Sexual Violence in Conflict Situations as Structural Injustice: Post Bellum Considerations

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Abstract  Jus post bellum, a relatively new addition to the just war tradition, offers a set of principles to ensure a just peace. The jus post bellum principles establish important guidelines for punitive and transitional justice in the wake of unjust aggression. However, sexual violence during conflict highlights some of the limits of relying solely on a rights-based approach to jus post bellum. Using the jus post bellum principles, I offer some suggestions for what might be required regarding punishment, compensation, and rights vindication for both individuals and communities, highlighting throughout the limits of relying solely on a rights-based approach to jus post bellum. I then argue that post bellum considerations need to account for the structural injustices of sexual violence in conflict situations. Doing so supports important social justice initiatives proposed for a global response to sexual violence in conflict aimed not only at punishment but at prevention.

Keywords: jus post bellum; just war theory; sexual violence; social justice

Introduction

Russia invaded Ukraine on February 24, 2022. International organizations began to document sexual violence by the Russian military shortly thereafter. Women and children are at a heightened risk of rape and trafficking during conflict situations. At the time of writing, over 400 cases of brutal rape, including gang rape, have been reported. Investigation, documentation, and prosecution are underway, but the violence continues and the response to war crimes involving sexual violence is far too ineffective to stem the tide.

Rape has always been a dreadful part of war, but only in the past few decades has the international community recognized that sexual violence of all kinds is used as a tactic in or as part of the strategy for war rather than merely a presumed inevitable side-effect of war. Rape during conflict situations, or war rape, is a willful act of sexual violation abusing or harming the bodily integrity of a combatant or noncombatant from an opposing side; it occurs strategically as an unjust part of the war effort or nonstrategically as a gross violation of noncombatant immunity (or violation of the...
protection of prisoners of war) during conflict situations. Sexual violence is not merely war rape; it encompasses all acts of sexual violence connected to the conflict situation. The UN Secretary-General defines sexual violence in armed conflicts as “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to conflict.” Sexual violence violates the body of a person embedded in a community; it impacts the immediate community of the person violated as well as the global community intent on upholding the human rights regime. Sexual violence is often used as a tool to destroy communities or damage the morale of opposing forces, regardless of whether it is sanctioned by the state, ruling party, dominant ethnic group, or commanding military officer. Mass rape campaigns might also be used as the very purpose of war, as when forced pregnancy is used as ethnic cleansing or genocide.

Rape is considered a “heinous” act in itself and hence is classified as means mala in se. When rape is used in the course of war, numerous individual rights are violated: the right to bodily integrity, the right to security and safety in one’s person, the right not to be tortured, the right not to be enslaved, the right to one’s honor, and the right to privacy and family. Even beyond the use of methods of war that are evil in themselves or aggression against civilians, rape is considered an act that violates the humanity of another, an act that shatters community and violates culture, and a failure of humanity on the part of the rapist. With the shift to understanding the impact of rape as integral to both tactical and end-goals of war, the lines between jus in bello and jus ad bellum war crimes are sometimes blurred.

Discussions of war rape tend to divide it into two main categories: individual rapes and mass rape campaigns. This categorization structures jus post bellum principles—the justice after war—which seek to hold accountable and punish perpetrators for their unlawful acts, and to hold accountable and punish negligent commanders who might be blameworthy for direct acts of rape, the indirect acts of ordering rapes, failing to issue clear orders, or failing to punish rapists in the ranks. In addition, the use of mass rape as a means of genocide in Rwanda and the former Yugoslavia demonstrated the need to think not just about punitive justice in the post-war period but also transitional justice. Sexual violence during conflict situations destroys communities even when the intent is not genocidal.

In addition to war crimes and crimes against humanity, sexual violence during conflict situations reveals a number of interconnected structural injustices. War rape exhibits the power, domination, and objectification common in all rapes. It adds in the element of political enmity, an element found at the heart of what makes killing in war possible. Political enmity turns hatred and dehumanization into tools used by the war machine to condition combatants into being able to take the life of another. In addition, the moral categories used for war risk erasing many of the victims and perpetrators of sexual violence during conflict. Sexual violence cuts across distinctions of combatant and noncombatant, enemy and ally, and even peacekeepers
and volunteers. Conceptualizing war rape along purely instrumental lines as a tactic in war or a strategy of war obscures violence perpetrated by civilians, humanitarian actors, and intimate partners. Rosanne Marrit Anholt points to further concerns with language that instrumentalizes victims of sexual violence insofar as it reduces sexual violence to an individualized experience. Anholt argues that a focus on innocent civilians as victims of sexual violence during conflict medicalizes and depoliticizes the violence. The victims become the focus of aid, but the structural gender inequalities and dominance are obscured.

In this article, I argue that the problem of war rape requires more than condemnation of it as a violation of *jus in bello*. Adequate *post bellum* measures require an examination of justice and war in more complex ways. The article first examines standard *post bellum* principles focusing on punitive justice in response to war rape as a war crime, crime against humanity, and genocide. The article then turns to a discussion of transitional justice in the context of sexual violence in war. Insofar as war rape affects communities, transitional justice frameworks help in the classification of requirements that contribute to the repair and healing of communities. I then look at what is missing from these accounts. Examining war rape as a form of structural injustice reveals a wider circle of global complicity in sexual violence during conflict situations. I argue that *post bellum* principles must include the principles of social justice which demand collective action in response to structural injustice.

Before proceeding, a word about terminology is in order. In choosing the language of *jus post bellum*, I am placing this paper into the literature on just war theory. *Jus post bellum* means justice after the war and is paired with *jus ad bellum*, justice of the war itself, and *jus in bello*, justice during the war, in the just war tradition. However, part of what I describe here and elsewhere are the limitations of just war theory for thinking about remediation in the wake of sexual violence during and after conflict. Just war theory provides very useful moral tools, but equally valuable is consideration of what is left out of just war theorizing. Ultimately, I maintain hope for a peace-filled world where discussions of wars (just or unjust) and addressing sexual violence are no longer necessary. Until that time, however, philosophers play an important role in contributing to thinking about the expectations and limitations of current accounts of justice.

I. *Post Bellum* Punitive Justice in Response to Sexual Violence in Conflict Situations

*Post bellum* principles are a relatively new area of study for the just war tradition. Some scholars initially denied the relevance of a just peace for the conduct of a just war but most acknowledge some relevance of justice for the victims of attack and multilateral obligations of justice on others. Nonetheless, with the realization that at least some subsequent wars might be prevented with the implementation of a just peace settlement, just war theorists have come to accept that the principles of justice after the war are worthy of articulation and inclusion in just war theory. Brian Orend
and Michael Walzer in philosophy, and Mark Allman and Tobias Winright in moral theology, are among the leading advocates for philosophical conceptions of *jus post bellum*. I use their approaches to structure my account.

Orend describes *post bellum* principles as the rights and duties of the victor when the “victorious regime has fought a just and lawful war, as defined by international law and just war theory.” He argues that the three parts of just war theory are inseparable in the evaluation of a just war. *Post bellum* principles articulate the commitment “prior to engaging in political violence” to support a just peace settlement, doing the work to ameliorate the rights that were violated in the unjust aggression of war, while also limiting the rights of the victor in a just war. Although some specific rights and obligations of victors in a just war are contested, there is general agreement that *post bellum* justice involves a publicly declared peace settlement, punishment of war crimes, and some form of reparations for the victims of aggression. These may be cast in more theological terms, as when reconciliation and restoration are employed to conceptualize peace settlements and reparations. It might also include demilitarization of the unjust aggressing nation. Some scholars also argue for some form of occupation or rebuilding of the aggressor society to limit the possibility that they might engage in unjust action again, while others are skeptical of such moves. Orend hopes that *post bellum* principles may “be amended, as details demand, in particular and unconventional cases.” The principles might guide at least some behavior and contribute to healing in post-conflict situations.

One of the first problems confronting just war theorists is whether the injustice of sexual violence, especially sexual violence perpetrated by military personnel otherwise acting as just defenders of a political community, makes the war itself unjust. Allman and Winright raise a question of the applicability of *jus post bellum* for an unjust war but ultimately argue that *post bellum* principles might be useful even in the wake of truly unjust wars. Orend specifically suggests that *post bellum* principles offer guidance in the wake of atrocities or wars wherein “intrinsically heinous means, like rape campaigns” have been used but presumes that there are clear distinctions between the unjust warriors and the just warriors, and that it is only the former who perpetrate sexual violence during conflict. For the sake of argument, in this section I focus on the guidance for *post bellum* justice when perpetrators of sexual violence are also enemy combatants engaged in an unjust war of aggression.

Sexual violence used as a tactic or strategy in war is analyzed first using *jus in bello* principles that assess the justness of the means of warfare and is deemed “means mala in se” or evil in itself. In other words, just war theory clearly condemns the use of sexual violence as a means in war. Perpetrators of sexual violence as well as the commanders who ordered it or just knew about it and failed to condemn it, ought to be punished. That is, individual perpetrators and anyone who had a direct responsibility for sexual violence, regardless of whether that person was a direct perpetrator, ought to be held accountable and punished for war crimes once the conflict has ended. In addition, rape used as the reason for war itself, as in mass rape and forced pregnancy
campaigns, violates *jus ad bellum* principles and constitutes a crime against humanity or genocide. These divisions correspond to two levels of punishment for perpetrators, which Orend calls “punishment 1” and “punishment 2.”

Punishment 1 means that leaders of unjust regimes must be held accountable for war crimes. Mass rape that is planned and initiated as a part or the whole purpose of war must be punished and the punishment, according to just war tradition, ought to be guided by proportionality. As Orend points out, the cases of Rwanda and Serbia are exemplars here, though he tends to place mass rape campaigns in the category of *jus in bello* violations. In the case of mass rapes, the responsibility for the atrocities is much more widespread. Individual rapists as well as superior officers (who might also be rapists) and ruling bodies are culpable. This indicates a blurring of the lines between *ad bellum* and *in bello* violations. The United Nations must have, and states must ratify, a standing procedure that is swift and effective in immediately addressing the horrific human rights violations of mass rape. This involves not only naming or correctly identifying the violations but also using international human rights instruments to establish war crimes tribunals and, as much as possible, indicting both the leaders of the mass rape campaigns and the participants. The Rome Statute establishing the International Criminal Court is a first step, but it needs robust support from the international community and more widespread intent to prosecute.

Punishment 2 for war crimes focuses on acts of soldiers. For individual rapes during war, the responsibility primarily rests on the perpetrator. Many, but not all, individual nations bind military personnel to standards of behavior and prosecute violations of those standards. In the United States, the Uniform Code of Military Justice, the formal basis of military law, governs all military personnel. So too, the Geneva Conventions provide a framework in international law for the proper treatment of civilians, prisoners of war, and captured enemy combatants. (The Code of the United States Fighting Force, as an ethical code of conduct, offers further guidance to military personnel on proper behavior in and outside of conflict but is not legally binding.) Charges of sexual violence in war ought to be handled by the military governing body. Domestic criminal law and international law step in either in the failure of the military to take proper steps to hold perpetrators accountable or when the crime exceeds the proper bounds of the military’s jurisdiction. If the acting soldier’s superiors had knowledge of the rape and did nothing to stop it or did nothing to punish the soldier, then the soldier’s superior officers may also be implicated in the blame and held accountable to the appropriate jurisdiction. Orend makes the further claim (following Walzer) that officers are also morally bound to (a) not issue orders that violate just war criteria and international laws of war, (b) minimize noncombatant casualties through careful planning of campaigns, and (c) “train their soldiers not only about combat but also about the rules of just war theory and the laws of armed conflict.” I would add (d) train their soldiers about the rules of proper treatment of civilians and prisoners of war, and (e) train in gender sensitivity and enforce the rules against sexual violence. A cavalier attitude toward sexual violence does not
adequately prepare or control soldiers. There may be compelling reasons to hold officers complicit for their neglect should the soldiers under their command commit rape (regardless of whether the rape is of an enemy combatant or civilian).

Importantly, soldiers are themselves often traumatized by being forced to rape. In some contexts, they have been trained to dehumanize the enemy or brainwashed to believe that their power with guns is nearly limitless. The normalization of sexual violence in such circumstances has lifetime traumatizing effects on soldiers.

In Rwanda, many of those who orchestrated the mass rape campaign were brought to trial, but many of the individual rapists resumed their place in the community, often as neighbors of those they raped. Prosecuting only the masterminds of mass rape campaigns is insufficient; it is also important to prosecute the individual perpetrators of rapes. Pursuing either form of punishment (punishment 1 and 2) must be done in a way that protects the victims/survivors as much as possible. Court procedures in all rape cases have undergone intense scrutiny to avoid revictimizing those victimized by sexual violence. Given the additional circumstances that the rape occurred during a conflict situation, cases should carry precise procedures to “spare the victim a face-to-face confrontation with her attacker and protect her life [before and] after she gives testimony.” This is especially true in cases of mass rape wherein the rapist and the victim may have been neighbors—or may still be neighbors. In Rwanda, survivors of the mass rapes and genocide were sometimes later killed before they could testify in court. The war crimes tribunal in Rwanda made rape a category 1 crime—a category reserved for the most heinous crimes and for the masterminds of the genocide. (Category 4 was petty crimes.) This gave tremendous recognition to the problem of violence against women and acknowledged the “severity of the act and the lingering consequences.” It was “seen as a great victory for women throughout the world.” However, since category 1 crimes are punishable by death (or 25 years if the perpetrator confesses), prosecution of individual rapists actually became more difficult. Few witnesses came forward for fear of reprisal. Moreover, even fewer rapists confessed to their crimes. A similar story is told in Haiti where accused rapists and thugs of the coup in the early 1990s were turned over to the U.S. troops often to be released and seek reprisal the next day. Clearly, positive steps must be taken to protect those victimized by sexual violence who elect to come forward and name their rapists. Allman and Winright suggest that accountability and punishment be implemented by independent authorities in a public and transparent manner. Using just war principles of discrimination and proportionality, they articulate the value of crimes trials as well as compensation for victims as two elements of the punishment “phase.”

The post bellum principles of punishment offer important means through which the rights of individual people victimized by sexual violence are acknowledged and reaffirmed. However, the approach is also limited, as evident from the examples above. Steps to address those limitations might include the opening of new regional and international avenues for reporting rape. Domestic structures have a poor track
record for taking reports of rape seriously. The will of the international community to transform how we think about and respond to rape in war must increase momentum if we hope to adapt just war thinking beyond “conventional” wars between nation-states. Anne Llewellyn Barstow calls for a “strong, permanent international court, one that uses sophisticated gender techniques.” Further, she states that “(1) women’s groups must continue to press for changes in law so that at every level of justice crimes against women are recognized and (2) women’s groups must continue to press for changes in procedures so that women believe that the courts will give them a fair hearing.”

Copelon adds that personnel (human rights personnel, war crimes tribunals, other humanitarian aid agencies) need to be trained for gender sensitivity and women ought to be adequately represented in the courts. This training should include detailed information about the relevant cultural ideologies and practices. She explains, “female investigators [must be] trained to get information in a way that respects the woman’s privacy and feelings.”

In addition, families and communities are often harmed or ostracized along with the person who comes forward to testify about rape. Mechanisms need to be in place to protect these home communities both from targeted reprisals and from ostracism. Technological means of giving testimony and placement of human rights officials in local communities may offer some alternatives to address these potentialities. In short, attention to the prosecution of perpetrators of war crimes must be redoubled and paired with appropriate and sensitive protection of the individual victims and their communities.

Compensation or reparations to the victims/survivors of sexual violence during conflict situations is included in post bellum principles. Although reparations are generally oriented toward the nation that has suffered an unjust act of aggression, implying that monetary compensation ought to be devoted to rebuilding damaged infrastructures, the principle of discrimination would also inform a practice of funding services, support, and direct payment to the surviving individual victims and their families, perhaps through humanitarian assistance in an effort to restore rape victims/survivors’ senses of self, safety, and security. In mass rape campaigns, the widespread damage to psychological well-being from a variety of traumas, sometimes including the loss of community and family, is astounding. The principle of compensation mandates medical and psychological services for direct victims/survivors and communities, as well as public security measures. Compensation to the victims/survivors should include funding for programs of empowerment to assist in the regaining of the sense of self. These might include support services, educational offerings, and job training. Further, given the reality that it is sadly not uncommon for protective forces themselves to perpetrate sexual violence, an ongoing effort to ensure security is necessary.

Victims/survivors’ families and home communities also experience traumatic effects caused by rape. Often a person victimized by sexual violence in a conflict situation is ostracized from the community; pregnancy due to rape may lead to abandonment by the community as well. To avoid communities compounding the
atrocity of sexual violence with their rejection of the person victimized, human rights monitoring might also include cultural negotiations to help communities accept rape victims as full and valuable members. Adequate care must be taken to, as best as possible, restore a victim’s (and/or a victim’s family’s and community’s) sense of empowerment and integrity.

Compensation should be directed at social and political institutions that support rape victims and their families or communities, care and education for children resulting from rape, physical and mental healthcare for all ancillary survivors of the rapes (in addition to what is provided rape victims), rehabilitative services for victims and victims’ families, and compensation/reparation for private and communal property destroyed in the mass rape campaigns. As it stands, the expansive international humanitarian community is often unable to meet even the immediate needs of peoples affected by conflict. Anholt’s study reveals that “essential services for sexual violence victims/survivors are largely unavailable, inaccessible, and inadequate.” The situation is exacerbated by the increasing distance between humanitarian actors and people victimized by sexual violence.  

An aggressor nation owes restitution, but proportionality in just war theory limits the amount of restitution an aggressor nation can be forced to pay. It would be unjust and counterproductive to leave the civilians of the aggressor nation destitute. Their human rights cannot be compromised in post-conflict justice. Orend contends that compensation ought to come “from the personal wealth of those political and military elites in [the aggressor nation] who were most responsible for the crime of aggression.” This poses some problems for civil wars and examples of war rape used in ethnic cleansing. Similarly, if some of the wars entailing sexual violence involve the former colonized responding to destitution, as some have argued was the case in Rwanda, then compensation is not likely to be forthcoming.

Post bellum principles of punishment and compensation offer important moral guidance for conduct in the aftermath of war wherein sexual violence was used as a tactic or strategy of war. As indicated, however, they are limited insofar as they focus on punishment of only some perpetrators, rights amelioration, and limited compensation. These limitations highlight the structural problems of approaching the issue in purely a punitive way. The just war jus ad bellum principles also include the prospect for peace or the probability of success. Translated for jus post bellum, that shifts the focus to transitional justice, to which I now turn.

II. Post Bellum Transitional Justice in Response to Sexual Violence in Conflict Situations

Sexual violence challenges post-conflict transitional justice. Transitional justice is specifically conceived as redress to victims and transformation of political systems in the wake of gross violations of human rights with the aim of creating conditions that will preclude such violations in the future. Using Orend’s account as a framework, I discuss three post bellum principles that may be understood as part of transitional
justice: peace settlements, rights vindication, and discrimination. Orend also discusses “rehabilitation” which entails the occupation of the aggressing nation, political and cultural transformation, and some demilitarization among other elements of his “recipe.” I do not think the case for rehabilitation through occupation is sustainable; hence I reject it as a principle. However, the next section on structural injustice offers an alternative account that seeks to accomplish the social change suggested in rehabilitation in a different manner.

To begin, transitional justice after a conflict that involved gross violations of human rights in the form of sexual violence requires peace settlements that conclude the political animosities but historically have not included acknowledgement of or apology for sexual violence used in the conduct of war. In part, deeply entrenched cultural beliefs about gender, men’s access to women’s bodies, the inevitability of rape in war, and any number of related ideological barriers tend to keep acknowledging rape out of the public peace declarations. Orend calls for a “measured and reasonable” peace settlement that is publicly declared: “The terms of the peace must be publicly proclaimed by a legitimate authority.” He also includes the expectation of a formal apology as part of a peace treaty. The idea is that the unjust aggressor must “show recognition of the moral principles they violated as part of their own rehabilitation.” The well-publicized International Criminal Tribunals for Rwanda and the former Yugoslavia, in which rape and forced pregnancy were added as “crimes against humanity” and a means of genocide, have significantly impacted the expectation for public acknowledgement of sexual violence. Although theorists of post bellum principles tend to stress the need to respect cultural differences, public acknowledgement of and accountability for atrocities like rape used during war serves an important restorative function, especially for the people directly targeted or victimized by sexual violence during war.

Public apologies and restorative efforts are controversial though. As Trudy Govier argues regarding truth commissions, public acknowledgement of wrongdoing does not guarantee that perpetrators of injustice accept responsibility for their actions and will work to restore damaged relations. The very publicness of the apology risks reducing it to performance and underestimates the potential for denial by perpetrators. Govier adds that truth commissions “encourage acknowledgement and seek to lessen denial,” but they cannot close off all of the pathways of deniability: “Even a torturer may rationalize his role, and see himself as engaging in a just struggle which was unfortunately lost.” Further, as mentioned previously when examining punishment, perpetrators may be embedded in communities that they targeted; people and communities victimized by sexual violence may find the trials retraumatizing or the perpetrators may seek further violence in response to restorative efforts.

The second post bellum principle for transitional justice is rights vindication, to vindicate the rights violated by the act of aggression. Usually, rights vindication means restoring the civil and political rights of the violated community. Orend cites the “rights to life and liberty and community entitlements to territory and sovereignty.”
Many civil and political rights violated during war are restored once the conflict ceases. The most important, perhaps, are the rights to territorial integrity and political sovereignty. Sexual violence during conflict destroys so much more than civil and political rights. Although it may be possible to restore some aspects of the civil rights to participation and security, for instance, restoring the sense of security or safety in one’s person and security in the right to bodily integrity in the aftermath of war rape and mass rape campaigns are much more difficult. In other words, the rights-based focus of just war theory runs up against limitations: securing the right is not always the same as the lived experience of the right. Minimally, it seems that the vindication of rights violated by sexual violence during conflict would require a sustained and public declaration of the rights of women and gender minorities, perhaps through the ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the establishment of an office or branch of government to allow for the reporting of violations. The psychological and social services discussed earlier would also lend some credence to the ability to exercise rights of bodily integrity and security in one’s person. But, as discussed in the next section, significant structural barriers also need to be addressed. A rights-based approach is insufficient for addressing the complexity of issues involved when sexual violence occurs in conflict situations.

The third post bellum principle related to transitional justice is discrimination. Reparation, discussed in the previous section and tied to compensation, plays a role here as well. In *jus in bello*, discrimination implores careful distinctions between leaders, soldiers, and civilians so that the appropriate people are targeted during war. For the aftermath of war, distinction is aimed at ensuring that responsibility for the cost of unjust aggression is laid at the right feet. It implies that the distribution of costs associated with compensating those subject to unjust aggression are properly aimed at the material and political infrastructure and that life within the nation subject to unjust aggression can return to some stable normalcy. The political and military leaders, as well as the economic elites who supported the unjust aggression, are primarily responsible for the war and, it might be argued, ought to bear the majority of the cost of the war. As Orend details, “respect for discrimination entails taking a reasonable amount of compensation only from those sources that can afford it and that were materially linked to the aggression in a morally culpable way.”

Those citizens of the aggressing nation who did not support the unjust aggression and sought to stop it ought not to be penalized in the same manner according to Orend. Walzer, in contrast, argues that *costs* of an unjust war must be shared but that the *blame* is subject to discrimination; he argues that discrimination pertains to who is culpable for the unjust aggression but that tax systems distribute the costs of an unjust war to all who are members of a political community. Regardless of whether the costs are distributed equally or according to blameworthiness, discrimination helps to distribute liability for unjust aggression so that a retaliatory hatred of former adversaries in war does not fester.
We can try to apply this logic of discrimination to cases wherein sexual violence is a tactic or strategy in war, with some limited guidance. The discussion of punishment addresses the liability for war crimes and crimes against humanity. At issue here is who bears the responsibility for forward-looking repair and what is expected of that repair. Given the extent of sexual violence in conflict situations and the pervasiveness of sexual violence beyond or outside of the borders of war, the approach of *jus post bellum* transitional justice, with limited reparation and discrimination, comes up short. Nonetheless, it does inform an imperative to retrain members of the military and incorporate measures that inculcate respect for gender differences.

In some instances of war rape or mass rape, abiding by the principle of discrimination, distributing responsibility between civilians and military, and determining the relation of particular rapes to war efforts is quite difficult. Many contemporary wars exhibit blurred lines between military personnel and civilians. In some cases, like Rwanda, a concerted effort to incite genocidal violence among civilians precedes the conflict situation.

Once the combat stops there is no guarantee that rape will stop. On the contrary, sexual violence is often spurred by conflict situations and remains long after the conflict has stopped. All the energy and violence of the military conflict is rechanneled into sexual violence, or peacekeepers become the rapists. Conflict zones and former conflict zones often become sites or sources for human trafficking. Organized traffickers recognize the vulnerability of the population and exploit the situation. One of the most important “institutions” in need of rehabilitation during the post-conflict period is the rule of law. The *jus post bellum* principles of rehabilitation restore the rule of law, and the respect for law generally. Restoring the rule of law may help stem the tide of abuses; attending to the gendered nature of rape and trafficking is also necessary in order to incorporate adequate mechanisms within the civil and criminal justice systems to protect women from so-called peacetime rape and trafficking.

The rights-based approach of transitional justice and the liability approach of punitive justice only scratch the surface of the *post bellum* obligations for conflicts that included sexual violence. Focusing on women, some have argued that it is the very fact that women do not yet enjoy universally recognized human rights that makes them vulnerable to attack both during peacetime and during war. In addition, the treatment of women is seen by some cultures as falling outside the human rights discourse. However, *post bellum* considerations also limit what the defending nations or humanitarian intervention forces can do. Walzer argues that *jus post bellum* is about social justice: “the creation of a safe and decent society,” adding, “But it is also about justice in its other sense—about doing justice to the perpetrators of tyranny, aggression, mass murder, and ethnic cleansing.” He is sanguine about the prospects for peace, noting that sometimes “just a peace” must suffice rather than “a just peace.” Although Orend argues for regime change which might also include cultural indoctrination, Walzer considers that overstepping the bounds of *post bellum* justice. With these limitations and moral considerations in mind, *post bellum* justice
ought to include an account of structural injustice. Analyzing the structural injustice of sexual violence during conflict and structural injustices present in the attempts to remediate sexual violence offers a more extensive account of social justice for *jus post bellum*. By understanding some of the complexities of sexual violence in conflict situations, another way of thinking through the complicity and the forward-looking responsibilities to remediate the harms of sexual violence during conflict is presented. This is, I think, consistent with just war theory, but stretches that theory beyond its traditional addressees of nation-states.

A just war approach that identifies only combatants and noncombatants or innocents is unable adequately to address the structural injustices of gender inequality and domination that contribute to sexual violence. In addition, including an account of structural injustice in a conception of *jus post bellum* radically expands the class of responsible parties. Punitive justice and transitional justice primarily address the responsibilities of political authorities and the international humanitarian community (United Nations and various nongovernmental organizations). Social justice expands the responsible parties in response to widespread complicity in structural injustice.

**III. Post Bellum Social Justice in Response to Sexual Violence in Conflict**

One implication of the discussion of transitional justice is that existing social and cultural ideologies marked by sexism, gender inequality, domination, and routine human right violations (especially of women and gender minorities) impact the ability to bring about change in the aggressor nation. A similar problem affects the defenders and the international community. These are elements of structural injustice that create and support the conditions for gender-based violence to occur; those conditions are exacerbated in conflict situations and the tensions do not diminish in the immediate post-conflict period. Moreover, domination and gender inequality within society leads to a disturbing complacency about sexual violence even during peace times. Insofar as one is a member of a society marked by gender inequality and domination, one is complicit in creating the conditions that allow sexual violence to occur and persist. As countless activists have argued, purging sexism and cementing gender equality could help stabilize relations and contribute to a decrease in sexual violence in society.

Although controversial, some scholars have argued that when sexual violence is part of the conflict, the war ought to be understood as twofold: the political war and war against women. The war against women does not always maintain the strict lines of opposition that otherwise political wars do. Rape destroys the security of women and in that sense may be seen as more than merely a tactic of war—it constitutes a war itself. Sexual violence in conflict disproportionately targets female civilians; nevertheless, men, boys, trans and gender-fluid people, and combatants of all genders are also subject to sexual violence. Although there is a risk of depoliticizing sexual violence, acknowledging that it affects many people helps to appreciate the extent and severity of the problem. Moreover, much of what is missing from the *post bellum* approaches in the previous two sections is the way sexual violence cuts across borders.
and operates outside of the space, time, and relationships of conflict. As MacKinnon, Anholt, and numerous others have catalogued, sexual violence in conflict is not merely a tactic or strategy across enemy lines: peacekeepers, civilians, and fellow combatants also perpetrate sexual violence.

Conceiving of war in this twofold manner discloses the relentless persistence of sexual violence long after the political conflict ceases. In nations where women and other gender minorities enjoy at least some version of basic human rights, the vindication or restoration of these rights would be part of the process of a just peace. On the other hand, in nations where gender inequality and domination predominate, the rights to bodily integrity, security in one’s person, honor, privacy, and the right not to be enslaved—rights that just warriors sought to restore for a political community—continue to be elusive for some members of the political community. Restoring rights of civilian victims that were not present prior to the outbreak of conflict is all but impossible in these contexts.

Anholt convincingly argues that the standard approach (inspired by the just war tradition) to sexual violence in conflict situations suffers from numerous flaws. These flaws point to structural injustice and the need to think about the demands of social justice. Anholt argues that the humanitarian community approach reduces sexual violence by conceiving it as “tactic” or “strategy” in war, thereby presuming it is always across enemy borders. Such an approach leaves perpetrators unscrutinized and seemingly places sexual violence between fellow combatants, perpetrated by peacekeepers, or orchestrated by women outside of the sexual violence of conflict. These are structural problems that reinforce a perception, too, of victims/survivors as vulnerable women in need of rescue, further concealing instances of rape and sexual violence that do not fit that model. More to the point, the punitive and transitional justice approaches depoliticize sexual violence by making it about individual perpetrators and victims. The structural issues of gender domination and inequality are not understood as part of the problem.

Anholt also criticizes the international humanitarian community for positioning “itself as the white, western, heroic protector of vulnerable women and girls (and not men and boys)—a narrative that not only escalates power differences between humanitarian and beneficiary but also reproduces the subordination of women.” This insight implicates the efforts to remediate sexual violence in conflict in the pernicious social conditioning or stereotyping that contributes to the conditions of sexual violence. Also worth noting is the way that sexual violence creates perpetrators: “individuals may be both subjects and agents of violence, like child soldiers who are first victims/survivors of (sexual) violence and later partake in its perpetration.” In other words, Anholt’s observation highlights the way that efforts to address sexual violence can, however unintentionally, reinforce unjust social structures.

Finally, Anholt argues that the international community fails to adequately scrutinize its own role in or complicity in systems of inequality. This is seen in the linking of gender inequality with sexual violence in conflict situations, but also in the language
used in humanitarian efforts. Anholth highlights the “celebrity diplomacy” that appears to be aimed more at providing a depoliticized means for individual activists to contribute to causes through “click, donate, and forget” campaigns. Private action, rather than political mobilization for social change, supports the egos of donors but creates rifts and distance between humanitarian actors and those in need of assistance.\footnote{52} Similar distancing occurs with the proliferation of titles. Administrative titles signal promotion and depth of organizational structures. But they also tend to diminish the accessibility to immediate services and the connection between individuals seeking assistance and those providing it.

Structural injustice is injustice embedded in structures. The structures, like humanitarian support systems in the aftermath of war, might themselves be morally beneficial or neutral, or some aspect of these structures or the structures themselves might also contribute to oppressive systems or exacerbate the harms of violence. Structures created through past action set the foundations or the conditions in which present and future actions take place. The structures are built through an aggregation of actions: “structures are produced and reproduced by large numbers of people acting according to normally accepted rules and practices, and it is in the nature of such structural processes that their potentially harmful effects cannot be traced directly to any particular contributors to the process.”\footnote{53} The structures of gender inequality, domination, and legitimation of the use of violence in conflict situations create the conditions for the massive injustice of sexual violence. The attempts to ameliorate the harms of sexual violence unintentionally continue some of the harms when they fail to recognize the structural injustices at their root. In order to address sexual violence in conflict situation, an analysis of the structural injustices, together with an acknowledgement of the collective complicity in contributing to those structures, is necessary.

The scars of sexual violence during conflict, as we have seen, mark not only the lives of individuals who survive it. The scars remain for generations, marring a community and a polity. Prosecuting war crimes is a lengthy process and the history of prosecuting rape in war is both recent and sparse. British lawmaker Arminka Helić argues that reactionary responses from the international community are insufficient to address the structural problem of sexual violence in conflict. Like Barstow’s previously mentioned proposal, she suggests that the establishment of a “permanent, independent and international body to investigate and prosecute rape and sexual violence as war crimes.”\footnote{54} She envisions the “well-funded” body to be staffed with trauma specialists to address the emotional and psychological needs, doctors dedicated to the collection of evidence and physical healing, and international lawyers at the ready to prosecute war crimes.\footnote{55} This proposal brings law, healthcare, and trauma care together in the effort to provide justice to the victims of sexual violence during conflict. If implemented with adequate resources for personnel, equipment, and support from the international community, such a standing body would send a clear message that sexual violence during conflict is unacceptable in every way. It commits the international community
to a long-term obligation to address the particular nature of war crimes involving sexual violence. In addition to the *post bellum* efforts to punish, it addresses the need to transform communities by incorporating trauma treatment plans. The standing body could be further augmented by adding components to tackle the brainwashing and normalization of violence experienced by the perpetrators. Helić acknowledges the lack of political will to address sexual violence. Changing the structural elements in international responses to rape in war might affect larger cultural and political change, further mustering the will to support and sustain an international effort to address sexual violence in conflict situations.

Just as structural injustices extend beyond the liable actions of any single individual or group of individuals, so too the responsibility for social justice—combating structural injustice—extends beyond any single individual or group of individuals. Indeed, social justice of the sort needed to address the aftermath of sexual violence in conflict situations demands a collective movement—or many collective movements—that addresses its various aspects and complexities. Walzer dissects some of the obligations of a political community that engages in an unjust war. His analysis is suggestive for atrocities like sexual violence understood as structural injustice as well. Secure members of a society in which sexual violence is used in conflict are implicated in that injustice unless they take active steps to oppose it, curtail it, or stop it. Those active steps range from education and awareness campaigns, to voting, to protest and policy reform. The key is that a structural injustice is composed of many parts and may be challenged through multiple means. Those people who are connected to the injustice or play a role in its perpetuation have a responsibility to work for change.

Combatting the structural injustice of sexual violence in conflict situations requires an organized response that incorporates the medical, psychological, and material needs of victims, and the social and political needs of the affected communities, as well as the concerns of justice and accountability. Stark et al. advocate that “strong legal structures and the rule of law are essential to the creation of social norms that condemn conflict-related sexual violence, protect individuals and communities from it, and prioritise accountability when it happens.”

IV. Conclusion

The human history of war and scholarly approaches to the ethics of war too frequently accepted rape during conflict situations as an inevitability and presented women as part of the spoils of war in its aftermath. A just peace meant to secure the rights of the violated and create a safe and decent society cannot be accomplished until these historical structural injustices are challenged and institutions of justice established. *Jus post bellum* needs to incorporate an analysis of social justice alongside punitive and transitional justice. Doing so, however, also means that members of society are no longer permitted to sit on the sidelines while political authorities and economic elites negotiate peace settlements. Sexual violence in conflict situations will continue without concerted and sustained collective action aimed at addressing
and dismantling the conditions of structural injustice across and through borders of political enmity. To quote the Lancet report on sexual violence, “Ultimately, we must all act to support survivors and prevent such sexual violence in Ukraine and in conflict zones across the globe as part of our long-term strategy to build peaceful societies.”

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Notes and References

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4. From UN UDHR Articles 2-5, 12.


26. Mark Allman and Tobias Winright, “Jus Post Bellum: Extending the Just War

35. Allman and Winright, After the Smoke Clears.
40. Walzer, Just and Unjust Wars, 297.
43. Enloe, Globalization and Militarism, 132.
44. Brownmiller, Against Our Will.
48. Sjoberg, Gender, Justice, and the Wars in Iraq, 51.
55. See also Stark et al., “Prevention of Conflict-related Sexual Violence,” 2174.