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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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PROPOSITIONS

Propositions relating to the dissertation 'The Function of *Jus Post Bellum* in International Law' by Jens Iverson:

1. "*Jus post bellum*" is a useful and meaningful term, best used to examine and structure the laws and principles applicable to the effort to transition from an armed conflict to a just and sustainable peace. While meaningful, the phrase "*jus post bellum*" is not always used consistently by various authors. This plurality in intended meaning comes from the newness of the term, the complexity of the problem, and the relative under-theorization of the concept. Despite the newness of the term, the concept has deep roots.¹
2. Transitional justice is clearly distinguishable from *jus post bellum*. Transitional justice, properly understood, is a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.² *Jus post bellum* is rooted in transition from armed conflict to a just and sustainable peace.³ While *jus post bellum* is substantively broader than Transitional Justice in many respects, *jus post bellum* is also clearly inapplicable in certain scenarios where Transitional Justice is applicable, and vice versa.
3. The function of *jus post bellum* is the successful transition from armed conflict to a just and sustainable peace. A hybrid functional approach to *jus post bellum* is superior to a primarily temporal approach to *jus post bellum* in terms of coherence, efficacy and scholarly depth.⁴ With a hybrid functional conception, *jus ad bellum*, *jus in bello*, and *jus post bellum* can overlap temporally, but differ in terms of function. While the emphasis of application may change over time, with *jus ad bellum* taking the lead during peace, *jus in bello* taking the leading during periods of armed conflict, and *jus post bellum* playing a role during the transition to peace, their definition is rooted more in their function than in their sequence.
4. The concerns and laws of *jus post bellum*, like those of *jus ad bellum* and *jus in bello*, predate the terms themselves. A review of the works of Augustine and his peers, the Institutes of Justinian, the Decretals of Gregory IX, Thomas Aquinas, Baldus de Ubaldis, Francisco de Vitoria, Francisco Suarez, Alberico Gentili, Petrus Gudelinus, Hugo Grotius, Christian Wolff, Emer de Vattel, and Immanuel Kant demonstrate that the issue of the transition from armed conflict to peace is of enduring importance.⁵ The legal and

¹ See generally Part I.

² Teitel, "Transitional Justice Genealogy" 69.

³ See generally, ch. 4.

⁴ See generally ch. 2, 3.

⁵ See generally ch. 1.

normative tradition regarding the transition to peace has been under-examined in part due to the retrospective application of the terms of the twentieth century (*jus ad bellum* and *jus in bello*) to encompass the entirety of thinking about armed conflict.

5. While *jus post bellum*'s function in aiming to establish a just and sustainable peace is in many ways more complex than the function of *jus ad bellum* or *jus in bello*, it is no less coherent in its basic aims.⁶ The transition to peace is often a period of intense instability and complex legal interplay and flux. New states, constitutions, inter-state agreements and peacekeeping agreements may come into existence, crimes may or may not be amnestied, old institutions may lose their legal existence and lawgivers of the *ancien régime* may lose their role as a source of law. The causes of the conflict, the conflict itself, and actions taken within the conflict may be the subject of legal action as the transition to peace moves forward.
6. *Jus post bellum*'s sister terms *jus ad bellum* and *jus in bello* extensively shape the contours of *jus post bellum*, helping jurists take a comprehensive view of the challenges of armed conflict and the transition to peace.⁷
7. A review of the contemporary legal content of *jus post bellum* provides a clear indication of the need for *jus post bellum*. Procedural fairness is generally necessary for peace to succeed. Territorial disputes must be resolved, and aggression condemned. No longer is it acceptable and commonplace to exterminate or enslave the defeated population. The prohibition on the annexation of territory is central not only in determining the legality of particular post-conflict settlement, but also in underpinning the entire order of stable and pacific interstate relations. The possibility of holding individuals to account must be available, and the possibility of freeing a post-conflict state from odious state must be considered.⁸
8. *Jus post bellum* should push back against the prohibition on transformative occupation in certain situations.⁹

⁶ See generally ch. 2, 5.

⁷ See generally ch. 2, 5.

⁸ See generally ch. 6.

⁹ See ch. 6.