonable prevention” (2000, 121) is allowed. Obviously, post war justice permits repelling aggression and some form of demilitarization and arms control (Bass 2004, 394). It also entails the right to prevent this from happening in the near future. Lastly, it includes the right to extract reparations from the aggressor, following from the aggressor’s duty to restore and repair the damage done to victims. In principle, post war justice does not allow for political reconstruction.4

However, the current political reality – in which few wars are purely self-defensive – poses situations that minimalism proper does not account for. This leads to the question: is this framework still appropriate today? Walzer already discussed an exception to this minimalist view in 1977, namely a Nazi-like regime, which threatens core international values and stands affront the conscience of mankind. The regime Walzer had in mind is extremely aggressive and genocidal, justifying an imposed political reconstruction (2000, 113). Bass argues regarding these defeated genocidal states that there is in fact a duty to reconstruct their political structure. Because of the extreme character of the regime, it loses its claim to be respected as a state and imposed reconstruction does not therefore constitute a violation of its sovereignty (Bass 2004, 398-399).

It is clear that today’s humanitarian interventions or wars against terrorism do not necessarily involve ‘Nazi-like’ regimes, but nevertheless political reconstruction is often a goal after such wars, which can be
accompanied by short or longer term occupation. This new political reality seems to have made Walzer broaden the type of regime qualifying for the exception: he states that “[…] the classic view of post bellum justice is now subject to revision whenever we encounter inherently aggressive and murderous regimes” (2012, 39). After humanitarian interventions or interventions in order to stop inherently aggressive regimes more generally, a new regime must be created in order to halt the taking of human lives and to prevent it from happening in the near future. Obviously, it will be subject to debate which regimes qualify as such. Idi Amin’s Uganda would probably have qualified, as would have Slobodan Milosevic’s Yugoslavia. But was Saddam Hussein’s Iraq sufficiently aggressive and murderous? There are many situations in which it is unclear whether the regime’s character justified imposed political reconstruction.

But let us assume that some regimes are inherently aggressive and murderous. What does the revision of this view on jus post bellum – minimalism proper – entail? Which other rights and obligations arise after wars with these regimes? According to Walzer, ‘provision’ is the primary obligation for victors. This entails the provision of immediate necessities for the people in the aggressor state, such as “[…] law and order, food and shelter, schools and jobs”, provided together with local partners wherever possible (Walzer 2012, 43-44). Next to the immediate provision of primary needs, post war justice requires political reconstruction, which is necessary to prevent further aggression in the future. The minimalistic nature of Walzer’s view on jus post bellum is clearly illustrated by the limitations he puts on political reconstruction. “The goal of reconstruction is a sovereign state, legitimate in the eyes of its own citizens, and an equal member of the international society of states” (2012, 44). Legitimacy restrains reconstruction efforts: they must be in full accord with local partners in order to safeguard and embed prevailing national values. Walzer is concerned about states imposing their own ideologies on foreign countries. Bass is equally concerned with imperialism and consequently states that reconstruction efforts
should always seek the consent of the defeated (2004, 392-395). A minimal conception of human rights is another factor determining reconstruction efforts (Walzer 2012, 43). While a democratic government is preferred in light of individual human rights protection, post war justice must be conceived in the minimal sense: the goal is the creation of a safe and decent society (Walzer 2012, 45).

The final norm of minimalist *jus post bellum* has to do with criminal justice. Contrary to what seems to be Bellamy’s view, the emphasis on criminal justice and therefore the organization of trials after a war is not reserved for maximalists (Bellamy 2008, 612; Muirhead 2012, 156). In practically all accounts of *jus post bellum* – including Walzer and Bass’s conceptions thereof – it is argued that some form of criminal justice must be achieved after a war. “There can be no justice in war if there are not, ultimately, responsible men and women,” Walzer argued as early as 1977. If there was aggression, there must be aggressors and if war crimes were committed, there are war criminals (Walzer 2000, 287-288). It is usually after the war that these persons, those guilty of the human rights violation(s) that started the war – violating *jus ad bellum*, and those guilty of war crimes – violating *jus in bello*, can be prosecuted, held accountable and punished. There are numerous reasons for prosecuting and punishing violations of *jus ad bellum* and *jus in bello*; retribution for crimes committed, prevention of future crimes, re-establishing the status of victims, fostering reconciliation, and symbolically reclaiming moral values, to list only a few. For these reasons, it is widely argued that criminal justice forms an important part of *jus post bellum*. But to categorically demand that those responsible be punished is too easy. Aside from the moral importance of punishing the guilty, the realization of peace is important as well. And most theorists acknowledge that this value of peace sometimes collides with the value of criminal justice. In those situations, the said values can be weighed against each other and, unsurprisingly, there is no general agreement on what must be the outcome. Bass argues, however, that the duty of peace has priority over the duty of justice (2004, 405). And theorists
more often agree that it is sometimes justified to grant amnesties to perpetrators in order to come closer to the goal of reconciliation and peace (Walzer 2012, 45). Walzer argues that the first priority after war is to create a secure peace for the people living in the war affected area. Therefore, “[...] sometimes security might require amnesties and public forgetfulness” (2012, 45).

To summarize, Walzer’s ‘classic view’ on *jus post bellum* – minimalism proper – is thus revised. Minimalist *jus post bellum*, as it is usually understood, includes different moral norms. It is allowed to draw back aggression and take measures in order to ensure that it does not happen again in the near future. It is also allowed to extract reparations from an aggressor in order to repair the damage done to victims. Furthermore, political reconstruction is allowed or even required after war with inherently aggressive and murderous regimes, including, but broader than, Nazi-like regimes. There are other positive obligations in these situations, which Walzer summarizes under ‘provision’. Bass adds that these obligations of political reconstruction and provision of basic needs for the population also arise after wars that leave a state in chaos. It is perfectly possible that after a just war, the old regime (not inherently aggressive and murderous) no longer functions properly while the population lacks the power to establish new political structures. In such situations, Bass argues, the victors should assist in the reconstruction of the state (2004, 402). Finally, the establishment of criminal responsibility for violators of *jus ad bellum* and *jus in bello* constitutes the last norm of *jus post bellum*.

**The Middle Ground?**

In addition to Walzer and Bass, Brian Orend is also presented as minimalist. Orend, as one of the most prominent spokespersons for *jus post bellum*, argues that such norms must be codified into a new Geneva Convention (Orend 2012). At first glance, it is easy to understand why Orend is located in the minimalist camp. But while he is presented as minimalist,
an analysis of his account of *jus post bellum* might cast doubt on that claim. Orend is, to a large extent, influenced by Michael Walzer. Indeed in 2002, his account of *jus post bellum* was very much in line with Walzer (Orend 2002), offering a clear checklist of *jus post bellum* norms, which remained largely the same in his writings in the following years (2006; 2007; 2008). The said checklist is widely quoted by other authors on *jus post bellum*. However, Orend’s position changes over time. While the checklist seems to remain the same, Orend becomes more willing to allow for political reconstruction. Consequently, it becomes more and more implausible that he is a typical minimalist. If we hold on to the minimalism-maximalism distinction, Orend’s position is at least halfway on a sliding scale towards the maximalist conception of *jus post bellum*. And his recent article (2012) shows definitively that he cannot be characterized as minimalist any longer. Because Orend is one of the most quoted authors on *jus post bellum*, and because his position illustrates the difficulty of framing the debate in terms of minimalism and maximalism, it would be useful to present his position here.

The main reason why Orend is often seen as minimalist, is his concern that victors will do too much after the end of war, leading to so-called ‘victors’ justice’. He thus limits what can be done after war, which characterizes the minimalist position. The aim of a just war, he states, “[...] is the vindication of those rights whose violation grounded the resort to war in the first place” (2008, 39). After the vindication of these rights, for example when the aggression is repelled and the rights to life, self-determination and the state right to sovereignty are restored, the war must end. And as unconstrained fighting beyond the vindication of these rights, demanding unconditional surrender after war is also prohibited (2008, 39).

In terms of content, Orend’s checklist of *post bellum* norms thus appears to be rather similar to Walzer and Bass’s accounts of *jus post bellum*. He proposes the following norms: (i) rights vindication; (ii) proportionality and publicity; (iii) discrimination; (iv) punishment; (v) compensation; and (vi) rehabilitation (Orend 2008, 40–42). These are three different
types of post war norms. The first norm of rights vindication is arguably central, as it limits *jus post bellum* in general. It implies that the cause of the war determines when the war must come to an end, and what can be aimed for after the war. Secondly, proportionality and discrimination are general norms, which function in different ways. They determine the nature of several other *post bellum* obligations. With the second norm of proportionality, Orend states that post war arrangements must be reasonable – which thus excludes, for example, unconditional surrender – and publicly announced and communicated. These arrangements can have the form of a peace treaty, but this is not absolutely necessary since the legitimacy of the arrangement is not derived from a formal treaty (Orend 2002, 55). The norm of discrimination entails in general that the victor is obliged to distinguish between leaders, soldiers and civilians of the aggressor state. According to Orend, the population of the state in question must be excluded from punitive measures (2008, 40-41).

The following norms: punishment, compensation, and rehabilitation make up the third type of norms, because they represent concrete areas of post war justice. As in Walzer and Bass’s theories, criminal justice forms an important part of Orend’s *jus post bellum*. This norm deals with the punishment of both the leaders of the aggressor regime, as well as soldiers of both sides who committed war crimes (Orend 2008, 41). While Orend stresses the importance of criminal justice, he adds that “care should be taken” to balance the goal of retribution with the negative results of prosecuting former leaders, implying that punishment should be reconsidered when it endangers the peace.\(^{10}\) Proportionality – Orend’s second norm – plays a role here in balancing the values of peace and criminal justice (2002, 53). In addition, the victims of aggression should be compensated for the damaged caused by the war. This norm deals with another concrete area of post war justice. The amount of compensation that is due and the distribution of costs are determined by the principles of proportionality and the principle of discrimination. Following these principles, compensation should only be extracted to the extent that
is realistically payable, and only from actors who were responsible for the aggression. Orend excludes the civilian population from contributing to these payments. At this point he disagrees with Walzer who argues that reparations can be paid through a general taxation of the population of the aggressor state (Orend 2002, 47-49; 2006, 166-167).\(^\text{11}\)

Finally, rehabilitation is a norm that concerns a specific area of post war justice. Orend’s interpretation of this last norm is particularly susceptible to periodic changes, in which he distances himself from Walzer’s position. Rehabilitation for Orend involves a broad range of activities such as disarmament, institutional reform, political reconstruction, rebuilding infrastructure, but also official apologies. The concept of rehabilitation is thus broader than political reconstruction alone. Some of these activities are also prescribed by Walzer, for example when disarmament is needed in the prevention of future aggression. But while Walzer argues that we should be very stringent in allowing coercive political reconstruction of other states, Orend thinks that Walzer is too cautious here. Instead of allowing rehabilitation only in cases of inherently aggressive and murderous regimes,\(^\text{12}\) Orend suggests that “[…] there should be a presumption in favour of permitting rehabilitative measures in the domestic political structure of a defeated aggressor” (2002, 49-52). However, regime change and full-fledged political reconstruction are not always permitted; the scope of rehabilitation – in Orend’s broad understanding – must be dependent on the character of the prior regime, and is subject to proportionality. But in all former aggressive states, reconstruction is allowed to a certain extent.\(^\text{13}\)

The important question arises: in which cases is regime change and full political reconstruction allowed? To answer this question, we must first look at Orend’s concept of the ‘minimally just community’: “A minimally just community makes every reasonable effort to: (i) avoid violating the rights of other minimally just communities; (ii) gain recognition as being legitimate in the eyes of the international community and its own people; and (iii) realize the human rights of all its individual members”
(Orend 2008, 43). In other words, it is a non-aggressive, internationally and internally legitimate, rights respecting regime. Orend’s answer to the question as to the cases of legitimate regime change and imposed political reconstruction has changed over the years. In 2002, he added to the presumption in favour of permitting rehabilitative measures, that the further away a state is from being a ‘minimally just’ state, the more extensive the reconstruction may be. This is clearly a sliding scale. Total reconstruction is positioned at the very end of the scale and, as in Walzer’s theory, is only allowed in extreme cases. However, a few years later, Orend seems more willing to permit imposed regime change and political reconstruction, allowing it not only in extreme cases. A state that is not minimally just, he argues, can be forced to adopt a new minimally just regime through coercive political reconstruction after a just war. Clearly, Orend hereby creates considerable room for imposed regime change and political reconstruction. The last criterion of ‘realizing human rights’ in particular seems to allow broad reconstruction. And which human rights is he referring to? He justifies political reconstruction with the argument that states that are not minimally just are not legitimate and therefore have no right to govern (Orend 2008, 43-44). And even if the people as a whole have the right to self-determination, this collective right is only valid insofar as it results in such a minimally just society (Orend 2008, 44).

Orend’s most recent article on jus post bellum confirms the conclusion that he leaves a great deal of room for coercive political reconstruction. He does not mention here his earlier checklist of jus post bellum norms. Instead, he presents us with two models for post war justice: the ‘revenge model’ and the ‘rehabilitation model’ (2012, 179-186). As was to be expected, he opts for the rehabilitation model, which leads to post bellum norms that are quite different from his earlier checklist. There is no longer any mention of the essential and limiting norm of rights vindication. Instead, Orend argues that the goal of post war justice is the construction of a minimally just regime in any defeated aggressor state (2012, 187). He
now openly argues that political reconstruction is the goal of post war justice in general (2012, 187). In addition, political reconstruction has moved from being one of many aspects of *jus post bellum*, towards being central. After a just war, the defeated state must always be politically reconstructed. It seems that Orend now supposes that unjust defeated aggressors are never minimally just and thus ‘need’ political reconstruction in order to become so. Another significant change in his position is the rejection of compensation for victims. While he was always cautious on this point, subjecting this norm to the principles of proportionality and discrimination, his fear of harming civilians was the reason that he left it out of his proposal for a new Geneva Convention. Instead, the focus now lies on investing in the defeated state in order to aid its reconstruction (2012, 183). It is clear that Orend’s position has changed through the years. He has evidently moved from leaning towards minimalism and Walzer’s cautious understanding of *jus post bellum* towards leaning more in the direction of maximalism.

**Maximalism**

Although the minimalism-maximalism distinction is at the forefront of the *jus post bellum* debate, not many authors are clear about their position on the issue. Mark Evans is one of the few who explicitly endorse the maximalist position, using the terminology ‘restricted’ and ‘extended’. According to Evans, there are clear circumstances in which the minimalist position offers too little. He argues that the norms of minimalist *jus post bellum* are always applicable after war, but that in some cases, the scope of *jus post bellum* needs to be extended (2008, 540-541). Mark Allman and Tobias Winright (2010) also implicitly endorse maximalism, their account of *jus post bellum* exhibiting several characteristics of this position. Although Evans and Allman & Winright acknowledge their dependence on Orend, they take his theory a step further and I will therefore take them as representatives to discuss the maximalist position.
What exactly does this extended or maximalist version of *jus post bellum* entail? Interestingly, Evans explains his position by demarcating it from Orend’s supposed minimalist checklist of *post bellum* norms. Sometimes, Evans argues, this checklist offers all the relevant post war rights and obligations. In other situations, however, *jus post bellum* will need to go beyond the immediate aftermath of war. Especially where there is an occupation after a just war, *post bellum* norms must be extended, meaning that more sorts of norms come into play and that they can only be achieved in ‘the long run’. In Evans’ theory, the scope of *jus post bellum* is dependent on the type of war that was waged and the question whether or not it is followed by an occupation. This resembles Walzer’s argument that the scope and type of *jus post bellum* obligations depend on the particular situation.

What other norms are identified by ‘maximalists’ as part of *jus post bellum*? Evans refers specifically to three more extensive obligations: reconstruction of the physical infrastructure; redistribution of material resources; and reestablishment of socio-cultural institutions, practices and relationships (2012, 207-208). But this ‘extension’ is not as significant as Evans would have us believe. First, the reconstruction of the infrastructure in the defeated state is presented as an additional obligation of maximalist *jus post bellum*. Allman & Winright similarly argue that investment in “[...] infrastructure reconstruction and development, including roads, ports, rail lines, electrical grids [...] is necessary for post war peace” (2010, 161). However, this obligation was already identified by Orend under the heading of rehabilitation (Orend 2002, 52). Secondly, the obligation to redistribute material resources is equally presented as a norm of maximalist *jus post bellum*. Evans states that victors must take responsibility for their fair share of the material burdens (2012, 208). He likewise argues that the victor should not extract the total costs of the war from the former enemy (2008, 541). Allman & Winright agree that reconstruction of the economy of the defeated state is essential, and that the victor has an important responsibility thereto (2010, 160-163). Yet again, the obligation to redistribute material resources and...
reconstruct the defeated state’s economy is also found in Orend’s theory, particularly in his most recent account of *jus post bellum*. According to Orend, the victor cannot extract reparations for damages done by the war, but must instead invest in the defeated country, rebuilding its economy (2012, 188). These two broad, so-called additional norms of *jus post bellum* – reconstructing infrastructure and assisting the defeated state financially – are thus also recognized by Orend.  

The third obligation that Evans thinks is part of *jus post bellum*, is indeed an extended addition. What the reestablishment of socio-cultural institutions, practices and relationships entails is not exactly clear, but forgiveness and reconciliation seem to make up the most important aspect thereof. According to Evans, Orend’s and the so-called minimalist accounts of *jus post bellum* fail to acknowledge the importance of repairing relationships between former enemies. Evans argues that this would be a “[...] potentially serious deficiency” (2012, 210). As a result, part of Evans *jus post bellum* is the obligation to “[...] take full and proactive part in the ethical and socio-cultural processes of forgiveness and reconciliation that are central to the construction of a just and stable peace” (2012, 208). Because the obligation to achieve forgiveness and reconciliation seems very demanding, Evans argues that these concepts should be understood in thin, minimal terms: reconciliation “[...] refers only to the business of developing means by which former enemies can live on the same planet without fighting each other” (Evans 2012, 211). Allman & Winright argue more strongly that reconciliation is a vital part of *jus post bellum*, presenting a richer religious understanding of the concept. The main goal of reconciliation is not only to make sure former enemies can continue to live on the same planet together, but to create relationships of respect, trust and friendship. “The reconciliation phase seeks to turn enemies into friends and to bring emotional healing to the victims of war” (Allman and Winright 2012, 102). They stress that reconciliation is not about forgive-and-forget, but is instead about true reconciliation between people, for which the truth is essential.  

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Finally, extensive political reconstruction is often seen as a norm of maximalist *jus post bellum*. Allman & Winright argue that the goal of *post bellum* regime change is more demanding than the realization of a minimally just state, as Orend holds (2010, 152-160). Based on the Christian tradition, they argue in favour of additional duties. Not only individual human rights, but the ‘common good’ is the state’s responsibility. After war, the victor has the responsibility to ensure that a government is in place that protects and guarantees human rights *and* pursues the common good. Consequently, they state that “[...] a Christian understanding of *post bellum* regime change would aim for a just and lasting peace, inclusive of robust human rights, political sovereignty, and territorial integrity as well as social, political, economic, religious, and cultural conditions that allow citizens to flourish, to pursue lives that are meaningful and worthy of creatures made in the image and likeness of God” (Allman and Winright 2010, 159). Obviously, this requirement imposes broad obligations on victors of war.

In general terms, what does an analysis of these positions – the minimalist position of Walzer and Bass, the middle-ground of Orend, and the maximalist positions of Evans and Allman & Winright – tell us? Evidently there are differences, but the positions are not as clearly separated as it might appear. And since it is not easy to categorize them as either minimalist or maximalist, there is no agreement on what the most common position on *jus post bellum* is.20

III. THE OPPOSITION BETWEEN MINIMALISM AND MAXIMALISM

To summarize where we stand so far: the supposed differences between minimalist and maximalist *jus post bellum* boil down to: (i) a short versus long timeframe; (ii) negative versus positive obligations; (iii) a limited array of norms versus a large array of norms (limited or extensive norms); (iv) the just cause as an end versus achieving more than a just cause. The difficulty in distinguishing between the positions results from the fact that
this characterization was certainly appropriate for explaining the difference between minimalism proper and maximalism, but that it is less appropriate for explaining contemporary positions on jus post bellum. It seems no longer useful to characterize the debate on jus post bellum in minimalism versus maximalism terms, and this becomes evident when we look at the differences between them.

The first characteristic that needs to be modified is the variation in timeframe. It is argued that minimalism focuses on the short term – the end of war and immediate aftermath – and that maximalism focuses on the long term. However, according to the recent positions of Walzer and Bass, post war activities can be stretched beyond the war’s immediate aftermath. Indeed, drawing back aggression and extracting reparations can be short term activities, but the prevention of aggression, the reconstruction of inherently aggressive regimes, and provision for the affected population are activities that will presumably need time. In addition, it is doubtful whether criminal justice, which is an important requirement in all proposals for jus post bellum, is something that can be restricted to the immediate aftermath. Experience with national justice systems after war, as well as with international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia, and hybrid courts, such as the Extraordinary Chambers in the Courts of Cambodia, reveals that the organization and working of such courts often requires a large amount of time. The same goes for other mechanisms used to deal with a violent past, such as truth and reconciliation committees. Since it is hard to claim that minimalist jus post bellum proposals exclude such provisions, the relevance of the short versus long timeframe becomes less important.

The second characterization is the type of norms that are proposed. It is argued that minimalism consists of negative obligations and maximalism of positive obligations. In general, this is true. Minimalism is more concerned with restricting what victors can do after a war, as a result of fear of exploitation of the defeated state and the imposition of foreign values. According to minimalists, it is prohibited to forcefully impose
political reconstruction. As we have seen, however, situations that involve inherently aggressive regimes or states left in chaos, are exceptions. After wars involving such states, minimalists argue that victors do have responsibilities regarding post war reconstruction. Walzer, for example, insists that the imperative to provide provision means that the victor must reconstruct the state politically, realize a safe environment, provide food and shelter for the population, and create education and employment possibilities. These imperatives are obviously positive obligations. Additionally, achieving some form of criminal justice also entails a positive obligation. It is clear, therefore, that both minimalists and maximalists propose positive obligations. The difference between minimalism and maximalism thus cannot be that minimalist *jus post bellum* exclusively consists of negative and maximalist *jus post bellum* of positive obligations. In reality the difference is merely a matter of degree: minimalists focus on negative obligations and positive obligations; maximalists, on the other hand, focus mainly on positive obligations.

This leads us to the third – related – characteristic. It is argued that the array of norms is larger for maximalists than for minimalists. Nevertheless, there are some *post bellum* norms that we find in practically all proposals. This is the ‘core’ of *jus post bellum*. Halting aggression and creating safety and security, (assistance with the) reconstruction of the defeated state, and establishing some form of criminal justice seem to be essential parts of any proposal of *jus post bellum*. We should be careful to include the right to extract reparation payments from the former aggressor in this list, because the said norm is part of minimalist accounts of *jus post bellum*, but not of all maximalist accounts. Evans and the later Orend in fact even turn this requirement around, arguing that victors should invest in the economy of the defeated state in order to rebuild it instead of demanding compensation. This means that debts due because of the war should be cleared instead of claimed. Reconstruction in general is always part of *jus post bellum*, only the scope of reconstruction is debated. Theorists differ with regard to the extent to which reconstruction is
necessary. Maximalists do indeed argue for more obligations in this context: rebuilding infrastructure, cleaning up the environment and generally investing more in the economy of the defeated state are considered required after war. Another additional ‘maximalist’ norm of _jus post bellum_ is the requirement of reconciliation. An evaluation of these first three characteristics shows that the most profound difference between the main positions on _jus post bellum_ lies in their specific scope and content. Maximalist _jus post bellum_ proposes additional norms, generally positive obligations.

The fourth characteristic seems in accordance with the said difference regarding scope and content: minimalists are said to restrict post war activities to achieving the just cause, and maximalists go beyond this. But again, the minimalism-maximalism distinction is not so obvious at this juncture. Both positions argue in fact that the just cause works as a general constraint after war. Like Walzer, Allman & Winright state that the just cause for the war limits legitimate actions when the war is over (2010, 87-90). The war must end and the sovereignty of the enemy state must be restored when the cause for war is achieved, and thus the previously stated objectives are realized.21 Evans also argues that the sovereignty of the defeated state must be restored “[…] as soon as is reasonably possible” (2008, 157). This requirement constitutes one of the five proposed criteria of _jus post bellum_.22

At the same time, both minimalists and maximalists agree that post war activities usually go beyond simply realizing the just cause. _Jus post bellum_ requires something more than a realization of the said cause, e.g. halting internal or external aggression, and restoring the status _quo ante bellum_ (Walzer 2000, 121; 122; Orend 2007, 578; 579; Allman & Winright 2010, 42). It requires ‘a better state of peace’. A tension exists between those two claims, something that Evans acknowledges (2008, 157-160). There is a desire to restrict post war behaviour and restore sovereignty as soon as possible, and yet positive _post bellum_ norms are proposed in order to create that better state of peace.

Exactly how much better this peace must be, and what it entails, are important questions to which I will later return. In short, while it is clear
that both positions in fact aim higher than achieving the just cause, the way that this goal is conceived marks an essential difference. Maximalists are more ambitious in their understanding of the goal of a just war. To illustrate this, Allman & Winright formulate this goal as follows: “Minimally, the goal of a just war must be to establish social, political, and economic conditions that are substantially more stable, more just, and less prone to chaos than what existed prior to the fighting. Maximally, it means a social political and economic environment that allows citizens to pursue lives of meaning and enables humans to flourish” (2010, 86).

Clearly, this last characteristic also fails to differentiate between minimalism and maximalism in the way one would expect. It does show that both positions are confronted with a tension between two different requirements: limiting post bellum activities on the one hand, and achieving something better than simply a restoration of the status quo ante bellum on the other. There is no agreement on the definition of ‘something better’. It seems that the more comprehensive the goal is, the broader the content and scope of the proposed norms are, and the stronger the tension with the limitation of post war activities. While this tension exists in both minimalist and maximalist proposals for jus post bellum, therefore, it seems to pose a more serious problem for maximalists.

All in all, it is not hard to understand why it is difficult to distinguish between minimalism and maximalism. Minimalism proper – aiming at the restoration of the previous situation, allowing resistance and prevention of aggression and extracting reparations – can indeed be characterized by the features that are mentioned. Minimalism proper and maximalism reflect opposing standpoints. The general characterization of the debate on jus post bellum as a conflict between two opposing camps, as presented in the introduction, is based on that distinction. Today, however, one of those positions seems to have been abandoned, and consequently, the characterization has lost its usefulness. Contemporary so-called minimalists have clearly moved towards maximalism, and current positions can thus no longer be divided easily in two opposing camps. In essence, all
contemporary accounts of *jus post bellum* are maximalist – at least to a certain extent. Our conclusion must therefore be that maximalism is indeed the new standard of normative thinking about *jus post bellum*. But if we have to leave the minimalist-maximalist distinction behind, how should we then characterize the contemporary debate on *jus post bellum*? What can explain the discussion on the content and scope of *post bellum* norms?

**IV. Jus Post Bellum in a Larger Perspective**

We came to the conclusion that the minimalist versus maximalist discussion is no longer relevant; all contemporary contributions are in fact maximalist. There seems, nevertheless, to be a gradual difference in terms of content and scope of *post bellum* norms. So the question arises: what determines the content and scope of *jus post bellum*? And can we pinpoint these gradual variations? In order to answer these questions, it would be clarifying to take a step back and establish a larger perspective. So far *jus post bellum* has been considered in relative isolation. Our discussion of its last characteristic, however, already indicated that the goal of just war theory is important. In what follows, we will take a closer look at the connection between *jus post bellum* and just war theory in general. The way *jus post bellum* is defined, I maintain, is particularly influenced by two factors: (i) the concrete situation to which the *justum bellum* applies; and (ii) the general perspective on international relations. These factors – one concrete and the other abstract – determine the content and scope of *jus post bellum*.

**Situation**

The first factor that influences the interpretation of *just post bellum* is the concrete situation in which the question of post war justice arises. The content and scope of *jus post bellum* depend in all proposals on the
situation. Evans states this most clearly when he argues that today’s post war situations contribute to the fact that *jus post bellum* now needs to entail more than what was originally envisaged (2008, 540-541). The relevant aspects of the situation are: the type of war and the nature of the state involved. Where there is a classic situation of attack and self-defence, for example, *jus post bellum* is usually limited, and focuses on stopping the aggression and preventing it from happening again. The ‘core’ of *jus post bellum*, in other words, is usually sufficient in such situations. But in instances of humanitarian intervention, the aim is to stop internal aggression and protect the local population against an oppressive regime, which then leads to more elaborate responsibilities. This can be recognized in Walzer’s theory.

Nevertheless, this analysis is not confirmed by Orend, who argues that broad positive obligations – e.g. those regarding political reconstruction – apply irrespective of the type of war that was waged. And Allman & Winright likewise seem to argue in favour or similar broad obligations after every type of war. It is plausible, therefore, that not only the first, but also the second aspect is important. *Jus post bellum* depends on the nature of the state involved. This appears to be a common element shared by the various positions. Walzer, for example, argues that even in a case of self-deference there can be extensive positive obligations, namely, in the case of self-defence against an inherently aggressive regime. Bass points to the chaotic situation that can arise after a regime has become dysfunctional. Such situations produce positive obligations regarding political reconstruction for the victors. According to Orend, political reconstruction is required whenever the state involved is not minimally just. And Allman & Winright claim that broad reformative activities are necessary whenever states are not able to promote the common good and provide their people with public services such as education, health care and electricity (2012, 15). It seems, therefore, that the nature of the defeated state determines the content and scope of post war obligations. Here we can distinguish between three specific determinants: the nature
of the state when it gets involved in the war (e.g. inherently aggressive?); the nature of the state as it comes out of the war (e.g. internal chaos?), and especially, the (foreseen) nature of the state in the future.

This last determinant, the view on the nature of the state when *post bellum* activities end, seems to be an important factor. Take Iraq as an example. Putting aside the justness of the war, *ad bellum* arguments especially focused on the aggressive nature of Saddam Hussein’s regime, leading to its removal and a subsequent power vacuum. Apart from these facts, *post bellum* activities are determined by the question: what type of state does the coalition aim to realize? This aim can be modest, requiring the creation of a certain level of safety for the citizens after the overthrow of the regime, but leaving the task of political reconstruction to the people itself. Or the goal can be more ambitious, requiring that the Iraqi people are left with a democratic, stable regime that respects human rights.

The higher the aspirations with regard to the nature of the defeated state, the more elaborate *jus post bellum* activities are. According to proponents of *jus post bellum*, victors must ensure that the state loses its inherently aggressive nature; that the state becomes minimally just as well, securing human rights; or that it becomes a state that secures human rights and pursues the common good. For Walzer, the goal of *jus post bellum* is not the restoration of the situation *quo ante bellum*, but the creation of a ‘safe and decent society’. This implies that some crucial human rights must be guaranteed in the defeated state, but it is not, according to Walzer, the task of the victor to establish democracy. Whether or not a democracy is realized in a post war situation is up to the people of the involved state themselves. With regard to Iraq, Walzer argues in this line that the most important requirement of *jus post bellum* is that “[...] the post-Saddam regime be a government of, by, and for the Iraqi people” (2004, 161). And while Walzer assumes that a fully democratic Iraq is a utopia, something better than the Baath regime, which is politically decent, must be aimed at (2004, 161; 162; 164). As we have seen, Orend’s goal for *jus post bellum* is the construction of a minimally just regime in any
defeated aggressor. Victors must ensure that the nature of the defeated state is non-aggressive, internationally and internally legitimate, and rights respecting. This view on the nature of the state in the future means that, compared to Walzer, more elaborate post bellum norms are required to achieve this. The same stands for Evan’s account of jus post bellum, which incorporates elements of a ‘just society’ in which democracy is promoted (2008, 545).

**View on International Relations**

Aspirations regarding the nature of the state bring us to the second, related factor that influences jus post bellum: the perspective on international relations. Traditional just war theory is based on a certain view of the international community as a system of independent sovereign states. This sovereign state system is often referred to as the ‘Westphalian system’. One could call this the classic regime of sovereignty, which is based on such principles as territorial sovereignty, equality of states and non-intervention in other states’ domestic affairs (Held 2003, 162). The emphasis on sovereignty means that just wars are particularly conceived as defensive wars against foreign aggression and jus post bellum as the return to the previous situation. However, this view of the international community has been changing in the past decennia, and thus just war theory with it. The Westphalian system and its concept of sovereignty are eroding. The general claim is that the world order is moving more and more in the direction of a world community, in which states are connected in many ways, instead of being independent (Cohen 2004, 2). Some important features of this new world order are the ongoing process of globalization; the increased emphasis on the value of individuals instead of states; and the proliferation of international legal norms (including human rights) and institutions. Due to these developments, the current international system tends to be characterized by growing interdependence and mutual responsibilities. Of course, this also has implications
for our concept of sovereignty. Sovereignty today is no longer perceived as unlimited state power. Instead, the idea that sovereignty carries with it responsibility is gaining ground. Sovereignty is seen as something conditional; the state’s right to represent its people is conditional upon respect for their vital interests. States that disrespect these vital interests – often explained in terms of human rights – violate international standards and consequently forfeit their claim to sovereignty.27 This argumentation is the foundation for the well-known responsibility to protect.28

The question arises as to what substitutes for the view of the international community as a system of independent nation states? Many argue that cosmopolitanism is emerging as the new conceptualization of international relations.29 According to Cecile Fabre, the central tenets of this new paradigm are: “[…] a) individuals are the fundamental units of moral concern and ought to be regarded as one another’s moral equals; b) whatever rights and privileges states have, they have them only in so far as they thereby serve individuals’ fundamental interests; c) states are not under a greater obligation to respect their own individual members’ fundamental rights than to respect the fundamental rights of foreigners” (2008, 964). Undoubtedly, the traditional concept of sovereignty is changing, states’ interdependence is growing and the emphasis on individual human rights as the central focus of international relations is growing.

The impact of these contemporary developments and the eroding Westphalian system on just war theory is evident. The emergence of an alternative changes the perspective on the role of the use of force as well. It means that the *jus ad bellum* is expanding beyond self-defence. Humanitarian intervention to protect foreign individuals against grave harms is now accepted by many as cause for war. Additionally, some argue that preventive wars can be necessary to eliminate threats to international peace, e.g. regarding weapons of mass destruction or the dangers of terrorist organizations (Ignatieff 2004; Patterson 2005). This theoretical development can be recognized in the way contemporary wars are justified. It is not only the safety of one’s own state that is stressed, but also
the safety of the world population. Wars are often initiated to protect a foreign population against grave human rights violations, to change an oppressive regime, to stabilize so-called ‘failed states’, or a combination of such reasons. In general, humanitarian arguments are becoming more and more important.\textsuperscript{30} As a result, and as highlighted above, just war theory now applies to different situations than earlier in history.

This changing view on international relations explains the general shift towards a more comprehensive \textit{jus post bellum}.\textsuperscript{31} When Walzer developed his just war theory, the Westphalian system and its conception of sovereignty formed its cornerstone. \textit{Just and Unjust Wars} (2000) reflects the international community as composed of independent sovereign states: aggression is forbidden, and if it does occur, states are allowed to repel it and restore their sovereignty. The war of self-defence is consequently the typical ‘just war’. And after a just war, states are allowed to restore the pre-existing order, the situation \textit{quo ante bellum}, and not much more. In this paradigm, there is no need for extensive post war norms. As a result of changing circumstances, Walzer’s view of international relations gradually changed. Sovereignty is no longer the cornerstone of his theory. When the situation is serious enough, sovereignty can be temporarily set aside.\textsuperscript{32} Consequently, the post war situation entails more than what was originally envisaged. We have seen that as a result, contemporary proponents of \textit{jus post bellum} cannot be called minimalist, not even Walzer. Having left the old paradigm behind, moving slightly towards a new paradigm in which the international order is viewed as a world community, we can call Walzer’s current position ‘limited maximalist’.

\textit{The Various Degrees of Maximalist Jus Post Bellum}

Those two factors: the situation (the type of war and the nature of the defeated state) and the view of international relations clearly influence the content and scope of \textit{jus post bellum}. As a result of the changed
international landscape and new ideas on the role of the use of force and the concept of sovereignty, *jus post bellum* has become richer. This shift towards maximalism thus coincides with the rise of a cosmopolitan morality, according to which all human beings have the right to the freedoms and resources they need for their wellbeing and to live a flourishing life (Fabre 2008, 965-966). Also, this development concurs with what was highlighted above: proponents of *jus post bellum* agree that the goal of a just war is not the restoration of the situation *quo ante bellum*, but a better state of peace. The way that this peace is defined further determines variations in terms of the content and scope of *jus post bellum*. When one assumes a more demanding and extensive goal regarding the nature of the peace, *jus post bellum* is necessarily more comprehensive. It then involves a larger array of positive obligations to achieve that goal. Walzer can be called a ‘limited maximalist’, because he still understands peace in a limited, or negative way. Safety and security are essential and of the highest priority after the awfulness of war, as are the most basic human rights. For him, the sort of peace that is demanded by *jus post bellum* is a negative peace, particularly understood as the absence of the collective violence of war. In other words, the goal of a just war remains modest: cessation of the violence of war and a state that is stable and no longer aggressive. And while this is a better state of peace, or a ‘decent peace’, it is not necessarily a ‘just peace’.33 For ‘full maximalists’ such as Evans and Allman & Winright, this is not enough. They aim for a positive peace. Democracy and respect for a wide range of human rights are considered essential for the establishment of peace. But other essential aspects of the peace are also identified. As we have seen, the two most important additional aspects are: a healthy economy in the defeated state; and forgiveness and friendly relationships between former enemies. Reconciliation, therefore, is deemed a necessary requirement in *jus post bellum*, in order to transform relationships into respectful relationships, and to heal the emotional wounds of the parties of the war (Allman and Winright 2010, 102).
A Just and Durable Peace?

Discussing *jus post bellum* thus leads towards a reflection on the goal of just war theory. In most contributions to the debate, the said goal is described as ‘a just and durable peace’.

And while this is generally accepted as axiomatic, the discussion of *jus post bellum* sheds doubt on that claim. I would suggest that this goal of just war theory at least demands more attention from proponents of *jus post bellum*. And attention should be focused more specifically on the question: what is the nature of the peace we aim to realize after the war? Realizing peace, understood merely as the absence of the collective violence of war and a certain level of security for the population, has proven to be difficult enough in practice. Is it, therefore, wise to be modest and aim for a decent peace? Furthermore, the restriction of post war behaviour and restoration of the sovereignty of the defeated state as soon as (reasonably) possible is best secured by a limited maximalist *jus post bellum*, aiming for such a negative peace. These are good reasons to argue that a limited conception of peace is worth pursuing.

But does this mean that we must settle for just any peace? While this limited conception of peace as a goal of just war theory might be realistic and attainable, it might be too modest in the world we now live in. A fully maximalist understanding of *jus post bellum*, determined by a positive conception of peace – a just and lasting peace – best accommodates the developments in the globalized world, and our contemporary conception thereof.

The effect of this position, as I have pointed out, is that it becomes more difficult to restrict post war activities and restore sovereignty quickly, which in turn increases the danger of exploitation and so-called ‘victor’s justice’. Perhaps, however, this requirement, although it is still widely endorsed, is a remnant of the previous paradigm that no longer fits in the new situation. As we have seen, the new perspective on international relations includes a new view of the role of force and the concept of sovereignty. When one fully adopts this new perspective,
arguing that force can be used as a vector for human rights and good governance, and that sovereignty is conditional upon the discharge of responsibilities set out in the ‘responsibility to protect’, one must also embrace a broad and comprehensive *jus post bellum*, despite that inherent danger.\(^{37}\)

What then remains is the practical attainability of such a lofty goal. This difficulty is recognized by both Evans and Allman & Winright, and it means that they must compromise the idea of a ‘just and durable peace’: it does not necessarily need to be perfectly just, they state. Evans argues that, in practice, occupiers must be prepared to settle for a “[...] suboptimal acceptable peace” (2009, 160). Allman & Winright agree and state that in some instances, we must indeed settle for a “[...] tolerably just or ‘suboptimal acceptable’ post bellum peace” (2010, 96). The question comes to mind whether this lofty goal is in effect any different from the sort of ‘decent peace’ Walzer has in mind?\(^{38}\)

**WORKS CITED**


NOTES

1. It should be noted that *jus post bellum* is not welcomed by everyone. There are a few authors who criticize this ‘new’ branch of just war theory, either because they consider it unnecessary to include *jus post bellum* as a separate branch in just war theory, since post war norms are already covered by the *jus ad bellum*; or because they consider it premature to incorporate *jus post bellum*. Alex Bellamy, for example, argues that we should be careful to insist that *jus post bellum* has become a third branch of just war theory, since its incorporation is by no means unproblematic (2006, 622).


3. This is also the view of Russel Muirhead (2012, 156).


5. An excellent article on Walzer’s understanding of humanitarian intervention was recently published in the *European Journal of International Law* (Nardin 2013).

6. The justness of an occupation is determined by the political direction and the distribution of benefits provided by the occupation, Walzer claims (2006). He criticizes the Bush administration for profiting and making money on the Iraqi occupation. This, according to Walzer, undermines the legitimacy of the occupation.

7. This form of reconstruction is limited: Bass draws on the Rawlsian category of well-ordered peoples. There is no obligation to create a liberal democracy. Walzer similarly states that *jus post bellum* is about justice in the minimal sense: the creation of a safe and decent society (2012, 45).

8. Mark Evans, Alexandra Gheciu and Jennifer Welsh and Alex Bellamy refer to Orend as being a minimalist in the *jus post bellum* debate (Evans 2008, 539; Gheciu and Welsh, 117; Bellamy 2008, 605, 606). While Frowe also cites Orend when explaining minimalism, she takes Orend’s account of *jus post bellum* as example for the maximalist position (2011, 209).

9. An updated version of Orend’s *The Morality of War* 2006 was published after this article was written and therefore not taken into account.
10. Negative effects resulting from prosecuting former leaders will arise especially when the accused remain popular among the local population. This can lead to destabilization and that is why Orend claims the advance of criminal justice is subject to the proportionality principle (2001, 52-54).

11. In 2012, Orend totally rejected compensation as norm of *jus post bellum*.

12. It should be noted here that when Orend explicitly formulated his disagreement with Walzer on this, at that time, Walzer was even more cautious than in his later writings, reserving political reconstruction for ‘extreme cases’. This is discussed in the previous paragraph. However, I think that his criticism would still be valid against Walzer’s current position.

13. Orend’s position on this matter seems also to have changed over the years. In 2007 and 2008, he seems more willing then before to allow imposed regime change and political reconstruction, reserving it not only for extreme cases (Orend 2008, 42-49). Assuming that this is the position he still takes, I will base this analyses on the latter article.

14. Which human rights does Orend mean? A few years earlier, he defined the rights that are satisfied by minimally just communities as the right to security, subsistence, liberty, equality and recognition (Orend 2006, 163). In his last article, he argues that these five rights are the major objects of human rights claims. From these objects, concrete rights can be derived such as those in the Universal Declaration of Human Rights (Orend 2012, 187-188). To me, this does not make clear what Orend demands for the minimally just regime. That it respects at least these five rights or objects of human rights claims or that it respects the full range of particular human rights.

15. Orend refers also to Immanuel Kant’s short reflection on *jus post bellum* and regime change in *The Metaphysics of Morals* to show that states failing minimal justice forfeit rights of existence.

16. Evans gives several reasons why he thinks that minimalism offers too little in the current political reality: (i) in occupation situations minimalist *jus post bellum* does not provide guidance on matters that are relevant; (ii) if *jus post bellum* is to provide a moral foundation for – and work with – international law, it must acknowledge the legal obligations established under the ‘responsibility to protect’; and (iii) the fact that war is a great evil, in terms of its inherent destruction, deaths and suffering, constitutes a moral argument for *post bellum* obligations, next to the familiar ‘pottery barn’ argument (2009, 150-155).

17. Although I doubt that Walzer or Orend would disagree here, but this will become clear in the following section.

18. Generally however, they are not found in minimalists positions. At least, they are not explicit part of Walzer’s and Bass’ accounts of *jus post bellum*. It might be argued however, that in some cases, such measures are part of what Walzer calls ‘provision’ in the defeated state.

19. They identify six areas important for a practical *post bellum* reconciliation: (i) the immediate post conflict period, in which the cease-fire is obviously a prerogative, and where symbolic gestures expressing respect and restraint in post war celebrations are on its place; (ii) acknowledgement, aimed at recovering the truth, completing public record on the past, and constructing a new narrative (subjects that in ‘transitional justice’ fall under the heading of historical justice); (iii) apologies, made individually or collectively, ideally complements that acknowledgement of past
wrongdoings; (iv) punishment of crimes committed by both the aggressor and the victor is another key area of post war justice; (v) forgiveness is stated to be at “the heart of the reconciliation process”; and (vi) the last key issue for post war justice is amnesty, which forms the last step in the reconciliation process (Allman and Winright 2010, 106-116).

For Bellamy, minimalism, with Brian Orend and Michel Walzer as its most important spokespersons, is the most common position (2008, 602). Frowe argues that maximalism is “[…] the dominant view of the role of victors” and she discusses Orend’s account of jus post bellum as example (2011, 209).

While they argue, in accordance with Orend, that the just cause works as a restraint after war, Allman & Winright criticize Orend for conflating the just cause and the right intention criteria. For them, the right intention criterion is important for jus post bellum in its own right, as it broadens and nuances the just cause principle (2010, 41-42; 86; 88-89).

Brian Orend similarly argues that “[…] the principle of rights vindication forbids the continuation of the war after the relevant rights have, in fact, been vindicated”. He stresses as the essence of justice after war, that there are firm limits and constraints upon its aims and conduct (2007, 579).

What aspects of those cases referred to by Evans exactly are relevant to determine the content and scope of jus post bellum are not made clear. He only refers specifically to the situation of occupation, in which minimalist jus post bellum is not sufficient.

Although, as we have discussed earlier, for all proponents of jus post bellum this involves more than a restoration of the status quo ante bellum.

Assumed that the state is cannot already be qualified as minimally just, which shows that it depends on the situation as well. See Orend (2012, 187).

In other words, territorial sovereignty has a positive aspect, meaning that states are exclusively competent regarding their own territory, and a negative aspect, meaning that they are obligated to respect other states’ rights (Shaw 2008, 490).

An interesting comparison could be made with Aquinas’ disobedience to an unjust ruler and his allowance of regicide. See his Commentary on the Sentences, 2, Distinction 44, question 2, article 2, ‘Whether Christians are bound to obey secular powers, especially tyrants’. Available online: http://dhspriory.org/thomas/Sent2d44q2a2.htm.


Variants of the cosmopolitan view are defended by e.g. Held (1995); Caney (2005); Kaldor (2006).

The war in Afghanistan, for example, was originally waged as a self-defensive action, launched by the US and the UK against Afghanistan for its connections with the terrorist network Al Qaeda in response to the 9/11 terrorist attacks. But aside from the reason of self-defence, humanitarian considerations were also claimed to be important: the people of Afghanistan had to be ‘freed’ from their repressive regime. To that end, the regime had to be removed. See further, for example, Theodor Meron (2006).

Matthew Shadle wrote an interesting book on the origins of war, in which he compares Catholic thought on war and the establishment of peace with international relations theory. He
argues that while Catholic ideas on war and peace in essence converged with liberal theory, constructivism in fact better harmonises with the theological perspective (2011).

32. Bass follows this line of reasoning. He now also endorses the concept of conditional sovereignty, and argues that extremely unjust states lose their ‘normal’ rights as a state and cannot claim full sovereignty. And if sovereignty is temporarily forfeited, *jus post bellum* will need to become richer.

33. Walzer refers to Avishai Margalit, who argues that a ‘decent’ peace is all that can be demanded as responsibility for the victor after war. Walzer asks the questions whether victors should aim at “just any peace”? He argues that the connection between peace and justice is strong but minimalist, meaning that “[…] peace itself is a value at which we can justly aim and sometimes live with, even if it is unjust” (Walzer 2012, 37)

34. For example, Evans (2009, 149) on May (2012).

35. Evans makes this argument in support of his ‘extended’ version of *jus post bellum* (2008, 151).

36. For example, by leaving more room for the political interests of the victorious state to determine post war conduct, and allowing the victor to profit economically from the benefits of war.

37. I would like to thank an anonymous reviewer for suggesting this.

38. I would like to thank Thomas Mertens, Ronald Tinnevelt, and three anonymous reviewers for their comments on an earlier version of this article.