

‘Virtuous war’ and the emergence of *jus post bellum*

BENJAMIN R. BANTA

Abstract. Scholars from various subfields have recognised a dangerous novelty for ethical thought on war in the combination of a detached, or virtual, technical ability to wage war and the ethical imperatives of human rights norms – deemed ‘virtuous war’. This article begins by discussing the contention that the just war tradition acts as the enabling discourse for virtuous war, and the further contention that the wars being enabled are paradoxically unjust. After assessing the validity of the virtuous war claim it is argued that the just war tradition’s core ethical commitment not only remains the most sound starting point for thinking about the morality of war, but is a commitment that those in the virtuous war literature suggesting alternate ethical doctrines on war implicitly reject. It is contended, though, that the addition of a third pillar to the just war structure of cause and means criteria – a justice after war or *jus post bellum* – has arisen due to the virtuous war reality, and is necessary in order for the just war tradition to remain committed to its core ethical principle in a 21st century marked by virtuous war. Lastly, I present a brief sketch of *jus post bellum* informed by the article’s key claims.

Benjamin R. Banta is a PhD candidate in International Relations at the University of Delaware. His dissertation is on the liberal or ‘globalising’ wars of the post-Cold War era, specifically their effects on the social structures that constitute international relations.

‘When philosophers write about public affairs, I believe that they must attend to the political and moral realities of the world whose affairs these are.’¹

This article seeks to secure the foundations of the burgeoning *jus post bellum* literature² by taking into account the implications of a literature that is, though opaquely, intimately connected to some of the recent criticisms of the use of just war reasoning. This literature, not explicitly invoked by scholars but implicit in almost any work referencing postmodern or liberal warfare, is constructed in this article around what James Der Derian calls ‘virtuous war’.³ *Virtuous war* is a term

¹ Michael Walzer, *Thinking Politically* (New Haven and London: Yale University Press, 2007), p. 309.

² The most important theorist is probably Brian Orend, ‘*Jus Post Bellum*’, *Journal of Social Philosophy*, 31:1 (2000), pp. 117–37, and *The Morality of War* (Peterborough, ON: Broadview Press, 2006) are two of the most prominent representations of his work. A litany of authors, too many to list here, have attempted their own versions. Some of the better examples not cited later in the article include: Gary Bass, ‘*Jus Post Bellum*’, *Philosophy and Public Affairs*, 32:4 (2004), pp. 384–410, and Richard P. DiMeglio, ‘The Evolution of the Just War Tradition: Defining *Jus Post Bellum*’, *Military Law Review*, 186 (2005), pp. 116–63.

³ James Der Derian, ‘Virtuous War/Virtual Theory’, *International Affairs (Royal Institute of International Affairs 1944–)* 76:4 (2000), pp. 771–88; *Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network* (Boulder, Colorado: Westview Press, 2001).

used by Der Derian to describe the technical military capabilities that form the basis of Michael Ignatieff's 'virtual war',⁴ with an emphasis on the way those capabilities are, through the help of electronic media, 'deployed with a new ethical imperative for global democratic reform [...] and humanitarian intervention.'⁵ Fields as diverse as military theory,⁶ constructivism,⁷ liberalism,⁸ and realism⁹ have observed changes in the nature of modern warfare that can be encompassed by Der Derian's phrase. And though scholars who might fall into this imagined virtuous war literature are not always critical of the changes observed – constructivists

⁴ Michael Ignatieff, *Virtual War* (New York: Metropolitan Books, 2000), p. 5. Ignatieff writes of the Kosovo intervention, his case study of a virtual war, as being a war in which 'technological mastery removed death from our experience of war.'

⁵ James Der Derian, 'Virtuous War/Virtual Theory', *International Affairs (Royal Institute of International Affairs 1944-)* 76:4 (2000), p. 772.

⁶ See, for instance, Robert A. Pape, 'The Limits of Precision-Guided Air Power', *Security Studies*, 7:2 (1997), pp. 93–114; John Arquilla and David F. Ronfeldt, *In Athena's Camp: Preparing for Conflict in the Information Age*, (Washington, D.C.: RAND, 1997); David J. Lonsdale, *The Nature of War in the Information Age: Clausewitzian Future* (New York: Frank Cass, 2004); Jan G. Kristensen, 'Effects-Based Operations: Air Power as the Sole Military Instrument of Power, Has it Matured Enough?', *Storming Media* (April 2006). These studies, along with many others, are concerned with the virtual war aspect of the term virtuous war. And though they do not usually mention morality, they do investigate the novelties that the RMA has brought to warfare in the last fifteen or so years. Some, such as the edited volume by Arquilla and Ronfeldt, portray the nature of war as changing drastically. Others, such as Lonsdale's book, believe that warfare will remain as bloody and 'Clausewitzian' as ever, despite new technologies. Either way, the purpose of this article is to investigate the implications of technology and morality when combined for the effectiveness of just war theory in constraining warfare. In their investigation of half the virtuous war equation, these strategic theorists can be seen contributing to the brevity of the virtuous war claim.

⁷ See, for instance, Thomas Risse-Kappen, 'Democratic Peace – Warlike Democracies?', *European Journal of International Relations*, 1:4 (1995), pp. 491–517; Tarak Barkawi and Mark Laffey, 'The Imperial Peace: Democracy, Force and Globalization', *European Journal of International Relations*, 5:4 (1999), pp. 403–34; Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca, NY: Cornell University Press, 2004); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000); Christian Reus-Smit, 'Human Rights and the Social Construction of Sovereignty', *Review of International Studies*, 27:4 (2001), pp. 519–38. These works are a small but important sample of the constructivist literature that not only deals with human rights norms, but concentrates on how those norms enable the actions of states. In this way, this literature supports the second half of the virtuous war claim – that human rights norms are prompting, or at least allowing, states to act where they otherwise might not.

⁸ Almost all of the just war theorists cited in this article work from somewhere in the liberal tradition, and many recognise the two aspects of virtuous war defined here as the most pressing concern for just war theory. Probably the most pointed work to express this concern is Nicholas Rengger, 'On the Just War Tradition in the Twenty-First Century', *International Affairs*, 78:2 (2002), pp. 353–63. He writes that 'the just war tradition at the opening of the twenty-first century shows some signs of having reached the limit of its elasticity [...]' (p. 361). In tacit agreement with the work being presented here, Rengger advises us not to give up on the tradition, though, but to recognise it as a way of thinking 'that is central to the lives of free and reasonable persons', (p. 363). Also, there is of course Ignatieff's *Virtual War*, a landmark work that begins to grapple with the implications of modern war-making technology for liberal states.

⁹ For the most recent look at the strain of realist agreement with virtuous war claims see, Michael C. Desch, 'America's Liberal Illiberalism: The Ideological Origins of Overreaction in US Foreign Policy', *International Security*, 32:3 (2008), pp. 7–43; Christopher Layne, *The Peace of Illusions: American Grand Strategy from 1940 to the Present* (Ithaca, NY: Cornell University Press, 2006). Though avowedly unconcerned with the moral dimensions under consideration here, realists have always warned that moral considerations inevitably lead to aggression and over-extension in a state's foreign policy. In this way, they can be seen to implicitly support Der Derian's claim that human rights norms are contributing to a Western trigger-happiness. Both the authors cited here blame liberalism, replete as it is with notions of moral superiority and human rights, for at least the last decade and a half of imprudent war-making on the part of the US.

especially have been criticised for their overemphasis on the rise of liberal norms¹⁰ – those that are usually target some aspect of liberalism for their critique. Indeed, the just war tradition¹¹ has become a central target. It is recognised as the primary ethical discourse on war,¹² and as such is charged with enabling in key ways the major wars of the post-Cold War era – recognised here as virtuous wars. This article seeks to address the moral implications of virtuous war for the just war tradition.

Though the virtuous war literature can be conceived broadly as containing scholars of numerous intellectual stripes, it is those working within a critical or postmodern vein that have touched most precisely upon its implications for ethical theory and practice. This should be of little surprise, as critical or postmodern scholarship, from constructivism to post-structuralism, has been most productive at pointing out a broad spectrum of intricacies in the international environment that the traditional dichotomy of realist and liberal IR have neglected. Also of little surprise is the fact that those critical scholars working in what can be called a virtuous war paradigm¹³ have pinpointed the just war tradition as a central issue, being as they are sensitive to how the deployment of discourses can have profound effects on practice. As a way of determining the import of the virtuous war claim for just war theory some specific attacks against its use are addressed. Thus just as Walzer defended the tradition against the realism of the Cold War era – and in the process brought the tradition renewed salience – it is proposed that addressing the virtuous war paradigm is both a normative and scholarly necessity.

It may be that this need has already been partially addressed. It is not coincidental that in the past decade a number of just war thinkers have lobbied for the addition of an explicit set of just peace criteria, or a *jus post bellum*, to be added to the standard just war theory of just cause (*jus ad bellum*) and just means (*jus in bello*). The reason given for this addition is usually a logic of completeness; there are three phases to war and thus should be three phases of just war theory. The fact that there has never been a significant push toward an explicit set of just peace criteria in the fifteen centuries of just war thought speaks to the possible connection between virtuous war as a new empirical reality and a sudden move to alter just war theory.¹⁴ This sociological view¹⁵ of the just war tradition is

¹⁰ See Samuel Barkin, 'Realist Constructivism' *International Studies Review*, 5:3 (2003), pp. 325–42.

¹¹ See Michael Walzer, 'The Triumph of Just War Theory (And the Dangers of Success)', *Social Research*, 69:4 (2002), pp. 925–46. He gives a concise overview of the history of the tradition as it originated in Augustine and Aquinas' thought on Christianity and war in European antiquity, its later codification into international law by Grotius and others, and his own efforts to bring the tradition up-to-date after the Vietnam War. Thus, when the tradition is spoken of here I am referring to this common understanding of an ever-evolving commitment in the Western world to constraining war through moral arguments. When I speak of theory I am referring to the precise content of the ethical doctrine emanating from the tradition at particular historical moments.

¹² See Walzer, 'The Triumph of Just War...'

¹³ As stated earlier, the virtuous war literature is an imagined one for the purposes of this article; no scholars explicitly call themselves virtuous war thinkers. Likewise, the virtuous war paradigm spoken of here simply denotes a way of thinking about war developed in this article by combining the insights of many disparate scholars around Der Derian's phrase, a phrase that I feel can encompass the work of all those mentioned.

¹⁴ Alex J. Bellamy writes on the philosophical roots of what he deems the two major positions of *jus post bellum* advocates – minimalist and maximalist positions delineated generally by their call for restraints or responsibilities after war, respectively. But he elides the sociological view espoused here; that just war advances are intrinsically connected to the exigencies of the practice of war. In doing

supported by the fact that the tradition has changed over time as war practices have changed, with Michael Walzer's restatement in the face of America's intervention in Vietnam presenting the most recent major example.¹⁶ But, *jus post bellum* has not approached any kind of scholarly agreement on necessity or content. Through an in-depth reckoning with virtuous war, this article seeks to clarify significantly the necessity of adding a *jus post bellum* to mainstream just war theorising and the vital content of such an addition.

As a way to establish at the outset the debate surrounding just war I begin by discussing the contention that the just war tradition acts as *the* enabling ethical discourse for war, and the further contention that the wars being enabled are sometimes paradoxically unjust. Then, fleshed out is the normative and conceptual terrain of virtuous war, partly through a look at the 2003 US led coalition war in Iraq, and in the process surveying the just war literature on this war. After assessing the validity of the virtuous war claim I argue that the just war tradition's core ethical commitment – that *in an imperfect world war is sometimes necessary to secure and foster basic human rights and the just peace that only their observance can bring* – not only remains the soundest starting point for thinking morally about war, but is a commitment that those critical/postmodern scholars suggesting alternate ethical doctrines on war implicitly reject. I contend, though, that the addition of a third pillar to the just war structure of cause and means criteria – a just peace or *jus post bellum* – is necessary in order for the just war tradition to remain committed to its core ethical principle in a 21st century marked by the novelties of virtuous war. Lastly, I present a brief sketch of *jus post bellum* informed by the article's key claims.

Just war: an enabling discourse

The moral shock of the 2003 Iraq invasion and the defence of it by some in just war terminology left many just war theorists scrambling, and many scholars decrying just war itself as a hopelessly contaminated normative framework. Anthony Burke, for example, believes that just war theorists in the 21st century represent an 'ontological challenge to peace as a concept'.¹⁷ This claim is due largely to the humanitarian rhetoric that just war theorists use while justifying recourse to violence. As Vivienne Jabri writes,

so he is also able to elide this aspect when judging whether a *jus post bellum* is needed, instead finding fault with the philosophical coherence of current *jus post bellum* manifestations and stopping there. Needless to say, this article takes a radically different approach to the study of just war doctrine. 'The Responsibilities of Victory: *Jus Post Bellum* and the Just War', *Review of International Studies*, 34:4 (2008), pp. 601–25.

¹⁵ This intuition is indebted to the work of Peter L. Berger and Thomas Luckmann, who write that theories change or are superseded because in the 'dialectic of psychological reality [read: moral reality] and social structure [radical changes in the social structure [. . .] may result in concomitant changes in psychological reality [in which] new psychological theories may arise because the old ones no longer adequately explain the empirical phenomena at hand.' *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Garden City, NY: Doubleday, 1966), p. 179.

¹⁶ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, Basic Books, 2006 [1977] 4th edition).

¹⁷ Anthony Burke, 'Against the New Internationalism', *Ethics and International Affairs*, 19:2 (2005), p. 84.

the agents of war, if defined in humanitarian terms [...] are at one and the same time also the agents of peace engaged in the wholesale pacification, or indeed 'domestication', of the global arena [...] Humanitarian wars [lie] at the threshold of law, in a zone of indistinction that, in blurring the boundary between inside and outside, locates those involved, the agents of war and those targeted, somehow beyond the law, generating impunity for the former and subjection beyond the law for the latter.¹⁸

Furthermore, no liberal state has waged a war in the post-Cold War period that did not carry with it humanitarian notions, even if said war was primarily about self-defence or prevention.

For war practitioners in this environment, Martin Shaw writes that 'just war thinking has often become merely another tool for furthering their concrete requirements.'¹⁹ This conclusion is reached primarily through discourse analysis of the justifications for war, with the assumption that these 'do not merely *reflect* or *mirror* [...] events [...] pre-existing in the social and natural world [but] actively *construct* a version of those things.'²⁰ But the claim that modern just war theory is enabling to the practice of war is not controversial for the proponent of the doctrine; the tradition's very purpose could be described as a discursive means of constructing only just wars, a claim synonymous with how just war thinkers would describe the tradition as limiting the practices of war. Where the discursive view of just war becomes a critique is when the tradition is claimed to have 'constituted rules which enable war as a form of conduct and which have, like its regulative rules, *institutionalized war as a social continuity*.'²¹ Thus, unnecessary wars such as Iraq, which most just war scholars denounced as unjust, are paradoxically seen as enabled – as constructed – by the very theory charged with limiting them. Statesmen may be derided by scholars trained to maintain the 'critical edge'²² of the doctrine, but they nevertheless use the very same language of those scholars to make their claims. In the end, statesmen are able to employ the language of justice even though it is devoid of sustainable credibility. Burke has been most pointed in this criticism:

Moral discourses have been used to brush aside concerns about the disproportionately high level of civilian casualties incurred during US and Northern Alliance operations against the Taliban and *Al-Qaeda*, as they were similarly used to play down the casualties of the war against Iraq. Moral arguments – including, incredibly, 'just war' arguments – have even been used to support *waging* war against Iraq. In their wake, we face the sobering realization that moral discourses are part of the warrior's political armoury; they are part of war's machinery, not a rod in its wheels.²³

This is not to suggest that the just war tradition is some rhetorical atom bomb allowing officials to do as they wish. Instead, it seems the tradition has simply not kept pace with the virtuous war paradigm in which we find ourselves. The basic

¹⁸ Vivienne Jabri, *War and the Transformation of Global Politics* (New York: Palgrave Macmillan, 2007), pp. 187–88.

¹⁹ Martin Shaw, *War & Genocide: Organized Killing in Modern Society* (Cambridge: Polity Press, 2003), p. 103.

²⁰ J. Potter and M. Whetherell, *Discourse Analytic Research: Repertoires and Readings of Texts in Action* (London: Routledge, 1993), p. 49.

²¹ Vivienne Jabri, *Discourses on Violence: Conflict Analysis Reconsidered* (New York: Manchester University Press, 1996), p. 107, emphasis added.

²² Michael Walzer, *Arguing About War* (Harrisonburg, VA: Yale University Press, 2004), p. 3.

²³ Anthony Burke, 'Just War or Ethical Peace? Moral Discourses of Strategic Violence after 9/11', *International Affairs*, 80:2 (2004), p. 330.

precepts of just war are still as conceptually sound as ever, but have simply been morphed or muted in their application to novel conditions. Therefore, before detailing how just war is employed to help construct our case the normative and conceptual terrain of virtuous war conditions are detailed and implicated as the independent variable responsible for the ability to use just war language in the ways that Burke finds so objectionable.

Virtuous war: ethics and technology

Tellingly, Walzer has not been averse to changing his original views on humanitarian intervention – formerly known as a ‘lawyer’s doctrine, a way of justifying a very limited set of exceptions to the principles of national sovereignty and territorial integrity’ – to fit a world where ‘the exceptions become less and less exceptional.’²⁴ His intuition is that the conditions for humanitarian interventions have not so much increased over previous periods, but that these conditions ‘are more shocking, because we are more intimately engaged by them and with them [as] [c]ases multiply in the world and in the media.’²⁵ Walzer is recognising two conditions of the post-Holocaust, and especially the post-Cold War era: the ascendancy of human rights norms and the advent of radically advanced technologies. As for the former, in the decade before 9/11 the abundance of prominent humanitarian interventions relative to classic wars of aggression or self-defence entwined the concepts of war and humanitarianism to such an extent that even a post-millennium war of self-defence in Afghanistan was justified partly as a rescue for the Afghan people.²⁶

Numerous scholars²⁷ have observed a new norm of humanitarian intervention.²⁸ This norm is also exemplary of the starkest dilemmas within the current society of states. As Catherine Lu puts it, “humanitarian intervention” illuminates the profoundly tragic contours of political, social and moral agency in a non-ideal world of domestic, international and global, social and political, agents and structures that are morally limited, defective and fallible.²⁹ Illustrative of this is the very organisation charged with fostering our non-ideal order. The UN has established both limits on the internal conduct of states with such documents as the 1948 Universal Declaration of Human Rights, and at the same time the illegality of the use of force by states unless in cases of self-defence.³⁰ Likewise,

²⁴ Walzer, *Thinking Politically*, p. 237.

²⁵ *Ibid.*, p. 238.

²⁶ George R. Lucas Jr., ‘From *Jus Ad Bellum* to *Jus Ad Pacem*: Re-thinking Just-War Criteria for the Use of Military Force for Humanitarian Ends’, in Deen K Chatterjee and Don E. Scheid (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003), p. 72.

²⁷ See especially constructivist accounts of the rise of the humanitarian intervention norm by Finnemore, *The Purpose of Intervention*, and Wheeler, *Saving Strangers*.

²⁸ Stephen Garrett defines humanitarian intervention as ‘the injection of military power – or the threat of such action – by one or more outside states into the affairs of another state that has as its purpose (or at least one of its principal purposes) the relieving of grave human suffering.’ *Doing good and doing well: An examination of humanitarian intervention* (Westport, Connecticut: Praeger, 1999), p. 3.

²⁹ Catherine Lu, *Just and Unjust Interventions in World Politics* (New York: Palgrave Macmillan, 2006), pp. 164–5.

³⁰ Wheeler, *Saving Strangers*, p. 1.

it also reflects the middle ground reality that leads to interventions in the real world: provisions of Chapter VII of the Charter state that the Security Council may authorise force to protect 'international peace and security'. Lu concludes that, '[i]f we are living in a "cosmopolitan moment" [...] it is decidedly half-baked.'³¹

But as Thomas Risse documents, human rights norms *are* 'imbedded in a whole variety of international regimes and organizations and [...] increasingly define what constitutes a "civilized state"'.³² A consequence of this imbedding has been the perception that intervention on behalf of what are deemed universal human rights is at the very least a right and many times even a duty for responsible members of the society of states.³³ Because, though, of the non-ideal world highlighted by Lu, this right or duty is almost never the sole or even primary reason for intervention. Instead, humanitarian concerns are tagged onto more traditional justifications – self-defence, pre-emption or prevention – as a sometimes vital scale tipper for otherwise questionable motives. This is even more problematic once we consider the media complexes highlighted by Der Derian and others. Media can not only bring to the fore far-off atrocities – placing pressure, because of the embedded human rights norms, on public officials to take action – but is a conduit for public officials to trumpet the supposed atrocities which give them recourse to war.

Furthermore, because of the revolution in military affairs³⁴ (RMA), liberal states seem inevitably tempted to combine even the most well-intentioned intervention with an expectation of virtually no casualties for themselves. Such is the subject of Ignatieff's study of the Kosovo intervention, which illuminates a state of material conditions that pose serious problems for moral thought on war. Where once the 'marriage between democracy and nationalism' resulted in the total mobilisation of a state's populace in both World Wars,³⁵ the Cold War presented the opportunity – with the nuclear stalemate between duelling great powers – for the production of a plethora of technically advanced non-nuclear weapons such that '[i]nstead of closing with an opponent, the object is to destroy him at long range'³⁶

After the Cold War, privatisation trends combined with the supposedly more peaceful world to push the US and other Western militaries toward shrinking military personnel.³⁷ This unfortunately coincided with 'a rash of smaller-scale conflicts' which increased, in a new world order of US liberal hegemony, the demands for intervention.³⁸ The logical solution was increased application of technological achievements; extensive use of long range and less troop intensive

³¹ Lu, *Just and Unjust Interventions in World Politics*, p. 154.

³² Thomas Risse, "International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Arena". *Politics and Society* 27, No. 4 (1999) pp. 529–530.

³³ See Wheeler 2000 for a full explanation of the English School concept of a society of states as it relates to intervention.

³⁴ Ignatieff (2000) gives a lucid account of this process, in which the rise of 'smart' and long range weaponry has given highly industrialised nations such as the US a massive military advantage over less technically advanced states.

³⁵ Ignatieff, *Virtual War*, p. 184.

³⁶ *Ibid.*, p. 169.

³⁷ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (New York: Cambridge University Press, 2005), p. 35.

³⁸ *Ibid.*, p. 36.

weapons such as precision guided missiles launched from hundreds of miles away. For the normative theorist, the RMA alters the calculations of making the case for war. If one is able to destroy ones enemy without setting foot on their soil, as was done in Kosovo, it is also much easier to sell war to ones public. For instance, in a psychological experiment, William A. Boettcher III concludes that,

[p]olitical leaders in democratic societies may need to appropriately ‘frame’ the potential costs, benefits, and probability of success of humanitarian interventions to generate the public support necessary to sustain these efforts [. . .] [A]n overwhelming majority [of the American public] (more than 80 per cent) will oppose intervention when the ratio of American lives lost to foreign citizens saved is more than 1 to 10.³⁹

In a cheap, virtual war, not only are their less casualties for the intervener, but there is relatively little participatory requirement for a large portion of ones populace.

There are many definitional accounts of this new character of warfare.⁴⁰ Shaw defines modern liberal war as ‘risk-transfer war’, and contends that the West has fundamentally shifted its ‘way of war’ because of the above conditions to one in which considerations of political risk and ‘life-risks (to combatants and civilians)’ have become the primary determinants of making ‘each war a successful project.’⁴¹ General Sir Rupert Smith provides valuable insight from a military utilitarian perspective. He warns that we are still preparing materially in a way left over from the Cold War, where two great powers capable of industrial warfare still existed in opposition. Without this opposition the West, and the US especially, still has a military designed for a time in which,

the political objective was attained by achieving a strategic military objective of such significance that the opponent conformed to our will – the intention being to decide the matter by military force [After the Cold War] we do not intervene in order to take or hold territory [but] to establish a condition in which the political objective can be achieved by other means [. . .] to create a conceptual space for diplomacy, economic incentives, [etc].⁴²

Thus Ignatieff, Der Derian and others seem to have uncovered a dangerous novelty: wars of rescue ethically justified and virtually conducted. At the furthest end of disquiet are the exaggerations of Jean Baudrillard that the Gulf War, the first ‘virtual war’, was but an illusion – that it did not *really* happen for the West.⁴³ But war has often been ambiguously justified by one side or another, ambiguously ended because of this, and has often been the pitting of the vastly technically superior against the ill-equipped.⁴⁴ An important insight does lay, though, with Der Derian’s additive phrase – virtuous war. The technological advances present

³⁹ William A. Boettcher III, ‘Military Intervention Decisions regarding Humanitarian Crises: Framing Induced Risk Behavior’, *The Journal of Conflict Resolution*, 48:3 (2004), p. 345.

⁴⁰ For instance: Chris Hables Gray calls it ‘postmodern war’: *Postmodern War: The New Politics of Conflict* (New York: Guilford Press, 2007). Zygmunt Bauman calls it ‘globalizing war’: ‘Wars of the Globalization Era’, *European Journal of Social Theory*, 4:1 (2001), pp. 11–28. And Mary Kaldor calls it ‘spectacle war’: ‘Elaborating the “New War” Thesis’, in Isabell Duyvesteyn and Jan Angstrom (eds), *Rethinking the Nature of War* (New York: Frank Cass, 2005).

⁴¹ Martin Shaw, *The New Western Way of War: Risk-Transfer War and its Crisis in Iraq* (Cambridge: Polity Press, 2005), p. 71.

⁴² General Sir Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (London: Penguin Books, 2005), p. 270.

⁴³ Jean Baudrillard, *The Gulf War Did Not Take Place* (Bloomington, IN: Indiana University Press, 1991).

⁴⁴ Aaron Schwabach, ‘Virtual War and International Law’, *Law and Literature*, 15:1 (2003), pp. 15–6.

various complicated moral hurdles for sure, but it is such technology coupled with acknowledgement of possible just or even *legal* reasons for fighting a war to stop human rights abuses that leads us into drastically new moral territory. As Der Derian writes, industrialised liberal states now have the 'capability and ethical imperative to threaten and, if necessary, actualize violence from a distance – *with no or minimal casualties*.'⁴⁵

The 2003 Iraq War as virtuous

The moral dilemmas that virtuous war presents can manifest in a number of ways. There is of course the possibility of a true humanitarian intervention, though the argument over whether one has ever occurred or can ever occur seems to me a less fruitful endeavour than acknowledging the reality of mixed motives. What needs to be examined is not whether a war is entirely humanitarian or not, but how a human rights discourse influences the practice of war in all of its manifestations, along with the technological capabilities that are sometimes incongruent to this humanitarian concern. It is not merely a question of how honest leaders are about their humanitarian motives, but how their rhetoric, whether honest or dishonest, influences the conduct of war and how their rhetoric may be altered by technological hubris.

The 2003 Iraq War exemplifies how virtuous war conditions manifest in new moral dilemmas precisely because it was not primarily a humanitarian intervention. For, even as a supposed case of 'pre-emption' to aggression, the US felt compelled to bolster the case for war by tapping into the moral discourse of liberal humanitarianism. Likewise, support for the war after the official conclusion of major combat operations depended largely on the perceived need for a more humane and stable state than previously existed. And, the Iraq War illustrates how technological hubris resulted in the abuse of humanitarian justifications – of a detrimental incongruence.

The two over-arching justifications for the war were pre-emption and humanitarian intervention.⁴⁶ The US, with Britain as a junior partner,⁴⁷ attempted to frame the war as one of pre-emption – traditionally entailing notions of self-defence in the prospect of imminent attack such that the 'preemptor has no choice other than to strike back rapidly'⁴⁸ – in hopes of staying within the accepted

⁴⁵ Der Derian, 'Virtuous War/Virtual Theory', p. 772.

⁴⁶ The contention that force was legally justified because Iraq had not held firm to the letter of UN resolutions with regards to weapons inspections is unconvincing. Alex J. Bellamy writes that '[m]ost international lawyers and states discounted the claim that the war was legal because it had been authorized by the Security Council.' None of the UN resolutions cited by the US or Britain implied that force could be used; 'the Council has never authorized the use of force to implement Resolution 687 [calling for Iraqi disarmament] [and most tellingly, in] September and November 2002, the USA and UK proposed a resolution that endorsed the use of force if Iraq continued to be in material breach of its obligations, but failed to persuade most other Council members to support it.' Bellamy, 'Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq', *Journal of Peace Research*, 41:2 (2004), pp. 134–35.

⁴⁷ John Keegan, *The Iraq War* (New York: Vantage Books, 2005), p. 1.

⁴⁸ Colin S. Gray, 'The Implications of Preemptive and Preventive War Doctrines: A Reconsideration', *Strategic Studies Institute* (Carlisle, PA), {<http://www.StrategicStudiesInstitute.army.mil>}, p. v.

ethical bounds of the Western war tradition. However, it is clear empirically that this justification came closer to the definition of a preventive war – a war based on ‘a guess that war, or at least a major negative power shift, is probable in the future.’⁴⁹ With controversy surrounding this justification – preventive war being outside international law and just war theory⁵⁰ – as soon as it was articulated in the National Security Strategy of 2002, and especially after its footing in assurances that Iraq held large caches of WMD faltered both before and especially after the war, the Bush administration turned to the contextual trump cards enumerated previously: technological military superiority and the liberal sensibilities of the West in conducting war for humanitarian reasons.⁵¹

The just war scholar Jean Bethke Elshtain mirrored the Bush administration’s justifications in her own just war analysis of the march to war in Iraq. She made ‘the case for preventive force’ in Iraq by citing two now discredited staples of pre-war intelligence assertions – Saddam Hussein’s material support of Osama Bin Laden’s *Al-Qaeda* operations and the WMDs that were to fall into the hands of terrorists.⁵² And though she mentions numerous times Saddam’s previous acts of aggression both abroad and domestic, these cannot fall within her argument (though I fear she believes they do) because a just war demands that acts requiring retribution be ongoing.⁵³ Likewise, James Turner Johnson, another prominent just war scholar who, like Elshtain, is influenced greatly by the tradition’s Christian roots, defended the justification of regime change in Iraq as in line with a traditional just cause that ‘allows use of force to punish evil.’⁵⁴ The basis of the virtuous war critique of just war, remember, is that theories and statements are recognised as partly productive of reality. Troublesome, then, is that while finding that all justifications given by the Bush administration, including pre-emption

⁴⁹ Ibid., p. 13.

⁵⁰ See, for example, Neta C. Crawford, ‘The Slippery Slope to Preventive War’, *Ethics and International Affairs*, 17:1 (Spring 2003), p. 36, in which she reasons that the just war requirement of last resort prohibits preventive war, even in the face of rogue states, WMD and terrorism, because it always ‘assume[s] perfect knowledge of an adversary’s ill intentions’, something that is never possible.

⁵¹ A few examples: Colin Powell stated before the World Economic Forum in January, 2003 that ‘We are where we are today with Iraq because Saddam Hussein and his regime have repeatedly violated the trust of the UN, his people, and his neighbors, to such an extent as to pose a grave danger to international peace and security.’ ‘THREATS AND RESPONSES; Powell on Iraq: “We Reserve Our Sovereign Right to Take Military Action”’, *The New York Times* (27 January 2003), available at: {<http://query.nytimes.com/gst/fullpage.html?res=9D03E6DD1239F934A15752C0A9659C8B63&scp=2&sq=Iraq+humanitarian+technology&st=nyt>} accessed 19 February 2009; President Bush stated on 28 March 2003 that ‘the Iraqi regime will be ended and the long-suffering Iraqi people will be free.’ Thom Shanker and Elisabeth Bumiller, ‘A NATION AT WAR: HEADS OF GOVERNMENT; War to Keep Going Until Regime Ends, Bush and Blair Say’, *The New York Times*, available at: {<http://query.nytimes.com/gst/fullpage.html?res=9D05E2D81F30F93BA15750C0A9659C8B63&scp=9&sq=Iraq+humanitarian+technology&st=nyt>} accessed 19 February 2009; and for a view on how technology shaped war planning, see Matthew Brzezinski, ‘The Unmanned Army’, *The New York Times* (20 April 2003), available at: {<http://query.nytimes.com/gst/fullpage.html?res=9C03EFD103BF933A15757C0A9659C8B63&scp=1&sq=Iraq+Rumsfeld+technology&st=nyt>} accessed 19 February 2009.

⁵² Jean Bethke Elshtain, ‘A Just War?’, *Boston Globe* (10 June 2002), available at: {http://www.boston.com/news/packages/iraq/globe_stories/100602_justwar.htm} accessed 11 November 2008.

⁵³ See Bellamy, ‘Ethics and Intervention...’ pp. 131–47, for why crimes must be ongoing for them to be considered as evidence requiring a just response.

⁵⁴ James Turner Johnson, ‘Using Military Force against the Saddam Hussein Regime: The Moral Issues’, *Foreign Policy Research Institute* (4 December, 2002), available at: {<http://www.fpri.org/enotes/americanwar.20021204.johnson.militaryagainsthussainmoralissues.html>} accessed on 4 November 2008.

and enforcement of international law, can find agreement in just war theory, he claims that he is not 'addressing whether the US will or should go to war with Iraq.'⁵⁵

The vast majority of just war scholars disagreed with these assessments, which speaks to the intuition that it may not merely be hindsight that allows us to acknowledge mistaken analyses. While firmly couched in traditional just war language, Elshtain and Johnson's assessments do not maintain the proper orientation toward – as even Elshtain states as the core mission of just war – creating 'the safe surround that permits civic peace [...] to flourish.'⁵⁶ It is also instructive to note that military scholars trained to delineate between doctrinal concepts such as pre-emption and prevention came to the same conclusion as most just war scholars. Colin S. Gray writes that the 'Bush Doctrine of 2002 either deliberately or accidentally misused the concept of preemption.'⁵⁷ Thus, the administration seemed to intuit that in order to justify the Iraq War it needed to couch the justification in accepted just war language, however far from reality that characterisation may have been; and some just war scholars acquiesced in this misuse.

The virtuous war paradigm also influenced the preparation for and use of certain means during the war. Ideally, if 'the president felt it necessary to publicly defend the action in humanitarian terms, an implicit admission that this justification was a necessary enabling condition of the action',⁵⁸ this implies a large and lengthy troop presence.⁵⁹ Illustrative of the lack of realistic preparation for post war responsibilities were the efforts to refute the pre-war assessments of General Eric K. Shinseki. After the General matter-of-factly asserted to the US Congress that several hundred thousand troops would be needed to secure Iraq, then Deputy Secretary of Defense Paul D. Wolfowitz and others were quick to dismiss this assessment on the bizarre grounds that, unlike the Bosnian campaign from which General Shinseki had garnered his experience, Iraq did not have a history of ethnic strife.⁶⁰ Similarly illustrative, the famed 'Downing Street Memo' written by British officials in July of 2002 stated plainly that not only were 'intelligence and facts being fixed around' the pre-war policy of US officials, but that 'the US military plans are virtually silent' on a post-war occupation plan.⁶¹ Indeed, though some very detailed plans for reconstruction were in place, they reflected a conspicuous absence of the military man-power aspect of this process. In a tellingly unpublished 2005 report to the Army, RAND concluded that because,

⁵⁵ Ibid.

⁵⁶ Jean Bethke Elshtain, *Just War against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), p. 54.

⁵⁷ Gray, 'The Implications of Preemptive...' p. 7.

⁵⁸ Nicholas J. Wheeler, 'Humanitarian Intervention after September 11, 2001', in A. F. Lang Jr. (ed.), *Just Intervention* (Washington, D.C.: Georgetown University Press, 2003), p. 198.

⁵⁹ See Orend, *The Morality of War*, p. 205. He writes that based upon 'nation-building research' the immediate aftermath of the Iraq war called for around 500,000 troops, as well as expectations of a long stay.

⁶⁰ Eric Schmitt, 'Pentagon Contradicts General on Iraq Occupation Force's Size', *The New York Times* (28 February, 2003), {<http://www.globalpolicy.org/security/issues/iraq/attack/consequences/2003/0228pentagoncontra.htm>}.

⁶¹ W. Pincus, 'Memo: US Lacked Full Post-War Iraq Plan', *The Washington Post* (12 June 2005), {http://www.washingtonpost.com/wp-dyn/content/article/2005/06/11/AR2005061100723_pf.html}.

[b]uilding public support for any pre-emptive or preventative war is inherently challenging. . . [a]ny serious discussion of the costs and challenges of reconstruction might undermine efforts to build that support [. . .] There was never an attempt to develop a single national plan that integrated humanitarian assistance, reconstruction, governance, infrastructure development and postwar security.⁶²

In the end, a campaign marked by the use of heavy air-power and precision guided weapons gave way to an initial post-war period which saw a withdrawal of troops in order to prepare for the next possible conflict.⁶³

Still, President Bush felt the need to express a humanitarian commitment as early as a month before war, saying that 'America's interests in security, and America's belief in liberty, both lead in the same direction: to a free and peaceful Iraq.'⁶⁴ But if one sells a war partly on how easily it will be won through technical means and how few troops this victory requires, realistic discussions of a lengthy occupation and reconstruction implied by humanitarian commitments must be ignored. Space does not permit an in-depth discussion of the connection between the lack of preparedness and resources for a post-war Iraq, and the unjust means that this inevitably led to – from training in occupation conduct to the Abu Ghraib incidents. Connections abound, though. For instance, contributing early to the rising insurgency were the heavy-handed tactics of US soldiers unprepared and under-equipped to take on an urban guerrilla force, thus breeding anger toward the US occupation.⁶⁵ This rising insurgency and the serious lack of force numbers to combat it surely contributed to despicable incidents such as Abu Ghraib.

It must be stressed, though, that this is not some conspiracy hatched in smoky rooms by powerful men desiring to dupe the American public into wars which cannot be won. Rather, the material and discursive forces at play – seductive precision guided weapons technology, the experiences of Vietnam and the end of the Cold War bringing about personnel reductions, and the perception that international humanitarian crises should be stopped by force – lead to a perfect storm of sorts, where disastrous wars such as Iraq can be deemed necessary, and are justified by ease of victory and supposed humanitarian aid. As Shaw bluntly states, it is a 'crisis of the new Western way of war that has developed over the last quarter-century.'⁶⁶ The Bush administration's use of the military in Iraq is no anomaly, as even before 9/11 Mr. Rumsfeld was intent on further transforming the military into one in which wars could be fought virtually. 'Senior aides promised to push aside what they described as hidebound volumes of doctrine in order to

⁶² Quoted in M. R. Gordon, 'Army Buried Study Faulting Iraq Planning', *The New York Times* (11 February 2008), {http://www.nytimes.com/2008/02/11/washington/11army.html?_r=1&landsc=1&landsq=randandst=nytandoref=slogin}, p. 2.

⁶³ Eric Schmitt and Thom Shanker, 'THREATS AND RESPONSES: THE MILITARY; War Plan Calls for Precision Bombing Wave to Break Iraqi Army Early in Attack', *The New York Times* (2 February 2003), {<http://query.nytimes.com/gst/fullpage.html?res=9804E3DF1238F931A35751C0A9659C8B63&sec=&spn=&pagewanted=1>} accessed 20 February 2009; Thom Shanker and Eric Schmitt, 'AFTEREFFECTS: MILITARY STRATEGY; Latest Mission for Armed Forces: Analyze New Ways to Prepare for Conflicts', *The New York Times* (30 April 2003), {<http://query.nytimes.com/gst/fullpage.html?res=9D07E7DD1E3DF933A05757C0A9659C8B63&scp=1&sq=Rumsfeld+military+buildup&st=nyt>} accessed 20 February 2009.

⁶⁴ M. S. Ottoway, 'One Country, Two Plans', *Foreign Policy*, 137 (2003), p. 55.

⁶⁵ S. Negus, 'The Insurgency Intensifies', *Middle East Report*, no. 232 (2004), p. 23.

⁶⁶ Shaw, *The New Western Way of War*, p. 139.

create an armed force emphasizing combat by long-range, precision strikes and expanding the most maneuverable military assets, mostly ships, jets, drones, satellites and Special Operations troops'.⁶⁷

But the post-war experience of Iraq⁶⁸ illustrates the incongruence between the perceived necessity to act as a humanitarian intervener, or even its use as a justification, and the virtual war model that has captured US strategists. We are left with some troubling ethical questions regarding the applicability of traditional just war language in a time of virtuous war.

The critical response

As the above case study illustrates, the virtuous war paradigm seems an accurate and imperative description of current warfare because it emphasises the most consequential novelties. And as discussed, those from a critical or postmodern perspective working within this paradigm have been most forthright in pinpointing the just war tradition as a prime locus for critique. It seems plausible that this observance would lend weight to the construction of an ethic of just war by critical/postmodern scholars. As C. A. J. Coady points out, 'if you are not a pacifist about war, then there is a minimal sense in which you have to be a just war theorist, that is, you have to give reasons why going to war can be justified and under what circumstances.'⁶⁹ As stated in the introduction, the core ethical principle of the just war tradition has come to be acknowledgement that war is sometimes, as a last resort, necessary to uphold the integrity of a community and their subsequent human rights. Just war at its most unambiguous is thus self-defence – a resort to war to defend ones own human rights. Likewise, those just war scholars that advocate some resort to humanitarian intervention do so out of concern for the human rights of those victims of some aggression in other communities. Even a realist finds a minimal moral justification in deeming the state's interest a proper justification for war. If one is not a pacifist, they are inherently a just war adherent; it is the view of what constitutes justice that makes for differences. What, then, do those scholars who critique existing discourses on just war contend is the proper response to the virtuous war context in which we find ourselves?

Unfortunately, postmodern scholars are notoriously content with exposing the dangers of assumption, or the oppression of the Other, and leaving the reader to decide what must be done. Burke has come closest to actually enumerating a postmodern just war ethic designed to confront the very real crisis of virtuous war. Others, such as Jabri, Shaw, Der Derian and Rosemary Shinko have convincingly expressed the need for a new form or usage of a cosmopolitan or peace ethic for

⁶⁷ Bernard Weinraub and Thom Shanker, 'A NATION AT WAR: UNDER FIRE; Rumsfeld's Design for War Criticized on the Battlefield', *The New York Times* (1 April 2003), {<http://query.nytimes.com/gst/fullpage.html?res=990DE5DA1039F932A35757C0A9659C8B63>} accessed 8 November 2008.

⁶⁸ For a first-hand look at justice in post-war Iraq see Noah Feldman, *What We Owe Iraq: War and the Ethics of Nation-Building* (Princeton University Press, 2006). Also see my own contribution: Benjamin R. Banta, 'Just War Theory and the 2003 Iraq War Forced Displacement', *Journal of Refugee Studies*, 21:3 (2008), pp. 261–84.

⁶⁹ C. A. J. Coady, 'War for Humanity: A Critique', in Deen K Chatterjee and Don E. Scheid (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003), p. 278.

the practice of war. But extrapolating some ethical imperative that can be applied to real world events and specific hard cases is difficult. We too often are left with hyperbolic pronouncements such as Burke's on Iraq, decrying a post Iraq invasion world in which 'liberty is a hermaphrodite [. . .] warrior *and* peacemaker.'⁷⁰ Or, we are left glaring elisions. For instance, in applying an 'agonistic peace' perspective to the conflict in Darfur, Shinko concludes rightly that we must 'reveal the interlocking structural components, identify their role in the emergence of conflict and provide a greater in-depth understanding of what it might take for a politicised peace to emerge within the terms of an agonistic struggle for recognition and respect', but is unwilling to speculate on how or whether the unquestionable atrocities being committed are to be stopped in the meantime.⁷¹

Shinko is no doubt hesitant to discuss such questions because it would require troubling recognition of *who* is to do the acting. And, this brings one into the messy realm of attempting to reign in the lurking unsavoury motives of actors that have the power to act. What seems to be missing is a recognition hard learned and sometimes forgotten even in the just war tradition: the most a moral theorist can hope for when confronting the actions of states and not individuals is 'not to search for some illusory moral rule that will mandate intervention if such-and-such a set of conditions apply, but for those who have the power to act to develop the kind of moral sensitivity that will enable them to recognize what is the right thing to do [. . .] and the strength of character to act upon this recognition.'⁷² In the end, and as I will attempt to demonstrate below, the postmodern ethic in practice contains strains of pacifism and/or legalism at odds with the core ethical insight of just war theory. The critique may be pointed, but prescriptions fall into worn categories outside a just war ethic.

If the just war tradition is at the heart of justifying wars of 'domestication', the postmodernist demands that it be replaced by an ethic in which 'universality is always in question [; a] politics of peace understood in this sense must always be in-process and on-trial.'⁷³ Indeed, Burke finds it necessary that we develop not a theory of just *war*, but a theory of 'ethical *peace*.'⁷⁴ Der Derian goes even further, indicting the mixture of modern media and the technologies of the military-industrial complex in capturing the ethical lens with which we are able to see the world. He claims that before we can truly examine the implications of war and peace, we must conduct a 'retrieval of facts' in which we 'explore *how* reality is seen, framed, read, and *generated*.'⁷⁵ After chronicling the 'crisis' that is the 'new Western way of war', Shaw concludes that 'the challenge is to accept the full logic of the value that Western society places on human life, and to seek [. . .] a 'historical pacifism', which increasingly recognizes war as *in itself* a danger, to be avoided rather than chosen.'⁷⁶

⁷⁰ Burke, 'Against the New Internationalism', p. 73.

⁷¹ Rosemary E. Shinko, 'Agonistic Peace: A Postmodern Reading', *Millennium: Journal of International Studies*, 36:3 (2008), p. 490.

⁷² Chris Brown, 'Selective Humanitarianism: In Defense of Inconsistency', in Deen K Chatterjee and Don E. Scheid (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press, 2003), p. 48.

⁷³ Jabri, *War and the Transformation of Global Politics*, p. 185.

⁷⁴ Burke, 'Just War or Ethical Peace. . .', pp. 329–53.

⁷⁵ Der Derian, 'Virtuous War/Virtual Theory', p. 786.

⁷⁶ Shaw, *The New Western Way of War*, p. 141.

In essence, those above who proclaim the need for a new ethic designed to address a postmodern world seem to feel we must go beyond talk containing both the words justice and war. Burke contends that we must first refuse to accept 'the legitimacy of strategic violence.' We somehow are also to accept the legitimacy of 'the short – to medium-term existence of strategic violence', but under 'far more stringent' standards than at present.⁷⁷ One can only conclude that Burke believes at some point in the future strategic violence might be eradicated, but in the meantime those who use it are deemed to be criminals. This contradictory stance is reached from a fundamental misunderstanding of just war's core ethical commitment. Burke writes that '[e]thical peace differs from 'just war' by rejecting the latter's prima facie acceptance of the legitimacy of strategic violence, and by making peace – however complex, difficult and delayed – its central normative goal.'⁷⁸ Many just war scholars do indeed view world peace as utopian, but this is the very reason that justice becomes so important for them; seeking it out is the only way to strive for a close approximation to the peace that an imperfect world allows. Thus, the central normative goal of just war is peace, but a peace tilted decisively toward justice rather than mere order.

Burke's confusion reflects an important feature of postmodern scholarship that does not lend itself well to developing realistic – in the sense that they may actually be useful presently – ethics of war and peace. In a critical pessimism well equipped to delineate modes of power and spaces of contestation, many postmodernists have taken to the Foucaultian view of modern world order as one of pervasive governmentality. Exemplified most famously in Michael Hardt and Antonio Negri's *Empire*,⁷⁹ it is contended that the state is indeed not the primary arbiter of world order, but that an 'art of government',⁸⁰ as Foucault would put it – and a liberal imperialist one at that – has come to dominate the relations between states, not so much directing moves but the very thoughts that go into those moves in a pervasive form of liberal self-discipline. Thus Hardt and Negri dismiss even human rights NGO's influence as 'a frontline force of imperial intervention.'⁸¹ Developing an 'ethical peace' doctrine is thus influenced by extreme scepticism as to whether any state can be trusted to make a morally informed and just action with regard to the use of force, especially when 'universal' human rights are used as a justification. And though the logic of governmentality would assume its permeation into all organs of governance – whether the UN or even human rights advocacy groups – the best case scenario becomes a search for hyper-consensus, in which any use of force outside of complete Security Council agreement is deemed detrimental to the cause of peace, as Burke contends.⁸² But this of course is still a compromise if human rights themselves, enshrined as they are within the UN, are suspect.

⁷⁷ Anthony Burke, *Beyond Security, Ethics and Violence: War Against the Other* (New York: Routledge, 2007) p. 161.

⁷⁸ Burke, 'Just War or Ethical Peace. . .', p. 349.

⁷⁹ Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA.: Harvard University Press, 2000), 'The passage to the society of control does not in any way mean the end of discipline. In fact, the immanent exercise of discipline – that is, the self-disciplining of subjects, the incessant whisperings of disciplinary logics within subjectivities themselves – is extended even more generally in the society of control.' p. 330.

⁸⁰ Michel Foucault, 'Governmentality', *Aut Aut* (September–December, 1978), pp. 167–8.

⁸¹ Hardt and Negri, *Empire*, p. 36.

⁸² Burke, 'Just War or Ethical Peace. . .', p. 350.

As Walzer cogently points out,

rights-talk can function as an alibi for imperialism; still, imperialism predates rights-talk by at least four thousand years, so it can't be a necessary alibi [...] In our own time, rights talk is more often critical than ideological [and] is most useful, then, to powerless and vulnerable people.⁸³

To base an ethic of such concrete and desperate human action as the use of military force on pure scepticism of that which ordinary people use as a check on such action seems detrimental to the espoused goal.

Burke misreads the just war tradition as having a 'capricious attitude [...] to international law – enforce it here, ignore or undermine it there',⁸⁴ and claims it is a 'stable system of truths which paradoxically suspends the difficulties of judgment and lends itself uncritically to political action.'⁸⁵ Just war does derive unapologetically from some truth: in my view a cosmopolitan – importantly enunciated recently by Lu as 'the recognition of a common human condition marked by vulnerability to suffering [and at the same time recognition that] to be human is also to be distinctively individual or particular'⁸⁶ – concern for basic human rights that sometimes must supersede the strictures of international law, which Burke himself admits 'are sometimes tainted by power play.'⁸⁷ Just war theory does not primarily seek to *do* anything to international law; if international law is influenced by its principles then all the better. Thus Walzer is able to point out that, as far as just war principles are concerned, had the UN Security Council authorised the 2003 war in Iraq it still would have been unjust barring further attempts at containment.⁸⁸

David Campbell exemplifies how postmodern thought on ethics *can* have imperative considerations for the just war tradition; not by elucidating a strict ethical theory, but by questioning the construction of current frameworks. In writing about the interventions in Bosnia and Kosovo, he commends the eventual bombing campaign in Kosovo, despite its questionable means, because the action was a step in the right direction toward the main ethical concern for the postmodernist. The most ethical position for Campbell concerns the individual's relation to the other, not as some cosmopolitan member in a hypothetical world state but as a political compatriot united in differences and struggles. He quotes Derrida:

What binds me to them – and this is the point; there is a bond, but this bond cannot be contained within traditional concepts of community, obligation or responsibility – is a protest against citizenship, a protest against membership of a political configuration as such. This bond is, for example, *a form of political solidarity opposed to the political qua a politics tied to the nation state.*⁸⁹

⁸³ Walzer, *Thinking Politically*, p. 252.

⁸⁴ Anthony Burke, *Beyond Security, Ethics and Violence: War Against the Other* (NY: Routledge, 2007), p. 163.

⁸⁵ *Ibid.*, p. 164.

⁸⁶ Lu, *Just and Unjust Interventions in World Politics*, p. 98.

⁸⁷ Burke, *Beyond Security, Ethics and Violence*, p. 161.

⁸⁸ Walzer, *Thinking Politically*, p. 299.

⁸⁹ David Campbell, 'Justice and International Order: The Case of Bosnia and Kosovo', in Jean-Marc Coicaud and Daniel Warner (eds), *Ethics and International Affairs: Extent and Limits* (New York: UN University Press, 2001), p. 110.

The Kosovo intervention is ethical as far as it looks toward this ideal. The just war tradition, as we have seen, also contains this ethical orientation. The practices of just war are viewed as the best available steps toward peace, and therefore ethical. Thus, Campbell's primary imploration is for the ethicist to take account of the world as it exists, not just in a material sense but in the ways that myriad discourses are employed strategically, instead of relying on 'dominant practices of intelligibility'.⁹⁰ The vision of just war to follow is thus not a construction from the utopian sense of justice elicited by Burke, but is the furthest available and most appropriate step toward peace based on the reality of existing injustices in a world of virtuous war.

The just war response to virtuous war

In his own way, Walzer has also recognised the position in which just war finds itself. He views the situation in a more positive light than I, contending that just war theory has triumphed; it is now the common vocabulary of warfare and has imposed real constraints. He chides the postmodern response to this victory, describing it as one of excessive relativism that would leave us unable to 'actively oppose the murder of innocent people.'⁹¹ He also warns against what this article shows to be a feature of the actual postmodern response: 'to take the moral need to recognize, condemn and oppose very seriously and then to raise the theoretical ante – that is, to strengthen the constraints that justice imposes on warfare.'⁹² For example, and exactly as Burke does, it does not follow from just war's core ethical claim that we should simply seek to 'make noncombatant immunity into a stronger and stronger rule, until it is something like an absolute rule: all killing of civilians is (something close to) murder; therefore any war that leads to the killing of civilians is unjust; therefore every war is unjust.'⁹³ This temptation, to become hyper-critical simply for the sake of critique, flies in the face of the reality that war is sometimes still the only tool available to right certain injustices.

Walzer does, though, recognise two areas which call for further thought on the 'critical edge of justice.'⁹⁴ Where he rather superficially acknowledges the need to address issues of 'risk-free war-making' – or the technological 'virtual war' aspects described above – and that of war's endings – which as we have seen is intertwined with the rise of explicit humanitarian motives for war – I would like to propose that addressing these issues has profound implications for just war theory. These implications are born out by examining how the addition of an explicit set of *jus post bellum* criteria affect the use of the former categories of cause and means, address the concerns raised by a virtuous war paradigm, and results in a far more reflexive theory relative to the use of just war theory at present.

Where it is understandable how one may view an ethic concerned solely with how a *state* may justify cause and act during war as placing its primary concern

⁹⁰ Campbell, 'Justice and International Order. . .', p. 109.

⁹¹ Michael Walzer, *Arguing About War* (Harrisonburg, VA: Yale University Press, 2004), p. 13.

⁹² *Ibid.*, p. 13.

⁹³ *Ibid.*

⁹⁴ Walzer, *Arguing About War*, p. 15.

on national security, it is clear that the implications of a robust *jus post bellum* mirror in many ways the concerns leading to the human security turn in security studies.⁹⁵ This is due to explicit concern for the conditions of those innocents who are to rebuild in the post-war period. In this way we can also say that this turn is a move toward the concerns of postmodern conceptions of justice. As Campbell points out, the heart of this form of justice is ‘when we are open to the surprise of the other, acknowledge the other’s summons, or are willing to be unsettled by our encounters with others.’⁹⁶

Some contend that the existing categories of just war are sufficient for thinking about wars of humanitarianism.⁹⁷ The categories would simply be considered in light of the alternate goal of rescue instead of self-defence. Unfortunately, the dichotomy between self-defence and humanitarian intervention as two categories of a just war are not so nicely separated in the real world. Discourses of humanitarianism play out even in odious wars of unjust cause such as Iraq 2003, bolstering the state’s ability to placate nagging concerns over the primary and flimsy defensive justifications for war. In light of this it seems dangerous to simply maintain two parallel just war theories – one for humanitarian intervention and one for self-defence. The considerations of both are simultaneously at work. Far from over-complicating the already disputed usages of just war theory, a reflexive mechanism able to cope with the novelties and intricacies of virtuous war ties up many of the loose ends and disputes over particular actions.

And far from being without precedent, William E. Murnion correctly recognises that ‘[h]istorically, the development of just war has not been an organic evolution, but a series of paradigm shifts in response to a dialectic between transformations of values and technological, political, social, and cultural innovations.’⁹⁸ In speaking of these paradigm shifts, he claims that just war theory is capable of shifting responsively and being expressed in different forms at different times.⁹⁹ For instance, the former holy war ethic of a just war was essentially a militarist interpretation containing the religiously-contingent righteousness of cause. Walzer’s re-interpretation, at a time in history when realist state’s interests had run amok in the Cold War chess game over the Third World, contained a surface of idealism mandating strict adherence to non-combatant immunity that ‘bottomed out in ethical realism’ and the necessities of statist great power political world order.¹⁰⁰ Walzer recognised, in observing the means of the Vietnam War, that the formerly accepted proportionality rule that mandated a ‘double effect’ – the good effect must merely outweigh any evil of fighting near non-combatants – was a *de facto* blanket justification for the death of civilians. Thus, he developed the requirement of ‘double intention’, or intending only the good and considering avoidance of

⁹⁵ There is good reason to be sceptical about the human security paradigm, so I will not be wholly endorsing it as a parallel to just war theory with the addition of a *jus post bellum*. See David Chandler, ‘Human Security: The Dog that didn’t Bark’, *Security Dialogue*, 39:4 (2008), pp. 427–38.

⁹⁶ Campbell, ‘Justice and International Order...’, p. 104.

⁹⁷ See, for instance, Coady, ‘War for Humanity: A Critique’, pp. 274–95.

⁹⁸ William E. Murnion, ‘A Postmodern View of Just War’, in Steven P. Lee (ed.), *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory* (Dordrecht, The Netherlands: Springer, 2007), p. 23.

⁹⁹ *Ibid.*, p. 35.

¹⁰⁰ *Ibid.*, p. 34.

non-combatants during planning.¹⁰¹ But importantly, both forms sought what was thought at the time as the best way to strive toward a more just and peaceful world. Even holy war adherents, in their violent self-righteousness, mistakenly believed that justice and peace were only possible in a Christian world. It is clear that a paradigm shift is again taking place within just war because of the moral dilemmas posed by interventions such as Kosovo and preventive virtuous wars such as Iraq 2003, the technological means used often too bluntly in conducting them, and the realisation that Cold War views of sovereignty have truly given way to the base-line internal state requirements of conduct articulated after WWII.

Orend makes the case that the explicit addition of *jus post bellum* considerations, in its realisation that unlike Walzer's conception the phases of war are a linked set in which the morality of one effects the ability to act morally in the other,¹⁰² signals a strengthening of idealism and a turn away from just war theory as a mere enabling doctrine. Although not giving way in total to an idealist conception of war, which would demand we 'reject any right to war', such an addition does demand that just war maintain an idealist/consequentialist tension of 'pursuing peace as much as practicable under historical circumstances.'¹⁰³ In this way the theory has made an implicit acknowledgement that the interconnectedness of our world demands taking into account considerations posed by scholars such as Shinko of the wider context of a particular conflict, for only then can an intervener realistically proclaim a commitment to some stable peace to come. Even Orend, in attempting to develop an admittedly Kantian, and so one might assume non-consequentialist perspective on just war, admits that 'through trying to articulate *jus post bellum* – I must confess to having been motivated by pacifism's insistence that we shouldn't take war for granted and that we must do something to make the international system more peaceful, such as pro-rights post-war transformation and the evolution of better global governance.'¹⁰⁴

Merely expressing the categories of cause and means in the modern era, where classic wars of self-defence between warring states are becoming the exception instead of the rule, has resulted in a poverty of orientation toward real peace. *Jus post bellum*, if it takes the exceptions of our current world into account, is an appropriate and necessary addition to just war theory. The most important effect of such an addition for theory, and in turn for practice, is the way that such considerations imply the fusing of the three phases of war into a logical chain of mutual implication. Contemplating a just peace before war alters the calculations of cause and means, and the success of those phases influences ones ability to enact a just peace. The final section outlines an articulation informed by explicit acknowledgement of why such a response came about at this particular point in history.

The emergence of *jus post bellum*: a brief sketch

Although the need for just peace criteria was first enunciated in 1994 by Michael Shuck, extensive theorisation did not begin until Brian Orend's 2000 article in the

¹⁰¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006, 4th edition), p. 152–9.

¹⁰² Orend, *The Morality of War*, p. 162.

¹⁰³ Murnion, 'A Postmodern View of Just War', p. 33.

¹⁰⁴ Orend, *The Morality of War*, p. 264.

Journal of Social Philosophy. This article laid out five criteria based on established just war terms and the insight, taken from Walzer, that the modern connection between human rights and peace necessitated that the aim of war was ‘a more secure and more just state of affairs than existed prior to the war.’¹⁰⁵ Orend’s five criteria were ‘just cause for termination’, ‘right intention’, ‘public declaration by legitimate authority’, ‘discrimination’, and ‘proportionality’. As Lieutenant Camilla Bosanquet finds, though, delineation of a familiar list of criteria, however grounded by Orend in ethical concerns for the ‘the vindication of the fundamental rights of political communities, ultimately on behalf of the human rights of their citizens’,¹⁰⁶ led to a ‘Pandora’s-box’ of ‘hustle to coin phrases, phrase the question, and question the tradition’ – without reflections being adequately grounded in the ethical basis of the just war tradition and/or the realities of virtuous war.¹⁰⁷

Illustrative of this disconnect are some of the well-meaning but problematic criteria developed in this period of ‘hustle’. Louis V. Iasiello lists ‘a healing mindset’, ‘just restoration’, ‘safeguarding the innocent’, ‘respect for the environment’, ‘post bellum justice’, ‘warrior transition’, and ‘study in the lessons of war’ as the criteria that should guide moral thought on post-war situations.¹⁰⁸ With ‘healing mindset’, Iasiello warns against the celebration of victory because it might be misinterpreted by those non-combatants in the defeated state. This is of course good advice, but something that would follow from adherence to more essential criteria; not to mention imagining the problematic lengths one should go to foster this mindset (a day of mourning for victory in war?). He includes in ‘just restoration’ a period of protectorship, as well as mandating that the defeated people develop their new government in concert with the just victor.¹⁰⁹ While there is no doubt that one can imagine, especially a total war like that of WWII, situations where this would be necessary, it is difficult to say whether an asymmetric just intervention necessarily involves the colonial spectre of a protectorship. Any just post-war reconstruction, if recognising the true implications of human rights norms, would have to ground its commitments in the wishes of the rescued community, which may view any form of non-multi-lateral, presumably non-UN led ‘protectorship’ as imperial nation-building. ‘Safe-guarding the innocent’, ‘respect for the environment’, and ‘warrior transition’ are again excessively specific and seem to refer commonly to some prior ethical principle – in this case respect for the human rights of the innocent.¹¹⁰ The ‘lessons of war’ criteria is also implicit in the very practice of just war reflection. With such an enunciation in mind, it is clear that any first-cut list of criteria – as this study admittedly presents – must be not only grounded in the empirical nuances that have driven a call for *jus post bellum*, but should also err on the side of parsimony.

An important realisation from this study is the role that a humanitarian discourse now plays in justifying war. I am inclined, however hypocritically such

¹⁰⁵ Orend, ‘*Jus Post Bellum*’, p. 122.

¹⁰⁶ *Ibid.*, p. 123.

¹⁰⁷ Lieutenant Camilla Bosanquet, ‘Refining *Jus Post Bellum*’, *International Symposium for Military Ethics*, 25 (January 2007), p. 4, available at: {<http://www.usafa.edu/isme/ISME07/Bosanquet07.html>}, accessed 2 July 2008.

¹⁰⁸ Louis V. Iasiello, ‘*Jus Post Bellum*: The Moral Responsibilities of Victors in War’, *Naval War College Review*, 57 (2004), pp. 33–52.

¹⁰⁹ *Ibid.*, p. 42–3.

¹¹⁰ Bosanquet, ‘Refining *Jus Post Bellum*’, p. 8.

justifications sometimes are in practice, to say that this realisation informs the construction of *jus post bellum* criteria in two ways: the criteria must allow for such rhetoric to flourish because human rights are integral to the maintenance of just peace, and it must also hold such rhetoric to the standards of conduct that it implies. It seems, then, that the primary criterion to be observed in *jus post bellum* is one of *right intention*. Generally defined, this would mean sticking to the intentions articulated during the cause phase, *and* the demand that those intentions take into account every reasonable step that might increase the security of non-combatant's human rights after the conclusion of major hostilities. This goal, and the work entailed in achieving it, would obviously involve additional assurances on the part of the intervening force in justifying war. For instance, it might require that the UN, if not active in the act of force itself, would be publicly offered significant influence in the post-war civil re-building during the *ad bellum* phase, giving them time to prepare for the burden. This is not because the UN holds some moral authority above that of a state that goes to war justly, but simply because the structure and characteristics of the UN – allowing as it does the input of all nations, and being a wellspring for expert knowledge on issues of peace and governance – mark it as one entity uniquely suited to inform reconstruction tasks.

A just use of force involves the punishment of some aggressor, but in a virtuous war sometimes the punishment meted out is distorted in the fog of technology and notions of moral superiority such that it is disproportionate to the goal of a just peace. Thus, the second necessary *jus post bellum* criterion is *discriminate and proportional punishment*. In Iraq 2003, for instance, the Iraqi military was notoriously disbanded, leaving a significant security vacuum and thousands of unemployed soldiers to feed the flames of insurgency. This action was no doubt influenced by the desire to punish those who fought on the side of the Hussein regime, the notion that anyone who did so was morally suspect, and possibly by the hubris inevitable after an overwhelming technologically aided victory. If, though, one of the justifications for war was that a tyrant would be deposed and a decent people allowed to regain rights, the punishment of military regulars likely as open – in the face of real defeat – to gaining back their country as any other Iraqi citizen is clearly not well-informed by a sense of discrimination between those who were hard-core, incorrigible Baathists, and those who were just following orders. It was not proportional in the sense that it served a greater harm to the cause of peace than risking the consequences of arms still in the hands of low-level military regulars who may or may not aid in securing the country for rebuilding. Thus, a just peace criterion of discriminate and proportional punishment would alter the equation for the punishment of aggressors by converting the question of whether one *can* be punished based on their allegiances, to whether one *should* be punished depending on an accounting of both their crimes and the good they might do if reformed and integrated into a post-war reconstruction.

The final criterion marking a just peace is informed by the sense that in the supposedly just wars of the post 9/11 era, the US has been too quick to believe that its version of a reconstructed state can be imposed militarily and quickly. Thus, a just force must do what is necessary to remain motivated by the core ethical claim of the just war tradition, which in the last phase of war must involve the *vindication of rights*. Robert E. Williams Jr. and Dan Caldwell have written with insight into

all the possible requirements that such a principle might entail, depending, of course, on the context of the war and the content of its justifications. But in most wars it is conceivable that steps must be taken by the victor to restore order, aid in reconstructing the states infrastructure, and eventually allow self-determination and the restoration of sovereignty.¹¹¹

Consider how these categories might alter some of the calculations of the traditional categories of the just war tradition: In both the cause and means phase, sober assessments of how the use of ground troops and or/long range weapons might prolong the emergency, or even the post-emergency rehabilitation, would have to be heeded. If, as in the case of Kosovo, the use of ground troops would obviously do a great deal to cut short, as the bombing campaign did not, the continued killing and displacement of non-combatants it is reasonable to ask that intervening parties put their own troops in harms way.¹¹² Burke is correct to criticise a just war theory of merely cause and means as becoming a ‘rule-bound normative theory’, too often used as a rhetorical checklist by those itching for war. Because *jus post bellum* necessarily involves, as Burke calls for, an ‘ethical orientation concerned with the likely *outcomes* of decisions and actions’,¹¹³ it demands that all categories of just war become context-sensitive. Considerations of just cause in wars partly justified by humanitarianism would not hinge solely on whether an aggressor could be defeated, but whether those who wish to intervene have taken all available steps to develop the necessary capability and right intention to rebuild the state afterwards.

Jus post bellum thus has the promise of anchoring just war as a more context sensitive theory, but it also must maintain some realistic chance of being adopted by actors. Shaw, for instance, believes that the just war solution to virtuous war would merely be to better balance the ‘risk between soldiers and civilians’; a task he believes would ‘fly in the face of core sociological realities of new Western warfare.’¹¹⁴ But justice after war requires a more appropriate and plausible calculus that plays off the sociological realities and realisations that the ignorance of human rights in post-war situations ‘militates against prudence [as it] contributes to prolonged fighting on the ground.’¹¹⁵ For example, Sir Smith, in his comprehensive study of the utility of force, concludes that the instrumental goals of modern (or postmodern, if you will) war will inevitably result in certain changes in the organisation of force (more troops available), the use of technology (primarily in intelligence gathering, and not to destroy an enemy that is now ‘among the people’), and the training of all operatives to move amongst the people.¹¹⁶ Likewise, the human rights basis of just war and *jus post bellum* ‘seem to be the most defensible and potent of basic moral and political norms in the contemporary world, [and] they also seem to make the best candidate by far in terms of securing actual cross-cultural agreement on their normative adequacy.’¹¹⁷

¹¹¹ Robert E. Williams Jr. and Dan Caldwell, ‘*Jus Post Bellum: Just War Theory and the Principles of a Just Peace*’, *International Studies Perspectives*, 7:4 (2006), p. 318.

¹¹² Jean Bethke Elshtain, ‘International Justice as Equal Regard and the Use of Force’, *Ethics & International Affairs* 17:2: (2003), p. 71.

¹¹³ Burke, ‘Just War or Ethical Peace...’, p. 352.

¹¹⁴ Shaw, *The New Western Way of War*, p. 136.

¹¹⁵ Orend, *War and International Justice*, p. 221.

¹¹⁶ Smith, *The Utility of Force*, pp. 400–01.

¹¹⁷ Orend, *War and International Justice*, p. 254.

The addition of a robust *jus post bellum* category also conceivably goes a long way toward remedying one of the central criticisms of just war. Burke contends that 'a major flaw in just war theory [is] the refusal to place the UN Charter and Security Council at the center of normative decisions about the use of force.'¹¹⁸ Unfortunately, the UN has been notoriously reticent to act in humanitarian crises. This reticence, though, speaks to the difficulty in wholeheartedly agreeing with Burke's criticism. While there are sound moral grounds, especially within just war, to demand that a proper authority arbitrate such decisions, the UN is obviously incapable of doing so as currently cultured. But the strengthening of just peace principles aims correctly at ameliorating this dilemma, not by disregarding the just war tradition, but by recognising the way it and normative theory results in real change: gradual agreement on principles and then codification and acceptance in physical institutions and positive law. Those advocating solutions within just war realise that '[t]raditional just war theory suffers from [blindness to post-war justice] and so the international laws of armed conflict – which have been derived from it – reflect this sad state of affairs.'¹¹⁹

It seems we are left to follow Rawls, who in *The Law of Peoples*¹²⁰ performs the necessary exercise of establishing an ideal of justice in international conduct, and then goes on to examine through the explicitly and ardently non-ideal theory of just war how those pure ideals should be enacted in a world of very real aggression, lawlessness, and human suffering. The addition of *jus post bellum* criteria within just war theory represents an acknowledgement that a new reality of vast technological asymmetry and pervasive human rights discourses demands that we re-evaluate how this non-ideal theory confronts the world. For, as has hopefully been established above, in an era of virtuous war, where cause and means are ripe for injustice, the addition of explicit post-war considerations to the former categories of just war theory would be a proper step forward for theory and practice.

¹¹⁸ Burke, 'Against the New Internationalism', p. 80.

¹¹⁹ Orend, *War and International Justice*, p. 220.

¹²⁰ John Rawls, *The Law of Peoples* (Cambridge, MA.: Harvard University Press, 1999).