

Unmanned Systems and War's End: Prospects for Lasting Peace*

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Most people probably remember United States President George W. Bush swooping down out of the sky in a Navy fighter jet and alighting onto the deck of the aircraft carrier U.S.S. Abraham Lincoln to give a rousing televised war speech under a gigantic banner reading “Mission Accomplished”. In his May 2003 address, given to signal the supposed end of major combat operations in the Middle East, Bush stated that the “United States and [its] allies have prevailed”.¹ Bush’s assertion—and the banner itself—continue to be quite controversial to this day, with the vast majority of casualties, both military and civilian, occurring long after the speech, despite the wide scale deployment of technologically sophisticated unmanned systems. While it is too simplistic to say that the United States led coalition failed to plan for the aftermath of the wars it became involved in, I submit that the poor prospects for lasting peace can be partly attributed to the lack of attention given to unmanned warfare’s effect on just war theory’s so-called “third tenet”—*jus post bellum*—which is concerned with justice at war’s end. As it stands at the time of writing, this paper marks the first comprehensive treatment of the contents and contemporary challenges facing *jus post bellum* as it pertains to unmanned warfare. It offers analysis and opinion on the responsibilities of drone-wielding states in ensuring a smooth transition from conflict to peace.

The first half of the paper is largely theoretical and examines the historical and conceptual foundations of the proposed third tenet. It maps current thinking and provides insights on the content of *jus post bellum* and its synergistic relationship with *jus ad bellum*, governing responsibilities in the resort to war.

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¹Associated Press, "Text of Bush Speech", 2009, <http://www.cbsnews.com/stories/2003/05/01/iraq/main551946.shtml>.

The second half of the paper bridges the gap between theory and practice. It begins to explore the issues posed by the demands of *jus post bellum* in the context of the use of unmanned systems. This involves a general assessment of the role that distance and technology play in forming perceptions of war among an adversary's culturally diverse population. It will also involve a brief look at what engineers and strategists can do to overcome the conflicts between unmanned warfare and the ends of *jus post bellum*.

Historical Conceptions of a Tripartite Just War Theory

Nearly every discussion of unmanned systems pays due homage to classical just war theory, which is a coherent set of concepts and values designed to enable systematic moral judgement in wartime. Traditionally, it has two main tenets: *jus ad bellum* and *jus in bello*. Within these two categories, various principles have been developed and defended in an attempt to regulate warfare and determine responsibility in the resort to armed force and the use of force in subsequent conflict, respectively. This, in itself, is not unproblematic, given recent challenges to the division between the two tenets by those like Jeff McMahan. However, as demonstrated elsewhere (Galliot, 2012 a, b), these challenges have not yet proved fatal. Just war theory continues to hold a great deal of explanatory power and many important ethical issues related to unmanned systems are fruitfully analysed under its main tenets. Yet it may be argued that relying on these two tenets in assessing unmanned warfare does not do justice to the task and leaves out an important question: that related to the nature of post-war responsibility. Accordingly, some just war theorists have recently argued that we need to develop just war theory and include an additional tenet with principles covering demilitarisation, compensation, rehabilitation and so on, which many have labeled *jus post bellum*. Given that the hostilities in Afghanistan and Iraq continue, despite the end of actual combat operations and assurances that the focus has now shifted to the reconstruction of these nations, there has been surprisingly little academic enquiry into this recent extension of just war theory and virtually no scholarship linking it to unmanned systems technologies.² Before examining this relationship in greater detail, attention needs to be given to the relevant but limited history of politico-moral and military thought concerning responsibilities after war's end and the reasons for the typical just war theorist's disregard or rejection of this intellectual framework.

² Many scholars simply dismiss *jus post bellum* scholarship entirely, while others simply disregard it because it complicates a neat discussion of the problems posed for *jus ad bellum* and *jus in bello*. For example, Daniel Brunstetter and Megan Braun disregard this important area of scholarship with one sentence, stating that "Finally, while such scholars as Brian Orend and Michael Walzer have argued for the importance of deepening our understanding of *jus post bellum*, we do not discuss it here". See: Brunstetter and Braun, 2011, p. 340.

While some scholars regard jus post bellum thinking as in its theoretical infancy (Royal, 2012, p. 65), it does have a place in the work of a number of influential just war scholars. Historical traces of a tripartite conception of just war theory can be found across many of the different traditions that have contributed to modern just war thought (Stahn, 2008, p. 95). St. Augustine linked war to the post-war goal of peace in his book *City of God*; perhaps the most important work of theology ever written. He provides a clear reference to a tripartite conception, writing that “peace is the instinctive aim of all creatures, and is even the ultimate purpose of war” (Augustine, 1984, p. 866). Much later, other proponents of just war theory built upon this thinking. These included Francisco de Vitoria who set basic rules for the just seizure of the enemy’s property and demanded that reparations be paid (Victoria, 1917, pp. 184-185) and Francisco Suárez, who gives support for similar rules in writing that a state has no reason to continue fighting where “full and sufficient satisfaction is voluntarily offered” (Suárez, 1944, pp. 838-840). More recently, Hugo Grotius developed an explicitly tripartite conception in *On the Law of War and Peace* (Grotius, 1925), which secularised just war principles and held them to be binding on all states regardless of local custom. Book Three, in particular, includes not only the typical rules that we have come to embrace in the form of jus ad bellum and jus in bello, but also practical rules on the just cessation of war, governing areas such as surrender and the peace treaties that typically follow (Grotius, 1925, pp. 804-831). Kant also put forward a theory based on three tenets: Right to War, Right in War and Right after War (Kant, 1887). He associated the latter, his equivalent of jus post bellum, with justice as it is manifested in peace settlements, limits on the punishment of individuals and respect for self-government (Kant, 1887, pp. 221-222). Thus, all of these just war theorists agreed, on some level, that states ought to be held responsible for the way in which war is ended and the prospects for peace managed. Despite the work of these classical theorists, most modern debates concerning war or warfare technologies end with little formal attention given to the ethics of the post-conflict environment. This is in no way to suggest that the just war tradition is simplistic or lacks modern relevance. As I have argued elsewhere, the founding fathers of just war theory could little have imagined tele-operated unmanned aerial vehicles, let alone fully autonomous unmanned systems, but their main principles remain sturdy and thought-provoking when applied to changing political systems and air warfare innovations. The case is the same for jus post bellum; it is a matter of re-examining and re-applying it in novel contexts. However, as Brian Orend has pointed out, it still needs to be asked why the termination phase of war has been overlooked in recent times and whether there is anything significant or revealing in this very fact of it being overlooked? (Orend, 2008, p. 33) Here, I mention two of the more convincing reasons that may have been a factor in the scholarly disregard of jus post bellum.

The first relatively simple reason is that in earlier times, the ends of war were different, so too were the motivations behind it. For instance, in the Middle Ages war was not only limited by the ideals of the church as written by Augustine, but also much more realistic constraints. Historian James Turner Johnson writes that because of the challenges associated with fighting throughout much of the year and the need for warriors to oversee their properties and seek to ensure that they remain productive and self-sufficient, war was a part-time endeavor, in much the same way that it is for today's Army reservists, with armies drawing on the larger population base for their economic support and conflicts breaking out primarily as a result of disputes over property and revenue (Johnson, 2012, p 23). The weapons employed during these conflicts were also difficult to use and, in the case of trebuchets and battering rams, notoriously difficult to transport. Therefore, it was not in the interests of the belligerents to employ harsh tactics or destructive weapons. To do so would be to counter-productively threaten their political and economic wellbeing. With a strong regard for a peace and wellbeing already built into the means and nature of warfare, this eliminated much of the need for an explicit third tenet.

The second and somewhat deeper reason has to do with the inertia of the tradition. As critics often draw to our attention, just war theory began along two established lines of thought regarding *jus ad bello* and *jus in bello* and many have shown what Orend calls an "unreflective unwillingness" to break out of these two categories (Orend, 2008, p. 33). Others say that while *jus post bellum* should not be considered a distinct category of just war theory, it is not entirely missing from it, either. Those that fall into this later group talk of *jus post bellum* but make a conscious decision to subsume it under the well-established category *jus ad bellum*. Following in the footsteps of Aristotle and many other just war giants, Michael Walzer also subordinates post-war justice to *jus ad bellum*. In the first edition of his classic *Just and Unjust Wars*, he writes that "justice after war consists in achieving the just cause which justified the start of the war to begin with... If the just cause was self-defense from aggression, *jus post bellum* consists in defeating and repulsing the aggressor... Full stop and we're done"³ Much more recently, he has written that the idea here is twofold: that war can only be considered just if there is a strong likelihood of success and, for this, leaders must have some idea of what success looks like. And, second, that right intention means that whatever is taken to constitute success must not only be possible, but also morally defensible (Walzer, 2012, p. 35).

³ This is stated in the opening section to a chapter dealing specifically with *jus ad bellum*. See: Walzer, 1977, pp. 109-126.

Thus, for him, and others in the subsumption camp, arguments about the post-war environment are a crucial part of the arguments about going to war in the first instance. That is, for these scholars at least, post-war considerations belong only within the category of *jus ad bellum*. Given that many scholars do indeed learn their just war theory at Michael Walzer's knee, either figuratively or more literally, this could partially account for the lacunae. However, I do not think we can leave the debate there.

Why does a possible tripartite conception deserve renewed attention as we progress into the twenty-first century? For many of those that remain unconvinced by my dismissal of McMahan's revisionist just war theory, the explanation is likely to be that a rethinking or reconsideration of the bipartite structure could serve a very particular systemic function. Recall that those who embrace McMahan's contemporary just war theory—if it can be called such—reject the idea that the categories are logically distinct. The categories are, for them, melded together. The benefit for proponents of McMahanian type ideas, as Stahn notes, is that *jus post bellum* might have a unifying force and “establish a closer nexus between the justification and motive of the use of force and the corresponding responsibilities in the aftermath of intervention” (Stahn, 2008, p. 321). Through encouraging international actors to consider the broader consequences of their actions, formal recognition of the rules and principles governing the post-conflict period may also stop them from divorcing matters of conduct from those of the resort to force, closing the gap between *jus ad bellum* and *jus in bello*. Bridging this gap goes some way toward aiding the cause of just war revisionists. Of course, proponents of classical just war theory will still maintain that while the categories may inform each other to some extent, the justice of peace should be evaluated independently of the justice of the war that preceded it. That is, for the classicists, myself included, there is little reason to think there cannot be a just conflict but an unjust peace and vice versa. For even where a state goes to war in compliance with the principles of *jus ad bellum* and fights in accordance with *jus in bello*, it may then fail to meet the conditions of *jus post bellum* after the war has ended.

More generally, and arguably more importantly, a contemporary theory of just post bellum would fill a large normative gap, given that at present, there is no thorough competing moral framework that serves to govern the transition from conflict to peace. We do have that already incorporated in *jus ad bellum*, but with war having a beginning, middle and end, we need a complete just war theory that covers responsibilities in the closing phase of conflict. It is needless to say that it is best when wars actually end and end well. The answer to the question “why do we need a third tenet?” is evident in the context of recent military interventions and their aftermath. Whilst it is obviously difficult to set objective standards by which to judge the end-result of any given war,

and while we will forever be striving to improve war's aftermath, few full-scale wars seem to have ended "well" or as well as they potentially could have. We need only turn to history and the trail of conflicts that have ended and lead to devastating and long-lasting post-war conditions, often to be reignited into even deadlier conflicts. Iraq is but one recent example that has underlined the challenges faced by states after the conclusion of the conventional phase of military operations. As such, the careful articulation of a third tenet may mitigate the gap and smooth over the transition from conflict to better and long-lasting state of peace.

Even proponents of the subsumation camp must admit that there are a number of advantages and some heuristic value in making it explicit as separate "checkpoint" or "consideration" (Fisher, 2011, pp. 79-80). It would, if nothing else, serve as a more detailed reminder to military and political decision makers of the need to take the goal of peace and any potential settlement into account in the balance of consequences when resorting to war and carrying out individual operations. In doing, as the next two sections will highlight, they must have a robust plan for dealing with any detrimental impact of military operations on prospects for ensuring the prompt restoration and/or improvement of peace.

The Principles of Jus Post Bellum

Without intending to deny the noteworthy efforts of some contemporary philosophers to introduce the category of jus post bellum and carefully articulate its principles, thinking on the subject is, to borrow Robert Royal's apt description, in its infancy and certainly not beyond adolescence (Royal, 2012, p. 90). There may be a growing consensus—stimulated by George Bush's speech on that memorable day in 2003—that the end and aftermath of war deserves a comprehensive and systematic treatment, but there is no general consensus on a canon of jus post bellum principles or criteria. As one Coast Guard Lieutenant who attempted to sort through the debate concluded, "the jus post bellum bandwagon, if you will, has filled up with musicians who have yet to get on the same sheet of music" (Bosanquet, 2007). This, of course, is not to say that the cacophony can be ignored. If anything, it is a further sign of the importance of carefully articulating relevant principles. Most existing articulations seek to create a synergy between jus ad bellum and jus post bellum through adapting the former's well-established principles to post-war problems or otherwise derive principles from best international post-war practice and propositions put forward by legal scholars. In this sense, those philosophers concerned with this articulation are doing what philosophers have always done: conceptualising the ideal while grounding it very much in the real.

In mapping their thinking, it is helpful to identify two separate positions or accounts, though it must be acknowledged that many scholars' work rests somewhere between the two and that the considerations captured by *jus post bellum* are sometimes hard to grasp. There are those who envisage *jus post bellum* as setting restrictive criteria outlining what it is permissible and impermissible for victors to do once the active conflict is over. Alex J. Bellamy labels this the minimalist approach (Bellamy, 2008, p. 602). Drawing on the work of just war theorists such as Vattel and Grotius, Bellamy claims that minimalists tend to view war as a method of rights vindication and argue that combatants are only entitled to wage war if their rights are impinged upon and then only to the extent that they are vindicated. As a consequence of this thinking, minimalists are of the opinion that victors are entitled to protect themselves, recover anything that may have been illegitimately taken and punish the perpetrators who violated their rights or those of others, such as in the case of genocide (Bellamy, 2008, p. 603-605). In essence, the argument here is that they can restore the state of affairs to that which existed prior to conflict, but any other interference or action is morally unsanctioned. Bellamy also identifies a maximalist approach. It builds on the less stringent account, and adds the proposition that there is an in-built presumption against conflict in just war thinking and that victors therefore acquire duties and responsibilities to the vanquished that go well beyond the requirement not to exact anything more from the conquered than is deemed necessary to vindicate their rights. These responsibilities include, but are not necessarily limited to, formalising the quasi-judicial function of war through establishing military courts and holding war crimes trials, as well as taking other active measures to avoid future war by assisting in long-term governance and reconstruction efforts, as the United States did with Japan and Germany and is now attempting to do in the Middle East (Bellamy, 2008, p. 612-618).

The maximalist approach is, in my view, the more normatively appealing. The reason is straightforward: the minimalist approach merely encourages restoration of the status quo ante. Those who embrace this approach hold that victors are entitled to use only that violence which vindicates their rights and returns them to a state of affairs equal or as near as possible to the state of affairs that existed prior to the outbreak of war. But to cease efforts upon reaching the status quo ante is essentially to sow the seed for future conflict. If we are to avoid returning to a state of conflict, more meaningful actions are required. This then leads to the work of Brian Orend, who

is perhaps the foremost scholar and advocate of *jus post bellum*,⁴ and argues that the scope of its principles must extend to “a more secure possession of our rights, both individual and collective” (Orend, 2008, pp. 39-40). The aim of a just war, he argues, is the vindication of the fundamental rights of societies, exercised on behalf of their citizens. He goes on to say that a legitimate, just war observing community must do all that it can reasonably do to: gain and maintain the recognition of its own people and the international community of states; adhere to basic rules of international justice, most notably non-aggression; and satisfy the rights of its citizens, including those to security. As a consequence of his rights-talk, his account may, at first glance, appear minimalist, but in his discussion of what these requirements actually amount to, its maximalist nature surfaces. Orend’s discussion of *jus post bellum* makes little mention of entitlements and, instead focuses on obligations, which are difficult to reconcile with rights-based minimalist accounts. He enumerates the following six principles according to which victors acquire a wide range of responsibilities beyond those required to restore the *status quo ante*: rights vindication, proportionality and publicity of the peace settlement, discrimination, punishment, compensation and rehabilitation (Orend, 2008, pp. 41-42).

On the first count he stipulates, in line with what has already been mentioned, that a just settlement of a war should secure the basic rights that were violated and that justified the waging of war (Orend, 2008, pp. 41-42). The relevant rights could include those to life and liberty, sovereignty and, more controversially, territory. Securing these rights must, for Orend, be the substantive goal of any morally legitimate peace settlement. On the second count, drawing on the classical just war principle of proportionality, he says that the peace settlement must be measured and reasonable, as well as publicly proclaimed (Orend, 2008, pp. 41-42). The call for a public proclamation ensures that the victor very clearly communicates to the other belligerent that they have sincere intentions for a lasting post-war settlement, while the measuredness condition ensures that the victor does not utilise the settlement as an instrument of revenge, which would only lead to more instability. Drawing on yet another familiar principle, he says that a distinction needs to be made between the soldiers, statesmen and civilians of the defeated state involved in the peace settlement (Orend, 2008, pp. 41-42). The latter group of persons is generally considered immune from the punitive aspect of post-war measures. This immunity seems to rule out the imposition of broad socio-economic sanctions such as reparation taxes and the like. The soldiers

⁴ Tony Coady puts forward a very similar elucidation of *jus post bellum* principles; however, in some senses it is even more comprehensive. His *jus post bellum* is all-encompassing, covering the termination of war, how to deal with post-war conditions and how to deal with one’s own troops justly after the war. See: Coady, 2011. This, I think, is to conflate the subtle differences between between these three sub-areas, so I opt for Orend’s account.

and statesmen, on the other hand, are far from immune. Orend's fourth principle states that these categories of persons from the vanquished state must be punished proportionally to the moral crimes they facilitated (Orend, 2008, pp. 41-42). Proportional punishment serves as a powerful deterrent against future moral crimes and may spur change and rehabilitation on the part of the aggressor. Of course, soldiers from all sides can commit war crimes and must be held accountable for this. Through his fifth principle, Orend further argues that the defeated state may also owe financial restitution, though as already stated, it falls upon the victor to determine how this fits with the requirements of proportionality and discrimination (Orend, 2008, pp. 41-42). Finally, and I think most importantly, he states that the aggressor state may require rehabilitation and demilitarisation depending on the nature of the violence it waged and the reasons behind it, along with some consideration of the threat it poses in the absence of such action (Orend, 2008, pp. 41-42). According to Orend, a just peace must meet all of these general requirements (Orend, 2008, p. 43). In short, there must be a comprehensive ethical exit strategy in place, regardless of the additional burdens it puts on the minds of policy planners and frontline commanders. Any significant non-adherence from his six principles would constitute a violation of just war theory, possibly leaving the offender open to punishment. That is because those principles just enumerated represent a fair "checklist"⁵ of the areas that must be addressed, whether it is a war with drones or more traditional weapons. However, more needs to be said of them. These are not inexpensive undertakings, in either financial or moral-political terms. As the Western coalition's actions in the Middle East have demonstrated, trying to accomplish anything resembling these goals can be a decades-long effort and contribute to hundreds of deaths and casualties that would otherwise have been avoided, at least in the near-term. Here rests a morally significant tension between a state's immediate responsibility for its own people, defined under the social contract, and its strategic responsibility to care for the wellbeing of those of the defeated state. When not applied meaningfully, with sensitivity or full understanding of what is required, well-intentioned actions can also result in cultural collisions that may never truly be healed. Part of the problem is that the principles are very general in nature. As anyone with a working knowledge of peacekeeping or the provision of humanitarian aid knows, it is the detail that counts. With that said, different wars entail different post-war responsibilities. In some instances, a quick withdrawal might be prudent, in others it may be wise to engage in lengthy stability operations. With the benefit of hindsight, the aim herein is to provide a more detailed understanding of these principles as they apply to drone-dependent operations, using the Middle East as the illustrative example.

⁵ I use this word in scare quotes because I do not intend to advocate the "checklist approach", whereby our leaders and combat personnel come to view the ethics of war as a "tick and flick" affair.

Jus Post Bellum and the Drone Effort

From the above discussion of Orend's jus post bellum, we know that to secure a better state of peace, states need to adhere to six general principles that are thought to aid in the establishment of a minimally just society. What states need to know, however, is how to operationalise and apply these principles in the conflict zone. Translating these theoretical principles into practice is a difficult task given that post-war actions must also take into consideration the political, social, cultural and religious norms of the area in which operations are conducted, a task the United States obviously failed to give adequate attention to in preparing for the Middle East. There is now much known about its strategic planning, or the lack thereof. For instance, we know that the United States military was prepared for a much longer and more deadly conflict than that which eventuated. Its forces were equipped for a short conflict it believed would involve nuclear, biological or chemical weapons (Patterson, 2012, p. 3). We also know that its post-conflict planning was limited to protecting oil infrastructure and avoiding Kuwaiti style destruction. While there were some successes in the sense that full-scale combat operations ceased within two months and Iraq's oil fields survived relatively unscathed, sectarian violence rages on today and the relevant governments seem no more just than they were prior to intervention. In their tenth year of what was supposed to be a five month operation, the United States, economically exhausted and suffering from greater than expected losses, has come to rely ever more heavily on drones. This, I will argue, has exacerbated the problem rather than alleviate it. In this section I will outline how to ground jus post bellum principles and demonstrate how, in most cases, their implementation is hindered by, or is in direct competition with, the employment of unmanned systems.

In addition to his six jus post bellum principles, Orend provides a ten point blueprint aimed at maximising prospects for lasting peace whilst forcefully enacting politico-military change, which I will draw on to illustrate the problem with unmanned warfare. The first point he makes is that states must adhere diligently to the laws of war during the conflict and any subsequent period of occupation (Orend, 2008, p. 46). This is morally vital for its own sake, but also serves to reinforce a state's cause and the legitimacy of its occupation to the local population. The United States has already run afoul of this principle in Iraq, of course, owing to the notorious abuse and mistreatment of prisoners of war at Abu-Ghraib prison, but the focus has already started to shift from these concerns over torture and humiliation to those about drone warfare. As already highlighted throughout this book, the employment of unmanned systems can breach the rules of war for any number of reasons: it can lead to more wars, lower barriers to killing in war and be

intrinsically unfair and unjust in cases of radical asymmetry. However, perhaps the biggest concern is that these systems might be perceived as being indiscriminate and/or disproportionate. The history of the targeted killing facilitated by unmanned systems technologies is marked by a long series of errors that are said to have resulted in large numbers of civilian casualties and mass destruction. According to Avery Plaw in a paper entitled “Counting the Dead”, while accounts of the imprecision of these systems differ, many report kill rates ranging from ten percent through to an abysmal two percent; that is, only one in fifty drone attacks are said to have resulted in the deaths of Al Qaeda combatants or other militant group operatives or leaders (Plaw, 2013, pp. 2-3). While it goes without saying that these claims and figures are probably exaggerated, much of the world has come to the conclusion that President’s Bush and Obama have lost their moral high ground as a result of the drone campaigns spanning their terms of office. This is problematic, because if both the local population and the international audience begin to doubt a state’s moral basis for continuing to wage war, they may withdraw their popular support and resources, extending the time it will take to accomplish a state’s set goals, resulting in longer, bloodier wars.

Another consequence of conducting inaccurate and disproportionate drone strikes and allowing society to doubt the moral rectitude of what is being done is that it makes it inordinately more difficult to disarm and demilitarise society during war and in post-conflict phases of operations, which is critical to the establishment of a just and lasting peace (Orend, 2008, p. 46). Many war commentators are concerned that unmanned systems technologies may actually be contributing to violence, hostility and instability in those areas where they are deployed. Although some commentators disagree and highlight that there is no conclusive proof of a causal link between drone attacks and increased violence, there is strong circumstantial evidence that suggests that the use of drones is spurring discontent and hampering United States efforts to quell the number of violent attacks that have been threatening their troops and others in their vicinity. For instance, Australian Lieutenant-Colonel David Killcullen, who is former counterinsurgency advisor to General David Petraeus, has said that if the United States continues with their aggressive drone attack policy, those tribes people who are not militants will soon become extremists (Center for Civilians in Conflict, 2012, p. 23).

This may seem a bold claim, but imagine the equivalent domestic scenario. Imagine that you live in a rough American neighborhood amongst drug lords, murderers and homeland terrorists. With the support of the state governor, the local police force decides to employ armed drones to capture and/or summarily kill those undesirables living nearby. These criminals are of sufficient danger that the risk matrix put in place to weigh civilian harms against the benefit of eliminating these people from society warrants conducting operations in your high-density neighborhood. The police accidentally destroy a number of homes and a local park. Are the homeowners and families of the injured more likely to turn against the criminals or the police force? And if they wanted to apprehend the criminals themselves, how would they go about that?

We ought to apply the same sort of logic to unmanned warfare and grasp the idea that killing noncombatants or destroying their homes and murdering their loved ones means fostering conditions that are antithetical to enduring peace and likely to give rise to radical insurgence. In both Iraq and Afghanistan, the local populace's will to resist American efforts continues to grow stronger with each civilian killed or injured, each village destroyed and each family that is forced to live on streets. The strategic implication is that each of those affected represents an extended and close-knit network of family, friends and professional colleagues that are only reminded of Britain and Pakistan's earlier aerial bombardment campaigns and provided with an additional reason to hate the United States and Western ideology. Conversely, as Kaltenhaler et. al. have recognised, radical terrorist organisations gain moral legitimacy as a force fighting against what appears to some as the latest attempt at colonisation (Kaltenhaler et al., 2012). As one young independent fighter is reported to have told *The Guardian*, "if young men lose hope in our cause they will be looking for an alternative. And our hopeless young men are joining Al Qaeda' Abdul-Ahad, 2012). This view is supported by a United Nations report, which concluded that air strikes were among the principal motivations for suicide bombers (Bergen and Tiedemann, 2007) and an American study that consisted of interviews with Yemeni government officials, tribal leaders and others and concluded that the unintended consequence of drone attacks in that country has been a 'marked radicalisation of the local population' (Raghavan, 2012). As Harry Bash put it in his musings, drones may be formidable weapons, but the Taliban and Al Qaeda have devised their own low-cost weapon in the form of "suicidal jihadists who have impacts not unlike that of our aerial ones" (Bash, 2011, p. 461). To that end, they recruit disaffected youth, inculcate them with radical ideals, convince them of the need for some religiously inspired jihad and then have them wear explosive-ridden clothing that is then detonated in some densely populated area. When one is left with no alternative option, some people will resort to whatever means are available to effect change.

For Americans there is a stark contrast between these American soldiers and suicidal jihadists, but for Iraqis, Afghans and others affected, the difference between these two weapons is likely much less significant.

The fabled precision of unmanned aerial vehicle attacks also decreases the likelihood that non-state associations and post-war civil society will eventually flourish, which is another practical requirement under Orend's *jus post bellum* blueprint. The Columbia Law School's recent report on drone warfare identifies a number of relevant factors that make the affected public reluctant to associate with others, enjoy life and show a commitment to their society. First, a number of neutral civilians have found themselves caught in a precarious and rather dangerous position between local militants belonging to groups such as Al Qaeda and the United States' drone effort, suspected of being spies or informants working for the foreign coalition (Center for Civilians in Conflict, 2012, p. 22). In one incident reported by the Los Angeles Times, a shop keeper was abducted, thrown into the back of a car and taken to a safe house where, along with other suspected "traitors", he was beaten for eight weeks (Rodriguez, 2011). Unable to determine whether he was in fact guilty, he was released to another militant group and later set free. While those suspected of colluding with foreign powers have been harmed, many of those that have been mistakenly targeted by drone missiles are also stigmatised and assumed to be connected in some way to the militancy (Center for Civilians in Conflict, 2012, p. 22). In such cases, civilians living nearby those liable to be bombed often undertake their own vigilante action against the suspected militants in the hope of ridding their community of potential danger, not knowing that apart from having a particular affinity for hitting large gatherings such as weddings and funerals, drones have also been known to mistake the homes of peace activists for Taliban hideouts. All of this is of particular moral concern because civic groupings connect citizens to their government (and often protect them from the same), take pressure off the state and serve to legitimise the state. Without the sort of robust civil societies that strong public participation supports, tyrannical governments can take reign.

To further prevent the rise or re-growth of tyrannical governments, Orend states that the victorious state must work with a cross-section of the local population on a new constitution and minimally just government that incorporates checks and balances, which ensures that those whom it serves are protected as well as possible (Orend, 2008, p. 47). In terms of the constitution building process, he is careful to say that all those whose non-participation could ruin any subsequent agreement, and anyone who is committed to a minimally just state, must be included in some fashion (Orend, 2008, p. 47).

The picture that Orend paints is one of genuine and well-intentioned political partnership between the victor, the vanquished and its population, and while it is obvious why the support of all three is necessary, the employment of unmanned systems threatens the meaningful participation of the latter for much the same reasons mentioned above.

Apart from the above-mentioned, the unwillingness to cooperate with United States forces and the transitional government initially implemented in Iraq can surely be attributed, more generally, to a failure to secure the oft-cited hearts and minds of locals.⁶ And securing exactly this prize is problematic for an unmanned military force, as it is imaginable that sending out robots to fight one's wars and kill one's enemy does not sit well with those on the ground. Enemy combatants might take it to be indicative of the fact that their counterparts are not willing to settle their dispute in the customary and somewhat more chivalric face-to-face manner. It is known for a fact that the Taliban, accustomed to fighting in close proximity to their Middle Eastern enemies, sees the use of these distance weapons as extremely cowardly (Wifferen, 2011). This may be the same for civilians too, for as already explained, they may only ever hear the powerfully alienating hum of the Predator drones flying overhead and see the destruction and side effects they cause, without ever seeing the faces of those operators behind them. Furthermore, there are far fewer, if any, soldiers on the ground to take responsibility for these matters and carry forward values like honour, honesty, duty, respect, integrity and personal courage that are traditionally attributed to warriors as representatives of their respective states. However, the Middle East has not diverged from traditional practice as quickly as the West, so it is precisely these sorts of values that the United States needs if they are to win the hearts and minds of Iraqis, Afghans and other national populations.

Unfortunately, in many respects, the drone war across Iraq, Afghanistan and its borderlands with Pakistan invite what is probably an unwelcome comparison to the Vietnam War (Gardner, 2009, p. 309). While the Obama administration and senior officials in the Pentagon are obviously not perturbed, the use of drone aircraft to rain bullets and launch missiles at key targets in what are often urban areas has become nearly as ritualised as the sustained bombing campaign against North Vietnam, later codenamed "Rolling Thunder". In both cases, the United States has displayed a reluctance to commit ground troops and lost the support of the local population due, at least in part, to the means employed. Levels of popular support are equally concerning. In their working paper on Pakistani public attitudes toward drone strikes, Kaltenhaler et. al. cite the (2010) Pew Global Attitudes Project poll that confirms the reasons for the loss of support for unmanned

⁶ Numerous scholars make mention of this. For two good discussions, see: Cummins, 2010 ; Robbenn (ed.), 2010.

warfare in that country. It found that while not universally hated, the wide majority opposed the United States conducting drone attacks in conjunction with their government (Kaltenhaler et al., 2012, pp. 2-3). When asked whether they kill too many innocent people, very strong responses were elicited from those who answered, with ninety-five percent of its two thousand respondents answering in the affirmative (Kaltenhaler et al., 2012, p. 4). Figures from the most recent (2012) Global Attitudes Project poll confirm slightly lower disapproval levels, but these remained constant across the populations of seventeen of all twenty states surveyed. There is not yet any evidence that this is a higher level of opposition and perceived threat than would flow from non-drone warfare, but Kaltenahler et. al. argue that much of the opposition, is, in fact, driven by an adversarial image of the United States presented by militant groups and religious extremists (Kaltenhaler et al., 2012, p. 6). While it must be said that this alone cannot account for the difficulty in securing the necessary hearts and minds necessary to avoid post-war rumblings, and that religious and political propaganda cannot really be separated from the true underlying causes already discussed. It must also be taken into consideration if the United States and those that will inevitably follow in its footsteps in employing drones are to forge working relationships with those they have conquered to develop the instruments of minimally just society.

This leads to my penultimate point and one of Orend's final requirements, which stipulates that in order to avoid a return to the previous state of affairs, states must purge the propaganda of the past regime or the militants that infiltrated the target state and encourage a shift in shared national values (Orend, 2008, p. 48). He suggests that this might necessitate revising the educational curriculum in the affected countries or provinces as in the early twentieth century, fascist groups used the school system to warp children, as future citizens, so that they would be more inclined to subscribe to their doctrines of racial and national supremacy (Orend, 2008, p. 48). In the past, this has resulted in a great deal of aggression being directed toward others. The same holds today, but it is the teaching of Islamic extremism—with its attitudes toward violence and women—and the employment of unmanned systems that often fuel rage amongst the locals and create the perfect environment for disseminating damaging disinformation and political propaganda (Gere, 2012, p. 522). Take Al Qaeda, which likes to be seen as trying to unite the Islamic world under a caliph by removing the presence of the United States and pro-Western regimes from the world. It is popular across the Middle East because it has started to fill the void left by the governments of the countries in which it operates, in some cases caring for the sick and wounded and providing education for youth in remote areas.

It is also quick to capitalise on drone strikes and surveillance by highlighting these practices in its propaganda. For instance, in 2009 it labeled its bombing of the Central Intelligence Agency's base in Khost an act of "revenge" for the deaths of Pakistani militants. Shortly after the trainer responsible for facilitating the attack was killed, his "martyrdom" boasted on jihadist websites and chatrooms (Ofek, 2010, p. 38).

To completely rid society of this sort of propaganda and increase the both states' chances of securing a less violent future, the victor must assist the authorities of the vanquished state to purge the old regime of anyone materially connected with tyranny and atrocity and capture and prosecute those amongst them who are likely to have committed war crimes, who are typically those also behind the propaganda effort (Orend, 2008, p. 46). This is, of course, important in its own right since it ensures that the guilty receive their just deserts and that there is some force in operation to deter would-be terrorists or tyrannical dictators. Sadly, while some American unmanned aircraft do have very impressive surveillance capabilities, they are technically limited. Many militant groups, now accustomed to fighting in drone-saturated environments and aware of these limitations, have developed tactics for evading drone surveillance. Several documents found by the Associated Press in buildings recently occupied by Al Qaeda fighters, along with delivering propaganda seeking to undermine America's drone effort by describing it as a last-ditch effort, tell how they should stay in places unlit by the sun, avoid gathering in open areas, form decoy gatherings and possibly seek to jam, confuse or override operating frequencies, amongst other things (bin Mohammed, 2011). From information released about the eventual capture of Osama bin Laden, it is known that he too knew of these tactics, never venturing outside his compound in Abbottabad and never once looking up, which would have rendered him vulnerable to facial recognition. Finding such individuals is, of course, key to prosecuting them. When we consider unmanned systems in the context of the United States' "capture or kill" policy, they are clearly better at the latter. The targeted killing facilitated by drones may be expedient for a political leader that disdains detention and interrogation as a matter of strategy, but it is not always the best choice in the war for hearts, minds and enduring peace. It does not eliminate the profaned, only the opportunity to extract valuable intelligence from those behind it.

Of course, every weapon used in combat operations—whether it is infantrymen, nuclear bombs, fighter jets or drones—has some sort of tactical, strategic and moral cost. In the case of unmanned aircraft, this is to some degree offset by the benefits they have over other weapons, namely a morally significant reduction in risk to otherwise vulnerable military personnel. However, the costs of the drone program challenge *jus post bellum* and the very thing that everyone hopes underpins America's unmanned warfare campaign: the desire for a more secure possession of its rights and freedoms and a long-lasting peace for all involved.

Drones for Good: A Note on Overcoming the Stigma

As a quick summary, *jus post bellum* requires that we fight war in such a way that it leaves the door open to lasting peace, but drones present a number of challenges when applying a number of its specific practical requirements. Some ethicists hold that the challenges presented by unmanned aerial vehicles are insurmountable. Rob Sparrow, for instance, says that there is more to war than simply “blowing people up” and that it is very clear that the Predator drone is precisely the wrong weapon to use to win the war in the Middle East (Sparrow, 2010, p. 89). According to his logic, if the goal of the war does, indeed, involve winning the hearts and minds of the locals and creating conditions that would allow them to govern themselves and live without the violence that has plagued them for decades, destroying key targets from drones flying high up in the sky will not accomplish this for many of the reasons noted above (Sparrow, 2010, p. 89). This, I think, is overly pessimistic. As Sparrow himself notes, there is more to war than killing people and drones need not be used exclusively for this purpose. Interestingly, it is in peace and stability operations that the United States and others employing these systems have an opportunity to overcome the stigma attached to unmanned systems by demonstrating that they have an active role in assessing and responding to the needs of peace.

The first step for the United States must be to ensure that it correctly assesses the civilian harm caused by its drone attacks during active combat operations. In conventional military operations, military protocol calls for an enemy “battle damage assessment”, updated during conflict and completed at the end of any lethal operation (United States Army, 1994). It is not clear whether these are conducted in drone strikes or in a manner that is conducive to their overall purpose. This is to determine whether objectives were met and the overall outcome accomplished, but more importantly for our sake here, to assess whether any civilian harm may have occurred during the process. If it is suspected that civilian harm has resulted, an investigation will be conducted to confirm losses, learn practical lessons to prevent future harm and, in many cases, compensate those affected by the losses with monetary payments, counseling or other assistance. It is

important to take this basic step in the typically covert drone context for a number of reasons. First, it is a moral imperative to assess and investigate civilian harm, as it is not only enemy personnel that should be prosecuted for war crimes or causing excessive collateral damage. Second, from a more strategic standpoint, a thorough assessment based on whatever information is attainable from in-weapon cameras may offer a counter to false allegations of civilian harm and is critical from an operational perspective. Third, and finally, promoting transparency might send a clear and positive message to those in the Middle East affected by drone operations that the United States is committed to preserving human life and dignity (Center for Civilians in Conflict). At present, these damage assessments are conducted as more of a military formality and with the secrecy surrounding America's drone war and the government's reluctance to even acknowledge its existence, let alone its moral or legal basis, the local populace is largely enraged rather than humbled and prone to doubting the legitimacy of each resulting fatality.

The United States and others can, however, utilise unarmed unmanned systems technologies in future conflicts to enhance their public affairs effort and communicate their intentions and policies to indigenous populations throughout the spectrum of military operations, minimising civilian repercussions and further countering any damaging disinformation that has been spread by the enemy. For instance, in remote areas of Iraq or Afghanistan, drones could be used to distribute messages written in the local dialect, explaining what these technologies are and why they are being used over local neighbourhoods. They could also be used to rapidly establish communications infrastructure to communicate with the local population via radio or mobile telephone. The Swarming Micro Air Vehicle Project, for example, utilises a dynamic swarm of high-flying unmanned aerial vehicles that create a roving network capable of providing wireless communications over areas where terrain would otherwise prevent such communication (Hauert, et. al., 2010). This would be particularly advantageous for those in mountainous areas of Afghanistan. Once conflict has begun, this network might also be used to communicate truthful and factual unclassified information about progress made toward achieving whatever goal initiated the conflict in an attempt to keep the domestic population on side. All of these are elements of a satisfactory *jus post bellum* programme. Therefore, drones can be used for good and fulfill a crucial and complementary function in presenting the other side of the story and shaping what intelligence officers specialising in psychological operations would call the "cognitive domain" of the target population/s (Didziulis, 2008, p. 9).

More generally, unmanned systems technologies can be used for good as part of post-conflict rehabilitation and stability operations. After war, those who live in remote locations and are in need of assistance as a direct or indirect result of military operations are the often last to be attended to as these areas require greater resources for troops or aid workers to access. Despite the fact that corrupt officials regularly stem the flow of humanitarian aid into these areas, organisations such as the United Nations and the Red Cross and Red Crescent movement are reluctant to put their personnel at risk by sending them into zones like these, regularly controlled by militant groups and hostile to external intervention in local affairs. It is in this regard that drones have purpose beyond their strictly military origins (Chow, 2012). As just one example, large unmanned aerial vehicles could be used to supplement or restore existing supply lines and provide for emergency drops. NATO, struggling with serious logistics problems in high-threat areas of southern Afghanistan, has already evaluated the use of pilotless helicopters for exactly this purpose. The K-MAX task-autonomous helicopter was tested over a period of six months, capably delivering several hundred tons of cargo since its inaugural flight (Lamberth, 2012). These robotic helicopters eliminate the need for dangerous convoys and large numbers of ground crew. Employed more creatively, unmanned systems could also be used as an ongoing measure to detect stirrings that have the potential to return to states to conflict, though this sounds much like “uberveillance” (Michael and Michael, 2010).

At this final point I should remark that this is not the same point made by Julian Savulescu and Zac Beauchamp in their paper on teleoperated combat vehicles as “robot guardians”, discussed earlier (Savulescu and Beauchamp, 2013). They are drawing attention to the fact that insofar as drones limit harm to humanitarian aid workers, these systems may make states less concerned about incurring casualties and more likely to wage humanitarian interventions, which they suggest is good thing. Again, I am not convinced by this argument. While states do sometimes fail to intervene when they ought, they have a far greater tendency to intervene when it is either unnecessary or unwarranted, only to make the state of affairs significantly worse. For this, if no other, it is important to differentiate the two arguments. It also needs to be said that there are some clear obstacles to employing drones in support of post-conflict operations and overcoming the stigma that has become cemented in the minds Middle Easterners. The dual-use nature of unmanned systems technologies will always leave room for uncertainty about the true nature and intent of drone operations, for even the best uses can surreptitiously aid para-military, military or state endeavours.

Conclusion

The wars in Iraq and Afghanistan are quite possibly the defining conflicts of our time, or will be the defining conflicts of our time once all related operations draw to a close. They have raised myriad issues, from those related to preemption and prevention through to those concerning sovereignty and independence. However, this paper has argued that one of the most fundamental and overarching issues facing us today relates to those obligations and responsibilities concerning post-war reconstruction, stability and peace.

The first section has highlighted that while in its modern theoretical infancy, *jus post bellum* has its place in thinking of theorists such as Vitoria, Grotius and Kant, all of whom gave textual uncoveries of tripartite conceptions of just war theory. The second detailed Orend's contemporary attempt at reviving the tripartite conception, exploring his six proposed principles. The third has bridged the gap between theory and practice. It has shown that unmanned warfare presents numerous challenges for Orend's ten-point blueprint for enacting these principles. Apart from these systems challenging the moral rules of war, unmanned systems: make it significantly more difficult to disarm and demilitarise society; threaten non-state associations and the flourishing of post-war society; hinder efforts to work with locals toward establishing instruments facilitating lasting-peace; hamper efforts to purge harmful propaganda; and hamper attempts to capture those suspected of war crimes.

The fourth then acknowledge the means that can be taken to ensure that the drone stigma is, where possible, offset. Overall, this paper has illustrated that unmanned aircraft can potentially play a critical but often overlooked role in hampering war's end and limiting prospects for lasting peace. This is something the public, politicians, military leaders and engineers must be aware of as weapons development progresses and other machines that further exacerbate the problem are unleashed.

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