

At All Costs and In Spite of all Terror?

The Victory of Just War*

Cian O'Driscoll
University of Glasgow
Cian.odriscoll@glasgow.ac.uk

Abstract: Derived from the Latin *Victoria*, which itself can be traced to *vino victus*, meaning 'to conquer', victory evokes a number of close synonyms, principally conquest and triumph. It occupies an ambivalent position in respect of contemporary war. Though in some regards a concept that is essential to the very idea of combat, the notion of *winning* wars has acquired an ironic ring in the aftermath of two brutal world wars and the advent of nuclear weapons. Victory in war is clearly a contentious subject. Yet scholars of the just war tradition have largely ignored it. This article fills that breach by asking what, if anything, victory can mean in relation to just war? It argues that victory has an aporetic quality insofar as it appears both integral to but incompatible with the just war ethos. As such, it reveals both the limits and possibilities of just war thinking.

Author Biography: Cian O'Driscoll is a Senior Lecturer in Politics at the University of Glasgow. His primary area of interest is the just war tradition. His published work has appeared in *International Studies Quarterly*, *Ethics & International Affairs*, *International Studies Review*, the *European Journal of Political Theory*, and the *Journal of Military Ethics*. Cian is the co-convenor of the Glasgow Global Security Network, a fellow of the Royal Society of Edinburgh Young Academy, and the principal investigator on the ESRC-funded 'Moral Victories: Ethics, Exit Strategies, and the Endings of War' project.

Word Count: 8,126 (inclusive of notes and title-page).

Keywords: Victory Just War *Jus Post Bellum* Ethics of War

* A number of people have helped me think through the ideas presented in this paper. Thank you to: Alex Allen, Jen Bagelman, Daniel Brunstetter, Ian Clark, Toni Erskine, James Turner Johnson, Matt MacDonald, Phil O'Brien, and Brian Orend. Thanks also to colleagues at Glasgow who kindly commented on earlier drafts: Katherine Allison, Naomi Head, Ty Solomon, Karen Wright, and the Historical International Normative Theory (HINT) group. I am also grateful to the very helpful anonymous reviewers for this journal, and to the ESRC for supporting the larger project, 'Moral Victories', from which this paper derives.

Introduction

'War's very object is victory, not prolonged indecision', General Douglas MacArthur once famously declared. 'In war there is no substitute for victory'.¹ Indeed, ever since Aristotle defined victory as the *telos* of military science, the idea that war is all about winning has been deeply lodged in the popular imaginary.² At the same time, many people have queried whether victory is an appropriate term to apply to modern war. Aristide Briand, Prime Minister of France for periods either side of the Great War, remarked: 'In modern war there is no victor. Defeat reaches out its heavy hand to the uttermost corners of the earth, and lays its burdens on victor and vanquished alike'.³ Writing after the Second World War, Basil Liddell Hart observed that nuclear weapons had rendered traditional strategic principles nonsensical: 'To aim at winning a war, to take victory as your object, is no more than a state of lunacy'.⁴ Victory in war is clearly an important subject that elicits strong views and little consensus. But what does it mean in relation to the ideal of just war, the principal western frame for thinking about the rights and wrongs of warfare?

¹ General Douglas MacArthur, 'Farewell Address to Congress, 19 April 1951'. At: <http://www.americanrhetoric.com/speeches/douglasmacarthurfarewelladdress.htm>. Accessed: 12 November 2013.

² Aristotle, *Nicomachean Ethics*, trans. by Harris Rackham (London: Wordsworth Classics, 1996), p. 3. Also: Cicero, *The Republic and The Laws*, trans. by Niall Rudd (Oxford: Oxford University Press, 1998), p. 83.

³ Quoted in: Richard Hobbs, *The Myth of Victory: What is Victory in War?* (Boulder: Westview, 1979), p. 477.

⁴ Quoted in: Beatrice Heuser, *The Evolution of Strategy: Thinking War from Antiquity to the Present* (Cambridge: Cambridge University Press, 2010), p. 454. Bernard Brodie argued that where thus far the chief purpose of military establishments had been to 'win wars', its main aim from now on must be to 'avert them'. Bernard Brodie, *The Absolute Weapon* (New York: Harcourt Brace, 1946), p. 76. Kenneth Waltz similarly disavowed victory: 'in war there is no victory, but only varying degrees of defeat'. Kenneth Waltz, *Man, The State, and War: A Theoretical Analysis* (New York: Columbia University Press, 2001), p. 1.

It is a propitious moment to ask what victory may mean in relation to just war. Commentators on the current conflict in Gaza have noted that there is uncertainty on both sides of the divide over what would constitute victory in this most bitter of struggles.⁵ Recent efforts to terminate conflicts in Afghanistan, Iraq, and Libya have also been hampered not only by poor planning and errors of judgement, but also by a lack of clarity pertaining to what victory requires.⁶ These shortcomings are understandable when set against their strategic context. Following fifty years of Cold War standoff, many observers have simply been caught off-guard by the re-emergence of the use of military force as an element of statecraft and vital concern for international society. While just war scholars have responded to this development by devoting attention to the questions of when and in what conditions that right to force might be enacted, what constraints it should be subject to, and what kind of post-war obligations yield from its successful conclusion, little thought has been given to what qualifies as victory in contemporary warfare. Yet it is arguably the latter question that demands most attention in the warzones of Afghanistan, Iraq, Libya, and Gaza.

⁵ Michael Cohen, 'Is the Arab-Israeli Conflict going to be the war that never ends?', *The Guardian*, 3 August 2014. Available at: <http://www.theguardian.com/commentisfree/2014/aug/03/arab-israel-palestinians-gaza-conflict-may-never-end>. Accessed on: 30 August 2014. Amira Hass, 'Israel's moral defeat will haunt us for years', *Haaretz*, 28 July 2014. Available at: <http://www.haaretz.com/mobile/.premium-1.607550?v=B844E2B9134251232410386CC5A070D8>. Accessed on: 30 August 2014. Ian Black, 'Palestinian groups see captures as a strategic weapon to help redress military imbalances, but latest is likely to prolong fighting', *The Guardian*, 1 August 2014. Available at: <http://www.theguardian.com/world/2014/aug/01/israeli-officer-capture-gaza-hamas>. Accessed on: 2 August 2014.

⁶ Benjamin R. Banta, "'Virtuous War" and the Emergence of Jus Post Bellum', *Review of International Studies*, 37:1 (2011), pp. 277-299. Also: Eric D. Patterson, *Ending Wars Well: Order, Justice, and Conciliation in Contemporary Post-Conflict* (New Haven, CT.: Yale University Press, 2012).

Motivated by these concerns, this article examines what victory means in relation to just war. It proceeds via four steps. The first section asks what victory means in the context of contemporary warfare. It contends that the notion of victory is not only tricky to define, it is also, more often than not, cast exclusively in strategic terms that encourage us to overlook its normative dimension. Seeking to remedy this oversight, Section Two investigates how, if at all, victory has featured in the mainline of classical and contemporary just war thinking. It argues that victory has long been regarded as peripheral to this body of thought. Developing this argument, but adopting a tighter focus, Section Three examines how victory is posited in one very specific branch of just war inquiry, the *jus post bellum* pole of analysis dedicated to interrogating questions of justice after war. It submits that although victory is frequently invoked by *jus post bellum* scholars, it is in actual fact marginal to their primary concerns. In practice, *jus post bellum* scholars tend to be more interested in the question of how justice may be enacted in the aftermath of war than in teasing out the meaning and moral significance of victory itself. Building on this, Section Four asks whether it is time for just war scholars to develop an account of victory. As well as making a case for why scholars should consider such a project, it previews the difficulties that would surely attend it. By way of closing remarks, the article reflects in general terms on the challenge that thinking about victory in modern warfare poses for just war scholars. It submits that the concept of victory has an aporetic quality insofar as it appears both essential to but also potentially incompatible with the just war ethos. As such, the article concludes, it reveals both the limits and possibilities of just war thinking.

What is Victory?

The concept of victory has attracted a healthy amount of scholarly attention in recent years. Monographs by Brian Bond, William C. Martel, Robert Mandel, and Dominic Tierney and Dominic Johnson, among others, have established it as a key topic of inquiry for military strategists and historians in the post-Cold War era.⁷ Despite this, victory remains a difficult concept to pin down. When seeking to define it, we confront the same problems Saint Augustine encountered when he attempted to explain the nature of time: 'Provided that no one asks me, I know. If I want to explain it to an inquirer, I do not know'.⁸ Some scholars, most notably Martel, have responded to this challenge by elucidating elaborate typologies that account for different levels of victory.⁹ Others, conceding that victory is an inherently nebulous concept, have preferred to operate Justice Potter's rule: like pornography, we are simply expected to recognize victory when we see it.¹⁰ The only common point of reference in this literature is Clausewitz's influential but rather gnomic account of victory as the successful imposition of one's will upon the enemy.¹¹

⁷ Brian Bond, *The Pursuit of Victory: From Napoleon to Saddam Hussein* (Oxford: Oxford University Press, 1996). William C. Martel, *Victory in War: Foundations of Modern Strategy—Revised and Expanded Ed.* (Cambridge: Cambridge University Press, 2011). Robert Mandel, *The Meaning of Military Victory* (Boulder: Lynne Rienner, 2006). Dominic Johnson and Dominic Tierney, *Failing to Win: Perceptions of Victory and Defeat in International Politics* (Cambridge, MA: Harvard University Press, 2006).

⁸ Saint Augustine, *Confessions*, trans. by Henry Chadwick (Oxford: Oxford University Press, 1998), p. 230.

⁹ Martel, *Victory in War*, pp. 17-56.

¹⁰ Dominic P. Johnson and Dominic Tierney, 'In the Eye of the Beholder: Victory and Defeat in US Military Operations', in Jan Angstrom and Isabelle Duyvesteyn (eds.), *Understanding Defeat and Victory in Contemporary War* (London: Routledge, 2007), p. 46. Also: Mandel, *The Meaning of Military Victory*, p. 3.

¹¹ Carl von Clausewitz, *On War*, trans. by Michael Howard and Peter Paret, ed. by Beatrice Heuser (Oxford: Oxford University Press, 2007), p. 13.

Efforts to apply Clausewitz and specify what victory might mean in respect of modern war are beset by several difficulties that bear primarily upon its association in the modern imaginary with ideas of totality and decisiveness. Owing to the preoccupation with pitched combat in military historiography, victory has come to be closely tied to the phenomenon of decisive battles, battles that produce an emphatic winner and settle the disputes that gave rise to them.¹² Thanks largely to the writings of Sir Edward Creasy and J. F. C. Fuller, triumphs like those won by Napoleon at Austerlitz and the British at Waterloo—contests that ended in the flight of the enemy and set the course of history for generations to come—came to be viewed as the archetypes of victory.¹³ Warfare, however, has only very rarely turned on climactic battles: historically speaking, they have been the exception rather the rule.¹⁴ The point is that victory, as it is typically understood, is freighted with associations to totality and decisiveness that diminish its applicability to modern war even as they enhance its rhetorical power. As ‘old wars’ have been supplanted by ‘new wars’, it has become increasingly clear that that received understandings of victory carry historical baggage that reduce its relevance today.¹⁵

¹² Lawrence Freedman, *Strategy: A History* (Oxford: Oxford University Press, 2013), p. 49, 71.

¹³ Sir Edward Creasy, *The Fifteen Decisive Battles of the World: From Marathon to Waterloo* (London: Richard Bentley, 1851). J. F. C. Fuller, *The Decisive Battles of the Western World and their Influence Upon History—Three Volumes* (London: Eyre and Spottiswoode, 1954-6).

¹⁴ Russell Weigley argues that they were a possibility for the brief spell between the battles of Breitenfeld (1631) and Waterloo (1815), but not beyond this. Russell Weigley, *The Age of Battles: The Quest for Decisive Warfare* (Bloomington: Indiana University Press), xi.

¹⁵ President Obama confesses he was ‘always worried about using the word “victory”, because, you know, it invokes this notion of Emperor Hirohito coming down and signing a surrender to MacArthur’. Gabriella Blum, ‘The Fog of Victory’, *The European Journal of International Law* 24:1 (2013), p. 421.

In contrast to the archetypal decisive battles described by Creasy and Fuller, and often associated with Napoleonic campaigning and, more broadly, the so-called 'western way of war', modern warfare does not typically produce a clear-cut victory.¹⁶ Rather, it tends to degenerate into stalemate, quagmire, or the protracted grind of low-intensity conflict. In such cases, references to victory, at least as it is typically understood, bear little relation to events on the ground and should be dismissed as misleading and unhelpful.¹⁷ As Mandel observes, the historical record indicates that there has been 'an observable decline in the proportion of wars in which there was a clear-cut winner or loser'. Wars, he continues, do not end the way that they used to: fewer wars than before terminate in a 'clean, decisive victory for one side or the other'. He infers from this that 'as outcomes go, victory and defeat may be going the way of slavery and duelling'.¹⁸ Although Mandel overstates the case, his key point is hard to rebut.

¹⁶ On the western way of war: Victor Davis Hanson, *The Western Way of Warfare: Infantry Battle in Classical Greece* (Berkeley: University of California Press, 2009). For a critique: Harry Sidebottom, *Ancient Warfare: A Very Short Introduction* (Oxford: Oxford University Press, 2004), pp. 1-4.

¹⁷ This point of view has undoubtedly informed the sceptical response to President George W. Bush's infamous 'Mission accomplished' speech aboard the flight deck of the USS Abraham Lincoln. As Larry Diamond remarks, this speech has come to be mocked for its ironic quality. Yet, perhaps illustrative of the enduring appeal of 'victory-talk', Prime Minister David Cameron repeated the formula in a recent 2013 speech on the war in Afghanistan. President George W. Bush, 'President Announces Major Combat Operations in Iraq Have Ended, 1st May, 2003'. Available at: <http://www.cnn.com/2003/US/05/01/bush.transcript/>. Accessed on: 2 May, 2014. Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (Owl Books: New York, 2006). Rowena Mason, 'Mission Accomplished in Afghanistan, Declares David Cameron', *Guardian*, 16 December 2013. Accessed on: 3 April 2014. Available at: <http://www.theguardian.com/uk-news/2013/dec/16/afghanistan-mission-accomplished-david-cameron>.

¹⁸ Robert Mandel, 'Defining Postwar Victory', in Jan Angstrom and Isabelle Duyvesteyn (eds.), *Understanding Victory and Defeat in Contemporary War* (Abingdon: Routledge, 2007), p. 18.

Moreover, even if we refute the observation that modern war rarely gives rise to decisive victories, we are still left with the difficulty of determining how to identify victory in practice. According to the standard view, victory requires the infliction of a sufficient level of damage upon the enemy's material capabilities and morale to compel its admission of defeat. There are, however, no obvious criteria by which to gauge the accomplishment of these ends. While command of the battlefield is the classic yardstick, it is of little help in an era defined by extended campaigns and amorphous battlespaces. In its place, commentators have measured military victories on the basis, variously, of body-counts, the annexation of territory, the capture of capital cities, the winning of hearts and minds, and the accomplishment of predetermined war objectives. There is no obvious way to harmonize these rival metrics when they produce different answers to the question of who won a particular war.¹⁹ This problem is magnified when we view it in light of the war on terror. As the Secretary of Defence, Donald Rumsfeld, complained in 2003, 'we lack a metrics to know if we are winning or losing the global war on terror'.²⁰ Four years later, General David Petraeus echoed Rumsfeld's consternation. It is hard to know if you are winning the fight against Al Qaeda, he remarked, because 'This is not the sort of struggle where you take a hill, plant the flag and go home with a victory parade.'²¹ The problem with victory is, then, also an epistemic one: it is hard to recognize it when it occurs, or to establish markers for it.

¹⁹ Johnson and Tierney, *Failing to Win*.

²⁰ Quoted in: Mandel, *The Meaning of Military Victory*, p. 135.

²¹ Mark Tran, 'General David Petraeus Warns of Long Struggle Ahead for US in Iraq', *Guardian*, 11 September 2008. Available at: <http://www.theguardian.com/world/2008/sep/11/iraq.usa>. Accessed: 31 January 2014.

One of the lessons to arise from the strife of the past decade is that these issues are ignored only at great peril and cost.²² The root of these issues, however, is, not the *applicability* of the Clausewitzian account of victory to modern war, but the Clausewitzian account of victory *itself*. By reducing victory to the imposition of one's will upon the enemy, the Clausewitzian account of victory overlooks and indeed obscures a central article of earlier writings about victory, namely that victory is closely bound with deeper considerations of justice, peace, and order.²³ It thus seduces scholars and military planners to set aside the normative dimensions of victory and approach it as a purely strategic issue. According to Beatrice Heuser, this has had a profoundly negative effect upon how we think about winning wars. Not only has it disconnected modern strategic thought from classical and medieval thinking about victory, it has also divorced the pursuit of military victory from the values—peace, order, and justice—that it ought to serve.²⁴ Heuser proposes that a possible solution to these problems is to look beyond Clausewitz, to deeper traditions of military and political thought, in order to recover more constructive understandings of victory. Rising to this challenge, the remainder of this article examines what if any conception of military victory can be found within the just war tradition.

²² Gideon Rose, *How Wars End: Why We Always Fight the Last Battle* (New York: Simon & Schuster, 2011), xi-xiv.

²³ Military writings since Clausewitz have been 'dominated by the pursuit of victory for its own sake, victory divorced from the political settlement of a fundamentally political conflict, victory not as a reward for just cause or piety but due only to strength or at best cunning and underpinned by the Social Darwinist notion that the fitter nation deserved to prevail'. Beatrice Heuser, 'Victory, Peace, and Justice: The Neglected Trinity', *Joint Forces Quarterly* 69 (2013), p. 7.

²⁴ Beatrice Heuser, *The Evolution of Strategy: Thinking War from Antiquity to the Present* (Cambridge: Cambridge University Press, 2010), pp. 10-2, 140-2, 472.

Victory in Contemporary and Classical Just War Thought

The just war tradition is arguably predominantly the predominant western body of thought concerning the ethics of armed conflict. Boasting a lineage that can be traced to the sunset of the Roman Empire, it reflects two millennia of reflection on the rights of war. A conundrum lies at its very core: Can the use of military force ever be an instrument of justice? Though scholars often quibble about its exact composition, a consensus has emerged that the just war tradition hinges on three distinct but connected questions. The first question, which stands for the *jus ad bellum* pole of just war reasoning, asks whether and under what conditions the recourse to war might ever be justified. The second question, reflecting the *jus in bello* dimension of analysis, asks how a war, once begun, might be waged in a just manner. The third and final question, the *jus post bellum* challenge, invites reflection on how wars should be concluded and a just peace cultivated. The *jus ad bellum* turns on five key precepts, 'just cause', 'proper authority', 'right intention', 'reasonable chance of success', and 'last resort'. The *jus in bello* pivots on the requirements of 'discrimination' and 'proportionality'. The *jus post bellum* reflects a vague set of desiderata bearing on reconciliation, reconstruction, and rehabilitation.

One struggles to find references to victory in contemporary just war literature. The closest one gets to it is the listing of 'reasonable chance of success' as a *jus ad bellum* principle. This principle stipulates that, in order to have just recourse to the use of force, a community must boast good prospects of prevailing in the ensuing conflict. This precludes the pursuit of lost causes. James Turner Johnson submits that this principle operates to introduce a prudential element into deliberations regarding the resort to war, and, as such,

should be categorized an ancillary element of the *jus ad bellum*.²⁵ Even so, it is not exactly clear what it requires. As Amy Eckert observes, 'The reasonable chance of success raises the question of what success really means' in respect to war.²⁶

Whatever about 'reasonable chance of success', the concept of victory itself does not appear in many tables of contents, and receives mere passing reference in recent key texts in the field.²⁷ Even Michael Walzer's classic *Just and Unjust Wars* only briefly skims it. Walzer's engagement with victory takes place in the context of two chapters devoted respectively to 'winning' wars.²⁸ He evokes the ambiguity of victory by on the one hand quoting a verse from Randall Jarrell on the illusory character of victory in war, and on the other proclaiming its centrality to the very idea of just war. The latter point is worth developing. Walzer states that victory is essential to the idea of just war insofar as it is the promise of the former that justifies the sacrifices required by the latter. 'There must be', he writes, 'purposes that are worth dying for, outcomes for which soldiers' lives are not too high a price. The idea of a just war requires the same assumption. A just war is one that is morally urgent to win, and a soldier who

²⁵ James Turner Johnson, *The War to Oust Saddam Hussein: Just War and the New Face of Conflict* (Lanham: Rowman & Littlefield, 2005), p. 37. Also see: Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity, 2006), p. 123.

²⁶ Amy E. Eckert, 'Private Military Companies and the Reasonable Chance of Success', in Caron E. Gentry and Amy E. Eckert (eds.), *The Future of Just War: New Critical Essays* (Athens, GA: University of Georgia Press, 2014), p.64.

²⁷ For example: Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013). Nicholas Rengger, *Just War and International Order* (Cambridge: Cambridge University Press, 2013). David Fisher, *Morality and War: Can War be Just in the Twenty-First Century?* (Oxford: Oxford University Press, 2011).

²⁸ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations—2nd edition* (New York: Basic Books, 1992), Chapters 7 and 14.

dies in a just war does not die in vain'.²⁹ Nevertheless, he admits that even if we know that 'it is sometimes urgent to win, it is not always clear what winning is'. Beyond a discussion of the Allied policy of unconditional surrender in World War II, and his insistence that the 'legitimate ends of war' also furnish its proper limits, beyond which any further fighting must be deemed criminal, Walzer's own analysis does little to address this problem.³⁰ This problem is amplified in his recent writings on *jus post bellum*, which we will discuss in Section Three.

What about the classical just war tradition? The concept of victory does feature relatively prominently in many of the landmark texts of the just war tradition. It is pivotal to Isidore of Seville's account of just war, worked out in Book XVIII of the *Etymologies*.³¹ Francisco de Vitoria devotes the third canon of warfare to the responsibilities of the victor in battle. 'Once the war has been fought and victory won, he must use his victory with moderation and Christian humility'. The victor, he continues, must think of himself not as the prosecutor but as a 'judge sitting in judgment between two commonwealths, one the injured party and the other the offender'.³² Francisco Suarez also treated victory as of paramount importance. He contends not only that a prince must demonstrate a reasonable chance of achieving victory before committing troops to war, but also that the stages of war should be understood in respect of their relation to victory. 'Three periods', he writes, 'must be distinguished [with respect to every war]: its

²⁹ Walzer, *Just and Unjust Wars*, p. 110.

³⁰ Walzer, *Just and Unjust Wars*, p. 110.

³¹ Isidore draws heavily on Roman conceptions of victory and the relation of this concept to the distinction drawn between *bellum* and *duellum*. *The Etymologies of Isidore of Seville*, trans. by Stephen A. Barney et al (Cambridge: Cambridge University Press, 2010), pp. 359-73.

³² Francisco de Vitoria, 'On the Laws of War', in Anthony Pagden and Jeremy Lawrance (eds.), *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991), p. 327 [§60].

inception; its prosecution, before victory is gained; and the period after victory'.³³ Later, in the 17th and 18th century, respectively, Hugo Grotius and Emerich de Vattel devoted several chapters to detailing the rights that victory in battle conferred upon the winner over the loser.³⁴

Should one wish to dig deeper, beyond what is conventionally recognized as the mainline of the tradition, one will also uncover meditations upon the relation between just war and victory in ancient Greek and Roman political thought. Writings about Greco-Roman military practice are replete with references to the idea that only victories attained by honourable means—that is, through pitched battles and without recourse to trickery or guile—in wars formally authorized by the gods could be leveraged as a source of glory for states. By contrast, victories won by dubious means were wont to be derided as a source of shame.³⁵ Little work has, however, been done on the role played by victory in early just war thinking. It has been almost entirely ignored.

³³ Francisco Suarez, 'A Work on the Three Theological Virtues: On Charity' in Gwladys L. Williams, Ammi Brown, and John Waldron (eds.) *Selections From Three Works of Francisco Suarez* (Carnegie Classics of International Law: New York, 1944), p. 882-3, 836 [XIII.IV.10, XIII.VII.1].

³⁴ Hugo Grotius, *The Rights of War and Peace*, trans. by Richard Tuck (Indianapolis: Liberty Fund, 2005), Book III Chapters VIII and XV. Emer de Vattel, *The Law of Nations*, ed. by Bela Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), p. 598 [III.XIII. §201].

³⁵ See, for example, the Queen of Massagitae's condemnation of Cyrus's guile in war, and the controversy surrounding the Athenians' use of aerial bombardment to capture the Spartan troops stranded on Sphacteria in 425 BCE. In the Roman context, Cicero posited a relation between the quality of victory and the means used to secure it. Herodotus, *The Histories*, trans. by Robin Waterfield (Oxford: Oxford University Press, 1998), p. 93. Thucydides, *The War of the Peloponnesians and the Athenians*, ed. by Jeremy Myntott (Cambridge: Cambridge University Press, 2013), p. 254-9. Cicero, *On Duties*, ed. by M. T. Griffin and E. M. Atkins (Cambridge: Cambridge University Press, 1991), p. 72-3. See: Cian O'Driscoll, 'Re-Writing the Just War Tradition: Just War in Ancient Greek Political Thought and Practice', *International Studies Quarterly* (Forthcoming 2015).

The Victory of *Jus Post Bellum*

There is, however, one area of just war scholarship where victory at least appears to enjoy the limelight. This is the *jus post bellum* pole of just war analysis, dedicated to examining questions of post-war justice. Understood as a discreet area of investigation, the idea of *jus post bellum* is itself a recent development.³⁶ It may be traced to the early 1990s, to Michael J. Schuck's influential 1994 essay in the *Christian Century*.³⁷ Appalled by the triumphalism displayed by the US in the wake of the 1991 Gulf War, Schuck argued that the victory parade conducted by veterans of the war, including General Norman Schwarzkopf, showed a lack of both humility and remorse for the losses that the war had occasioned on both sides. More deeply, he claimed, it exposed the general lack of thought devoted to the question of how states ought to comport themselves in the aftermath of war. As a remedy, Schuck coined the phrase *jus post bellum* and proffered it as the missing element of just war theory. Latterly, Brian Orend, Gary Bass, and Alex J. Bellamy among others, have endorsed Schuck's case for *jus post bellum* and argued that rather than concentrating all their efforts on the initial decision to resort to war and its subsequent conduct, contemporary just war theorists should devote more time and energy to contemplating the ethical challenges that arise at war's end.³⁸

³⁶ I am not claiming that the *jus post bellum* is disconnected from *jus ad bellum* and *jus in bello* concerns; all three elements of just war reasoning clearly crosscut one another. I merely note that the *jus post bellum* has only recently been posited as a distinct category of analysis, worthy of its own Latinate name.

³⁷ Michael J. Schuck, 'When the Shooting Stops: Missing Elements in Just War Theory', *Christian Century* (26 October 1994): 982-3.

³⁸ Brian Orend, 'Jus Post Bellum', *Journal of Social Philosophy* 31:1 (2000): 117-137. Gary Bass, 'Jus Post Bellum', *Philosophy & Public Affairs* 32:4 (2004): 384-412. Alex J. Bellamy, 'The Responsibilities of Victory: Jus Post Bellum and the Just War', *Review of International Studies* 34 (2008): 601-625.

The concept of victory is ubiquitous within the *jus post bellum*. A number of influential scholars, including Louis Iasiello, Bellamy, Larry May, and Darren Mollendorf, have posited it as the pivot of *jus post bellum* analysis. Iasiello equates the remit of *jus post bellum* with the task of determining the responsibilities that victors in war incur with respect to the societies that have fallen under their sway. He writes that the job of *jus post bellum* theorists is to devise ‘moral precepts to guide the *post bellum* activities of victors’.³⁹ Bellamy proposes that the principal division in the *jus post bellum* field is between minimalist and maximalist approaches, a distinction that turns on whether one apportions minor or extensive responsibilities to victors for the vanquished: ‘Minimalists envisage *jus post bellum* as a series of restraints on what it is permissible for victors to do once the war is over. By contrast, maximalists argue that victors acquire certain additional responsibilities that must be fulfilled for the war as a whole to be considered just’.⁴⁰ May claims that the key question for *jus post bellum* theorists is ‘what difference should there be between victors and vanquished in terms of post war responsibilities?’⁴¹ Finally, Mollendorf submits that the function of *jus post bellum* theory is to clarify ‘the limitations on the terms that a victorious warring party can impose on the vanquished’.⁴²

³⁹ Louis V. Iasiello, ‘Jus Post Bellum: The Moral Responsibilities of Victors in War’, *Naval War College Review* LVII:3/4 (2004), p. 40.

⁴⁰ Bellamy, ‘The Responsibilities of Victory’, p. 602.

⁴¹ Larry May, *After War Ends: A Philosophical Perspective* (Cambridge: Cambridge University Press, 2012), p. 1.

⁴² Darren Mollendorf, ‘Jus Ex Bello’, *Journal of Political Philosophy* 16:2 (2008), p. 130. Other *jus post bellum* specialists also devote much of their analysis to parsing the post-war responsibilities of the victors in war. C. A. J. Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2008), p. 276. Bass, ‘Jus Post Bellum’, p. 412. George R. Lucas, ‘Jus Ante and Post Bellum:

Within this framing, the character of victory achieved in any given war is held to matter insofar as it impacts upon the prospects for establishing a durable peace: the more legitimate the victory, the better the chances are that a sustainable peace will ensue. It is in this spirit that Brian Orend argues that victories marked by a draconian spirit pave the way, not for reconciliation, but for recrimination and further hostilities. 'We know', he writes, 'that when wars are wrapped up badly, they sew the seeds for future bloodshed'.⁴³ Conversely, a number of scholars have cited the conduct of the commanders of the Union Army in the US Civil War as an example of how humility in victory—exactly what Schuck alleges was absent in the US in 1991—can play a pivotal role in facilitating peace. The magnanimity displayed by General Ulysses Grant at Appomattox is often cited as a case of best practice.⁴⁴ Grant and his men, it is averred, understood that bad winners create sour losers, and they tempered their behaviour accordingly. Other scholars have remarked that it is not only *bad* winners that hinder peacemaking. Citing Afghanistan, Eric Patterson has argued that *unconvincing* winners also cause problems. The inability of the US and its allies to 'obliterate' the Taliban and achieve a 'complete victory' has, he observes, undermined all subsequent efforts to usher in a meaningful peace by creating a strategic environment conducive to festering hostilities.⁴⁵

Completing the Circle, Breaking the Cycle', in Eric D. Patterson (ed.), *Ethics Beyond War's End* (Washington: Georgetown University Press, 2012): 47-64.

⁴³ Brian Orend, 'Justice After War', *Ethics & International Affairs* 16:1 (2002), p. 43.

⁴⁴ David A. Crocker, 'Ending the US Civil War Well: Reconciliation and Transitional Justice', in Eric D. Patterson (ed.), *Ethics Beyond War's End* (Washington: Georgetown University Press, 2012): 145-174.

⁴⁵ Patterson, *Ending Wars Well*, p. 174.

This intimate relationship between considerations of victory and *jus post bellum* theorising should come as no surprise for the latter is rooted in the former. This is evidently true in a disciplinary sense. As a recent addition to just war thinking, *jus post bellum* analysis has its origins in the writings on victory by Schuck, Bellamy, and others. In this respect, the *jus post bellum* is ostensibly an outgrowth of the broader interest in the ethics of victory. But the observation that *jus post bellum* is rooted in victory is also true conceptually. As a body of thought dedicated to guiding victors with respect to their post-war obligations, it assumes the achievement of victory as its point of departure. That is to say, victory is posited as a threshold for the commencement of *jus post bellum* theorising. As a result of the combination of these disciplinary and conceptual factors, it is nigh impossible to find an article on the *jus post bellum* that is not peppered with references to victory.

Herein lies the rub. Although the concept of victory pervades *jus post bellum* analysis, and could even be described as ubiquitous to it, it is rarely interrogated. None of the sources cited thus far offer a convincing definition of what is meant by victory, nor do they unpack its normative dimensions. The reason for this is because, despite its prominence in the literature, victory is not the central concern of conventional *jus post bellum* analysis. Rather, as David Rodin has pointed out, the majority of *jus post bellum* scholars are actually interested in discerning only what moral and legal principles should obtain *after* victory has been achieved and the transition to peace has already begun.⁴⁶

⁴⁶ Rodin regards the task of devising principles to guide the pursuit of victory is neglected in *jus post bellum* analysis, and proposes a *jus ad terminationem belli* to address it. David Rodin, 'Two Emerging Issues of *Jus Post Bellum*: War Termination and the Liability of Soldiers for Crimes of Aggression', in Carsten

This should not be waved away as a mere lexical problem. The proclivity to treat victory as the point of departure for *jus post bellum* miscasts a substantive issue as a premise. If, as seems sensible to suppose, the determination of winners and losers is part and parcel of the endgame phase of war, rather than prior to it, our analytical framework should reflect this. This is because the manner by which a war is ended primes the prospects for a durable peace in its aftermath. By contrast, the prevailing tendency to treat the category of victory as a given brackets the very questions we should be asking. Consider, for instance, the following statements by General Tommy Franks and Walzer. Interviewed in 2006, Franks emphasized the importance of subjecting the concept of victory itself to scrutiny. ‘What constitutes victory? I think that is a fundamental question, and it is good for each of us in this country to ask ourselves that from time to time. When we try to decide whether or not we’ve been victorious, we have to think, for just a second, what the term “victory” means’.⁴⁷ Six years later Walzer bypassed these concerns in an essay on *jus post bellum*: ‘I am going to *assume* the *victory* of just warriors’, he writes, ‘and ask what their responsibilities are *after victory*’.⁴⁸ To assume, as Walzer and other just war scholars do, that the distinction between winner and loser prefigures *jus post bellum* analysis is to foreclose precisely the matters we should be interrogating—i.e., how victory itself is understood, produced, and consolidated.

Stahn and Jann K. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace* (The Hague: TMC Asser Press, 2008): 53-77. This proposal has found some resonance in legal writings: Gabriella Blum, ‘The Fog of Victory’, *The European Journal of International Law* 24:1 (2013): 391-421.

⁴⁷ General Tommy Franks, ‘The Meaning of Victory: A Conversation with Tommy Franks’, *The National Interest* 86 (November/December 2006), p. 8.

⁴⁸ Michael Walzer, ‘The Aftermath of War: Reflections on Jus Post Bellum’, in Eric D. Patterson (ed.), *Ethics Beyond War’s End* (Washington: Georgetown University Press, 2012), p. 37. Emphasis added.

At All Costs and in Spite of All Terror?

Setting this critique of *jus post bellum* scholarship aside, there will nevertheless be those who counsel that victory should be treated as simply another one of those concepts—such as, for instance, the ‘balance of power’—that just war thought has no business addressing. This section explores this proposition. It surveys two arguments both for and against engaging the concept of victory under the rubric of just war thought.

The first reason for addressing victory within just war thought is that, no matter what we wish, victory is an essential concept that cannot be avoided in any discussion of military matters. It is so intimately connected to warfare in the popular imagination that the two often appear symbiotic. We may recall in this respect General MacArthur’s observation that the object of war is victory, but also Prime Minister Winston Churchill’s May 1940 speech to the House of Commons detailing the Allies’ objectives in World War Two. ‘You ask, what is our aim? I can answer in one word: victory—victory, victory at all costs, victory in spite of all terror; victory, however long and hard the road may be; for without victory, there is no survival’.⁴⁹ Whether we like it or not, the idea of victory is deeply ingrained in the popular imaginary and not likely to be erased or forgotten anytime soon. It is too powerful a rhetorical motif to simply disappear or fade into desuetude. Additionally, any attempt to work around it is likely merely to re-code it. The point here, then, is that, rather than pretending it does not exist, or simply steering around it, just war scholars should acknowledge the inescapability of the concept of victory and engage it in a constructive fashion. To do anything else would be to continue ignoring the elephant in the room.

⁴⁹ Quoted in: Bond, *The Pursuit of Victory*, p. 142.

The second reason for pursuing this course is that if just war scholars turn away from victory, this would effectively mean surrendering this important concept to other actors, principally military strategists and planners. This is troubling because, as we have already noted in Section One, only a handful of these scholars incorporate a normative dimension into their accounts of victory in war.⁵⁰ As Heuser points out, this has had deleterious effects for how we think about winning wars, divorcing the pursuit of victory from the deeper considerations of justice, order, and peace that it necessarily evokes.⁵¹ Accordingly, by encouraging just war scholars to engage with victory, a concept that is all too often viewed as the monopoly of hard headed military thinkers, we might both ameliorate these effects and furnish a meeting ground for scholars from these ostensibly rival camps. Employing the concept of victory as a bridgehead between normative and strategic modes of thought would, it follows, go a long way toward establishing a long overdue and potentially fruitful dialogue between the followers of Augustine on the one hand, and the followers of Clausewitz on the other. This would presumably be beneficial for all parties. It would correct the tendency on the part of strategists to ignore the normative dimensions of conflict, while also nudging just war scholars to ensure that their analysis both stakes of and connects to the animating logic of war, the kinetic relation between military means and political ends.

⁵⁰ For example, Colin Gray's writings on victory almost completely bypass its normative element. Colin S. Gray, *Defining and Achieving Decisive Victory* (Carlisle, PA: Institute of Strategic Studies, 2002). Also: Colin S. Gray, 'Nuclear Strategy: The Case for a Theory of Victory', *International Security* 4:1 (1979): 54-87. Exceptions to this rule, strategists who consider victory's moral dimensions, include William Martel and Robert Mandel. Martel, *Victory in War*, p. 3. Mandel, *The Meaning of Military Victory*, pp. 53-69.

⁵¹ Heuser, 'Victory, Peace, and Justice', p. 7.

On the other hand, there are also good reasons for exercising caution when it comes to addressing the concept of victory within the just war rubric. The first is that the notion of victory presupposes a ludic or *agonal* conception of war. It is premised upon a view of war as akin to a game or bounded contest. Although once orthodox, this view of war elicits hardly any support in the modern era.⁵² Rather, the view of war as game has provoked widespread disdain. War is not regarded as a contest that one side can *win*; it is instead viewed as a human tragedy. We have already commented upon this view as it has been expressed by, among others, Liddell Hart, and Briant, but it is also the dominant motif in the war memorials that are dotted across the hinterlands of Europe and North America. Studies of these memorials reveal that they rarely invoke victory.⁵³ Most memorials function instead as sites of mourning that testify to the ‘catastrophic character of war’.⁵⁴ We could add to this the views of novelists (like Kurt Vonnegut and Joseph Heller), journalists (Peter Maass and Chris Hedges), artists (Pablo Picasso), and poets (Wilfred Owen and Siegfried Sassoon). This medley of voices reflects the widely held view that it is inappropriate to think about war through the prism of victory for it lends the impression that war is a game that can be won when in fact it is properly understood as a disaster for all involved. This is a powerful chorus that just war scholars would be churlish to ignore.

⁵² James Q. Whitman, *The Verdict of Battle: The Law of Victory and the Making of Modern War* (Cambridge: Harvard University Press, 2012), pp. 1-3.

⁵³ Alex King, *Memorials of the Great War in Britain: The Symbolism and Politics of Remembrance* (Oxford: Berg, 1998), p. 176. Alan Borg, *War Memorials: From Antiquity to the Present* (London: Leo Cooper, 1991).

⁵⁴ James M. Mayo, ‘War Memorials as Political Memory’, *Geographical Review*, 78:1 (1988), pp. 62-75.

The second and perhaps more fundamental issue is that the notion of victory sits uncomfortably alongside the value placed on restraint by just war scholars. Although the Greeks may have deployed a particular conception of victory to lock in *jus in bello* norms, victory can also be invoked to encourage the abrogation of the rules of war. Winning is all, the argument goes, and every means necessary to achieve it should be employed. Pragmatism is extolled and moderation derided. The issue is illuminated in a revealing passage from Sebastian Junger's 2011 account of the activities of a US Army platoon in Afghanistan. He writes that the advent of military technologies (like the machine-gun) transformed war from being an arena in which men demonstrated their prowess to a base form of mechanized slaughter.

In wars of that nature soldiers gravitate toward whatever works best with the least risk. At that point combat *stops being a grand chess game between generals and becomes a no-holds-barred experiment in pure killing*. As a result, much of modern military tactics is geared toward maneuvering the enemy into a position where they can essentially be massacred from safety. It sounds dishonourable only if you imagine that modern war is about honour; it's not. *It's about winning, which means killing the enemy on the most unequal terms possible.*⁵⁵

Redolent of Churchill's account of Allied war aims in World War II—victory at all costs and in spite of all terror—what this illustrates is that the ideal of victory has the propensity to undercut the emphasis on rules, restraint, and right conduct that is so central to the just war ethos.

⁵⁵ Sebastian Junger, *War* (New York: Twelve, 2011), p. 140. Italics added.

Conclusion

It can be asserted that the concept of victory is important, not adequately treated by just war scholars, and, as currently defined, a weak pivot or foundation for *jus post bellum* analysis in particular. What can be said beyond this? What, for instance, does victory mean in respect of just war? Should just war scholars devote their time to developing an account of just victory? The answers to these questions are not clear. As this article has demonstrated, victory is a troublesome concept when applied to modern warfare. There is, it follows, a temptation to argue for either excising the concept of victory from the just war vocabulary, or bidding to refine it. As one might expect, both options, to a greater or lesser extent, cancel one another out. On the one side, scholars inclined to purge the concept of victory from their just war analysis should be mindful that their efforts will more than likely simply end up re-coding it. On the other, scholars that lean toward developing victory as a substantive category of just war analysis ought to beware that this endeavour is likely to proliferate difficulties.

This result should not, however, be regarded as an impasse or dead end. Carefully observed, it can reveal a lot about the limits and potentialities of just war. How so? Asking questions about victory forces us to contemplate what just wars can and cannot achieve. In so doing, it compels us to confront the possibility that just wars can only rarely, if at all, yield victories in the fullest sense of the term. That is to say, only in the most exceptional circumstances could just wars produce a decisive—final and total—resolution to a conflict. Rather, the best that we can reasonably hope for from just wars is that they interdict egregious acts of wrongdoing. Accordingly, we might say that they are

properly understood, not as an active means of promoting justice and advancing the good, or as something to be celebrated, but as a remedial instrument that can at best put a temporary halt to the commission of injustice and forestall the worst from coming to pass. Asking questions about victory, then, reminds us of the tragic character of just war. As Augustine well understood, but as too many contemporary just war theorists are wont to forget, just war is not only a balm rather than a solution to the ills of the world, it is also symptomatic of them.

Our conclusion, then, is this. The notion of victory, understood in its fullest sense, is essential to but also in tension with the just war ethos. On the one hand, the ideal of victory is clearly presupposed by the idea of just war. For a war to be regarded as a just war it must be vital to win it, and it would be a non-sequitur to think otherwise. On the other hand, where the just war ethos emphasizes humility, temperance, restraint, and the value of limited and provisional objectives, the ideal of victory threatens to subvert this agenda by encouraging a dangerous 'eyes on the prize' disposition that discounts respect for constraints in war. The threat is evident, for instance, in Churchill's emotive statement that the Allied objective in World War Two was 'victory at all costs, victory in spite of all terror'. If, then, the discussion of victory is unsettling, if it hits a nerve, this is because it presses directly and sharply upon an uncomfortable truth, namely that the very idea of just war presupposes but struggles to accommodate the notion of winning. This is not something that should be swept under the rug. Rather, it is something that should be alighted upon and openly debated, for it is precisely the question of what winning means, and whether it is possible to win justly, that is at stake in Gaza, Libya, Iraq, and Afghanistan today.