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Jus ex Bello*

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JUST war theory has traditionally been concerned with the moral considerations that govern the decision to initiate the use of military violence and that regulate the means by which a war is prosecuted. To these considerations of *jus ad bellum* and *jus in bello* theorists have recently argued for the addition of another important set of considerations, namely those that concern the terms of the peace at the cessation of the conflict. This is the doctrine of *jus post bellum*. I shall argue that even with the addition of *jus post bellum* just war theorizing is incomplete. This is not a criticism of just war theory per se, but of its comprehensiveness as it is traditionally and currently understood. I shall argue that once a war is initiated it is altogether possible for the moral calculus to change dramatically. The moral questions of whether the war should be brought to an end and if so how are different than the questions of whether it ought to have been started, the means by which it may be prosecuted, and the arrangements that should come to pass upon the war's end. In other words, moral considerations regarding whether and how to end a war are distinct from *jus ad bellum*, *jus in bello*, and *jus post bellum*. Remarkably—if I am right—this has gone largely unnoticed.¹ I call *jus ex bello* the set of considerations that govern whether a war, once begun, should be brought to an end and if so how. For those who believe that war is just if and only if it satisfies certain conditions, matters of *jus ex bello* are of central importance.

In the next two sections I argue that considerations of *jus ex bello* are independent of considerations of *jus ad bellum*. In section III I argue that *jus ex bello* is also distinct from both *jus in bello* and *jus post bellum*. One implication

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¹Part of David Rodin's “Two emerging issues of *jus post bellum*: war termination and the liability of soldiers for crimes of aggression,” *Jus Post Bellum: Reflections on a Law of Transition from Conflict to Peace*, ed. Jann Kleffner and Carsten Stahn (Cambridge: TMC Asser Press/Cambridge University Press, forthcoming 2008), discusses some of these issues, but with a significantly different approach.

of these three sections taken together is that just war theory is importantly incomplete. In section IV I start the process of completing the theory by giving an account of the considerations that I believe constitute the foundation of the doctrine of *jus ex bello*.

I

Traditionally the principles of *jus ad bellum* establish the conditions that a war must satisfy in order for its initiation to be justified. A thicket of controversy surrounds questions of which principles are necessary and the exact character of their demands in application. Venturing there would prevent me from arriving where I would like, so I hope to navigate around these matters, staying largely unscathed, by orienting on a core set of principles that are widely accepted as part of the doctrine of *jus ad bellum*. These are the following: Just cause, likelihood of success, proportionality, and last resort. In this section and the next I argue that satisfaction of these four principles of *jus ad bellum* is neither sufficient nor necessary for determining whether morally a war should be terminated once it has begun. The argument will proceed by seeking to establish the following two claims:

- (1) It could be morally required to end a war that initially satisfied all four of the principles of *jus ad bellum* even though a victory has not been obtained.
- (2) It could be right to continue a war that initially failed to satisfy any one (or more) of the four principles of *jus ad bellum*.

In this section I defend the first claim. I defend the second claim in section II.

First a word about the argument. In arguing that a course of conduct regarding war is right, I do not make normative assumptions that are external to just war theory as traditionally considered. For example, the doctrine of *jus ad bellum* is apparently inconsistent with act consequentialism, since it is entirely conceivable that a war could maximize positive consequences but fail to satisfy the principles of just cause and last resort.² I assume that just cause and last resort are necessary conditions for the justified initiation of a war. I do not proceed, then, on act consequentialist grounds. But I am not here further concerned with the nature of the background normative ethical theory that justifies the four principles of *jus ad bellum* listed above. Rather, I hope to show that insofar as the four core principles of *jus ad bellum* are morally regulatory with respect to the initiation of hostilities, the kinds of moral concern that they express may require substantially different judgments after the onset of a war than before its initiation.

I turn now to the first claim. One reason a war could be just to initiate but unjust to continue to prosecute derives from the principle of likelihood of success.

²This is a running theme of Paul Ramsey's *War and the Christian Conscience* (Durham, NC: Duke University Press, 1961).

I am not concerned with how likely the success must be in order to satisfy the principle, nor with what counts as success, nor with the time at which success-assessments are relevant for the satisfaction of the principle, even though these are important considerations in the casuistry of the principle.³ I simply assume that a war satisfies the principle.

For the sake of clarity, however, it is useful to note two important matters regarding this principle. First, a war can fail the principle of likelihood of success either because of the strategy adopted or independently of the strategy adopted. It might be the case that it is merely the strategy pursued that is not likely to succeed. In that case the war as prosecuted fails to satisfy the principle. If an alternative strategy is either not available or would not satisfy the requirements of *jus in bello*, then it is not merely that the war as prosecuted fails on grounds of likelihood of success, but that the war unqualifiedly fails on these grounds. For present purposes, I assume that the war somehow satisfies the principle. Second, we can distinguish two general interpretations of the requirements of the principle. One is objective, namely that the war would be reasonably judged to be likely to succeed, given all of the relevant *facts*, including facts about war planning and preparation, balance of military forces, and levels of support for the war. The other is subjective, that the war is reasonably judged to be likely to succeed, given the available *evidence*.

Now, a war initially correctly judged to succeed according to the objective interpretation may in the course of events prove to be very unlikely to succeed, or unlikely to succeed within the constraint of proportionality. This is because the principle is probabilistic and the improbable can happen. The idea here is that as events unfold, a battle that was objectively likely to be successful might prove unsuccessful. If the battle is important enough, or if defeat happens often enough, the objective likelihood of the war's success can change. If likelihood of success is a necessary condition of the justice of a war, a war that satisfied *jus ad bellum* could, in the course of events, become unjust. Or, take the case of a war whose success depends crucially on popular support for its cause.⁴ There might be very good reasons for why it would be likely for such support to be forthcoming, yet, due to unlikely political events the support does not materialize. Once again, a war that initially satisfied *jus ad bellum* could come to fail to satisfy the principle of likelihood of success.

The point is still easier to appreciate with respect to the subjective interpretation of the satisfaction of the principle. According to this interpretation, satisfaction is dependent upon a reasonable judgment of the available evidence. Now, the limitations of the objective interpretation also apply here: The unlikely

³I discuss some of these casuistical considerations in *Cosmopolitan Justice* (Boulder, CO: Westview, 2002), pp. 118–22 and in “Is the war in Afghanistan just?” *Imprints*, 6 (2002), available at: <http://eis.bris.ac.uk/~plcdib/imprints/moellendorf.html>.

⁴Michael Walzer in *Arguing about War* (New Haven, CT: Yale University Press, 2004), p. 10 argues that modern forms of warfare often depend crucially on popular support.

can happen in war; when it does the probability of success can change. But the subjective interpretation faces an additional limitation, namely that the evidence available to persons could be incomplete. There could be intelligence failures for which no one is at fault, which would require dramatic changes of judgment regarding the military balance of forces or the popularity of a cause, if the additional evidence were available. Unlike the objective interpretation, the *facts* would lead one to conclude that success is not likely, but the available *evidence* does not reveal the facts. Once the war begins, these facts could become apparent and require dramatic revisions of the estimated probability of success.

In short, the judgment that a war satisfies the conditions of *jus ad bellum* is not only fallible, but because it requires, among other things, a determination of the likelihood of success, the error could become apparent with the kind of evidence that the experience of prosecuting a war provides. Hence, any reasonable commitment to the justice of a war must be based not merely on a judgment made prior to the initiation of the war but on an on going assessment of the likelihood of success. The war's satisfaction of the principles of *jus ad bellum* beforehand is consistent with it becoming unjust in the course of events.

II

The second claim that is essential to demonstrating the independence of *jus ex bello* from *jus ad bellum* is that it could be right to continue a war that initially failed to satisfy any one (or more) of the four core principles of *jus ad bellum*. In defending this claim, I assume that a war can be justified according the principles of *jus ad bellum* and that prosecuting such a war may be right. I am assuming, in other words, that pacifist challenges to the morality of war can be defeated.⁵ The argument is that if the principles of *jus ad bellum* govern the morality of war, then a war that is unjust to initiate according to any one or more principles could be just to continue to prosecute once it has begun. I hope to demonstrate this by taking each principle in turn and showing how a war that failed to satisfy it initially, could be just to continue.

As I argued in the previous section, the employment of the principle of likelihood of success is fallible and revisable in light of new information. In the previous section, consideration of this helped demonstrate that a war that initially satisfied the principle could later fail to satisfy it. But the opposite sort of learning can also occur in cases in which the initial judgment was that the principle was not satisfied. With additional facts or evidence, a war that did not satisfy the principle could later satisfy it. Hence, a war that is unjust because it failed only to satisfy likelihood of success could later satisfy all of the principles, in which case, it would be just to continue to prosecute it.

⁵For arguments against pacifism see my *Cosmopolitan Justice*, pp. 148–58.

The case with respect to last resort is importantly different. Once again, I do not wish to discuss the details of the satisfaction of this principle, I simply assume that this principle requires the employment of some alternative means before resorting to war.⁶ It cannot be the case, then, that a war that once failed to satisfy the principle, could later come to satisfy it. Once a party resorts to war without employing other means, having resorted to war it cannot then pursue those other means before resorting to war. Perhaps a belligerent party could nearly satisfy the principle by ceasing the war and pursuing alternative means. But this is probably impossible most of the time. It is rarely the case that the diplomatic alternatives available in the *status quo ante bellum* are available once a war begins since at the very least there typically is the new and complicating issue of responsibility for the war. But if the war was otherwise just prior to its initiation—if it was proportional to the injustice and reasonably likely to succeed in remedying the injustice—and if alternative remedies are unavailable once the conflict has begun, then the fact that at its initiation the war did not satisfy last resort is not decisive to the morality of its continuation.⁷ For how else, at that point, is the just cause to be achieved?

One might think that the independence of *jus ex bello* is hardest to establish in the case of a war's failure to satisfy the principle of just cause, but for reasons that I hope will soon be clear it is at least as difficult to establish in the case of proportionality. But the latter cannot be adequately addressed until the former has been; so, I focus first on just cause. Suppose that prior to hostilities there was no injustice whose remedy would serve to justify the war, how could it be the case that during the course of the war such an injustice somehow manifests? That such a moral change is possible becomes plausible when reflecting on the example of the Iraq war. Suppose for the sake of argument that neither a pre-emptive war against the possible existence of weapons of mass destruction nor a war of regime change to create a democratic and human rights respecting state could satisfy just cause.⁸ Several years into the war, however, it could plausibly be characterized as an effort to prevent the complete collapse of the Iraqi state. At one point Michael Walzer worries that "the inflation of ends is probably inevitable" in war.⁹ The dismal failures of the policies of this war provide a remarkable counter example to Walzer's claim, for now any realistic goal amounts to a significant deflation of initial ends. In any case, if the humanitarian consequences of full scale state collapse are sufficiently likely to be severe enough—unrestrained civil war, ethnic cleansing, or regional war, for example—then the new situation provides new reasons to believe that even if the

⁶I discuss some of these matters in *ibid.*, pp. 119–20.

⁷On this point see also my "Is the war in Afghanistan just?" The anonymous referee has pointed out to me that a failure to satisfy last resort might nonetheless have other moral ramifications concerning for example appropriate conduct in the war and liability after the war. These are considerations of *jus in bello* and *jus post bellum* respectively.

⁸Walzer takes this position in *Arguing about War*, pp. 146–9.

⁹Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 120.

war failed earlier to satisfy just cause it might nonetheless sufficiently remedy new injustices or prevent very likely ones so as to satisfy the requirement of just cause.¹⁰

I have not argued either that the Iraq war failed to satisfy just cause or that the likelihood of full state collapse is now a sufficient reason for the war to continue. The argument is more modest: Even if the war failed to satisfy just cause, it may nonetheless be continued if the likely dangers of ending it are grave enough. Even theorists, who take the moral demands of political self-determination to be very restrictive of intervention, are willing to allow that grave humanitarian dangers are just cause for intervention.¹¹ If grave humanitarian danger provides just cause for intervention, then surely it justifies continuing a war, even if the war originally did not satisfy the principle of just cause. In general, the strongest case for such an argument would be a new and highly plausible prediction of genocide.

The claim that an initial failure to satisfy just cause does not necessarily condemn the war, once begun, has important consequences because of the way that the four principles under discussion are related to each other. Likelihood of success, for example, is in reference to achieving the just cause of war. If there were reason to reassess the cause of the war, then there would be reason to reassess likelihood of success. It could, of course, be the case that in changed circumstances there is a new legitimate reason for the war but that the likelihood of success is sufficiently low—even if originally high for the original cause—that the war should nonetheless be terminated. The possibility of a changed cause of the war, then allows for another possible ground for reassessing the likelihood of success of the war. And, as I argue presently, the same holds for proportionality as well.

As a matter of *jus ad bellum* the principle of proportionality requires that the injustice or evil to which the war is a response be sufficient to outweigh the presumptive evil of resorting to war. Looked at one way this principle is relatively insensitive to changes that occur as the result of prosecuting a war. If the evil of war was initially disproportional to the injustice to which it responded, that calculation is not subject to change, except in the very unlikely event that the war proves somehow to be less costly morally than it was originally judged to be. But if, as discussed above, in the course of the war the cause were to change, then the calculation of proportionality would also need a corresponding change. Should the injustice to which the war is responding become sufficiently more severe, the evil of war would become proportional.

There is at least one additional moral reason external to just war reasoning that could be offered in opposition to a war. Although the reason is external to

¹⁰Apparently several simulations conducted by the U.S. military support predictions of such consequences. This is reported in Karen De Young and Thomas E. Ricks, "Exit strategies," *Washington Post*, July 17, 2007, p. A1.

¹¹Walzer, for example, takes this as one of the rules of disregard. See *Just and Unjust Wars*, pp. 101–108.

just war reasoning, it involves weighing considerations in a manner similar to that required by proportionality. A war might fully satisfy the four core principles of *jus ad bellum* that I have been discussing—perhaps other principles as well, if there are such—but nonetheless be the wrong policy because of the opportunity costs involved in prosecuting it.¹² Scarce material resources will be consumed that could perhaps be put to better use, such as improving the circumstances of the billions who live in abject poverty. International diplomatic relations, which are important for remedying global problems such as terrorism, might be damaged by the initiation of even a just war. To argue against a war on these grounds involves a kind of rationing judgment. Not all of the demands of global justice or international morality can be fulfilled given scarce material and diplomatic resources. In selecting one course of action others close. It would not be absurd to argue that even a just war ought not to be prosecuted because of the moral costs of doing so.

But once again, the weight of reasons that warrants the conclusion that a just war should not be pursued could change after hostilities commence. As we have seen, the cause of the war could become more important or it could become relatively less costly to realize due to surprising battle successes. Alternative uses of resources could become less feasible. Therefore, just as with the cases in which the war is initially condemned on just war theory grounds, the immorality of the war initially is no guarantee that the continued pursuit of the war is immoral. Moral reasoning regarding ending the war must be attentive to the possibility of changed considerations after the war has begun.

Let's take stock. In the previous section I argued that a war's satisfaction of the four core principles of the doctrine of *jus ad bellum* before the war begins is insufficient to warrant its continued pursuit. One important implication of that argument is the rejection of an assumption that seems implicit in much just war theorizing, most apparent when distinguishing *jus ad bellum* from *jus in bello*, namely that the only other important moral considerations with regard to the prosecution of a war that satisfies *jus ad bellum* are considerations of *jus in bello*.¹³ In this section I have argued that the justified judgment prior to war that it would be immoral—on either *jus ad bellum* or rationing grounds—is insufficient for the judgment that, once begun, it ought to be ended. One important implication of this argument is that a claim moralists sometimes make about war is false, namely that the prosecution of a war that fails to satisfy the requirements of *jus ad bellum* is necessarily immoral.¹⁴ The combined upshot of these two sections is that the determination of the *jus ad bellum* (or broader)

¹²See my "Reply to Miller and Satz," *International Journal of Politics and Ethics*, 3 (2003), 253–68.

¹³This assumption seems to be at work for example in Brian Orend, *The Morality of War* (Peterborough: Broadview Press, 2006), p. 160, and in Walzer, *Just and Unjust Wars*, pp. 21, 127.

¹⁴See for example: Gary J. Bass, "Jus post bellum," *Philosophy and Public Affairs*, 32 (2004), pp. 389–390, and Orend, *The Morality of War*, p. 162.

morality of the war in advance of the war is neither necessary nor sufficient for a judgment regarding whether the war should be ended. Initially just wars could sometimes require termination prior to achieving victory; and initially immoral wars should sometimes be continued.

One apparent weakness of my argument is that it serves to minimize the importance of determining the *jus ad bellum* injustice of a war prior to its onset since later moral assessments might redeem an unjust war. But I have not argued that the principles of *jus ad bellum* are morally irrelevant. On the contrary, whether or not to start a war is a gravely important moral decision; I have assumed that certain familiar moral principles guide that decision. And, I have been employing the kinds of considerations expressed by those principles—with the exception of last resort—to argue that judgments prior to the onset of hostilities might be revised after the shooting starts. Moreover, even if it can be just to continue a war that failed to satisfy *jus ad bellum*, the fact that it so failed usually provides good reasons to oppose analogous wars in the future since the changed appraisal after the war began is often based on unforeseen or unlikely events. In the event that a war that was unjust to initiate becomes just to continue, the case for continuing is based in part on the danger of compounding the initial injustice by ending a war when good reason has developed to pursue it. Insofar as it is a case against compounding an injustice, it offers no support for the original injustice.¹⁵

The general point of these two sections is that moral judgments regarding the continuation or termination of a war must be sensitive to the ever-changing landscape of war. Defenders of a war cannot rest the case for the continued prosecution of the war on the nature of the *ante bellum* injustice. And critics of the war cannot necessarily base their criticisms of the war on the injustice of resorting to war. Judgments of *jus ex bello* are not dictated by judgment of *jus ad bellum*.

III

Jus post bellum is mostly discussed as a victor's doctrine. It concerns, for the most part, the limitations on the terms that a victorious warring party can impose on the vanquished.¹⁶ Consider Brian Orend's justification of the need for the development of the doctrine: "Failure to construct principles of *jus post bellum* is to allow unconstrained war termination. And to allow unconstrained war termination is to allow the winner to enjoy the spoils of the war."¹⁷ The majority of Gary J. Bass's recent paper on *jus post bellum* defends requirements on the

¹⁵I'm grateful to the audience members of the seminar on Ethics and the "War on Terror" at Oxford University for helping me to understand this point.

¹⁶In addition to examples cited in this paragraph in support of the victor's doctrine character of most of *jus post bellum* theorizing, see also Walzer, *Arguing about War*, pp. 18–22.

¹⁷Orend, *The Morality of War*, p. 161.

victorious, namely that they usually refrain from conquest so that the sovereignty of the defeated state is respected, that they reconstruct the political order of genocidal states, and that they aid in economic reconstruction.¹⁸ There is a relatively short discussion in Bass's piece about the duty, and limits thereto, of the vanquished to pay reparations.

Regardless of whether the focus is on the duties of the victors or the vanquished, the most important point to appreciate for present purposes is that, as the name suggests, *jus post bellum* primarily concerns itself with the nature and policies of the post war order and the constraints that these place on the prosecution of the war. A war must be directed towards just ends, the manner in which it is fought must serve these ends, and upon cessation of the military conflict the policies adopted must serve just ends. In what seems to be an effort to distinguish *just post bellum* from *jus ad bellum*, Bass claims that "Just war theorists focus on the outbreak of war as a crucial moment: when state-controlled mass killing becomes morally acceptable, up to a point. But the moment at which the war ends is equally a crucial one. The return to peacetime must carry with it moral duties."¹⁹ I have no quarrel with this claim, but it does, I think, serve to illustrate well that the doctrine of *jus post bellum* does not provide direct guidance on questions such as whether and how a war, once begun, should be ended.

One can see this also in the way that Brian Orend carves out conceptual space for *jus post bellum*:

Conceptually, war has three phases: beginning, middle and end. So if we want a complete just war theory—or comprehensive international law—we simply *must* discuss justice during the termination phase of the war. After all, there is no guarantee that if you fought justly, for the sake of a just cause, that you will automatically impose a just set of peace terms upon your vanquished enemy.²⁰

Orend makes it clear elsewhere that he takes the middle phase to be concerned with considerations of *jus in bello*.²¹ The doctrine of *jus ex bello* as I understand it is also a middle phase doctrine, and therefore distinguishable from *jus post bellum*.

One might think that as a middle phase doctrine *jus ex bello* is identical to *jus in bello*. But *jus in bello* traditionally and currently concerns the justified means by which a war can be prosecuted.²² And this is, of course, logically distinct from whether the war should be prosecuted. Since once a war has begun that question

¹⁸Bass, "Jus post bellum."

¹⁹*Ibid.*, p. 412.

²⁰Orend, *The Morality of War*, p. 160 (emphasis in the original).

²¹*Ibid.*, p. 106.

²²A valuable summary of the origin and content of the traditional doctrine can be found in chapter three of Ramsey's *War and the Christian Conscience*, pp. 34–59. For the basis of the contemporary discussion see chapters eight and nine of Walzer's *Just and Unjust Wars*, pp. 127–59.

is not necessarily the same as before it began, a complete just war theory needs a doctrine of *jus ex bello*.

IV

Insofar as the doctrine of *jus ex bello* concerns whether and how a war should be ended, conceptually it would seem to have two parts. One is directed to the question of whether a war, once begun, should be continued or terminated. But if it should be terminated, the other is directed towards what should be done in pursuit of peace. In this section I shall briefly discuss each of these two parts in sequence.

Although whether a war should be continued is logically distinct from whether it should have been initiated, the considerations that go into answering the former are not necessarily distinct from those of the latter, except in the case of last resort. The moral reasons in favor of the principles of *jus ad bellum* have to do with ensuring that the evil of war is resorted to only when there are sufficient moral grounds, and that it not be pursued recklessly or to achieve unjust ends. Such concerns do not disappear once the war begins. It seems, then, propitious to begin by considering whether the core principles of *jus ad bellum* could serve as requirements for the justified continuation of the war.

Before proceeding, however, I reiterate that there are significant problems of interpretation and application for each of the principles of *jus ad bellum* about which I would like to remain neutral here. So, I try to discuss these principles at a level of abstraction that still allows such neutrality but also allows taking them to have at least some determinate normative force.

The principle of just cause requires that the war be a remedy to an injustice in the *status quo ante bellum*. As I argued in section II a war might not fulfill this requirement *ex ante* but in the course of events fulfill a similar requirement. A war could remedy an injustice that develops after the initiation of hostilities, as when a policy of ethnic cleansing only begins in response to a war. Alternatively, a war could prevent an injustice that would be likely to occur in the absence of its continued prosecution, as when ceasing to defend certain civilian groups that came under protection in the course of the war would lead to their slaughter. To generalize on these kinds of cases, the doctrine of *jus ex bello* contains the following requirement of just cause: The war must be a remedy either to an injustice in the *status quo ante bellum* that continues to exist, an injustice in the state affairs that came to pass after the war began, or an injustice that would likely occur were the warring side simply to pull out. In this light, those who contend that a precipitous withdrawal of United States (US) troops from Iraq would lead to the state fully collapsing and a high intensity civil war are making the right kind of claim for the doctrine of *jus ex bello*.²³

²³See De Young and Ricks, "Exit strategies."

Notice, however, that if preventing a predicted future injustice may be a just cause for continuing a war, the principle of just cause in the doctrine of *jus ex bello* may include empirical forecasts and counterfactual claims that are not typically employed with respect to consideration of just cause in the doctrine of *jus ad bellum*. In that doctrine, likelihood of success contains forecasts about the probability of securing the just cause; but the principle of just cause does not. Hence, an additional element of uncertainty is involved in any employment of the principle of just cause in *jus ex bello* that depends on claims about injustices that would occur if the war were not prosecuted. This ought to affect our confidence in claiming that a war is just on the basis that it is preventing a future injustice.

Take the case of the Iraq war mentioned above. Confidence in the predictions about the catastrophic consequences of a US withdrawal is diminished by the lack of support that Iraqis have for the US military presence. According to an Iraqi opinion poll taken by ABC News, the BBC, and NHK in the summer of 2007, 65 to 70 percent of those polled believed that the surge had worsened security; 60 percent viewed the US invasion as wrong; 57 percent supported violence against US troops; and 47 percent favored an immediate US withdrawal.²⁴ Consideration of these views are relevant to the claim of just cause, taken as prevention of future state collapse, for they suggest the possibility that the US military presence itself is a destabilizing force.

I noted above a similarity between a claim of just cause on the basis of a forecast of calamity if a war were to end and a claim of likelihood of success. Despite the similarity they are distinct moral considerations. This can be seen clearly in cases in which each fails to be satisfied. If just cause of this sort were not satisfied it would be because the calamity would not occur if the war were ended. If likelihood of success were not satisfied, it would be because the war would not in any case prevent the calamity. In the case of the continued prosecution of the Iraq war, for example, one can find criticisms of both sorts, but not one hopes—for the sake of consistency—made by the same critic.

Generally in accounts of *jus ad bellum* the requirements of likelihood of success, proportionality, and last resort are conceptually dependent upon just cause. In other words, a just war must be a proportional remedy to an injustice in the *status quo ante bellum*, but a remedy that is likely to succeed and taken only after alternatives have failed. In the doctrine of *jus ex bello*, the justified cause may be different than that which would have justified the war *ex ante*. In such cases, judgments of proportionality and likelihood of success would have to be reconsidered. These two principles would have a place in the doctrine of *jus ex bello* for the same reason that they have place in the doctrine of *jus ad bellum*. Because war is a great evil that produces many deaths and great destruction, its continuation must not only serve as a remedy to an evil, but also be worth the

²⁴Gary Langer, "Iraq: where things stand," ABC News. Available at: <http://www.abcnews.go.com/US/story?id=3571504> (accessed Sept. 13, 2007).

moral price and be likely to succeed. Moreover, in order to satisfy these two principles jointly a war must not create a state of affairs that is sufficiently unjust to outweigh the remedy it produces.

The evil of war is the reason why alternative remedies should be pursued. This is the basis for the *jus ad bellum* requirement of last resort. The same considerations provide the basis of a *jus ex bello* analogue to last resort: The war may be continued only if an alternative diplomatic remedy is unavailable. This requires not merely watching for such remedies but taking initiative to create them when the circumstances seem right. I call this *the principle of the pursuit of diplomatic remedies*. In this regard President George W. Bush's war policy appears deserving of criticism for rejecting, without even attempting to pursue, the advice of the Iraq Study Group to seek to involve other regional powers in a diplomatic effort to bring peace to Iraq.²⁵

Thus far, I have argued that whether a war, once begun, should be considered just depends on at least four principles: just cause, proportionality, likelihood of success, and the pursuit of diplomatic remedies. I turn now to the considerations that should govern the pursuit of peace if a war fails to satisfy the four principles necessary for justifying its continued prosecution.

How a war, which fails to satisfy the four continuation requirements of *jus ex bello*, should be ended depends importantly on whether it satisfies the *jus ex bello* principle of just cause. This I hope will be clear presently. For the moment I turn to considerations of a general nature that apply in all, or nearly all, cases of ending a war that fails on grounds of *jus ex bello*. Take the case of a war of unjust conquest pure and simple, and assume that in the course of events no additional injustices arise that the war would remedy. The fundamental moral requirements in this case are that the party pursuing conquest cease and desist. The reason for this is basic to just war theory itself: War is an evil that is justified only if it meets several conditions that serve to make it likely that sufficient good will derive from its prosecution and that limit the evil that can be done in its prosecution.

The principles governing how the withdrawal of troops ought generally to be conducted require the minimization of casualties, of damage to vital infrastructure, and of damage to institutions required to uphold law and order. The justification of these principles derives from the basic approach of just war theory since the principles concern minimizing some of the kinds of evil that war itself produces, and because of which war requires special justification. If war is presumptively wrong, albeit justifiable, because it harms persons, property, and institutions, then the termination of a wrongful war should seek not to increase these very evils.

A war that satisfies the *jus ex bello* principle of just cause, but which is unjust because it fails to satisfy some other principle is, however, a special case governed

²⁵The report of the Iraq Study Group is available on line at: http://www.usip.org/isg/iraq_study_group_report/report/1206/iraq_study_group_report.pdf (accessed Sept. 24, 2007). It introduces the need for diplomacy early on as part of an "external approach" on page six of the Executive Summary.

by an additional principle, namely that it must mitigate the injustices that are the basis of the just cause claim. Suppose that preventing full state collapse and a generalized civil war in Iraq provide just cause for the war, but that there is insufficient reason to believe that it will be possible to withdraw within the foreseeable future without these events coming to pass in any case: Political reconciliation is not forthcoming; present troop levels cannot be maintained; a drawdown of troops must occur eventually; and whether it starts now or sometime later the same bleak prospects for avoiding generalized civil war (including even ethnic cleansing) are present. Such a war would fail to satisfy the principle of likelihood of success. Because the war satisfies the principle of just cause, the process of withdrawing the troops requires balancing the moral requirement of not extending an unjust war against the requirement to mitigate the injustice that cannot be remedied. Serious discussion and vetting of alternative means of balancing are required by the principle of mitigation of injustice: Can withdrawal be accompanied by a partitioning for purposes of establishing separate and relatively stable political communities? Alternatively, can the relatively stable and liberal region of Kurdistan be insulated from civil war in other parts of the country? Or is success so unlikely with respect to these plans that nothing short of a complete withdrawal—with all its assumed terrible consequences—is justified?

One implication of the principle of mitigation of injustice is that the path of peace in an unjust war might itself be unjust. If there is a moral requirement to mitigate injustice, which is not served by a particular policy pursued, but could have been by an alternative policy, then although the war should be ended, its termination fails to satisfy a requirement of *jus ex bello*. In discussing the importance of victory in a just war (which, of course, is not at all our discussion here) Walzer makes an observation apropos to this matter: “There is always a humanitarian impulse to stop the fighting, and attempts are often made by the great powers (or the United Nations) to impose a cease-fire. But it isn’t always true that such ceasefires serve the purposes of humanity.”²⁶ Recall that I noted in section I that the principle of likelihood of success can condemn a particular war strategy, even though it might not condemn the war itself. The present point is somewhat parallel. A particular path to peace might be condemned by the principle of the mitigation of injustice, even though the pursuit of peace itself is required by other principles of *jus ex bello*.

V

I do not claim to have provided an exhaustive set of principles or considerations for the doctrine of *jus ex bello*. I hope, however, to have demonstrated several

²⁶Walzer, *Just and Unjust Wars*, p. 123. Walzer also notes in *Arguing about War*, p. 20 that “once we have acted in ways that have significant negative consequences for other people (even if there are also positive consequences), we cannot just walk away.”

claims: First that just war theory is incomplete without a doctrine of *jus ex bello*; second that *jus ex bello* includes the principles of just cause, proportionality, likelihood of success, and the pursuit of diplomatic remedies, which a war once begun must satisfy in order to be just; and third that in pursuing peace when a war is unjust the principles of the minimization of casualties, of damage to infrastructure, and of damage to institutions of law and order apply in general, and that the principle of the mitigation of injustice applies in the special case of an unjust war that satisfies the *jus ex bello* principle of just cause.

This has been an exercise in pursuit of moral clarity regarding war. I hope that such clarity is of great importance to at least some policy-makers, but I have no doubt that it is important to many citizens who seek to hold their policy-makers accountable to moral principles in the prosecution of wars. One important way to prevent unjust wars is through citizen activism. Moral clarity on these matters is, of course, also of importance to the global community for whom international peace and global justice matter. If the account in this paper is roughly correct, then the global community also stands in need of legal doctrines and institutions to govern *jus ex bello*. In that case, in addition to filling out the moral details of the doctrine of *jus ex bello*, much important normative work remains to be done in developing accounts of the institutions that could serve the doctrine.