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## **Jus Post Bellum and the Responsibility to Rebuild**

JAMES PATTISON\*

This article considers the issue of who should rebuild after war. Many leading advocates of the relevance of *jus post bellum* for Just War Theory adhere to the ‘Belligerents Rebuild Thesis’, which holds that those who have been involved with the fighting – such as the victor, just belligerent, unjust aggressor or humanitarian intervener – should be tasked with the responsibility to rebuild. By contrast, this article argues that there is a collective, international duty to rebuild that should be assigned primarily according to the agent’s ability to rebuild – and not necessarily to the belligerents. The article also claims that, in contrast to the prevailing view, considerations of *jus post bellum* do not play any moral role in the justifiability of a war. Accordingly, defending the Belligerents Rebuild Thesis by invoking the alleged moral relevance of *jus post bellum* for Just War Theory is mistaken.

In their influential 2001 report, *The Responsibility to Protect*, the International Commission on Intervention and State Sovereignty (ICISS) defend the claim that there exists not only a responsibility to prevent mass atrocities and a responsibility to react when necessary, but also a responsibility to rebuild afterwards. This involves ‘full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert’.<sup>1</sup> The report has been helpful in highlighting the fact that international agents may have a duty to rebuild war-affected political communities. However, it does not identify *which particular agent* should be tasked with post-war rebuilding; it asserts only that the responsibility to rebuild is an international, remedial responsibility that falls on the international community in general. The subsequent evolution of the responsibility to protect doctrine since the 2001 report (which was agreed to at the 2005 World Summit Outcome Document and outlined in the Secretary General’s 2009 report) has not clarified matters and, if anything, largely ignores the responsibility to rebuild. Moreover, as Alexandra Gheciu and Jennifer Welsh note, there is a general lack of clarity surrounding the international duty to rebuild and international law is not instructive on this issue (beyond the obligations of occupying powers).<sup>2</sup>

Consequently, in this article I will consider the issue of who has the responsibility to rebuild in cases such as Afghanistan, Bosnia, Côte d’Ivoire, East Timor, Iraq, Kosovo, Libya, Somalia and Sudan. For example, should the UK and US have been tasked with rebuilding Iraq, given that they fought the war, or were other states, such as France and Germany, morally required to help rebuild Iraq even though they did not take part in the war? I will focus largely on the *moral* issue of how the duty to rebuild should be assigned, rather than on the political difficulties of assigning the duty to rebuild or the lack of legal

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<sup>1</sup> ICISS 2001, XI.

<sup>2</sup> Gheciu and Welsh 2009, 126.

clarity on this issue.<sup>3</sup> This is because we first need a stronger understanding of the correct assignment of the moral duty to rebuild, which has not, as far as I am aware, been explicitly addressed in detail. Once we have this, we can then attempt to address the political problems and legal ambiguities, and devise political and legal mechanisms to make sure that the agents that possess the duty to rebuild do, in fact, do so when required.

Why is assigning the duty to rebuild important? In general, duties need to be assigned to particular duty-bearers in order to be effectively claimable.<sup>4</sup> Unless specific duty-bearers are clearly identified and assigned, the ambiguity may preclude them from acting because they simply do not realize that *they* are the duty-bearers. Alternatively, duty-bearers may mendaciously avoid bearing their duties amidst ambiguity surrounding where the duties lie. Thus, as Gheciu and Welsh argue, the lack of clarity surrounding the responsibility to rebuild ‘often leads to a diffusion of responsibility, making it easier for states and international organizations to shirk their obligations’.<sup>5</sup>

That said, some have offered an (often implicit) assignment of the responsibility to rebuild. Many leading advocates of the relevance of *jus post bellum* for Just War Theory support what I call the ‘Belligerents Rebuild Thesis’.<sup>6</sup> This thesis asserts that those who have been involved in the fighting – such as the victor, just belligerent (in *ad bellum* terms), unjust aggressor or humanitarian intervener – should be tasked with the duty to rebuild. I will reject this view and argue instead that there is a *pro tanto*, collective, international duty to rebuild. After presenting some conditions to judge who can permissibly rebuild (that is, who has the right to rebuild), I will argue that the international duty to rebuild should be assigned to the agent that can *most justifiably* discharge this duty according to the conditions that I outline. In practice, I will argue that this often means that the UN has the duty to rebuild.<sup>7</sup>

Some advocates of the Belligerents Rebuild Thesis – especially those who hold that it is the just belligerent or humanitarian intervener that should rebuild – seem to do so because of the alleged relevance of *jus post bellum* for Just War Theory.<sup>8</sup> That is, they hold that a just belligerent or humanitarian intervener needs to rebuild in order for its war to be morally justified. This assertion seems to stem from a particular conception of the import of *jus post bellum* concerns, which I shall call the ‘Dependence Approach’. According to this approach, the justice of a war is dependent on meeting the principles of *jus post bellum*. In my rejection of the Belligerents Rebuild Thesis, I will also reject the Dependence Approach. I will argue that *jus post bellum* considerations do not play *any* moral role in the justifiability of a war (although they may be relevant in assessing the justice of institution-building, international criminal justice (or transitional justice) and global justice). Therefore, I will argue that defending the Belligerents Rebuild Thesis by invoking the alleged moral relevance of *jus post bellum* for Just War Theory is mistaken. To that extent, a secondary aim of the article is to challenge the prevailing view of *jus post bellum* as having moral import for Just War Theory.<sup>9</sup>

<sup>3</sup> To be sure, some practical issues may affect particular moral judgements about cases and the account of the (nonideal) moral principles developed.

<sup>4</sup> See Miller 2009; Tan 2006.

<sup>5</sup> Gheciu and Welsh 2009, 137.

<sup>6</sup> See, for example, Bass 2004; Evans 2008; Evans 2009; Orend 2006; Orend 2007; and Walzer 2012.

<sup>7</sup> I consider who has the right and duty to undertake humanitarian intervention in Pattison 2010.

<sup>8</sup> See, for example, Bass 2004.

<sup>9</sup> This is in a similar vein to Bellamy 2008 and Lazar 2012.

Before beginning, some clarifications are necessary. First, rebuilding can involve several different elements, such as military occupation, funding, authorization, assisting another agent, oversight and writing a new constitution. In certain cases, it may be that different agents should perform different aspects of the rebuilding process. In addition, it might not simply be only one agent that is tasked with a particular role. Just as peace operations have been increasingly hybridized – that is, performed by a combination of agents – several agents may carry out a single role of the post-war reconstruction process.<sup>10</sup>

Second, it is not necessarily the defeated party that requires rebuilding. The defeated party may be little affected by the war and the victors may be so exhausted that they need reconstruction. Third parties may also be severely affected by the war (for example, because of substantial refugee flows that destabilize the state) and so require rebuilding. More generally, although I will often use the example of warring *states* to simplify the ethical issues, rebuilding may not be focused on warring states or even states, but on any political community that has been negatively affected by the war.<sup>11</sup>

Third, to frame the discussion, I will use the term the ‘institution building’. This is broader and more accurate than the two leading alternative terms, ‘peacebuilding’ (which is limited to rebuilding the belligerents and focuses on preventing armed conflict over other *post bellum* issues) and ‘statebuilding’ (which is focused on building states when alternative forms of political arrangement may be more appropriate).

#### THE BELLIGERENTS REBUILD THESIS

The Belligerents Rebuild Thesis holds that the warring party has the duty to rebuild. This is often asserted about *unjust* aggressors (in terms of *jus ad bellum*) – that is, that unjust aggressors should rebuild after wars to repair the mess they have caused. This claim was frequently made in the aftermath of the 2003 War in Iraq. For instance, Colin Powell, the former US Secretary of State, purportedly averred the motto, ‘[y]ou broke it, you own it’.<sup>12</sup> Similarly, Gary Bass, who is one of the most prominent advocates of the Belligerents Rebuild Thesis, argues that unjust *ad bellum* aggressors have the duty to bear the burdens of the reconstruction. He claims that since the ‘costs of economic restoration must be paid by *someone*, after all; it might as well be the aggressors’.<sup>13</sup>

The Belligerents Rebuild Thesis is not necessarily limited to *ad bellum* unjust aggressors, however. It may be applied to the victors *in general*, regardless of the justice of their war in terms of the principles of *jus ad bellum* (for example, the victors should rebuild to ensure that the basic needs of those in the defeated belligerent are met). But the Belligerents Rebuild Thesis is perhaps more often defended for those that fight *just* wars, such as those that undertake just humanitarian interventions. For example, Michael Walzer argues that

[p]eople who do good in the world have more obligations than people who don’t do anything. Volunteer for some worthy task, and you are quickly entangled in a web of obligations; you hardly have a minute to yourself; while the men and women who never volunteer for anything can do what they like with their evenings. The case is the same with

<sup>10</sup> On the hybridization of peace operations, see Bellamy and Williams 2009 and Piiparinen 2007.

<sup>11</sup> Kaldor 2007, 269.

<sup>12</sup> Gheciu and Welsh 2009, 124.

<sup>13</sup> Bass 2004, 408. Also see Rodin (2011), who argues that the US and its allies were obligated to remain in Iraq and Afghanistan.

states as it is with individuals. Once the Vietnamese had sent an army into Cambodia, for the best of reasons, to save lives (whatever their other reasons), they were bound to keep on saving lives in Cambodia. They had to secure and maintain some kind of law and order and establish a nonmurderous government to replace the one they had overthrown.<sup>14</sup>

Similarly, Bass argues that in instances of victorious humanitarian intervention against ‘genocidal countries’, the interveners possess the duty to rebuild, such as by prosecuting war criminals, changing the educational system of the state and imposing more stable political institutions.<sup>15</sup> Why do interveners have such duties? For Bass, this is a matter of consistency with *ad bellum* ends; if an intervener fails to reconstruct the vanquished belligerent in such cases, it raises doubts over whether the initial war was in fact a case of just humanitarian intervention.<sup>16</sup> Furthermore, Bass argues that this is not simply a matter of meeting the requirements of *jus ad bellum*. Rather, *jus post bellum* places a further set of moral demands on belligerents so that the overall justice of a war is jeopardized if the belligerent does not reconstruct the defeated party, even if it meets the demands of *jus ad bellum*, ‘much as one would regard a just war as compromised if it were not fought according to the strict demands of *jus in bello*’.<sup>17</sup> Bass’ defence of the Belligerents Rebuild Thesis draws, then, on the Dependence Approach, which, as we will see below, (wrongly) asserts that the justice of a war is dependent on *jus post bellum*.

### *Objections to the Belligerents Rebuild Thesis*

There are two central problems with the Belligerents Rebuild Thesis. The first is that it seems unfair when the belligerent has fought a just war. Suppose that Gabon wages a just defensive (hypothetical) war in order to fend off unjust aggressor Cameroon. If Gabon had refused to fight, its population would have been subject to mass violations of basic human rights. It does not seem fair that the just defender, Gabon, should be the one tasked with bearing the costs of rebuilding. Intuitively, the claim that those who are causally responsible for the war and the ensuing devastation are the ones who are required to rebuild, or the strict liability claim that those who in some sense freely chose to fight the war are required to rebuild, seem to be an inadequate basis to hold that Gabon should rebuild. Gabon may have, strictly speaking, chosen to wage the war, but without doing so, it would have left its population vulnerable to massive harm.<sup>18</sup> As a result, it seems unfair that Gabon, rather than any other agent, should be tasked with the costs of rebuilding Cameroon. Moreover, since Gabon has already had the misfortune of having to fight against Cameroon’s unjust attack – presumably at some cost to itself – it may be fairer that *others* bear the costs of rebuilding the aggressor. It has already had to bear some of the costs of the aggressor’s war.

The Belligerents Rebuild Thesis seems particularly unfair in cases of just humanitarian intervention when it is to some extent altruistic. In such cases, the intervener has already undertaken (presumably costly) action not simply to save itself, as in cases of self-defence, but in order to save the lives of others. It seems unfair then to hold that *it*, rather than anyone else, should have to bear the costs of rebuilding, simply because it intervened. Furthermore, there is another way in which the Belligerents Rebuild Thesis seems unfair: it

<sup>14</sup> Walzer 2012, 40.

<sup>15</sup> Bass 2004, 412.

<sup>16</sup> Bass 2004, 401.

<sup>17</sup> Bass 2004, 400.

<sup>18</sup> Bellamy 2008, 619; Frowe 2011, 214–15; and Lazar 2012, 215–17 make similar points.

wrongly excludes non-belligerents from the rebuilding process. If the Belligerents Rebuild Thesis is premised on the claim that ‘you broke it, you own it’, it seems to be too narrow, since certain non-belligerents may have also been culpable for the war, such as those that finance the war and provide military equipment.

The second problem with the Belligerents Rebuild Thesis is that the warring parties may not be the most suitable agents to rebuild. This is perhaps most obvious when the belligerent has fought an unjust war (for example, its post-war occupation may be heavily opposed by the local population leading to a reigniting of the conflict), but it is also true of belligerents that fought a just war. Suppose, for instance, that Eritrea was unjustly invaded by Ethiopia and it fought a just war of self-defence in response. Given its impoverishment and size, Eritrea might not be the most suitable agent to rebuild Ethiopia to ensure, for example, that it does not invade again.<sup>19</sup>

This point can be made more precisely: the belligerent may not have the (1) *right* to rebuild. Below, I will consider some conditions for assessing when it may be permissible to rebuild. Given that the belligerent was involved in the conflict, it may sometimes – and perhaps often – fail to meet these conditions. This may be largely for instrumental reasons: the belligerent will not meet the requirements of a reasonable prospect of success because its rebuilding will be vehemently rejected by the local population. To be sure, as noted above, rebuilding comprises several elements. Belligerents may sometimes be likely to meet the conditions of a right to rebuild for *some* aspects of the rebuilding process, such as funding the rebuilding or assisting another agent’s occupation (for example, by providing military logistics). However, even if belligerents might have the right to rebuild in such cases, it does not follow that they are likely to have the (2) *duty* to rebuild. Other agents may be better able to carry out these roles than the belligerent and thus have the duty to do so. (I will argue below that the duty to rebuild should fall on the agent that can do so most justifiably according to the conditions that I outline, which in most cases means the agent that can rebuild most capably).

What I think lies at the heart of the intuitive appeal of the Belligerents Rebuild Thesis is that belligerents *sometimes* possess duties of reparation, by which I mean duties to redress the wrongdoing for which they are morally culpable. More specifically, belligerents may possess reparative duties because of culpable wrongdoing in their unjust *ad bellum* war or *in bello* actions.<sup>20</sup> Indeed, belligerents may have duties of reparation even in *just* wars, all things considered. For instance, in cases where otherwise just humanitarian interveners cause morally impermissible civilian casualties (for example, NATO’s use of cluster bombs), the interveners may owe the victims reparation.<sup>21</sup> There may also be duties of reparation because of the role played by the belligerent *before* the war (of course, non-belligerents may also possess such reparative duties). For example, a state may wage a war of regime change against a dictator whom they originally put in place or undertake humanitarian intervention in response to a severe crisis that they are in part culpable for by upholding an unjust global economic order. (In addition, reparations may be owed due to wrongdoing during *post bellum*).<sup>22</sup> To be sure, I am not endorsing blanket reparations

<sup>19</sup> To be clear, this is a contingent objection: it is conceivable that the belligerents *may* sometimes possess the right to rebuild (although I doubt the likelihood of this below).

<sup>20</sup> Thus, I think that duties of reparation exist when agents are *culpable* for wrongdoing, rather than when agents are only *minimally responsible* by voluntarily engaging in a practice and meeting the criteria for rational agency. Space, however, precludes defending this view here.

<sup>21</sup> See Majima 2009.

<sup>22</sup> Fleck 2012, 95–6; also see McMahan 2009b, 22.

owed by all within the political community that committed wrongdoing. This seems to me to be morally problematic because it is too indiscriminate. Duties of reparation are individually, rather than collectively, owed. Assigning collective reparations risks requiring those individuals who are not culpable – who are, in effect, morally innocent – to pay reparations even though they have done nothing wrong.

Yet, duties of reparation are of limited relevance for the issue of who should rebuild. As discussed above, belligerents may not be suitable to carry out the rebuild since they lack the right to do so. This is true even if they have reparative duties. Analogously, someone may attack you without provocation, and in doing so break your arm. They may well have reparative duties to you, such as to pay you compensation, but it does not mean that they should necessarily be the one to give you medical treatment. Another individual, such as a doctor, nurse, paramedic or first aider, who is better placed to assist you, should do so, given that their help is likely to aid you most. Hence, it does not follow from the fact that agents may have duties of reparation to the conclusion that they should be the ones to rebuild.

Notwithstanding, it might be that your attacker should *pay* for the doctor, nurse, paramedic or first aider to treat you. Duties of reparation may therefore be important for determining who should *pay* others to rebuild, that is, who should bear the costs of the rebuilding. And if that is the case, then at least one element of the international duty to rebuild defended below – paying for the rebuild – may be a fallback or remedial duty, in that it becomes necessary only when those who have reparative duties (such as unjust belligerents) fail to discharge these duties to bear the costs. Returning again to the above example, it is only when the aggressor fails to pay for the costs of your treatment that it may seem that others have duties to bear the costs of this treatment.

Yet, although the international duty to bear the costs of rebuilding may be best conceived (fundamentally at least) as only remedial, it can generally be expected to be the default, that is, the solution that is typically relied upon. The central issue is that reparative duties cannot be expected to determine clearly and often who should pay for the rebuild. This lack of guidance can be expected for the following four reasons.

First, there may be no belligerent to pay. Sometimes the belligerent will cease to exist and therefore there will be no functioning institution to pay for the rebuild. For instance, a war between two statist parties may be so acrimonious that the institutions of both states no longer function. Alternatively, especially in the case of a non-state war, the belligerent (for example, a guerrilla movement) may no longer exist after the war.

Second, it may be difficult to trace causally which agents were the belligerents and so owe reparative duties, and the degree to which they owe reparations. This is because there may have been numerous belligerents involved – such as state forces, rebel groups, other rebel factions, foreign forces and mercenaries – with some groups changing allegiances and the same individuals belonging to different groups, and other groups acting clandestinely.

Third, tracing culpability (or minimal responsibility), when used as the basis for assigning reparative duties to pay for the rebuild, may be even trickier, given that it may be very hard to accurately assess who did what before and during the war. As indicated above, even though they were involved in the war, some agents may not be liable to pay reparative duties since they have done nothing wrong. This is true at the institutional level – some institutions may not be culpable for their part in the conflict and so not owe duties of reparation. It is also true at the individual level. Within the institutions that are culpable for the conflict, particular individuals may not be culpable and so not

liable to bear the costs of the rebuild. Indeed, the issue of mistakenly identifying those who are morally innocent is an often-voiced worry about reparations policies.<sup>23</sup> It seems that if a reparations policy cannot be put into practice without indiscriminately requiring several morally innocent individuals to bear *significant* costs, it seems impermissible, just as a war that will lead to the death of several nonliable individuals may also be impermissible.<sup>24</sup> Another way of putting this point is that belligerents may not have the right – and, as a result, also the duty – to pay for the rebuild, since doing so will be indiscriminate: it may impose significant costs on those not liable for these costs.<sup>25</sup>

Fourth, it is unclear how the duty to pay to rebuild should be assigned when the belligerents that owe reparations do not comply with their duty to rebuild. The Belligerents Rebuild Thesis is silent on this. Yet, noncompliance can often be expected: it seems likely that those that fight unjust wars or perform unjust actions in war – and so have the duty to rebuild on a version of the Belligerents Rebuild Thesis that emphasizes culpability – will often refuse to pay, given that their unjust war and/or unjust actions in war raise significant doubts about their attentiveness to moral requirements.

These problems indicate that reparative duties owed by belligerents are typically unlikely to resolve the issue of who should pay to rebuild.<sup>26</sup> The international duty to bear the costs of the rebuild (justified as part of the international duty to rebuild) may then become the norm.<sup>27</sup> In fact, these problems highlight a further issue with the Belligerents Rebuild Thesis: typically, it will offer only an incomplete answer, since it will often fail to offer guidance on who may and should rebuild (including who should pay), given the potential disbandment of belligerents, the opaqueness surrounding the role of belligerents and potential noncompliance. Accordingly, even if – despite the problems noted above – one were to continue to endorse the Belligerents Rebuild Thesis, it would, at the very least, need to be supplemented with an additional principle, such as the international duty to rebuild that I will defend shortly.

#### THE DEPENDENCE APPROACH

It might be argued in response that the Belligerents Rebuild Thesis should be maintained because it is important for belligerents to rebuild in order for them to fight a just war. If they fail to rebuild, their war is unjust. This defence stems from what I call the ‘Dependence Approach’ to *jus post bellum*, which asserts that the justice of a war is dependent on *jus post bellum*.<sup>28</sup>

<sup>23</sup> See, for example, Coady 2011, 59.

<sup>24</sup> Orend 2006, 166–7.

<sup>25</sup> I consider further some of the conditions necessary for the right to pay below.

<sup>26</sup> In addition, it may not often be easy for agents to separate (1) bearing the costs of rebuilding from (2) undertaking the rebuilding. I argue below that in such situations – when the agent that rebuilds is also the one that has to bear the costs of doing so – culpability for the situation is of lesser moral significance than other concerns, most notably the capability of the rebuilders.

<sup>27</sup> It is also worth noting that these four problems are not encountered to such an extent by the more general international duty to rebuild, which is assigned to the most justifiable agent according to the conditions listed below. This is because it is forward looking and so avoids problems of relying on the continuity of agents and the tracing of complex historical processes in order to determine liability for costs. It also has a clear default for conditions of noncompliance: the next most justifiable agent should act (see below).

<sup>28</sup> As we saw above, Bass (2004) makes this claim in the case of humanitarian intervention.



Let me elaborate further. There are several principles of *jus post bellum* on the standard lists of the principles, including the punishment of those culpable for the unjust war, compensation for the innocent victims of the war, limits to the possibilities of what victors can permissibly do (for example, the need to retain the *ante bellum* territorial boundaries), the provision of the basic needs of those in the war-affected societies, and the rebuilding of the political and material infrastructure of the war-affected societies. According to the Dependence Approach, if a belligerent is to fight a just war, not only does it have to meet the requirements of *jus ad bellum* and *jus in bello*, its aftermaths must also meet these *jus post bellum* principles. If a belligerent fails to meet these principles, even if it acts permissibly in terms of *jus ad bellum* and *jus in bello*, it fails to act justifiably overall. And from the Dependence Approach, the Belligerents Rebuild Thesis may appear to ensue: the belligerents should be tasked with rebuilding, since this is an important part of their fighting a just war.<sup>29</sup>

I think that the Dependence Approach is mistaken. It is important to make clear the roles that aspects of *jus post bellum* may play in determining the justifiability of a war. First, aspects of *jus post bellum* may constitute *separate* moral considerations to the considerations of *jus ad bellum* and *jus in bello*. That is, for a war to be just, it ultimately needs to meet not only the requirements of *jus ad bellum* and *jus in bello*, it also needs to meet the principles of *jus post bellum* that concern a *further* set of moral issues (for example, post-war rebuilding and punishment). Second, aspects of *jus post bellum* may be *related* to the moral considerations of *jus ad bellum* and *jus in bello*. Looking to *jus post bellum* may help provide evidence to determine whether the principles of *jus ad bellum* and *jus in bello* have been met. Alternatively, the principles of *jus ad bellum* and *jus in bello* may allegedly need to be revised so that they address issues raised by *jus post bellum*. Most notably, the *ad bellum* principles of reasonable prospects of success and proportionality may be claimed to need to reflect the likely post-war environment.

I am sceptical about both sorts of claims. In what follows, I will argue that (1) there are no *separate* moral considerations of *jus post bellum* that need to be reflected in an account of the justice of the war (compared to the ethics of institution building, international criminal justice and global justice) and that (2) considerations of *jus post bellum* do not help provide evidence or show that the standard accounts of the principles of *jus ad bellum* and *jus in bello* require revision. Hence, I will claim that considerations of *jus post bellum* play no *separate* or *related* moral role in the justifiability of a war.

Let me start with the claim that *jus post bellum* provides *separate* moral considerations that need to be taken into account in the overall assessment of a war. Bass claims that '[t]he addition of *jus post bellum* as a category creates a third condition for a just war, and tends to restrict further the number of just wars'.<sup>30</sup> He continues, '[a]s in so many issues in public life, those who would act well bear a heavy burden, and *jus post bellum* duties only

<sup>29</sup> To be sure, the relationship between the Dependence Approach and the Belligerents Rebuild Thesis is not a necessary one. One might endorse the Dependence Approach and still reject the Belligerents Rebuild Thesis. For example, one might hold that, for issues other than rebuilding, it is important that the belligerents meet the requirements of *jus post bellum* in order for their war to be just. One might also endorse the Belligerents Rebuild Thesis and reject the Dependence Thesis. For example, one might claim that belligerents should rebuild not because this is important for the moral justifiability of their war, but for other reasons (for example, because in their unjust war they 'broke' the war-affected society).

<sup>30</sup> Bass 2004, 412.

add to that burden. People who somehow manage to act decently before and during war are rewarded only by being required to act decently again afterward'.<sup>31</sup>

This seems to be too demanding.<sup>32</sup> That is to say, it seems to lead to an implausibly restrictive account of Just War Theory, whereby it becomes too difficult to fight a just war. The worry is that, if one endorses the Dependence Approach, wars that seem to be intuitively just may be viewed as unjust. Consider, for example, the problematic aftermath of the NATO intervention in Kosovo, which still endures occupation by the EU, NATO and other organizations more than a decade after the intervention. The post-war occupation has been hampered by political infighting by the supposed rebuilders and ongoing tensions between Serbs and Kosovar Albanians; little has been done to build infrastructure or establish independent political institutions so that Kosovo can function effectively as an autonomous political entity. But this problematic *jus post bellum* settlement does not seem to affect our judgement of the justice of the war waged by NATO: the war was, I think, justified (all things considered); the aftermath perhaps is not. To hold that the intervention in Kosovo was unjust because of the problematic post-war situation seems implausibly restrictive. Indeed, it is not clear that there would ever be a just war based on this highly demanding account of Just War Theory.

In fact, the considerations of *jus post bellum* do not seem to affect the justifiability of a war at all. The intervention in Kosovo was, all things considered, justified. But this is *not in spite of* the problematic post-war situation. It seems, rather, that the justifiability of the intervention in Kosovo (and other wars) is *solely* a matter of *jus ad bellum* and *jus in bello*. The problematic post-war situation does not affect our assessment of its overall justifiability *at all*. This is because the judgement of *jus post bellum* concerns a different period – the post-war period – and our assessment of it does not alter the case for the war or the rectitude of what went on during the war. To that extent (as I argue further below), the considerations of *jus post bellum* should be viewed as separate to Just War Theory, that is, as part of an account of the ethics of institution building, global justice or international criminal justice (transitional justice). This is nicely put by Alex Bellamy: ‘the justice of the peace should be assessed independently of the war’.<sup>33</sup> Of course, this does not render a problematic post-war settlement morally acceptable. For instance, if a belligerent *does* have the duty to rebuild, and fails to fulfil this duty, it acts wrongly. But this is only *post-war* and does not seem to render its war unjust.

Let me now consider the claim that *jus post bellum* is *relationally* valuable to *jus ad bellum* and *jus in bello*, that is, the claims that *jus post bellum* can help determine *jus ad bellum* and *jus in bello* and that *jus ad bellum* and *jus in bello* need to be revised to reflect *jus post bellum*. First, it may seem that *jus post bellum* is relevant for determining the *jus ad bellum* principle of just cause. That is, if agents do not fulfil *jus post bellum* requirements, then their initial just cause might be in question. Consider, for example, wars of regime change (that is, in response to authoritarian regimes) and wars of humanitarian intervention. It might be thought that in such cases the belligerents need to achieve regime change or stop the humanitarian crisis in order for their war to be just. This is because what justified the resort to war in the first place – what provided just cause – was the

<sup>31</sup> Bass 2004, 412.

<sup>32</sup> See also Evans 2008, 554.

<sup>33</sup> Bellamy 2008, 622. Also see Lazar (2012), who argues that if we need an account of *jus post bellum*, it should be broadened beyond its focus on wrongdoing in war and located within the larger ethics of peacebuilding.

removal of the authoritarian regime and the halting of the humanitarian crisis.<sup>34</sup> If the belligerents fail to deliver on these, it may appear to call into question whether they actually had just cause in the first place. We might also think the same for certain wars of national defence. For instance, the failure of the US and UK-led War in Iraq to find weapons of mass destruction (WMD) after the initial conflict stage may have been thought to repudiate the defensive case for that war – and, in particular, the just cause to go to war to prevent an Iraqi WMD attack.

Second, it may seem that *jus post bellum* is relevant for the *jus ad bellum* principle of right intention. The thought is that if the agent does not show an effort to rebuild, it is doubtful whether it in fact met the requirements of right intention. As Bellamy notes, a lack of commitment to rebuild may be seen as a proxy for measuring the intentions of the intervener: it might be read by some ‘as a lack of intention to wage war to create such a peace and might point to self-interested intentions’.<sup>35</sup>

The problem with the case for the relational import of *jus post bellum* is, first, that it potentially loses the action-guiding quality of *jus ad bellum*. That is to say, the principles of *jus ad bellum*, including just cause, are directed at the pre-war period. If Just War Theory and the principles of *jus ad bellum* are to be action guiding in this period (which surely they must, given Just War Theory’s practical policy focus), the account of the principles of *jus ad bellum* needs to be clearly determinable at that time in order to assess whether the war in question will meet them. But if, for example, just cause will depend in part on whether certain *jus post bellum* conditions are in fact fulfilled, then we cannot know whether just cause has been fulfilled until the *jus post bellum* period has been completed. It will therefore cease to be a useful guide for making *ad bellum* decisions. For instance, suppose that Kazakhstan *might* potentially have just cause to wage a war of regime change against Uzbekistan. If we hold that Kazakhstan needs to successfully install a democratic regime in Uzbekistan for it to be the case that it does *in fact* have a just cause, we will not know, at the time that Kazakhstan decides to wage the war, whether it has just cause. Similarly, looking to whether the belligerent acted appropriately *post bellum* and did in fact possess right intention does not help provide an action-guiding account of right intention for the *ad bellum* period. We will need to wait until after the war to establish this.

A further problem with linking the *ad bellum* conditions of just cause and right intention to *jus post bellum* is that it may lead to a misjudgement of the former. Suppose (hypothetically) that in Guinea a dictator has overthrown a justly elected leader and is severely repressing his people. Côte d’Ivoire wages war against Guinea to restore the ousted democratically elected leader. It has, we can suppose, just cause for this war. But now suppose that Guinea resists Côte d’Ivoire. As a result, Côte d’Ivoire is severely weakened and the dictator survives in the aftermath of the war. That Côte d’Ivoire cannot achieve its war post-war aims does not mean that it did not have just cause at the start of the war. Likewise, even if the belligerent fails to achieve its initial aims in the *post bellum*

<sup>34</sup> At one point, in his generally excellent article, Bellamy appears to endorse something approaching this view. He suggests that in some rare cases victors may possess responsibilities to rebuild (what he calls ‘maximalist’ responsibilities) when they justifiably intervene to remove tyrants (and when there is consensus about this) (Bellamy 2008, 619–24). In such cases, ‘by initiating war the (justified) aggressors acquire *jus post bellum* responsibilities that go beyond minimalist constraints because it is precisely the achievement of ends related to maximalist responsibilities (creation of legitimate governments, punishment of tyrants etc.) that provided the grounds for war in the first place’ (Bellamy 2008, 619).

<sup>35</sup> Bellamy 2008, 620.

period, this does not necessarily mean that it lacked right intention. To see this, suppose further that Côte d'Ivoire *does* possess the capacity to remove the dictator after winning the war but chooses not to. It might be because it is self-interested – say it strikes a bargain with the dictator over oil. This may provide further, after-the-event evidence that calls into question the permissibility of the war – it may not have met the requirements of right intention. But it might not choose to remove the dictator for other morally justifiable reasons. For example, the disbandment of the new regime may destabilize Guinea massively and worsen the situation. That the reasons *now* count against the removal of the dictator does not mean that in the *ad bellum* period regime change was impermissible.

I am not denying that the *reasonable expectations* of the post-war period may be relevant for some *jus ad bellum* (and *jus in bello*) judgements, particularly right intention, the reasonable prospect of success and proportionality. But this is nothing new. Many accounts of the principles of *jus ad bellum* are *already* sensitive to such likely long-term consequences. There does not seem to be a need to revise them further, as some *jus post bellum* advocates suggest. We can see this by looking at some of the accounts of *jus ad bellum* that were presented before the recent spate of work on *jus post bellum*. For instance, several accounts in the early 2000s of measuring success in cases of humanitarian intervention call for long-term outcomes to be included.<sup>36</sup> Thomas Hurka's influential account of proportionality includes considerations after the war (for example, the benefits of forcibly making a state peaceful).<sup>37</sup> Similarly, right intention has often been said to relate to intending peace (most notably, Augustine in *Letter to Boniface*).<sup>38</sup> Thus, as Walzer argues, in classic Just War Theory a reasonable prospect of success and right intention include *post bellum* justice.<sup>39</sup>

It does not seem, then, that *jus post bellum* adds anything new to *jus ad bellum* or that *jus post bellum* provides evidence for *jus ad bellum*. As Alex Bellamy and Seth Lazar argue, *jus post bellum* lacks relevance for Just War Theory insofar as this is largely a theory about war.<sup>40</sup> *Jus ad bellum* and *jus in bello* capture the main moral terrain of the ethics of war. *Jus post bellum* seems to be better located within a broader account of the ethics of institution building and international criminal or transitional justice (for concerns about punishment) and, more generally, global justice. Backward-looking considerations concerning war-related wrongdoing – the subject matter of much of the work on *jus post bellum* (for example, punishment and reparations) – can be incorporated into these accounts (along with forward-looking considerations). Of course, this is not unique to war-related wrongdoing. A fully fledged account of the ethics of institution building and global justice more generally may need to be sensitive to a whole host of backward-looking (as well as forward-looking) considerations, such as moral responsibility for an unjust global economic order that arguably leads to conflict and the failure to establish just political institutions.<sup>41</sup>

<sup>36</sup> See, for instance, Clarke 2001, 3 and Wheeler 2000, 37.

<sup>37</sup> Hurka 2005.

<sup>38</sup> Augustine says '[p]eace is not sought in order to provoke war, but war is waged in order to attain peace. Be a peacemaker, then, even by fighting so that through your victory you might bring those whom you defeat to the advantages of peace' (St Augustine of Hippo 1994 [487], 220).

<sup>39</sup> Walzer 2012.

<sup>40</sup> Bellamy 2008 and Lazar 2012.

<sup>41</sup> See Pogge 2008. It may be replied that *jus post bellum* could remain part of Just War Theory if wars were not viewed as dependent on meeting the conditions of *jus post bellum* to be deemed just. I would like to thank Pablo Kalmanovitz and Tom Sinclair for pressing me on this objection. But there is still a danger that such an account (unlike the broader account) would unduly downplay the forward-looking

## THE INTERNATIONAL DUTY TO REBUILD

I have presented a series of objections to the Belligerents Rebuild Thesis and argued that defending this thesis by invoking the alleged moral relevance of *jus post bellum* for Just War Theory is mistaken. As such, the claim that belligerents should rebuild is unpersuasive, although certain agents may have reparative duties. Instead, I will now argue that there exists an international, collective duty to promote and establish just political institutions, which translates into a duty to rebuild for the most justifiable rebuilder according to the conditions that I outline below. My aim is not to strongly defend one account of the duty to rebuild (which would require more space than I have here), but rather to argue that this duty is a corollary of several leading accounts in global political theory. More specifically, I will argue that it is a corollary of (1) ‘nonrelational’ cosmopolitanism, most notably the approach defended by Allen Buchanan, which provides perhaps the clearest basis for the duty to rebuild, (2) ‘relational’ cosmopolitanism, (3) John Rawls’ Law of Peoples and (4) the endorsement of humanitarian duties.<sup>42</sup> (I will suggest that these accounts do differ somewhat in exactly what they require). I will also respond to two objections: (1) that the duty to rebuild is problematic because it is not special to post-war situations and (2) that the duty to rebuild justifies excessive interventionism.

*The Duty to Rebuild as a Corollary of Other Approaches*

Let us first consider a nonrelational cosmopolitan approach that maintains that we have natural duties of justice regardless of facts about interdependence, and how the duty to rebuild follows from this approach. Rawls argues that there are several (domestic) natural duties of justice, of which ‘the most important natural duty is that to support and further just institutions’ – the NDJ.<sup>43</sup> The NDJ includes a duty to comply with existing just institutions and, importantly for our purposes, ‘to assist in the establishment of just institutions when they do not exist, at least when this can be done with little cost to ourselves’.<sup>44</sup>

The international duty to rebuild after war seems to follow from this duty. It involves an important set of cases for this duty – that is, where just post-war political institutions do not exist. In fact, the duty to rebuild after war seems to be one of the most important implications of the NDJ for two reasons. First, post-war societies may comprise several of the cases in which societies lack just political institutions. Second, the strength of the NDJ may be much greater in cases of the duty to rebuild because war-torn societies sometimes have no effective political institutions (for example, Somalia), let alone just ones. It may be even more morally urgent to address anarchy and to establish basic order than to put in place just institutions where there are currently unjust ones.

The link between the duty to rebuild and the NDJ becomes clearer when we explore two major arguments made for the NDJ. The first is moral equality and, in particular, equal respect and concern. This argument is based on the (cosmopolitan) defence of the NDJ

*(Fnote continued)*

considerations of *jus post bellum* that are not directly related to war-related wrongdoing (for example, those related to institution building).

<sup>42</sup> Nonrelational accounts of justice hold that social practices ‘do not play any role in the *justification* and *formulation* of a given set of principles’, although may condition their application (Sangiovanni 2007, 6). By contrast, relational accounts of justice in general hold that ‘practice-mediated relations in which individuals stand condition the content, scope, and justification of those principles’ (Sangiovanni 2007, 5).

<sup>43</sup> Rawls 1999a, 293.

<sup>44</sup> Rawls 1999a, 293–4.

made by Buchanan and runs as follows.<sup>45</sup> In general, just political institutions – those that protect basic human rights and allow for democratic participation – are necessary for moral equality. A society in which, for instance, there are government-sponsored persecutions of certain religious minorities will not be one in which equal respect is enjoyed by those persecuted. To be committed to equality, it is not enough to refrain from violating rights *oneself*, given that others may do so.<sup>46</sup> The principle of moral equality requires more than simply fulfilling negative duties; it also requires positive duties to help others, including helping them establish just political institutions. So, if someone else is intent on violating your basic rights and I can help (at reasonable cost) by supporting a police and court system that prevents such crimes, I do not hold you in equal respect if I refuse you this support.<sup>47</sup> Thus, Buchanan argues that ‘each of us has a limited moral obligation to help to ensure that all persons have access to institutions that protect their basic rights’.<sup>48</sup> It seems that a post-war society that suffers from instability and that suspends democratic control will be one in which some citizens lack an equal say over the political decisions that affect them. Outside agencies, such as UN election monitors, may therefore be required to assist the society (when the requisite conditions for permissible rebuilding outlined below are met) to establish the just political institutions required for democratic decision making and (ultimately) moral equality.

A second argument for the NDJ relies on a Rawlsian original position. It should be noted, however, that Rawls’ own account of the NDJ focuses far more on the duty to comply with existing just institutions.<sup>49</sup> He does not consider in detail the duty to establish just institutions when they do not exist, and it is unclear whether he thinks that this duty applies to those who would not be subject to these institutions (as in cases of the duty to rebuild after war). In fact, the argument differs to Rawls’ account of the duty of assistance to burdened societies in *The Law of Peoples*, which I suggest below also implies the duty to rebuild. Notwithstanding, the argument is that, when considering nonideal principles behind the veil of ignorance, one would not know whether one would be in a society that has just political institutions, but would know that just political institutions may not exist. As part of this, it seems that one would also know that there may be war-torn societies. As a result, one would agree to duties to ensure that one will be in a position to enjoy just political institutions. Hence, one would agree to duties to assist those in war-torn societies.<sup>50</sup>

<sup>45</sup> Buchanan 2004.

<sup>46</sup> Buchanan 2004, 87.

<sup>47</sup> Buchanan 2004, 89.

<sup>48</sup> Buchanan 2004, 87.

<sup>49</sup> Rawls 1999a, 98–101, 293–301.

<sup>50</sup> These bases are potentially related (an original position may help determine the demands of equality). Yet one may be advanced without the other (for example, contractualism may be rejected). Also note here that, although Rawls’ account of the NDJ in *A Theory of Justice* focuses on the domestic case, one might still hold that the NDJ is international. First, one might claim that the justification of the NDJ from moral equality is independent of the nationality of those involved. The argument, recall, is that equal concern and respect require assisting others to establish just political institutions, given that such institutions are necessary for moral equality. It may be claimed not to matter that those who require assistance may be from another state: regardless of their nationality, equal respect and concern simply require that they be assisted. Second, one might claim that the justification of the NDJ from the original contractualist position could be also conceived in a manner that does not depend on the nationality of those involved. There may be a global original position with individual parties (see Pogge 1989, 247) in which the individuals agree to the NDJ – and the duty to rebuild – regardless of their nationality.

There are three notable features of the duty to rebuild after war when viewed as a consequence of endorsing the NDJ. The first concerns the aims of this duty. Rather than simply halting a post-war humanitarian crisis or restoring the pre-war status quo (when the pre-war status quo is not just political institutions), the objective is to establish just political institutions, given the egalitarian and contractualist bases of the NDJ outlined above. Of course, tackling an immediate humanitarian crisis and restoring the pre-war status quo may be first necessary to establish and promote just political institutions. However, not only would this be insufficient to achieve equality, it seems that more would be agreed to by the parties in the original position. For example, if they know that they might be subject to authoritarian leaders post-war, they would agree to the more extensive NDJ, which aims to help individuals secure just political institutions.

Second, and as I will discuss further below, the duty to rebuild is not limited to post-war societies (although this is the focus of this article); there are similar duties to rebuild *after other events* (for example, natural disasters) and analogous duties to *build*. Conversely, the international duty to rebuild does not apply to post-war societies that enjoy just political institutions, even if they have suffered some damage during war (although such societies may still be owed reparations).

Third, when defended on the basis of a result of the NDJ, the duty to rebuild is both individually and institutionally owed. That is, individuals have duties to promote and establish just institutions, and so to help to rebuild, when they can as individuals. As natural duties on the Rawlsian account, these duties are derived by individuals behind the veil of ignorance and apply to individuals, regardless of voluntary acts, institutions or social practices.<sup>51</sup> In that sense they differ from other principles that stem from the original position, such as the principle of fairness, which are more focused on institutional actors.<sup>52</sup> However, although the duty to rebuild may apply to individuals, most of the opportunities to rebuild will be through political institutions. In this sense, the NDJ is *collective* and *international*: the duty to promote and establish just institutions is universally owed by all individuals, but is best mediated collectively through political institutions.<sup>53</sup>

The duty to rebuild is also implied by other leading positions, including (2) relational cosmopolitanism. For instance, a Poggeian argument might run as follows.<sup>54</sup> We are implicated in upholding an unjust global economic order that leads to severe poverty, humanitarian crises and, importantly for our purposes, wars (for example, wars are caused by poverty, disputes over resource privileges, etc.). There is, then, a negative, backward-looking duty of justice to redress the harms caused by the unjust global economic order. This would seem to include a duty to rebuild after war. Although this form of the duty to rebuild after war may be seen as a reparative duty, it differs from the standard accounts of duties of reparation, which (as we have seen) typically focus on the belligerents. The suggestion instead is that the bearers of the duties of reparation are

<sup>51</sup> Rawls 1999a, 99–100, 295–6.

<sup>52</sup> Rawls 1999a, 100.

<sup>53</sup> Also see Buchanan (2004, 92–3) and Bellamy, who argues that '[t]he responsibility to uphold the *ius post bellum* is collective' (2008, 622). It is worth noting here that there may also be some cases in which individuals can best promote the duty to rebuild through private institutions, such as firms and nongovernmental organizations (NGOs). For instance, NGOs may be the only actors that are permitted to rebuild by those in the war-torn society.

<sup>54</sup> See Pogge 2008.

those who uphold the unjust global economic order, which will include several agents. It is then a widely owned, and perhaps global, duty.<sup>55</sup>

The duty to rebuild also seems to be a corollary of (3) Rawls' approach in *The Law of Peoples*.<sup>56</sup> His argument, in short, is that in a second, international original position, both liberal and certain nonliberal (in particular, decent) societies would agree to a 'duty of assistance' to 'burdened societies' that suffer from unfavourable conditions. This duty of assistance to burdened societies, as Rawls conceives it, is a principle of transitional justice in that its aim is to bring burdened societies into the Society of Peoples, that is, to enable them to have (reasonably) just basic political institutions and take part freely and equally in international society.<sup>57</sup> It seems that the hardships suffered by several post-war societies would also fit Rawls' account of the unfavourable conditions suffered by burdened societies (for example, lack of material resources and human capital), and so there may be a similar duty to rebuild after war as part of the duty of assistance. Alternatively, post-war societies may be 'outlaw states' or (perhaps less likely) 'benevolent absolutisms' on Rawls' account, in which case they may be subject to intervention, sanctions or war (in the case of outlaw states) or persuasion (in the case of benevolent absolutisms). The aim is (like for burdened societies) to bring them into the Society of Peoples by, for instance, helping them to have (reasonably) just basic political institutions and take part freely and equally in international society. As such, there might still be duties to rebuild outlaw states and benevolent absolutisms after war in order to achieve this aim. This second Rawlsian argument offers, then, a potential statist, contractualist basis of the international duty to rebuild.<sup>58</sup>

Moreover, even those sceptical of claims about global justice and Rawls' Law of Peoples may need to accept the international duty to rebuild if they accept (4) humanitarian duties, given the devastation that war can leave behind, such as inadequate access to food, shelter, running water and other basic goods. The post-war situation may often be one of humanitarian disaster, and the duty to rebuild after war stems from the duty to tackle the humanitarian disaster. Indeed, this account of the duty to rebuild after war and its internationalism does not seem contentious, given that limited international duties to provide humanitarian assistance are widely endorsed. Indeed, several renowned noncosmopolitans accept such humanitarian duties.<sup>59</sup>

Nevertheless, basing the duty to rebuild on humanitarian duties *alone* is likely to lead to only a fairly limited duty to rebuild. It would seem to apply only when a certain threshold of humanitarian disaster is reached, in terms of the *sorts* of suffering involved (for example, death and starvation) and the scale of wrongdoing (for example, widespread death and starvation). For example, Thomas Nagel's account of humanitarian duties are to those 'in desperate need', such as those threatened with starvation, severe malnutrition or early death from easily preventable diseases.<sup>60</sup> It would

<sup>55</sup> Space precludes considering the potential responses to the Poggeian argument here. There might also be a more positive relational cosmopolitan defence of the duty to rebuild that is based, for instance, on Beitz's (1999) claims about the import of social co-operation (for example, there is a duty to rebuild after war, given global interdependence). The obvious limitation with relational cosmopolitan defences of the duty to rebuild is that they may not apply when there is limited or no interdependence.

<sup>56</sup> Rawls 1999b.

<sup>57</sup> Rawls 1999b, 105–13.

<sup>58</sup> This Rawlsian argument may establish only that there is a duty to rebuild to establish *decent* political institutions, rather than *liberal* ones (given toleration of the former).

<sup>59</sup> See, for instance, Nagel 2005.

<sup>60</sup> Nagel 2005, 118–19.



not seem to apply in cases in which there would not be humanitarian disaster without rebuilding, but there would still be significant wrongdoing, such as political persecution and oppression.

*Objection 1: The Duty to Rebuild after War is not Special*

We have seen, then, that the duty to rebuild after war is a corollary of not only the NDJ, but also of other cosmopolitan and noncosmopolitan accounts (although what exactly these accounts require after war differs). It may be objected at this point that focusing on the duty to rebuild is problematic because there is nothing particularly special about rebuilding after war. The duty to rebuild after war would be parallel to, first, the duty to rebuild after other situations, such as natural disasters and, second, the duty to build new just political institutions for those who have never possessed them.

Why might this be a problem? One argument that can be more easily dismissed involves reparations. Any potential reluctance to endorse the duty to rebuild on the basis of the NDJ and the other bases because of its lack of specialness may stem from the view that the duty to rebuild is based on reparations owed during war (such as is potentially held by the Belligerents Rebuild Thesis). However, if the duty to rebuild is based on reparative duties, it may still suffer from the same (alleged) problem: not highlighting anything special about rebuilding after war. As noted above, duties of reparation may require duties apart from rebuilding (for example, returning property to its rightful owners). Alternatively, it may be argued that there is something uniquely egregious about war. To that extent, it may be held that there are stricter duties to rebuild after war than to rebuild after similar devastation caused by other means or to establish new just political institutions. This argument seems unpersuasive, although I cannot fully reject it here (which would require a full consideration of the morality of war). My main reason for doubting it is that, if we endorse 'revisionist' Just War Theory, war does not have a separate moral domain. Rather, it is the application of moral and political philosophy to situations of war.<sup>61</sup> As such, the wrongs in war are not fundamentally different to those in other domains. To be sure, the wrongs of war are typically on a *massive* scale. In other words, according to the revisionist view, the wrongs of war are typically of a different *magnitude* – for example, they involve the *mass* violation of human rights – rather fundamentally different than in *type* – for example, they still involve the violation of human rights.<sup>62</sup>

Alternatively, it might be argued that there is something particularly important about rebuilding. Here the suggestion might be that those who have previously experienced just political institutions, but subsequently no longer enjoy them, suffer more than those who have never lived under these institutions. It might be thought, for instance, that it was particularly important that just institutions be re-established in Norway after its occupation in World War II, given that there had previously been several decades of democracy. However, this reply would not establish that there is anything particularly special about rebuilding after *war*. A similar argument may be given for those whose political institutions have been devastated by other causes, such as a natural disaster

<sup>61</sup> Revisionist Just War Theory has been most notably outlined and defended by McMahan 2009a. The central claim of revisionists is that, in principle, an individual's liability in war should not be judged according to their membership of a group of combatants or noncombatants, but rather according to their moral responsibility for posing an unjust threat in war (or, for some, culpability). Also see Pattison 2013.

<sup>62</sup> To be sure, there may be some specific *subcategory* of wrongs that are generally found only in wars, such as the killing of prisoners of war and the shooting of deserters.

or a *coup d'état*. Moreover, it does not seem that there is a major difference between rebuilding and building. It may also be argued that those who have never enjoyed just political institutions do not appreciate what they have lost. Yet this seems dubious, given the number of movements around the world fighting for just political institutions by those who have never enjoyed them.

It does not seem, then, that there is anything particularly special about the duty to rebuild after war. Rather, it is based on an application of the NDJ and/or other cosmopolitan and noncosmopolitan duties. In one sense that it is special, however, concerns its scale. War-torn societies often seem to be furthest from possessing just political institutions and in most dire humanitarian need. To that extent, and as noted above, war-torn societies are an important case for the application of the NDJ and other bases of the duty to rebuild, even if they are not a special case.

### *Objection 2: The Duty to Rebuild Would Justify Excessive Interventionism*

A further, broader objection is that the various potential groundings of the duty to rebuild (most notably the NDJ) could in fact lead to morally objectionable interventionism in societies that currently face humanitarian crises or lack just political institutions. This could also potentially include societies that are not suffering the aftermaths of war. Any society that currently faces a humanitarian crisis or lacks just political institutions would be subject to the duty to rebuild.

However, this worry about interventionism is largely misplaced. As emphasized below, any rebuilder would first need to have the right to rebuild. If a rebuilder's actions would undermine effective local attempts to rebuild, it would not have the right or duty to rebuild; it would lack the just cause and effectiveness conditions outlined below, and (most likely) the representativeness condition (in such a case, it seems unlikely that it would represent the opinions of those in the political community it is rebuilding). Societies that are not suffering the aftermaths of war may also be subject to a parallel duty to build or rebuild, which is justified on the basis of the NDJ. But there would also need to be an account of the right to build or rebuild in such cases, such as when assistance after natural disasters is morally permissible, which would preclude morally objectionable interventionism.

#### ASSIGNING THE DUTY TO REBUILD

I have suggested that there is an international duty to rebuild. But how does this help determine *who* should rebuild? To establish who has the duty to rebuild – and which institution can rebuild justifiably – it helps to consider two central issues: (1) which agent has the *right* to rebuild and (2) which agent has the *duty* to rebuild.

### *The Right to Rebuild*

We need an account of who has the right to rebuild, since if an agent lacks such a right, their participation in the rebuilding process would be impermissible. For example, suppose that if Tajikistan were to rebuild post-conflict Afghanistan, its limited resources would mean that it would likely be so ineffective that it would worsen the human rights situation in Afghanistan. In this case, it seems that Tajikistan would lack the right to rebuild. Therefore, we must determine which agents have the right to rebuild before we can assess who should rebuild. It is beyond the scope of this article to present a fully fledged account of the principles of the right to rebuild. Instead, I will tentatively and

briefly sketch some important principles – drawing on the literature on *jus ad bellum*, humanitarian intervention, peacebuilding and *jus post bellum* – in a similar vein to John Lango’s application of the principles of Just War Theory to other domains.<sup>63</sup>

The first principle (and a necessary one) is that there needs to be just cause for rebuilding. That is, the political community that is potentially subject to the rebuild must lack just institutions (or not be currently developing them). If a political community possesses just institutions, or is in the process of creating them, there is no need to rebuild. An attempt to rebuild these institutions could undermine the self-determination of the political community (which I think is independently valuable when the political community has just institutions).

The second necessary condition is that the rebuilding needs to be likely to be reasonably effective. I interpret this criterion broadly to mean that rebuilders need to be more likely to promote basic human rights (primarily by establishing and promoting just political institutions) over the long term than if they had not rebuilt. As suggested above, if a rebuilder is likely to make things even worse, they cannot permissibly rebuild. This includes broader but unintended consequences, such as the effects on international stability and the long-term self-determination of the society. There may be several qualities that contribute to a rebuilder’s effectiveness, such as being perceived as legitimate by the local actors, possessing adequate resources, experience of rebuilding, having UN authorization, divesting power to local actors and, as the ICISS suggest, ‘post-intervention strategy... to help ensure that the conditions that prompted the military intervention do not repeat themselves or simply resurface’.<sup>64</sup>

In addition to these two necessary conditions, there are some *contributing* factors that are important in helping to establish that a rebuilder has the right to rebuild. That is to say, a potential rebuilder needs to reach a certain threshold of justifiability in order for it to possess the right to rebuild. By doing well on some or all of these factors, a potential rebuilder will meet this threshold. As such, these contributing factors are not *always* necessary (particularly in exceptional circumstances when a potential rebuilder will be able to do an extremely effective job at rebuilding without meeting these conditions, which can help it to reach the threshold). Nevertheless, they may generally play a part in the permissibility of a potential rebuilder.

Perhaps the most morally weighty contributing factor is the need for rebuilders to represent the means, methods and goals of those in the community they are rebuilding. For instance, if those in the political community do not want their community to be rebuilt by the agent or in a particular way, the agent should respect these wishes.<sup>65</sup> The moral import of this consideration stems from both intrinsic considerations (for example, the import of the individual self-government of those in the war-affected political community) and instrumental considerations (for example, without the support of those they are trying to assist, the rebuilding process may be unlikely to be effective). To meet

<sup>63</sup> Lango 2007; Lango 2009.

<sup>64</sup> ICISS 2001, 39.

<sup>65</sup> A fuller defence of this factor than is possible here would need accounts of whose opinions of those in the political community should be taken into consideration (for example, should those who are responsible for the conflict be included?), how conflicting views should be weighed (for example, is majoritarianism acceptable?), how conflicts with other values should be responded to and the means by which potential rebuilders might be representative. See, instead, Pattison 2007 and Pattison 2010, 129–51, where I present an analogous principle for humanitarian intervention that tackles some of these issues.

this condition, it will often be necessary for rebuilders to heavily involve locals in the decision-making process and to adopt ‘hybrid’ peacebuilding solutions.<sup>66</sup>

Let me now turn to the other contributing factors. The rebuilder needs to *intend* to promote and establish just political institutions in the war-affected state.<sup>67</sup> If an agent aims to promote or establish just political institutions for other reasons, it may not be engaged in the practice of permissible rebuilding, but rather another practice (for example, colonialism) which there are reasons to prohibit generally. It is also unlikely that an agent will be effective at just rebuilding if it does not possess the appropriate intention. In addition, the rebuilder’s *motives*, understood as its underlying reasons for action (whereas its intentions are its objectives), have some noninstrumental moral significance (which is perhaps limited because the rebuilders’ mindset seems comparatively less important than the other moral considerations). The rebuilder, ideally, should be motivated by a desire to assist the war-affected political community. As Gheciu and Welsh argue, this does not foreclose the possibility that rebuilders may also possess other, self-interested motives if the intention is still to rebuild.<sup>68</sup> Notwithstanding, there is a danger that the presence of self-interested motives will lead to diverging objectives and, in particular, the prioritization of the interests of the rebuilder over those in the affected community. For instance, the focus on stopping Iraq and Afghanistan from becoming ‘breeding grounds for international terrorism’ did not correspond to ‘what would be required to secure the basic security and well-being of Iraqi and Afghan civilians’.<sup>69</sup>

In addition, the potential justifiability of an agent’s rebuilding is likely to be increased for certain aspects of the rebuilding process (for example, occupation) by receiving the authorization of the appropriate international political institution – in most cases, the UN.<sup>70</sup> For example, given its purported universalism, it can diminish the worry that the rebuilder is carrying out victor’s justice. The UN can also help ensure that only morally appropriate rebuilders are authorized and, in doing so, encourage rebuilders to meet the other relevant considerations (for example, so they do not undertake self-interested rebuilding). As Bellamy argues, although the UN Security Council has several problems, ‘insisting on collective oversight reduces the likelihood of abuse and self-interested restructuring whilst increasing the likelihood that the “will of the people” and needs of international order will be taken into consideration’.<sup>71</sup>

This list of principles is not meant to be exhaustive. There are likely to be other considerations; these principles simply seem to be the most significant. It should also be noted that the above considerations concern the *before* rebuilding period. They function in a similar way to the *ius ad bellum* principles before war. A full account of just rebuilding would also include what can be done *during* the rebuilding period, that is, a set of

<sup>66</sup> See, further, ICISS 2001, 44. It is also worth noting that some of the critique of liberal peacebuilding and the call for a hybrid approach to peacebuilding (for example, Richmond 2009) seems to stem from the concern that rebuilders are not sufficiently reflective of this factor. That is, rebuilders do not adequately reflect the opinions of those in the relevant political community by, for instance, involving them significantly in decision making.

<sup>67</sup> See McCready 2009, 74.

<sup>68</sup> Gheciu and Welsh 2009, 139.

<sup>69</sup> Gheciu and Welsh 2009, 140.

<sup>70</sup> By contrast, Orend (2007, 589) suggests that the UN should *not* be involved post-conflict; this should be left to the just belligerents.

<sup>71</sup> Bellamy 2008, 623. To that extent, the moral import of this consideration may only be secondary in that it helps ensure that the other considerations are met.

principles that is functionally similar to *ius in bello* principles.<sup>72</sup> It is also worth noting that there are conditions that govern the permissibility of the specific issue of *paying* for the rebuilding – that is, whether agents have the right to pay to rebuild. If the agent undertaking the rebuilding is also paying for it, it should also meet these conditions.<sup>73</sup> The most obvious are as follows (again, this list is not meant to be exhaustive).

An agent needs to have just cause to use its citizens' resources to pay, such as when it has previously been an aggressor and so owes reparation, or when another political community lacks just political institutions. Its payment would also need to be likely to be successful in enhancing basic human rights globally (for example, if payments would be funnelled to fuel a warlord's war elsewhere, it may be impermissible). The means by which payment for the rebuild is obtained should be discriminate, at least as far as the imposition of significant costs is concerned. That is to say, significant costs should be borne only by agents that are liable for such costs; innocents can be asked to bear only reasonable costs.<sup>74</sup> This may mean that the costs of the rebuild need to be shared between various agents, so that no one agent's citizens have to bear significant costs when they are not liable for them. These two last conditions indicate that the severe impoverishment of the agent's citizens by payment would typically be impermissible (since it would seem likely to decrease the overall enjoyment of basic human rights and be indiscriminate). In addition, for reasons of fairness, it may be more justifiable to spread costs between nonliable agents in order to reduce their burden, even when these costs would otherwise be within the bounds of reasonableness. For instance, even if the costs of rebuilding the Solomon Islands (after a hypothetical war) would be reasonable for Australia to take on, it would still be preferable that others (that have the right to do so) take on some of the costs to reduce the burden on Australia.

### *Assigning the Duty to Rebuild*

Who has the duty to rebuild? Most obviously, any potential duty-bearer first needs to have the right to rebuild: it needs to reach the threshold of justifiability in order for its rebuilding to be permissible by meeting the necessary conditions and doing well on some of the contributing factors. Among those rebuilders that meet this threshold, there are several potential ways of assigning the duty to rebuild. David Miller helpfully presents four *prima facie* plausible ways of allocating responsibilities in general: (1) causal responsibility, (2) moral responsibility, (3) capacity and (4) community.<sup>75</sup> In what follows, I will consider each of these possibilities in the context of the duty to rebuild and defend an amended version of (3) capacity.<sup>76</sup>

*Causal responsibility.* The first way of assigning the duty to rebuild is causal responsibility, which in this context may mean that the belligerents should be assigned the duty to rebuild.

<sup>72</sup> In a similar vein, McMahan (2009b, 8) argues that there are principles that will determine *when* occupation is justified and principles to govern the *conduct* of occupation.

<sup>73</sup> Some of these principles may be met by doing well on the conditions for the right to rebuild listed above. There may also be specific conditions governing the permissibility of other elements of rebuilding, such as the authorization of another rebuilder and the drawing up of a new constitution.

<sup>74</sup> I assume here that the agent will impose costs on its citizens, who do not have a clear choice about whether to take them on (which means that supererogatory acceptance of additional costs by the agent's citizens is not feasible).

<sup>75</sup> Miller 2001.

<sup>76</sup> Miller defends a pluralist approach to remedial responsibilities that combines these four elements ('the connection theory'). I am not convinced by this approach, but cannot consider it here.

But, as we have seen, the Belligerents Rebuild Thesis suffers from a number of failings. Alternatively, causal responsibility may relate to other agents apart from the belligerents, such as those that financed the war or other groups that prompted the war. But again, it seems mistaken to hold that those that caused the war should rebuild. Suppose, for instance, that Kurdistan (justly) secedes from Turkey, which leads to a war between Turkey and Iraq as Iraq attempts to protect Kurdistan. It seems mistaken to task Kurdistan with rebuilding Turkey or Iraq simply because it seceded. Kurdistan may not be best placed to do so, given its limited resources. As Gheciu and Welsh argue, in the context of rebuilding, ‘backward-looking ideas of causal responsibility relate imperfectly to the forward-looking task of addressing a problem, since the actor who caused another actor to be in danger is not always best placed to rectify the problem’.<sup>77</sup> In addition, as noted above, tracing causal responsibility can be very difficult and the agents that are causally responsible may no longer exist.

*Moral responsibility.* A second way of assigning the duty to rebuild is to base it on moral responsibility for the war, so that those that are culpable or minimally responsible for the unjust war are tasked with rebuilding. But, as we have seen, this position also seems to be morally problematic. Those that are culpable for injustice may possess reparative duties and perhaps should pay for the rebuild at least fundamentally, but this does not mean that they should rebuild. Most obviously, they may not possess the right to rebuild.<sup>78</sup>

Notwithstanding, a more plausible variant on the moral responsibility view is that agents that possess the reparative duties should be the ones that have the duty to rebuild *if they also have the right to do so and it is apparent that they are culpable*. Suppose, for example, that Honduras originally waged an unjust war against El Salvador but now could permissibly rebuild El Salvador. It may seem that no other agent should be tasked with the rebuild. But suppose that Honduras would only do a scarcely permissible job, that is, it would only just meet the threshold of justifiability required to possess the right to rebuild. For instance, its rebuild would barely be effective at establishing just political institutions in El Salvador. Although not responsible for the conflict, the US would rebuild El Salvador in a much more effective manner, with only reasonable costs to itself: it would save thousands more lives in the long run (for example, due to its building of new hospitals). Also assume that other states are not willing to share the costs of the rebuild. Should Honduras or the US rebuild?

It seems to me that the US should rebuild in this case. Although having Honduras rebuild may seem to be desirable since those that are nonliable would not be required to bear any costs, the moral significance of this consideration is outweighed by the likely effectiveness of the US’s rebuild – that is, the long-term human rights benefits. In other words, it seems to matter much more that, when the US rebuilds it would save many more lives in the long run, than the fact that it is not morally responsible for the situation, despite it having to take on some (reasonable) costs. My point, then, is that when those bearing the costs and undertaking the rebuild are the same agent – so that either liable Honduras or nonliable US will rebuild (assuming there is no way to get Honduras to pay separately) – it is not necessarily moral responsibility that should guide the assessment of who should rebuild. Other factors, such as effectiveness, are more important (although, as

<sup>77</sup> Gheciu and Welsh 2009, 134.

<sup>78</sup> Moreover, as argued above, it is questionable even whether moral responsibility is helpful for determining who should pay to rebuild, since tracing culpability may be extremely difficult and noncompliance with reparative duties can be expected.

suggested above, moral responsibility is important when considering who should pay, at least fundamentally).

This does not let wrongdoers off the hook, since they may, of course, still owe reparative duties. In the above case, if it were feasible, Honduras should still pay for the rebuild. Indeed, if it is unwilling to pay (and has the right to do so), it may potentially be subject to sanctions and international opprobrium. In fact, wrongdoers may owe reparative duties independently of their duty to rebuild. For example, they may be owed to a war-affected political community that *already* enjoys just institutions. They may also be owed to a war-affected political community that is being rebuilt by another agent (such as the case above of El Salvador being rebuilt by the US). In both cases, fulfilling the reparative duties goes *beyond* what is required for the baseline of enjoying just political institutions. To illustrate, consider again the case of someone attacking you without provocation and breaking your arm. They have a duty not only to mend your arm (for example, by paying for medical treatment), but also to compensate you for the harm that you have suffered. Likewise, suppose that in the case above Honduras would now be the only agent that has the right to rebuild, and so has the duty to rebuild (its rebuilding would now be the most morally justifiable). It would not only have to bear the burden of fulfilling the duty to rebuild by establishing just political institutions in El Salvador. Once it has done so, it may also be required to do *even more* to redress its wrongdoing by, for instance, compensating those within El Salvador that it has harmed in its unjust war.

*Capacity (or, more precisely, moral justifiability).* The third – and most favourable – option is to look to the most capable rebuilders. As should be apparent by now, I think there is something to this view, although it needs amending.<sup>79</sup> The duty to rebuild should fall on the potential rebuilders that are most likely to do well according to the principles outlined in the previous section (and, of course, beyond the threshold of justifiability required to possess the right to rebuild). In other words, it should fall on the potential rebuilders whose rebuilding is likely to be *most morally justifiable* according to these principles. The likely capability of the rebuilders will, I think, have a large impact on how justifiable an agent's rebuilding will be. To that extent, among those that have the right to rebuild, it should often be the most capable rebuilders that rebuild.

Why should we hold that capability is so important? As indicated above, it is because what is at stake (for example, with the duty to promote and establish just political institutions) is extremely morally significant – in essence, the protection of individuals' basic human rights. Therefore, it seems that this consideration should be given greater weight than other factors that relate to less morally urgent concerns. So, for example, if Tanzania were likely to be very capable of establishing just political institutions in post-conflict Somalia, it seems that this is extremely important for deciding who should rebuild, given that this will have a huge, beneficial impact on the citizens of Somalia.

It might be argued that assuming the most capable have the duty to rebuild is unfair on the most capable, since, for instance, other agents that have not developed their capacity are not assigned the duty.<sup>80</sup> In response, it should be reiterated that agents only have a duty to make a *reasonable effort* to rebuild. Hence, the duty to rebuild falls on the most

<sup>79</sup> I defend this amended view in more detail in the context of assigning the duty to intervene in Pattison 2010 (where I call it the 'Moderate Instrumentalist Approach').

<sup>80</sup> See Miller 2001, 461.

justifiable rebuilders according to the conditions that I outline, but if this agent has already made significant effort (in terms of costs) to rebuild in a number of ways that mean it has done what could reasonably be required of it, then the duty to rebuild should fall on the next most justifiable rebuilders.

In addition, the duty to rebuild is not simply a duty to rebuild permissibly, but a duty to do so *as justifiably as possible* – that is, a duty to rebuild as well as possible according to the relevant moral considerations outlined above. Let me explain. As noted above, for an agent to have the right to rebuild, it is not necessary that they have full compliance with all the relevant factors. Instead, they need to meet a certain threshold of justifiability. It seems clear that if no other agent is willing to rebuild (or is better able to meet these factors), it may be permissible for an agent to rebuild – such as Honduras in the case above – that only just meets the necessary just cause and proportionality conditions, and only does well enough on the other contributory factors. But its rebuild will still have several major failings, such as not fully responding to the views of those subject to the rebuild and not being effective as it could be. Since each of the relevant factors is based on important moral considerations, agents are required to do as well on all of them as possible (within reasonable costs). For instance, suppose that in rebuilding Kosovo, NATO could easily be much more effective at rebuilding (still within reasonable cost), which in turn could be expected to save many more lives. It seems that it has a duty to do so. It would be acting wrongly if it were not to do so, even if the results of its current efforts would be better than nothing. So, agents are morally required to rebuild as capably (and as justifiably) as possible (within reasonable costs). Thus, requiring the most capable (and justifiable) agent to rebuild is simply requiring it to do its duty.

Moreover, even if the currently most justifiable agent has some failings, it may be required to redress these, again if it can do so at reasonable cost. If, for instance, in the case above, the US could be much more effective in El Salvador by reforming some of its policies on rebuilding, it would be morally required to do so. Other agents are also morally required to reform so that the duty to rebuild can be discharged as justifiably as possible. This might be through an institutional arrangement to spread costs in particular situations, so that even though one agent does all the rebuilding, the costs are shared. Or it might be through having numerous agents that can rebuild very justifiably, so that turns can be taken in rebuilding and costs can be shared. Without such arrangements, the agent that can rebuild most justifiably according to the conditions that I outline has a legitimate complaint against those that do not attempt to set up such an institutional arrangement and/or fail to be in a position to rebuild as justifiably as possible, given that future rebuilding can be expected to be necessary. Analogously, if you know that a child is likely to be drowning in a pond in the future, it seems unfair that you – a strong swimmer – should always bear the costs of saving the child. Others should either set up a lifeguard scheme or train to be stronger swimmers. The complaint of unfairness is, then, a complaint against other agents not doing their fair share. It does not mean that the duty to rebuild does not fall on the most justifiable agent and that they are not required to act.

In practice, it is also worth noting that the issue of unfairness may not arise to a significant degree, since the duty to rebuild is itself broad and so many different agents may possess different aspects of the responsibility to rebuild (that is, they can each do different aspects most justifiably), which diminishes any apparent unfairness. Furthermore, the responsibility to rebuild is derived from broader duties (such as humanitarian duties) and other agents may be able to do their fair share justifiably in other ways (for example, by tackling other humanitarian crises).



*Community.* A fourth way of assigning the duty to rebuild relates to community. It might seem that there are special bonds between certain political communities that mean that those with these special ties possess the duty to rebuild. However, it seems that this way of assigning duties is not convincing when considering rebuilding after war because special ties do not seem to be of much moral weight, at least in this context. For example, suppose that in the El Salvador case, Spain possesses special ties with El Salvador and could rebuild permissibly, but (like Honduras) only just permissibly. Special ties do not seem to require that Spain should rebuild, rather than the US, given that the US would be far more effective. Effectiveness in this context seems to be far more weighty. Nor do special ties seem to be relevant in determining who should bear the costs of the rebuilding. It does not seem that Spain should bear greater costs than those culpable – Honduras – or, when the international community is to bear the costs, than other agents with a pro rata share. In short, it is unclear what it is about special ties that would make Spain liable to bear greater costs.

It is also doubtful in practice whether, first, there exist many cases of sufficiently strong special ties between political communities and, second, those with special ties would be best placed to rebuild, since they may lack the means to do so and perceived legitimacy.<sup>81</sup> For example, although the EU may be alleged to have special ties toward the Balkan states, ‘many Kosovars remain suspicious of the motives and likely effectiveness of EU peacebuilding, and place greater trust in arrangements and practices that involve at least some U.S. participation’.<sup>82</sup>

#### CONCLUSION: WHO SHOULD ACTUALLY REBUILD?

What does this mean in practice? Who should actually rebuild? I cannot offer a full account of this here, given that the primary purpose of the article has been to develop an account of how we might judge this issue. But I will offer some brief remarks.

First, there should be a presumption against belligerents rebuilding. It seems that in some cases (although not all) they will lack the right to rebuild and, even if they do have the right, other agents may be in a better position to rebuild. This seems to be particularly the case for post-war occupation, when the warring parties’ involvement in the conflict can lead to significant antagonism among the local population and therefore mean that effective rebuilding may be difficult (and the rebuilders may fail to meet the representativeness consideration).

Instead, it seems that the rebuilding process should not only be *authorized* by the UN Security Council, but also generally be *carried out* by it (for example, by UN peacekeepers or a UN transitional administration). The UN seems generally (if not always) best placed to rebuild in the most justifiable manner for several reasons. In 2005, it set up the Peacebuilding Commission (PBC), which is a co-ordinating forum for dealing with post-conflict situations.<sup>83</sup> It aims to bring together relevant actors that marshal resources, propose and advise on integrated strategies for post-conflict rebuilding, and co-ordinate the relevant actors.<sup>84</sup> To that extent, Bellamy argues that the PBC ‘goes some way towards formalising the idea that international society bears a collective responsibility for

<sup>81</sup> Gheciu and Welsh 2009, 135.

<sup>82</sup> Gheciu and Welsh 2009, 135.

<sup>83</sup> Fleck 2012, 96.

<sup>84</sup> Jubilit 2011, 36.

rebuilding states and societies after war'.<sup>85</sup> The relevant UN institutions are also perhaps most likely to be perceived to be legitimate, partly because the UN is seen to be more culturally and historically sensitive and willing to be flexible and neutral, and more likely to adapt to local practices, customs and traditions.<sup>86</sup> In this context, Gheciu and Welsh argue that '[r]egional organizations, and especially intervening states or coalitions, are likely to have high stakes in reconstruction efforts and may be viewed by at least some of the parties in war-torn territories as biased, and potentially even as neocolonialists'.<sup>87</sup>

Notwithstanding, in certain situations the duty to rebuild may be best carried out by coalitions of the willing, regional organizations or even states acting independently, albeit with the authorization of the UN Security Council. This is because the UN's ability to rebuild effectively is questionable on occasion and its current mechanisms for rebuilding leave much room for improvement. The PBC has a large and unwieldy membership (including the five permanent members of the Security Council) and has murky reporting lines since it is an organ of both the Security Council and the Economic and Social Council.<sup>88</sup> Although it can play a useful co-ordinating role, the PBC is limited to offering recommendations and can act only after a request from the UN institutions or a member state.<sup>89</sup> The underlying worry, then, is that assigning the UN the responsibility to rebuild will leave it with duties it cannot always discharge and let other actors, which may sometimes be more appropriate rebuilders, off the hook.<sup>90</sup>

To counter these worries, the UN needs to be given the ability to rebuild in all cases when required, if it is to be formally or conventionally assigned the responsibility to rebuild. Ideally, there needs to be a stronger PBC that can handle all cases of post-war rebuilding fully justifiably. It would, for example, have improved coherence and co-ordination, be very well resourced and spread the costs fairly.<sup>91</sup> This requires significant reform and would, in effect, be an institutionalization of the duty to promote and establish just institutions.

I think we have a duty to carry out such reforms. In a similar vein, Buchanan argues that 'we ought to develop an institutional legal system to ensure all persons have access to just institutions'.<sup>92</sup> That is, if the responsibility to rebuild requires a stronger UN system for rebuilding so that the responsibility to rebuild can be properly realized, there is a further duty to act upon this. Thus, I think there is a duty to build such an international institution in order to carry out the duty to rebuild.

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<sup>85</sup> Bellamy 2008, 616.

<sup>86</sup> Jubilut 2011, 38–9.

<sup>87</sup> Gheciu and Welsh 2009, 136.

<sup>88</sup> Gheciu and Welsh 2009, 135–6; also see Weiss 2009, 188.

<sup>89</sup> Jubilut 2011, 41.

<sup>90</sup> Gheciu and Welsh 2009, 135.

<sup>91</sup> See also Fleck 2012, 97.

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