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The function of Jus Post Bellum in international law

Iverson, J.M.; Iverson J.M.

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Author: Iverson, Jens Muir

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Annex A

A. Introduction

This Annex expands upon the empirical analysis of research on *jus post bellum* analysed in Section 3.A. *supra*. No publicly available database of *jus post bellum* scholarship existed when the author began his research. The database of *jus post bellum* scholarship created by the author serves as the basis of the following findings.

B. Method

Datasets were created in stages. The initial, proof-of-concept data set was created by finding all articles available on the Social Science Research Network (SSRN) that mention *jus post bellum*. The Social Science Research Network has over 207,000 authors and more than 1.3 million users.¹

The database was created with one record for each article. The Microsoft Word or Portable Document Format (PDF) version of the article was uploaded into the database, and the available metadata regarding each article was entered in the appropriate field. The fields were created from the Document Center template in the Microsoft SharePoint Server 2010, with the addition of customized fields where appropriate. This was hosted and supported by the Living Lab at the Grotius Centre for International Legal Studies,

¹ See *Social Science Research Network Frequently Asked Questions*, available at http://www.ssrn.com/update/general/ssrn_faq.html#what_is. (Last accessed 5 October 2012.)

University of Leiden and the Jus Post Bellum Project under the Virtual Research Environment framework.²

Once the database was created and populated with this initial dataset of 13 articles from SSRN, a series of potential datasets was evaluated. Westlaw, being a leading, widely available and widely used legal search engine, was one potential source for an additional data set. Of the potential searches within Westlaw, the best option seemed to be a collection of all articles from Westlaw, specifically all articles that were received from a “terms and connectors” search in the world-jlr database (Combined World Journals and Law Reviews) for the term “jus post bellum.” This search would yield 89 documents at the time of the search. Google Scholar was additional option, widely available but arguably less widely accepted. A general Google Scholar search for the term would return 819 hits, which could be further narrowed to 759 hits if the “no citations” option was used. Further narrowing the Google Scholar search to filter for only what Google Scholar considered “legal documents” narrowed the search to 95 results. Searching in the

² The relevant fields describing each article are as follows: Name, Title, Rating (0-5), Number of Ratings, WorkCitation, PublicationYear, Volume, Issue, Pages, JPBDefinition, Abstract, Tags, Keywords, ArXiv ID, DOI, JPBDefinitionPointCite, ScholarlyField, Author, Publisher, DefinitionQuote, Collection, Date, JournalName, Language, Note, Westlaw Subjects, and MinimalJusPostBellumReference. Some fields, like Rating and Number of Ratings, are reserved for future use. Most fields are text fields, although some have restricted inputs such as a checkbox for indicating that the ScholarlyField is “law.” The Collection field indicates the dataset, such as SSRN or Westlaw. MinimalJusPostBellumReference is a Boolean variable indicating whether the reference to *jus post bellum* is truly a mere passing reference. Of particular note are the JPBDefinitionPointCite and DefinitionQuote fields. Together, they allow an export of the metadata allowing external evaluation of the analysis of definitions, specifically into a linked Microsoft Excel file.

same catalogue with “jus post bellum” in any field revealed 126 results, with 111 peer-reviewed articles and 124 with the full text online. These search results were re-verified on 15 August 2012.

Many other possible datasets are possible—for example, HeinOnline or WestLaw for international researchers. The current point of this research, however, is not to be comprehensive but instead to be reasonably representative while still functional. Additional research options are addressed in the sections in the Conclusion that deal with further avenues of research and implementing further research.

Of these candidate datasets, the Westlaw dataset was picked for the main body of the empirical analysis presented here. In part, this was a matter of a reasonable sample size and the scope of research, as a full evaluation of 819 references from Google Scholar might prove difficult on a practical level, particularly when providing a consistent evaluation of each article throughout. In addition, Google Scholar has unique problems as a primary data set for analysis. Google Scholar is broad, but unreliable, relying on automated entry without human checks. This required the author to make an additional level of subjective evaluations as to the suitability of the results, which in turn potentially undermines the reliability of the empirical results derived from the dataset. These limitations of existing datasets are discussed in “Areas for Further Research” in the conclusion of this section.

In an effort to increase transparency, it is important to note that the author leans towards the functional approach. When evaluating the articles as more functional or temporal the

author tried to be objective as possible, with no known expectations as to the trends in scholarship. The main point of this chapter is not to argue for one approach or the other (although the comparative analysis should demonstrate the coherence of the functional approach). Rather, this article seeks to highlight that these two separate approaches exist and that consolidating around one approach would be useful.

Once the articles were analyzed and the data entered, the metadata was exported to Microsoft Excel format and further analyzed, including the creation of the graphs included below.

C. Findings

1. Introduction

The findings below will be presented first according to the analysis of the SSRN dataset, then the analysis of the contemporary scholarship as analyzed overall (including disaggregation when appropriate). The overall findings could legitimately be summarized as follows: There has been a steady expansion of references to *jus post bellum* in a variety of journals. (See *figs. 1, 2, infra.*) With the expansion of references, there has been an increase of ambiguity, not a consolidation around a consensus definition. The trend is generally an increase in trivial references to *jus post bellum*, in addition to a trend towards a simple, literal temporal definition. Whether a consensus focus will be achieved, and what that consensus might be, is as yet unclear.

The overall year-by-year pattern of publication mentioning *jus post bellum* in the analyzed datasets can be visualized using the following chart.

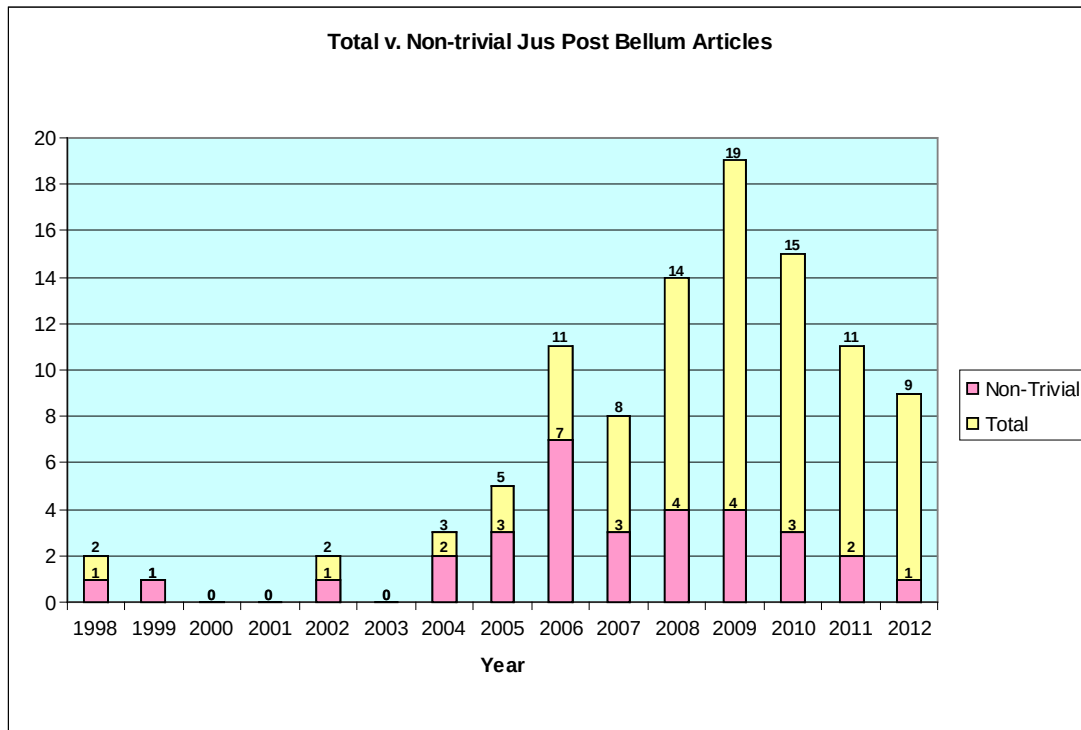


Figure 1

The data in the chart above is explained in more detail in the Westlaw and SSRN Analysis section *infra*.

The widespread nature of the publishing can be seen here. While there are a few noteworthy leading journals on the subject, overall the scholarship is spread over a large number of journals.

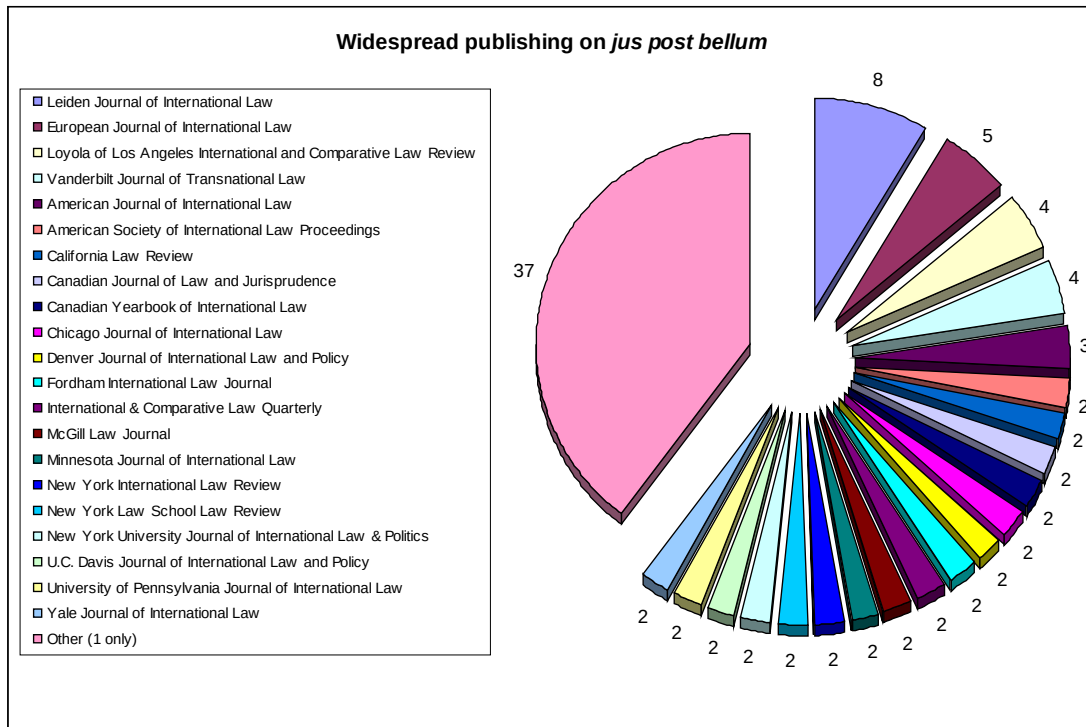


Figure 2

With this overall picture established, we can turn to the particular subject of interest, trends with respect to the temporal-functional dichotomy.

2. SSRN Analysis

a) Summary Findings

For articles in SSRN, the general trend is towards a generally temporal definition and away from a generally functional definition of *jus post bellum*. This is summarized by the graph below. This graph covers the period in which articles mentioning *jus post*

bellum (2002-2012). Please note that in all of the charts in this article, there are overlaps in data points, but the line shows the general trend.

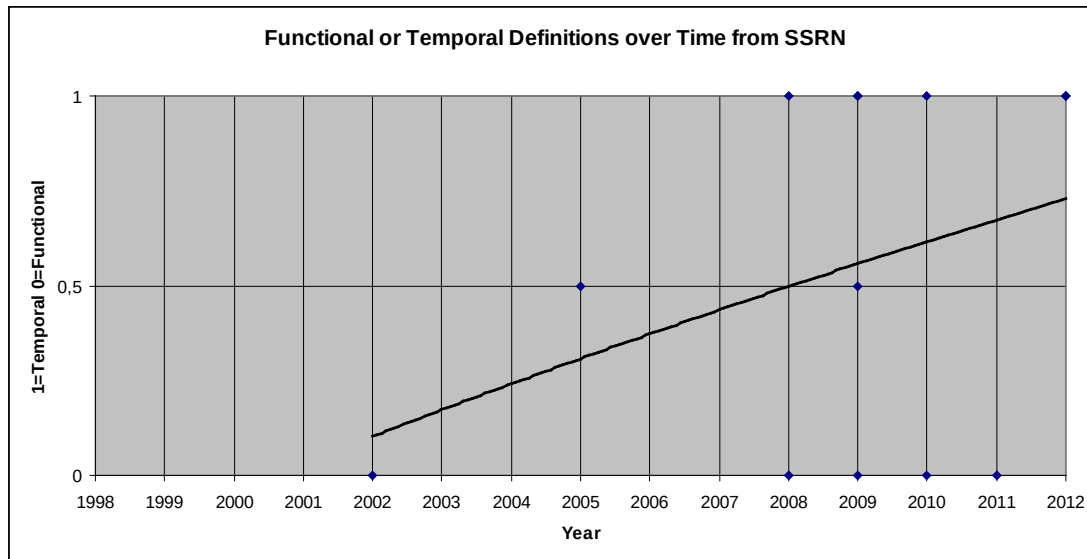


Figure 3

The SSRN articles are described below, first with respect two unclassifiable articles, then with respect to articles with a primarily functional definition and then with respect to articles with a primarily temporal definition. This close analysis, article by article, is intended to help evaluate not only the articles in question, but also the meaning of “primarily functional definition” and “primarily temporal definition” in practice.

b) Unclassifiable

Two SSRN articles discussing *jus post bellum* have proved quite difficult to reasonably classify: *Grandeur et déclin de l'idée de résistance à l'occupation : Réflexions à propos*

de la légitimité des « insurgés » by Frederic Megret³ and *Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers* by Kristen Boon.⁴

Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers by Kristen Boon⁵ defines *jus post bellum* as follows: "Jus post bellum, or the justice of post-war settlements and reconstruction, is assumed to draw on similar principles as *jus ad bellum* (law of war) and *jus in bello* (law in war)."⁶ This could be read with an emphasis on the clear "post-war" temporal definition, but it is also clearly tied to particular goals and qualities (settlement and reconstruction). It is interesting to note that Boon's subsequent work on *jus post bellum* in SSRN emphasise the functional aspects more clearly.

One SSRN article, *Grandeur et déclin de l'idée de résistance à l'occupation : Réflexions à propos de la légitimité des « insurgés »*⁷ by Frederic Megret did not have a definition of

³ Megret, Frederic, *On the Legitimacy of 'Insurgency': Rise and Fall of the Idea of Resistance to Occupation (Grandeur Et Declin De L'Idee De Resistance a L'Occupation: Reflexions a Propos de la Legitimite des 'Insurges')* (November 5, 2008). *Revue Belge de Droit International*, 2009. Available at SSRN: <http://ssrn.com/abstract=1296060> or <http://dx.doi.org/10.2139/ssrn.1296060>

⁴ Boon, Kristen E., *Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers*. *McGill Law Journal*, Vol. 50, 2005; Seton Hall Public Law Research Paper No. 962094. Available at SSRN: <http://ssrn.com/abstract=962094>

⁵ Ibid.

⁶ Ibid 7.

⁷ Megret, Frederic, *On the Legitimacy of 'Insurgency': Rise and Fall of the Idea of Resistance to Occupation (Grandeur Et Declin De L'Idee De Resistance a L'Occupation: Reflexions a Propos de la Legitimite des 'Insurges')* (November 5, 2008). *Revue Belge de Droit*

jus post bellum that could clearly be categorized as functional or temporal. It recognizes that the definition of the term is not entirely fixed (“*Bien entendu, la définition exacte du jus post bellum demeure une question amplement débattue.*”)⁸

c) Functional Definitions

The following SSRN articles use a generally functional definition of *jus post bellum*: *On War as Hell* by Roger Paul Alford (2002),⁹ *Obligations of the New Occupier: The Contours of a Jus Post Bellum* by Kristen E. Boon (2009),¹⁰ *The Future of the Law of Occupation* by Kristen E. Boon (2009),¹¹ *New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation* by Nehal Bhuta (2010)¹² and *Corporate Legitimacy* by Laszlo Zsolnai (2011)¹³.

International, 2009. Available at SSRN: <http://ssrn.com/abstract=1296060> or <http://dx.doi.org/10.2139/ssrn.1296060>

⁸ Roughly translated: “Of course, the exact definition of *jus post bellum* remains a widely debated question.” Megret, Frederic, *On the Legitimacy of 'Insurgency': Rise and Fall of the Idea of Resistance to Occupation (Grandeur Et Declin De L'Idee De Resistance a L'Occupation: Reflexions a Propos de la Legitimite des 'Insurges')* (November 5, 2008). *Revue Belge de Droit International*, 2009, p. 18.

⁹ Alford, Roger Paul, *On War as Hell*. *Chicago Journal of International Law*, Vol. 3, No. 1, Spring 2002. Available at SSRN: <http://ssrn.com/abstract=867208>

¹⁰ Boon, Kristen E., *Obligations of the New Occupier: The Contours of a Jus Post Bellum* (June, 29 2009). *Loyola of Los Angeles International and Comparative Law Review*, Vol. 31, No. 2, 2008. Available at SSRN: <http://ssrn.com/abstract=1427355>

¹¹ Boon, Kristen E., *The Future of the Law of Occupation* (June 30, 2009). Kristen E. Boon, *THE FUTURE OF THE LAW OF OCCUPATION*, *Canadian Yearbook of International Law*, 2009 . Available at SSRN: <http://ssrn.com/abstract=1464443>

¹² Bhuta, Nehal, *New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation* (March 1, 2010). *New York University International Law and*

On War as Hell by Roger Paul Alford (2002)¹⁴ indicates clearly that *jus post bellum* includes principles not only for the period after war ends, but for the process of war termination and the transition to peace. Alford states: “International relations scholars have recently begun articulating principles of *jus post bellum*, modernizing and expanding just war theory to address principles for the termination of war and the transition to peace.”¹⁵ The focus of the article is on war reparations. This subject, perhaps, lends itself to the terms and processes of peace negotiations that occur as part of war termination and the implementation of the peace agreements in the transition to peace.

Obligations of the New Occupier: The Contours of a Jus Post Bellum by Kristen E. Boon (2009)¹⁶ indicates that there is no clear temporal division between war and peace. Boon states “Yet with the exception of the law of belligerent occupation, neither *jus ad bellum* nor *jus in bello* provide much guidance on temporary interventions after war and before peace.”¹⁷ This understanding pushes against a simple temporal definition, starting with

Justice Working Paper No. 2010/1. Available at SSRN: <http://ssrn.com/abstract=1574329> or <http://dx.doi.org/10.2139/ssrn.1574329>

¹³ Zsolnai, Laszlo, Corporate Legitimacy (March 18, 2011). Available at SSRN: <http://ssrn.com/abstract=1789884> or <http://dx.doi.org/10.2139/ssrn.1789884>

¹⁴ Alford, Roger Paul, *On War as Hell*. Chicago Journal of International Law, Vol. 3, No. 1, Spring 2002. Available at SSRN: <http://ssrn.com/abstract=867208>

¹⁵ Ibid 217, fn. 29.

¹⁶ Boon, Kristen E., *Obligations of the New Occupier: The Contours of a Jus Post Bellum* (June, 29 2009). Loyola of Los Angeles International and Comparative Law Review, Vol. 31, No. 2, 2008.

¹⁷ Ibid. 102.

the end of armed conflict. The focus is on the process of transitioning out of armed conflict into peace. One could argue that this is simply a different temporal definition, starting earlier and covering the period of “transition.” This argument, however, misses the principal point of the distinction—that a functional definition emphasizes whether a process is going on (the termination of armed conflict and transition to peace) rather than whether an event has happened (war ending). This article falls into the former category, and was thus classified as “functional.”

The Future of the Law of Occupation by Kristen E. Boon (2009)¹⁸ clearly emphasizes the function of transition from law to peace. Boon states, “While the scope and content of jus post bellum are only developing, a significant contribution of a jus post bellum would be to fill existing gaps and establish a uniform legal regime applicable to the exercise of public authority during transitions.”¹⁹ Again, like in *Obligations of the New Occupier: The Contours of a Jus Post Bellum*, Boon is emphasizing the action of transition (particularly the action of the exercise of public authority) rather than a temporal definition.

Corporate Legitimacy by Laszlo Zsolnai (2011)²⁰, which mirrors a chapter in *Business Ethics and Corporate Sustainability* edited by Antonio Tencati and Francesco Perrini.²¹

¹⁸ Boon, Kristen E., *The Future of the Law of Occupation* (June 30, 2009). Kristen E. Boon, *The Future of the Law of Occupation*, Canadian Yearbook of International Law, 2009.

¹⁹ Ibid 23.

²⁰ Zsolnai, Laszlo, *Corporate Legitimacy* (March 18, 2011). Available at SSRN: <http://ssrn.com/abstract=1789884> or <http://dx.doi.org/10.2139/ssrn.1789884>

Zsolnai defines *jus post bellum* as follows: “In more recent years, a third category — “jus post bellum” — has been added, which governs the justice of war termination and peace agreements, as well as the trying of war criminals.” This definition is largely functional in nature. It is perhaps not the most legally precise definition, but that may be expected in a work that is using just war theory as an analogy for business ethics. Including this work raises the question of the “interpretive community” or “discourse community” of *jus post bellum*. It clearly extends beyond law, and may extend in surprising ways. This may be an instance where an idea is spreading out (to business ethics in this instance) rather than true dialogue across disciplines. In any case, for methodological consistency, as this was article appears in a search for *jus post bellum* in SSRN, this article must be included.

In *New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation*,²² Nehal Bhuta defines *jus post bellum* as a project of legal codification “that would provide a set of standards governing the relationship between occupier or administrator and the population of a territory, in order to ensure that constitutional change is indeed a product of the internal sovereignty of the people.”²³ This does not

²¹ Tencati, Antonio and Francesco Perrini, *Business Ethics and Corporate Sustainability*, 2011, Edward Elgar Publishing Limited.

²² Bhuta, Nehal, *New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation* (March 1, 2010). New York University International Law and Justice Working Paper No. 2010/1. Available at SSRN: <http://ssrn.com/abstract=1574329> or <http://dx.doi.org/10.2139/ssrn.1574329>

²³ Bhuta, Nehal, *New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation* (March 1, 2010). New York University International Law and Justice Working Paper No. 2010/1, p. 5.

necessarily include the norms that are included in many functional definitions, including peace negotiations and peace agreements, but it does not exclude them either. The emphasis is clearly on function, in any case, not time, even if the function specified is narrower than many definitions.

d) Temporal Definitions

The following SSRN articles use a generally temporal definition of *jus post bellum*:

Putting an End to Human Rights Violations by Proxy: Accountability of International Organizations and Member States in the Framework of Jus Post Bellum by Matteo Tondini (2008),²⁴ *Post-Conflict Peacebuilding - Ambiguity and Identity* by Vincent Chetail (2009),²⁵ *Post-Conflict Peacebuilding*, by Vincent Chetail in *Lexique de la Consolidation de la Paix*²⁶ (2009), *The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept* by Eric de Brabandere (2009),²⁷ *Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic*

²⁴ Tondini, Matteo, *Putting an End to Human Rights Violations by Proxy: Accountability of International Organizations and Member States in the Framework of Jus Post Bellum* (2008). C. Stahn and J. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace*, The Hague: TMC Asser Press, 2008, pp. 187 - 212. Available at SSRN: <http://ssrn.com/abstract=2100944>

²⁵ Chetail, Vincent, *Post-Conflict Peacebuilding - Ambiguity and Identity* (March 16, 2009). *POST-CONFLICT PEACE-BUILDING: A LEXICON*, pp. 1-33, Vincent Chetail, ed., Oxford University Press, 2009. Available at SSRN: <http://ssrn.com/abstract=1641243>

²⁶ Chetail, Vincent, *Post-Conflict Peacebuilding* (July 19, 2009). *LEXIQUE DE LA CONSOLIDATION DE LA PAIX*, Vincent Chetail, ed., Bruylant, pp. 29-70, 2009. Available at SSRN: <http://ssrn.com/abstract=1645183>

²⁷ De Brabandere, Eric, *The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept* (October 1, 2009). *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 1, 2010. Available at SSRN: <http://ssrn.com/abstract=1569990>

Reform in Post Conflict Countries by Christina Benson (2012),²⁸ and *Peace Settlements and International Law: From Lex Pacificatoria to Jus Post Bellum* by Christine Bell (2012).²⁹

Putting an End to Human Rights Violations by Proxy: Accountability of International Organizations and Member States in the Framework of Jus Post Bellum by Matteo Tondini (2008) was a chapter in *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace* edited by Carsten Stahn and Jann Kleffner.³⁰ Tondini defines *jus post bellum* as peace-making “Moreover, the call for accountability in post-conflict situations coincides with a broader systemic challenge which is at the heart of *jus post bellum*, namely a ‘normative gap’ in the law governing peace-making after conflict.”³¹

²⁸ Benson, Christina C., *Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries* (April 10, 2012). Forthcoming in: *Richmond Journal of Global Law and Business*, Issue 4, Vol. 11 (Fall 2012). . Available at SSRN: <http://ssrn.com/abstract=2037561>

²⁹ Bell, Christine, *Peace Settlements and International Law: From Lex Pacificatoria to Jus Post Bellum* (May 17, 2012). Edinburgh School of Law Research Paper No. 2012/16. Available at SSRN: <http://ssrn.com/abstract=2061706> or <http://dx.doi.org/10.2139/ssrn.2061706>

³⁰ Tondini, Matteo, *Putting an End to Human Rights Violations by Proxy: Accountability of International Organizations and Member States in the Framework of Jus Post Bellum* (2008). C. Stahn and J. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace*, The Hague: TMC Asser Press, 2008, pp. 187 - 212. Available at SSRN: <http://ssrn.com/abstract=2100944>

³¹ Ibid 188.

Post-Conflict Peacebuilding - Ambiguity and Identity by Vincent Chetail is a chapter in *Post-Conflict Peace-Building: A Lexicon* edited by the same Vincent Chetail.³² It states: “Following this perspective, jus post bellum can be generally defined as the set of norms applicable at the end of an armed conflict—whether internal or international—with a view to establishing a sustainable peace.”³³ This is arguably a mixed temporal and functional definition, because the clear temporal definition—norms applicable at a particular time, at the end of an armed conflict—is qualified with a particular goal for the norms in question—establishing a sustainable peace. It could have been coded as a .5 (as a midpoint between a “0” coding for “functional” definitions and a “1” coding for “temporal” definitions), between temporal and functional. But a natural reading of the sentence, as well as the article as a whole, indicates that peace agreements are not included in the definition. The function of transition from armed conflict to peace is thus incomplete. Accordingly, it has been coded as temporal, rather than functional.

Post-Conflict Peacebuilding, by Vincent Chetail in *Lexique de la Consolidation de la Paix*³⁴ is similar, and likely identical, to *Post-Conflict Peacebuilding - Ambiguity and*

³² Chetail, Vincent, *Post-Conflict Peacebuilding - Ambiguity and Identity* (March 16, 2009). *POST-CONFLICT PEACE-BUILDING: A LEXICON*, pp. 1-33, Vincent Chetail, ed., Oxford University Press, 2009. Available at SSRN: <http://ssrn.com/abstract=1641243>

³³ Ibid 18.

³⁴ Chetail, Vincent, *Post-Conflict Peacebuilding* (July 19, 2009). *LEXIQUE DE LA CONSOLIDATION DE LA PAIX*, Vincent Chetail, ed., Bruylant, pp. 29-70, 2009. Available at SSRN: <http://ssrn.com/abstract=1645183>

Identity described *supra*.³⁵ The definition, “*Suivant cette, optique, le jus post bellum peut etre defini dans un sens large comme l'ensemble des regles applicables a la sortie d'un conflit arme - interne ou international - en vue d'instaurer une paix durable*” is functionally identical. One might exclude it from the coding, but as it is published twice and presumably reaches a different audience, it was coded as two separate works.

The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept by Eric de Brabandere³⁶ defines *jus post bellum* in the following sentence: “Several scholars have drawn attention to the need to move toward a distinct discipline on the law after conflict—*jus post bellum*—a systemic adaptation of the current division between the ‘law of war’ and the ‘law of peace.’”³⁷ The emphasis is on the temporal—law after conflict. The substantive emphasis in the article is rather limited, mostly to reconstruction and occupation.

Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries by Christina Benson³⁸ defines *jus post bellum* using temporal

³⁵ Chetail, Vincent, *Post-Conflict Peacebuilding - Ambiguity and Identity* (March 16, 2009). *POST-CONFLICT PEACE-BUILDING: A LEXICON*, pp. 1-33, Vincent Chetail, ed., Oxford University Press, 2009. Available at SSRN: <http://ssrn.com/abstract=1641243>

³⁶ De Brabandere, Eric, *The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept* (October 1, 2009). *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 1, 2010. Available at SSRN: <http://ssrn.com/abstract=1569990>

³⁷ De Brabandere, Eric, *The Responsibility for Post-Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept* (October 1, 2009). *Vanderbilt Journal of Transnational Law*, Vol. 43, No. 1, 2010, 121.

³⁸ Benson, Christina C., *Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries* (April 10, 2012). *Forthcoming in: Richmond*

markers: “Rather, the focus of this paper is on the justice of developments during the post-war period of occupation (“jus post bellum”), after the CPA took control of the country and up until such time as a nominally representative sovereign government could be elected.”³⁹ *Jus post bellum* as the justice that applies from one point to another, specifically during occupation, is clearly a temporal definition.

Peace Settlements and International Law: From Lex Pacificatoria to Jus Post Bellum by Christine Bell⁴⁰ appears to define *jus post bellum* temporally. Bell states “From this dislike derives an instinct to codify a jus post bellum that would regulate post-conflict dilemmas more clearly and more appropriately. If international law is now a law of regimes, and the post-conflict environment has no specific or appropriate regime, then, the argument runs, it now needs one.”⁴¹ The emphasis seems to be on the post-conflict period, rather than any particular function. This contrasts with Bell’s *lex pacificatoria*, which emerges from peace settlements and is alternatively called the “law of the

Journal of Global Law and Business, Issue 4, Vol. 11 (Fall 2012). . Available at SSRN: <http://ssrn.com/abstract=2037561>

³⁹ Benson, Christina C., *Jus Post Bellum in Iraq: The Development of Emerging Norms for Economic Reform in Post Conflict Countries* (April 10, 2012). Forthcoming in: *Richmond Journal of Global Law and Business*, Issue 4, Vol. 11 (Fall 2012), p. 5.

⁴⁰ Bell, Christine, *Peace Settlements and International Law: From Lex Pacificatoria to Jus Post Bellum* (May 17, 2012). Edinburgh School of Law Research Paper No. 2012/16. Available at SSRN: <http://ssrn.com/abstract=2061706> or <http://dx.doi.org/10.2139/ssrn.2061706>

⁴¹ Bell, Christine, *Peace Settlements and International Law: From Lex Pacificatoria to Jus Post Bellum* (May 17, 2012). Edinburgh School of Law Research Paper No. 2012/16, p. 51.

peacemakers.”⁴² The research paper is self-reflective with respect to definitions and quite nuanced, but is best coded as classifying *jus post bellum* through a temporal lens.

3. Westlaw and SSRN Analysis

Adding the SSRN and Westlaw searches together, overall the references look like this.

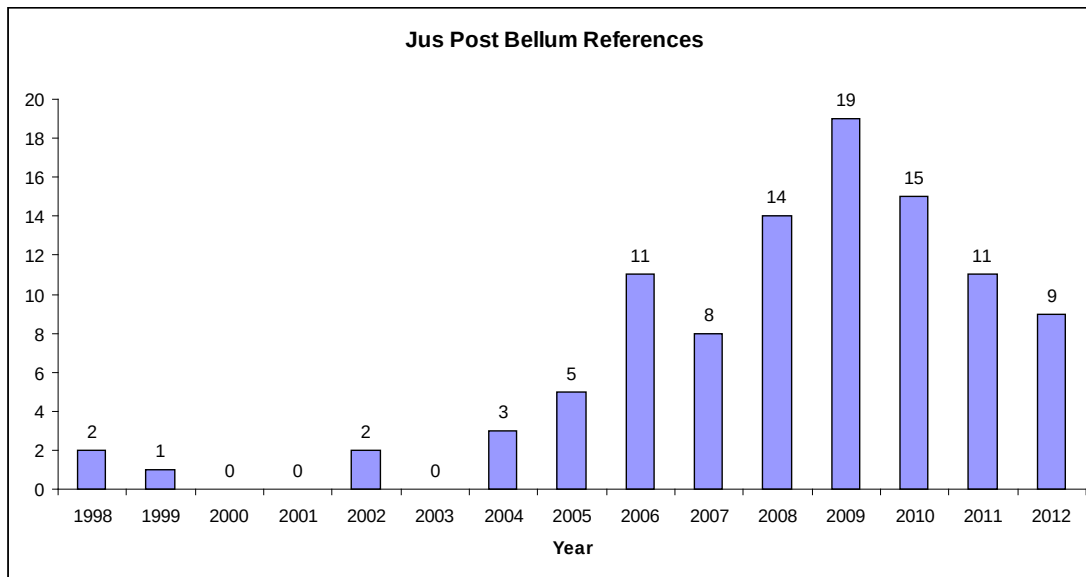


Figure 4

⁴² Ibid 1.

Many of the references, however, are trivial. Graphing only the non-trivial references to jus post bellum looks like this:

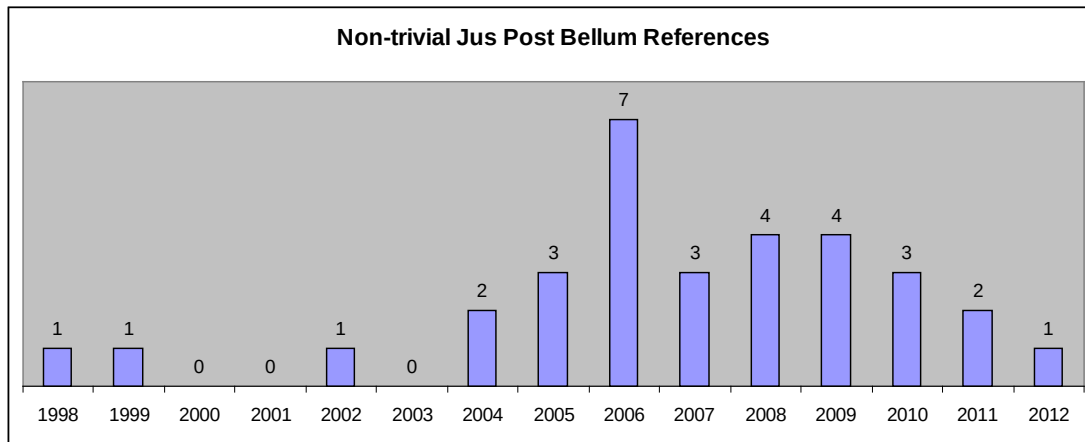


Figure 5

Putting the two together, one can visualize the data as follows:

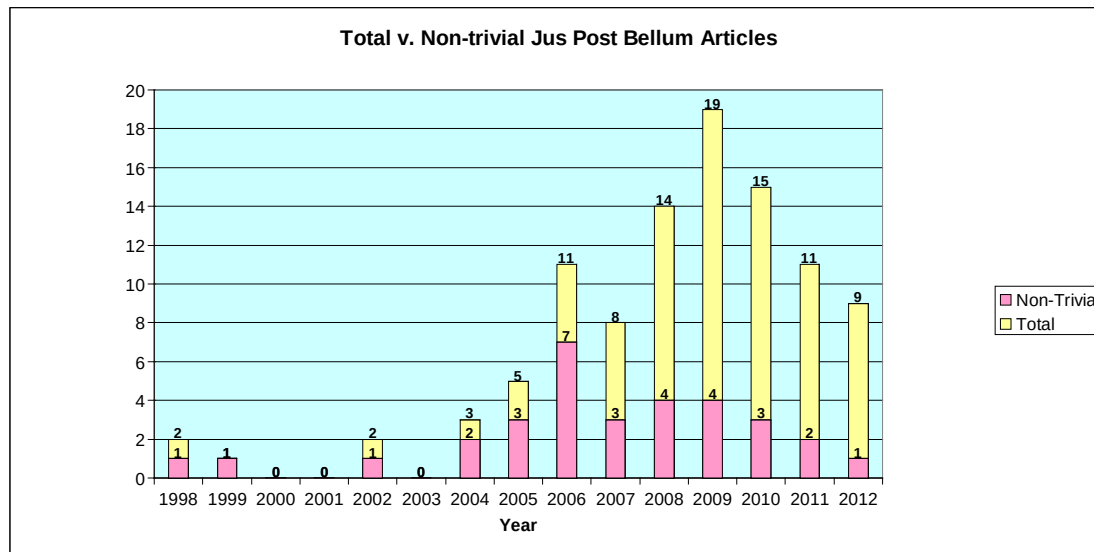


Figure 6

This dataset simplifies works that give two-year spans as their publication year as the first publication year, so for example, if there were 6 articles with 2006 as the publication year, 2 articles (etc.) with 2007 as the publication year, and 1 work with 2006-2007 as the publication year, the totals used would be 7 works with 2006 as the publication year and 2 works with 2007 as the publication year.

It is interesting to note the high percentage (32%) of works with only trivial reference to *jus post bellum*.

All works with essentially trivial references to *jus post bellum* were coded as “Non-Defined” in the JPBDDefinition variable. The JPBDDefinition variable can thus only be meaningfully analyzed with non-trivial references.

One way to visualize this data is as follows:

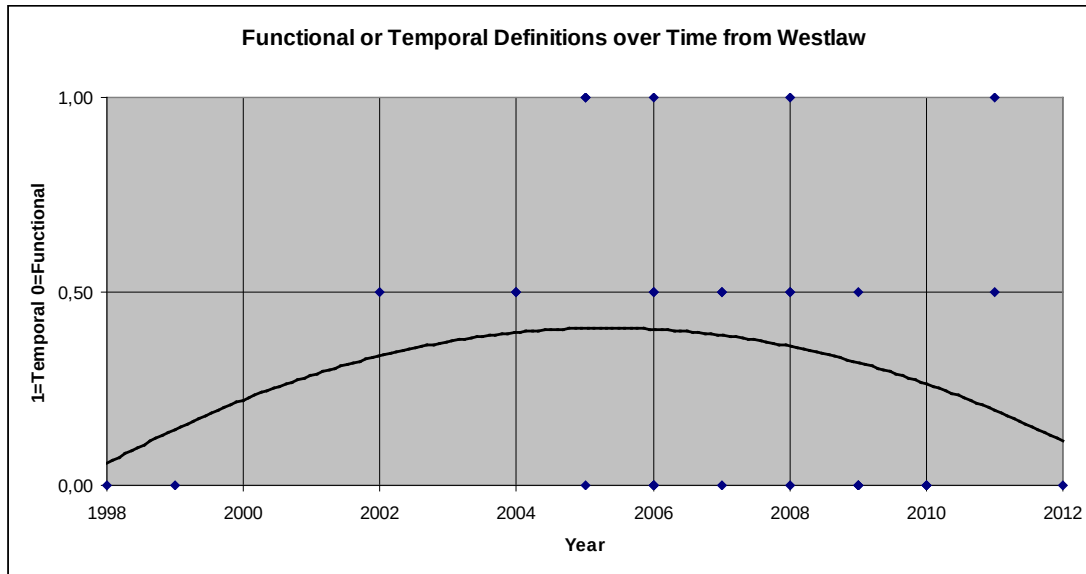


Figure 7

This indicates, using a second-degree polynomial trend line, that there was an uptick in ambiguous or temporal definitions of *jus post bellum* in works listed in Westlaw during the mid-2000s, but that the understanding is returning to the original functional understanding of the phrase.

As indicated above, the SSRN data can be visualized as follows:

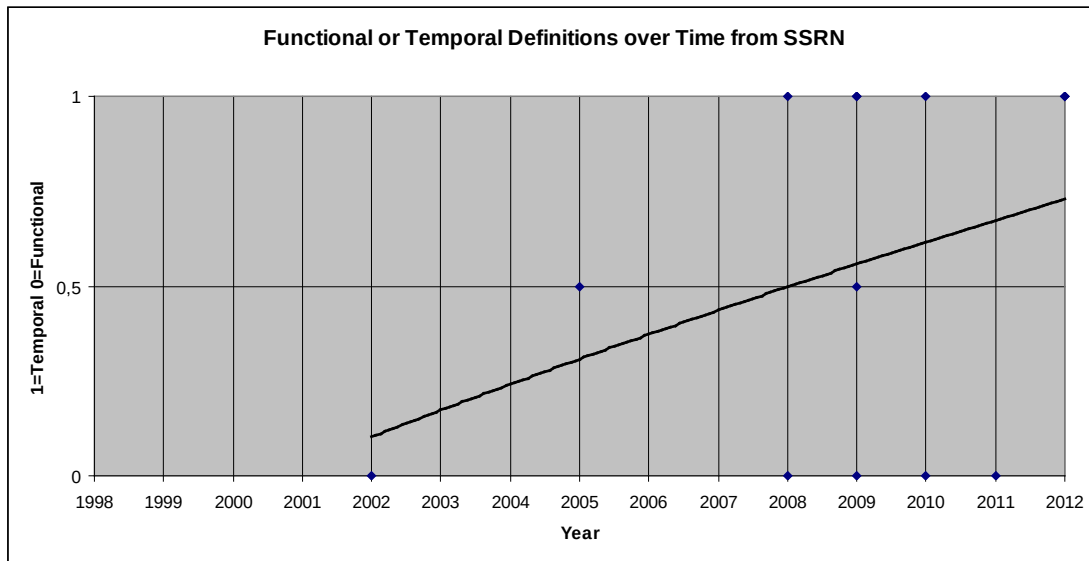


Figure 8

As above, this is a second-degree polynomial trend line, indicating a steady trend towards a more temporal framework in the more general social science audience of SSRN.

Adding the SSRN information back in, the overall trend line looks like this:

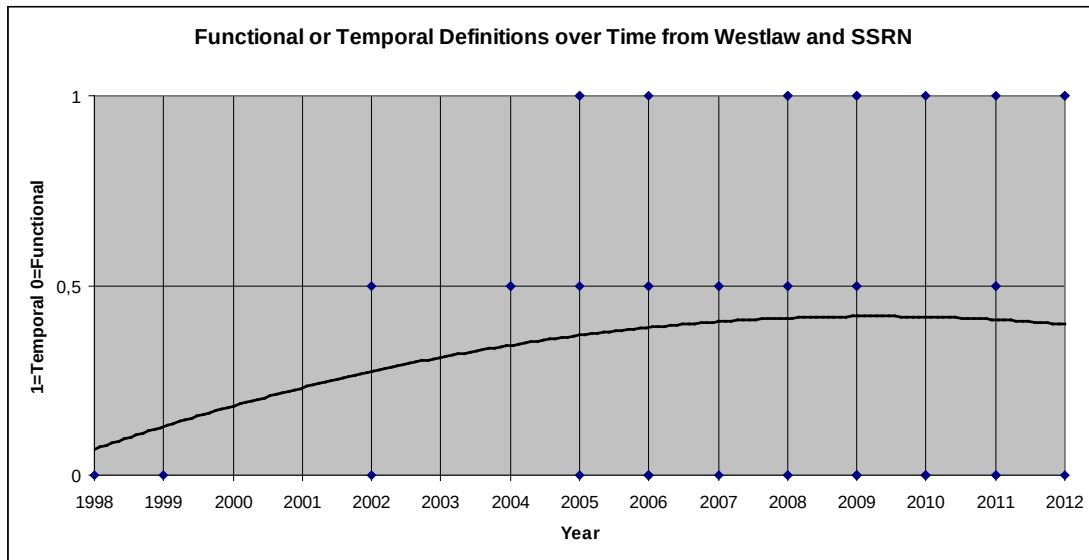


Figure 9

However, forcing a trend line is possibly unjustified given the limits of the dataset. A clearer visualization might be the following summation of the combined SSRN and Westlaw data, excluding trivial references:

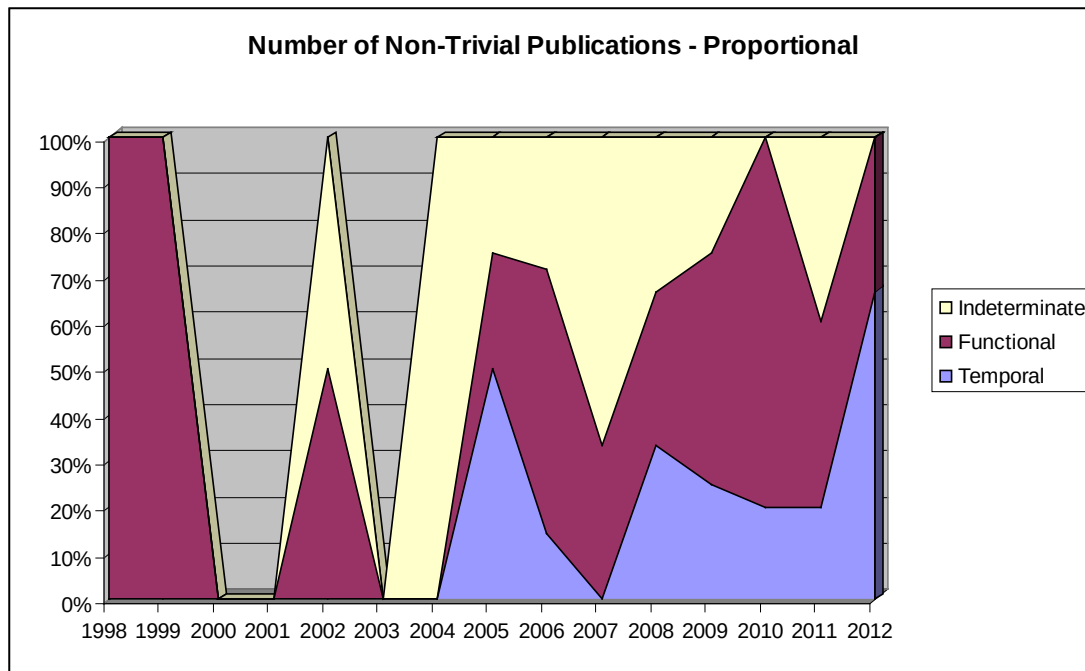


Figure 10

The graph shows the early use of functional definition, an intermediate period of indeterminate definition, and increasing use of temporal references compared to functional approaches in 2012. In absolute terms, the publications can be represented as follows:

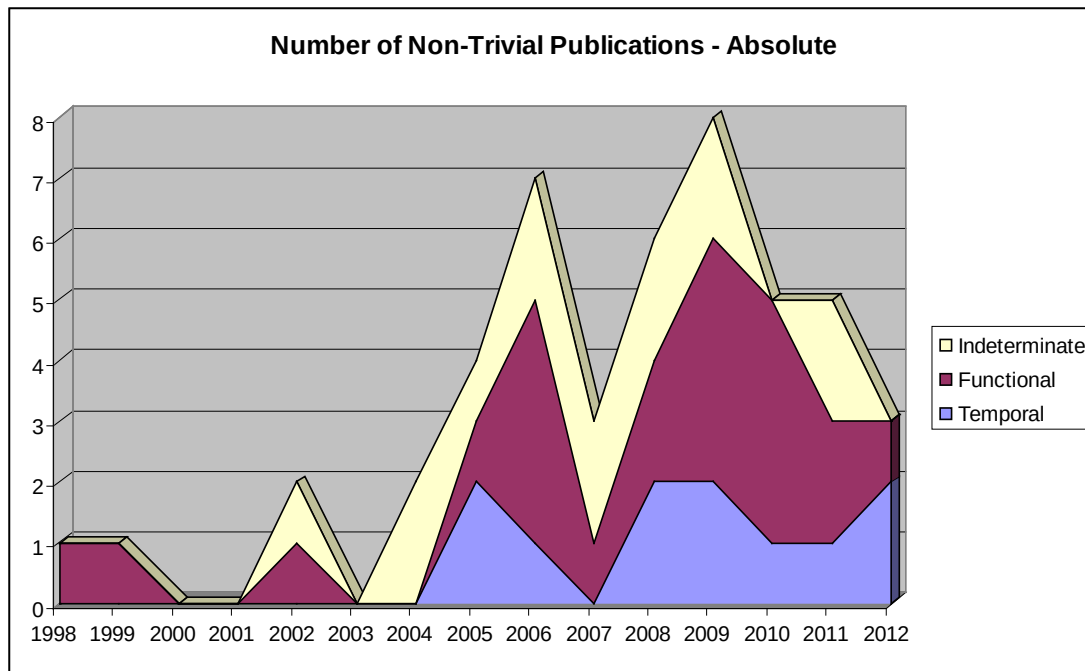


Figure 11

One interpretation of this data could be that the term “*jus post bellum*” is gaining at least a superficial currency and “mindshare,” as seen by the number of glancing references to the term. There have been an increasing number of references overall. This can be illustrated in the following chart showing usage of each phrase in a large corpus of printed work.⁴³

⁴³ Source: Google Books Ngram Viewer, dataset 20090715, available at: http://books.google.com/ngrams/graph?content=jus+post+bellum&year_start=1990&year_end=2008&corpus=0&smoothing=0 last visited 10 October 2012. This represents the usage of “*jus post bellum*” over time within millions of printed books.

For more on the use of bigram analysis of a large corpus of scanned materials, see Michel, Jean-Baptiste, et al., Quantitative Analysis of Culture Using Millions of Digitized Books, Science, 16 December 2010, available at <http://www.sciencemag.org/content/331/6014/176>.

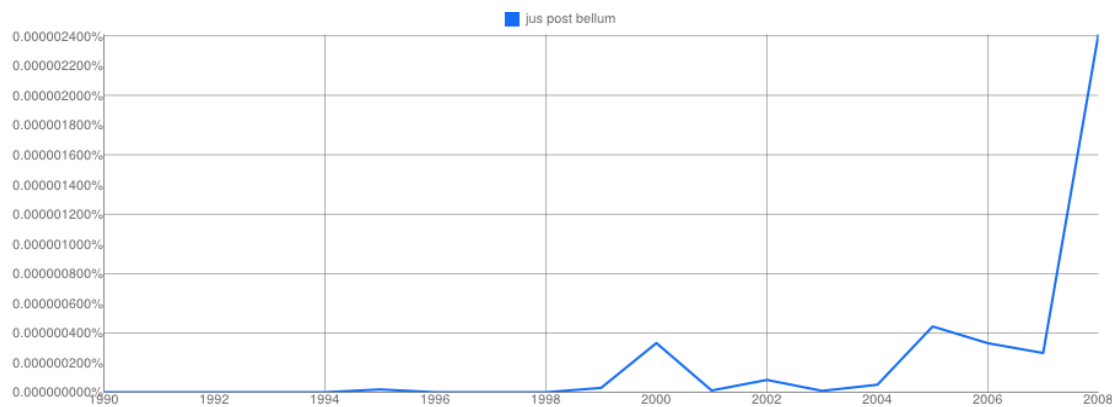


Figure 12

Indeed, the increasing number of references overall as well as the increasing number of substantive references indicate that *jus post bellum*'s utility for legal scholars is more than superficial. There is a risk, however, that with increased usage there will be an increased lack of clarity and consistency as to the meaning of the term. There are a number of works which are at least ambiguous as to the nature of the phrase.

D. Conclusion

There has been a steady expansion of references to *jus post bellum* in a variety of journals. With the expansion of references, there has been an increase of ambiguity, not a consolidation around a consensus definition. The trend in the less-legally focused dataset (SSRN articles) is away from an emphasis on functional aspects and towards temporal aspects. The overall trend is hard to discern, but for articles with more than a glancing reference to *jus post bellum* there seems to be an arc that went from a functional definition, towards, a temporal definition, and with a renewed legal interest back towards

a more functional definition. Whether a consensus will be achieved, and what that consensus might be, is as yet unclear.

1. Areas for Further Research

The body of scholarship analyzed in this work does not cover all existing works, nor of course future works. There are, of course, various options for further research available now, and in the future.

For a researcher wishing to pursue a similar methodology but use a more comprehensive analysis, the datasets identified, researched, and evaluated but not uploaded into the database from Google Scholar could be gathered, included in the same database used for this work or a similar work, and further analyzed. Broadening the data analyzed would result in a more reliable analysis and allow the researcher to draw more robust conclusions. The Google Scholar material would broaden the amount of material considerably. Greater analysis of material within monographs, edited volumes, and other published work would be valuable. On the other end, analysis of material outside the scholarly sphere, such as news reports or communications for practitioners attempting to apply law to guide a situation from armed conflict to peace would also be extremely interesting. The material analyzed could also be expanded by following the relevant citations within the materials already analyzed.

To keep the data fresh, the existing datasets or additional datasets could be updated, either periodically or on an ongoing basis. Many research tools allow the automatic

notification of new works which match a particular search. It will be valuable to see if current trends continue.

In addition, it would be very interesting to get a better map of the importance of different works, and weight the empirical analysis accordingly. For example, the number of times an SSRN article is viewed or downloaded could be incorporated. The impact of particular journals could be evaluated.⁴⁴ Alternatively, the weight given to various articles could be qualitatively (if perhaps subjectively) analyzed, either by a single scholar or through an open model with online input.

The Jus Post Bellum Virtual Research Environment⁴⁵ (hereinafter “Jus Post Bellum VRE,”) is the online database which served as a central research tool and scholarship repository for this work. The Jus Post Bellum VRE could be the foundation of a published critical bibliography of *jus post bellum*, as well as an ongoing, interactive *jus post bellum* critical bibliography—continually updated for the use of scholars.

Finally, more generally, similar research (on terms other than *jus post bellum*) could build upon the research recorded in this work, potentially even using the Jus Post Bellum VRE as a template. Research on *jus post bellum* would be furthered by doing analysis of the

⁴⁴ See e.g. the Impact Factor of the Washington and Lee University School of Law Most-Cited Legal Periodicals, available at <http://law.wlu.edu/library/mostcited/method.asp> (last visited 10 October 2012) or the Journal Citation Reports, available at http://thomsonreuters.com/products_services/science/science_products/a-z/journal_citation_reports/ (last visited 10 October 2012).

⁴⁵ This online database or “virtual research environment” is currently hosted at <https://vre.leidenuniv.nl/vre/jpb/definitions/default.aspx>.

contemporary literature on related terms. More generally, this sort of empirical analysis of contemporary literature could be used more frequently in scholarship to evaluate definitional ambiguity.

2. Implementing Further Research

Many of the areas for further research described above could be implemented through extending the Jus Post Bellum VRE. As can be seen in the screenshot below, articles can be checked in and checked out for the purposes of editing the associated metadata. Additionally, it is possible for multiple users to rate the individual articles.

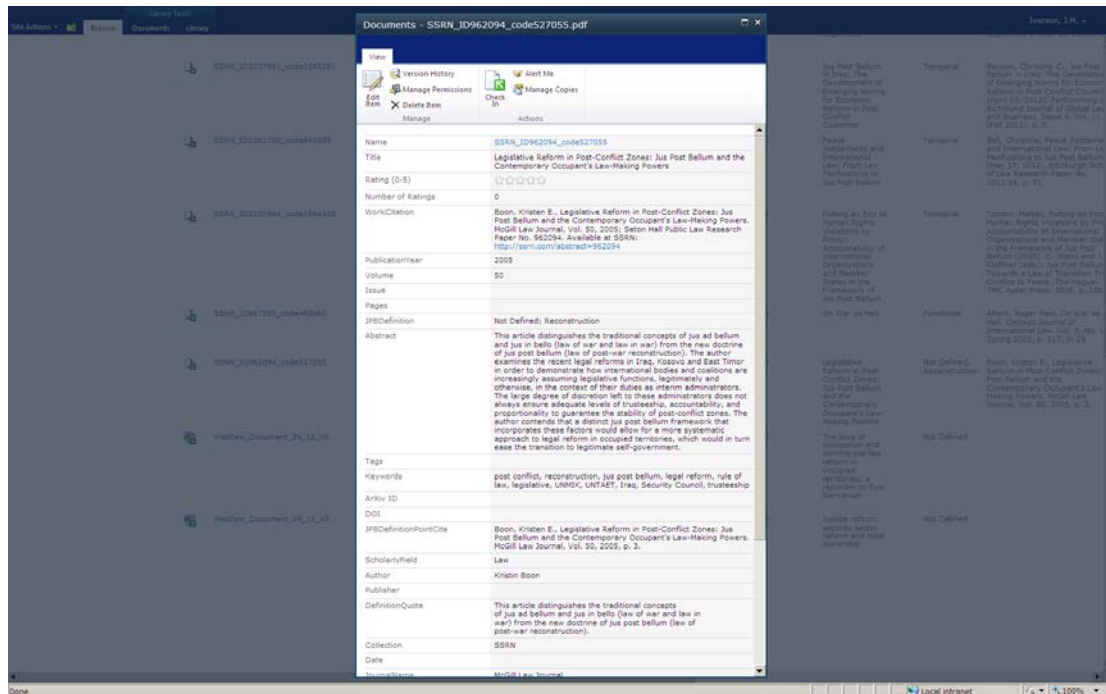


Figure 13

The author hopes that others will find the Jus Post Bellum VRE useful. He would greatly welcome the collaboration of scholars and practitioners interested in *jus post bellum*, with feedback on the research thus far, with respect to the Jus Post Bellum VRE's design for research going forward, and with respect to extending and repurposing the Jus Post Bellum VRE for additional research projects.

This work has posed answers to the questions “what is ‘*jus post bellum*’” and “why use the term ‘*jus post bellum*’” in a manner that opens further avenues for research rather than close the questions with a “definitive” answer. There is no consensus definition for *jus post bellum* with respect to the emphasis on functional or temporal aspects.

Accordingly, the reasons why scholars and practitioners use the term ‘*jus post bellum*’ varies.

The author suggests that a *jus post bellum* solution that explicitly focuses on the goal of the transition to sustainable peace is preferable going forward, given the opportunity cost of not focusing on that goal and adopting what might be called a simply nominal approach to categorizing law. Regardless of whether those using the term agree with this suggestion, it is imperative for the term to be explicitly defined with respect to functional or temporal emphasis. This should clarify the debate going forward, and assist the community using the term arrive at a consensus.