

JUS POST BELLUM AND THE ENIGMA OF POST-CONFLICT SOCIAL RECONSTRUCTION

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Abstract: The resolution of conflicts and internecine wars across Africa has often proved enigmatic due to the failure to comprehend, articulate and activate an adequate framework for post-conflict reconstruction. Scholars like Laury Ocen, Olu Arowosegbe, and Elizabeth Mutunga admit that as seen in Sudan, Liberia, Sierra Leone, and other conflict-ridden parts of Africa, post-conflict peace building must become integrative and indigenous in its approach especially as it relates to women and the girl-child. This paper therefore attempts an interrogative study of the effects of a comprehensive and well-articulated framework for post-conflict reconstruction on conflict displaced women. It utilizes the notion of *jus post bellum* in dissolving some of the ethical concerns associated with conflicts and concludes that state owes a moral duty that necessitates critical interventions and the sustenance of justice on a legal and moral framework.

Keywords: *Jus Post Bellum*, Conflicts, Peace-Building, Moral Duty.

1. INTRODUCTION

This paper focuses on how *jus post bellum* represents a fundamental approach in the quest to resolve the problems of displacement and socio-political rehabilitation of war-ravaged states across Africa. It will extend Brian Orend's *jus post bellum* as an articulation of the duties essential in the process of peace building at the termination of war for the benefits of the displaced persons while also explaining how it serves as a means of strengthening the proposition that traditional just war theory suffers from 'the neglect of post war reconstruction, and so the international laws of armed conflict that has been derived from it reflect the sad state of affairs'¹.

It will also attempt to establish the significance of peace building in the furtherance of transitional justice as moral duties. In the final analysis, the paper highlights the steps that are considered ideal in the resolution of the problems of displacement as it concerns women and the girl-child in the determination of transitional justice.

2. AN IDEA OF POST WAR PEACE BUILDING IN AFRICA

The ideology underlying the thrust for peace building is fundamentally situated in the cognition of the fact that societies and states must be reconstructed since they often become dysfunctional or even fail practically, despite the existence of 'traditional mechanisms developed by the society to contend with social problems'² in the aftermath of any form of conflict. In this sense, peace building is considered essential to ensuring social cohesion and justice either as a result of the collapse of social institutions or as fallout of wars and other conflicts arising from constant and perpetual struggle for power within or without the societies and by extension, states. The import of peace building in addressing the problems of displacement in Africa is therefore made apparent in the quest to restore or entrench justice, social harmony and development.

The African continent presents itself as a ready to use template for the discourse on states riddled with history of conflicts and civil wars. The continent is dotted with wars that have perpetually engendered the collapse of the state apparatus and institutions leading to the pertinent need to engender peace for reconstruction. In most of the cases across Africa, conflicts and wars have been seen to have led to a total or permanent failure of state where all the institutions of state have been dismantled. In its aftermath, it ensured a situation where ‘the newly won peace poses challenges to the reconstruction of post conflict states’³ as exemplified in countries like Somalia, Sierra Leone and even, Liberia.

Jeremiah Arowosegbe (2011) argues that the difficulty in post conflict peace building in West Africa particularly and the whole of Africa, is traceable to the causes of the conflict itself because these conflicts fail in redressing their causative factor. He claims that the ‘collapse of public authority and the descent of the society into battlefields’⁴ which are typical of most post-colonial states across Africa, are signals towards state collapse that must be rectified before the attainment of social reconstruction. In the case of Sierra Leone, social reconstruction is deterred mainly due to its polarization as a result of sectoral politics and the ‘appropriation of lumpen violence and thuggery by the political class, a process that undermined security and paved way for the emergence of armed marginalized youths whose activities crippled and undermined government in a remarkable way’⁵

Syria, Sierra Leone, Somalia and Libya remain case studies and points of reference in the discourse on the articulation of the form of social reconstruction being proposed here. Their apparent post conflict situations amplify the need to bridge the gapping inadequacies of the just war theory and at the same time beckons on the need to apply a purposeful reconstruction that assuages all forms of trepidation, fear and intimidation arising from war, a social reconstruction approach that underscores the need to protect the vanquished by maximizing the distribution of social welfare fairly to achieve social justice while at the same time forestalling the possible recurrence of all forms of aggression from within or outside the states.

In a bid to provide a viable solution to this endemic problem, Jeremiah Arowosegbe opines that ‘there is a need for detailed studies of post-war conflict transitions on the continent with a view to arriving at viable options for reconstructing states and societies in ways that enhance inclusive and sustainable peace, security and development’⁶. This submission apparently underscores and encapsulates the basic propositions contained in Brian Orend’s thought on how to ensure post war justice. Like Orend, Arowosegbe identifies factors such as ‘widespread economic problems, identity politics and ecological stress’⁷ leading to displacement as the issues that any viable attempt at post war social reconstruction must deliberately and prominently address.

In the recognition of the peculiarities of the conflicts across African states, Arowosegbe raises objection to the idea of a one size fits all approach in post war reconstruction especially when we consider the reason why social reconstruction is desired, by claiming that most post conflict rehabilitation programmes have been conducted with little critical self-reflection on the underlying assumptions and structural biases of post-conflict peace building efforts. He however submits that social reconstruction is attainable if the ‘disconnect in the orientations of policy makers and practitioners as regards security priorities and the actual development needs of the societies in question’⁸.

It can be inferred from the above that the importance of social reconstruction is suggested in the notion that there are many varying or numerous methods that could be deployed in the attempt to reconstruct an ailing society that has its perpetual existence threatened by problems arising at the end of war which may include poverty, crime, corruption insecurity and famine. G Tusabe (1999:6) explains that ‘social reconstruction is intrinsically connected to ethics and the establishment of justice in such a manner that it facilitates the operation of a morally motivated and guided civil society’⁹. He affirms that the essence of ethics in social reconstruction is essentially to ‘support the principles of solidarity and subsidiarity by which the various levels of the society can cooperate in the achievement of human fulfillment’¹⁰.

G Tusabe further explains that in relation to war and displacement, it is important to note that social reconstruction is underscored by a pertinent need to comprehend the pivotal role of social justice as exemplified in the fact that ‘it extends the principle of liberty, equality, justice and freedom to the widest possible set of institutions and people’¹¹. We can therefore conclude that there is a cogent nexus between the guarantee of individual rights, social justice and social reconstruction in states that have recently been traumatized by large scale conflict or war.

In relation to the aforementioned, Olusegun Oladipo extends the conceptualization of social reconstruction as including ‘cultural renewal, social coordination, state rebirth, democratic governance and economic advancement along with the

values of justice and human dignity¹² fits in almost perfectly with the notion of jus post bellum and post war reconstruction which has dominated the discourse in the earlier part of the research paper. Oladipo explains that the quest for social reconstruction must be concerned with the achievement of concrete goals which includes 'social integration, equality of access to socio-economic power, fairness in the distribution of benefits and burdens as a means of minimising areas of conflict in the society and better social services as a means of creating conditions of self-fulfillment and developing non-coercive means of securing consent'¹³.

These positions held by Olusegun Oladipo and Tusabe which are of course independent of one another, compel us to admit that the essence of social reconstruction is the entrenchment of welfare and peace building at the aftermath of war through the instrumentation of the state as contained in the Brian Orend's *Jus post bellum*. Tusabe further explains that to attain social reconstruction, the state is expected to 'actively devote itself, not only to the protection of the weak, but also developing conducive social and legal atmosphere by which civil society can effectively function'¹⁴ even in the aftermath of gruesome warfare between states.

Jon Elster proposes an idea of post war reconstruction premised on the importance of the appropriation of the resources of the state at the end of a war. Elster foregrounds the importance and possibility of post war reconstruction on the effective utilization of resources within the state in a formal arrangement that ensures that genuine entitlements and claims are processed in a manner that intensifies justice. Elster argues that

There are three criteria for the allocation of public resources in post war reconstruction: entitlements, created by past titles or past sufferings which are the basis for reparation claims against the state, present needs, which may or may not be directly linked to violence and destruction caused by war, and economic development, which aims to increase productive outputs in the post-war period, and ultimately to spread economic benefits widely¹⁵

Elster's theory of social reconstruction begins from the stage of reparation and the use of resources without necessarily giving prominence to the role of justice. Elster affirms the essence of post war social reconstruction but his outlining begins with pertinent concerns ranging from the need to satisfy entitlement of the displaced or vanquished which existed before the war. For Jon Elster, these entitlements are primarily in form of reparations and resettlement, the recognition of present needs that are resultant effects of the displacement or wanton destruction of properties during hostilities and a more important need to focus on the resuscitation of the economy of the states which had been incapacitated by war. The resuscitation of the economy in Elster's theory is necessitated by the undue diversion of resources to the prosecution of warfare or the desolation of industries at the instance of invasions or war engagements.

The notion of entitlement is clearly a basis for the vindication of rights that have been revoked by war because the entitlements represent all the material possessions and privileges that belonged to the citizens in the period before war broke out. In this sense, entitlements are also the basis for claims in form of reparation because they would remain intact within the confines of the displaced had the war not broken out.

In this context, present needs refer to the immediate provisions that are expected to provide immediate succor to the displaced persons and war victims. He claimed that these needs may not be directly linked to the war itself but that they arose in the quest for reconstruction. It is succinct to add that post war social reconstruction must begin from a standpoint that recommends the entrenchment of principles that discourage states and actors from further occurrences by imposing punishments where necessary and consequently establishing a mediatory approach which seeks to spread the losses of war evenly by postulating the need for 'a general imperative to distribute the burdens of material reconstructions equitably'¹⁶ and recognising the need to ensure that conditions that may lead to social reconstruction are concretised while giving recourse to the plight of the displaced victims of war who are mainly affected by the core issues of post war reconstruction.

In *War's Aftermath: The Challenges of Reconciliation*, Trudy Govier also affirms the central idea contained in Brian Orend's *jus post bellum* as fundamental to the discourse on social reconstruction. she claims that the insistence on the importance of reconstruction in the determination of a just war completes the just war theory primarily because it encapsulates the plight of the vanquished and the significant need to address it through post war reconstruction especially 'since the records of war are often written by the victors, they are often silent when it comes to the rehabilitation of the victims by arguing that the intention of the war was not to originally decimate the vanquished'¹⁷.

Unlike Orend's proposition of a war crime court that apportions blames, seeks conviction for the crimes committed during war and consequently enforce those punishments by 'the instrumentation of a tribunal that can rise above all sentiments by apportioning punishments, remonstrations and recompense'¹⁸ as the required and appropriate in the furtherance of social reconstruction that is, the entrenchment of justice after war. Govier raises questions as to whether forgiveness as against revenge, is enough basis for the restoration and vindication of rights. She answers by stating that entrenchment of the principles of international justice and the reaffirmation of our deepest values with regards to justice whether domestic or international should not be derived from punishments or some other sort of revenge at the termination of war.

For Govier, the expediency of the war crime trial should not be premised on the need to seek revenge or any form of vindictiveness rather it should constitute of an attempt at seeking and exploring forgiveness on the side of the aggressor and the vanquished. She argues further those punishments by war crime courts will only 'deepen resentments' between the warring states because punishments serve the singular purpose of legitimizing revenge and not necessarily retribution as suggested by the advocates of a war crime trial that is typified by the demand for punishments for wrong done during war.

Instead of punishment, Govier argues that seeking and encouraging forgiveness engenders social reconstruction better and also that it is the appropriate step to take immediately after the termination of war because it helps the offended party to relinquish anger and rebuild trust, while on the part of the aggressor state, there is a form of remorse that makes reconciliation or conciliatory attitudes possible in the pursuit of rehabilitation and reconstruction. In essence, Govier's theory of social reconstruction is premised on forgiveness and conciliation as exemplified in her affirmation that it is a better proposition when it is compared to the problems associated with securing conviction and meting out punishments to war criminals.

In the light of the afore mentioned we will further Orend's argument by examining his propositions as a basis for social reconstruction in the sense that it entrenches the basis of the welfare of the displaced and the states that is, the individuals and the states that have suffered loss in the course of war by juxtaposing it with the prescribed standards for social reconstruction.

3. MORAL DUTIES AND BENEFICENCE

The arguments sustained in this chapter on post war justice resonates the basic offerings of beneficence in both theoretical and practical terms especially when we consider the fact that displaced persons are often left at the mercy of arbitrators and sometimes the victors in the aftermath of war. It is therefore permissible as an issue of morality, in this case beneficence that displaced persons and states at the declaration of armistice are to be treated in such a manner that they are not subjected to further economic and political decapitation.

In ethics beneficence refers to actions or rules aimed at benefitting others. It involves the act of charity, mercy and kindness or doing good to an individual, it suggests that as moral agents we should always act in ways that benefit others. Its prevalent examples can be seen in acts of charity, social welfare engagements that are non-profitable and even the provision of relief and shelter for displaced persons although there are limits to extent to which states can go in providing acts of beneficence. In the event of transitional justice, beneficence can be utilised in reference to all the actions directed towards providing comfort for war ravaged states and displaced persons and it is being deployed in that sense here as a means of showing its import.

It presupposes the need to undertake beneficial actions as a means of assisting vanquished state to attain their post war objectives while in another sense it is used as a means towards egalitarian goals of retaining a social order that benefits all the members of the global community in the creation of a form of social equality which alleviates the plights of people who are disadvantaged by certain factors outside their control especially those arising as a result of war. In post war reconstruction, beneficence is deployed as a practical ethical principle that demands a favourable treatment of the victims of war whether as displaced persons or prisoners of war.

It is utilised in two senses here. Firstly, with the aim of showing that states hold certain obligations in the process of social reconstruction to the displaced and their states. As an ethical principle, it is used within a context that refers to actions and conducts that are intrinsically altruistic and particularly, undertaken for the benefit of others as a way of ensuring that justice is entrenched at the termination of war. Secondly, it preempts the fact that these states hold both positive and negative duties in ensuring that they provide for and protect displaced people from any form of harm or undue discrimination.

It furthers Orend's proposition by ensuring that host states and the United Nations which serves in most cases as the arbiter in war crime and related issues, do good and maximises good in their settlement of the disputes between states as an aftermath of war and more importantly, their dealings with displaced persons while at the same time ensuring that these states are not pushed beyond their elasticity in their obligation to do good as thereby pushing them beyond their level of tolerance. In their efforts to undertake actions that are beneficial to displaced persons, states are expected to set limits to their level of tolerance so as not to expend all available resources in fulfilling their obligations at the detriment of their domestic needs.

On the other hand, the notion of beneficence is reinforced by Thomas Pogge's notion of 'refraining from harming the global poor'²⁶ because it explains that by affirming that states have a duty to ensure that it dissolves all forms of social exclusion on behalf of the displaced, it means that beneficence can only be achieved when 'distributing social benefits to meet their needs, entrenching the cogency of beneficence in the explanation of the efficacy of negative duties in the establishment of global justice and by stating that strong states owe a duty of sharing the burden of the plight of displaced people while also strengthening the social institutions for social reconstruction'²⁷. The importance of beneficence is thereby shown in the relationship between economically stable states and those that are just emerging from wars and conflicts. In the proposition of *just post bellum* as a social reconstruction theory, it is appropriate to state that the Brian Orend's just war theory imagines and ingrains the basic connotations of beneficence as essential to social reconstruction.

4. OREND'S PROPOSITIONS AS ESSENTIAL MORAL DUTIES IN POST WAR PEACE BUILDING

In order to further affirm the importance of Brian Orend's *jus post bellum* in post war peace building, it is instructive that we underscore the peculiarity of its propositions. It is also imperative that we examine how these propositions present a better approach in the termination of war and post war reconstruction as a matter of moral duties. This will be done by showing that in its unique approach; it underscores the importance of ensuring social harmony, entrenchment of justice, political reconstruction and economic development as positive duties of states requisite for the discourse on morality of war.

PROPOSITION 1: THE DUTY OF RESTRAINING CONQUEST FOR SOCIAL HARMONY AND POLITICAL RECONSTRUCTION

The first essential duty is the articulation of the appropriate approach to the immediate concerns that ensue with the termination of war. It proposes that there must be cogent focus on the total quelling of all sort of aggression and the restoration of the sovereignty of the vanquished states within its political space as seen in the case of Kuwait after its undue invasion by the Iraqi government under Saddam Hussein. It argues that a total and complete rolling back of all forms of violence must be the absolute priority of the parties involved in the armistice. As a point of departure from other theories, this very first proposition for post war justice and peace building in *jus post bellum* emphasises the importance of ensuring that belligerent states are restrained from claiming conquest while the vanquished state is accorded its appropriate political status in international relations as a prelude to political re-organisation.

Unlike Jon Elster's classification of the restoration of entitlements as the first stage in post war reconstruction, here immediate restraint of undue aggrandizement and attribution of properties, territories and other benefits resulting from war is proposed as a fundamental derivative of the proper termination of war in the search for social reconstruction. It is also argued that the first step immediately after the belligerent state is restrained is the political re-organisation or the immediate revamping of the machinery of state in the vanquished state through the intervention of the United Nations and other parties to the armistice. This is considered germane primarily because of the exigency of a governmental framework through which international relations will take place on behalf of the vanquished state.

The proposition goes further to affirm that all 'the unjust gains from aggression must be eliminated after the termination of war'¹⁹ or transferred to the original custodian in order to initiate and establish a gradual process of trust and social cohesion aimed towards an effective political reconstruction. This suggests the notion that when the sovereignty of the vanquished state is restored and its political leaders are given support to continue the administration of the state by engaging in internal and international relations with other states, social cohesion begins to unfold within the state and in turn social reconstruction becomes more endearing and attainable. It is therefore clear that it projects the importance of the restoration of justice and entrenchment of social harmony through rolling back aggression and the relinquishing of unjust gains accruing to the

aggressor state as a result of the war before all other considerations or negotiation. This particularly intensifies the idea that the quest for social reconstruction depends largely on stopping all forms annexation or intimidation based on the idea of conquest by the states.

To ensure that the restraint becomes effective, the aggressor state might also require some demilitarization and political rehabilitation, depending on the nature and severity of the aggression it committed and the threat it would continue to pose in the absence of such measures²⁰. This is considered obligatory in the sense that there is a pertinent need to assuage the fears of the victims of war against recurrence and also to ensure that there are 'constraints upon the outbreak of war in the future'²¹. It is suggested that to ensure that this measure becomes effective especially in the face of the need for the installation of peace after the demilitarization. A procedure for weapon inspection by the United Nations to determine whether the aggressor state portends short- or long-term threat to international peace and security within the region is also considered quintessential in the process of post war reconstruction.

With the first proposition, it is clear that transitional justice as a prelude to post war peace- building must begin with the need to ensure that aggression between the warring states has been put to an end. This is done as a way of restraining further pillaging and annexation of territories after truce has been jointly agreed upon and declared. It also follows that restraining conquest effectively ensures the restoration of sovereignty of the states involved in war. By extension, it will also ensure that displaced persons, combatants and non –combatants are granted safe passage across borders to their respective homes without any fear of further violence or intimidation thereby giving attention to addressing all other the ancillary issues linked to post war reconstruction which includes the deepening of social harmony, economic advancement, democratic governance and human dignity as core values in the attainment of social reconstruction.

It is also noteworthy that when conquest is restrained, the re-organisation of the political structure of the vanquished state becomes a critical and fundamental requisite in post war reconstruction in the same way that social harmony at the termination of war underscores the end of all forms of hostilities between the warring states. The restoration of the sovereignty of the state with all the objects of state rights after war especially as the first concrete stride in quest for social reconstruction makes social reconstruction more endearing and attainable. Apart from the fact it is a major prerequisite for social reconstruction after war, restraining conquest is also important in the creation of a jointly agreed procedure for the entrenchment of justice which includes the agreement that the aggressor state be made to contribute financially to the rehabilitation and reconstruction process typified by the entrenchment of justice.

It is important to note from the above that if war involved the invasion and unjust taking of a part of the country, territory or on a larger scale or a form of irredentism, to ensure a proper termination of war and the entrenchment of social reconstruction unlike the other theories, the conditions for post war justice requires that the aggressor state that has unjustly invaded a territory outside its borders must be driven out by the joint efforts of allied states as seen in the Iraqi war or any other agency employed for the said purpose. Thereafter, a secure border with mutually consented agreement between all parties will be reestablished as a prelude to the political reconstruction of the annexed state.

PROPOSITION II: THE EFFICIENCY OF WAR CRIME TRIALS IN THE ENTRENCHMENT OF JUSTICE AS A MORAL DUTY

With the second proposition, it becomes apparent that all forms of post war reconstruction must rely practically on the idea that when punishments are meted out to the raw commission of aggression and violence in the course of war it will deter for future recourse to war. It also asserts that when punishments and indictments are given to war criminals compensations must also be awarded to the victims for at least some of the damages done to the state. As a theory of reconstruction, it demands that there should be a form of reparation for the cost incurred during the war since it was fought solely as a means of restoring violated rights.

For the purpose of vindication or restoration of rights, the second proposition suggests that there must be war crime trials to punish the instigators of aggression for the crime of violating the contents of *jus ad bellum* and *jus in bello* which may include unjust declaration of war and or prosecuting wars without ensuring that it conforms with the prescribed moral and legal frameworks. In the dispensation of their duties war crime tribunals are to be genuinely concerned about post war reconstruction to effectively take off. Their responsibilities are considered central to the functionality of the second proposition especially after all undue gains of war has been relinquished by the aggressor as recommended in the first proposition. They are therefore established to try all perceived perpetrators of war crimes, uphold the prescribed standards

of the rule of law and proclaim justice to the victims of war that have been unduly exposed to all sorts of dehumanisation and terror associated to war.

The establishment of The Commission on The Responsibilities of the Authors of War and Enforcement of penalties at the end of the First World War for instance ‘was ineffective in the conduct of its duties primarily because of its composition and the numerous political interests represented in the commission’²¹. Although it was established to punish war criminals and also encourage restraint on the part of political leadership by prescribing retribution and reconstruction of affected states, in the particular case of Germany the responsibilities for the prosecution of war criminal were eventually ceded to the Supreme Court of Germany at Leipzig which failed to make any meaningful impact in terms of social reconstruction. Subsequent war crime trials at the end of the Second World War held in Nuremberg and Tokyo were partially effective having learnt practical lessons from the mistake of Leipzig. It is important to note that the mistakes of these tribunals were conditioned and instigated by the overt politicization of the process and inconsistencies in the sentences secured by the tribunals

Unlike the halfhearted attempts to institute international justice by the comity of states against the political leadership of Germany at the end of the First World War which was flawed by overt concerns for the stability of the newly formed German government above the principal concerns for the entrenchment of peace and justice and the inconsistencies of the Nuremberg and Tokyo tribunals of the Second World War as discussed briefly above, Brian Orend affirms the importance of a war crime tribunal in post war social reconstruction and the prevention of the recurrence of war as seen at the end of the Iraqi war. He explains that

Following the war, the UN established a compensation fund that was financed by a gradual lifting of oil embargo that was leveled on Iraq after its initial attack on Kuwait. Under the terms of the lifting, 30 percent of the oil export sales of Iraq were allowed to be kept by the government, with the stipulation that such monies be employed to provide humanitarian needs (foodstuff and medicine) of its people. The remaining 70 percent was split between 1. The compensation fund; 2. A special fund designed to pay for the expenses of on- site UN weapons inspectors and 3. An escrow account which was to be handed to the over to Iraq once full compliance with terms of settlement was achieved²²

From the above, it is clear that as suggested in the second proposition, a major step that is definitive of the conventions of war termination and social reconstruction is the effectiveness of war crime tribunals. It is in fact a watershed in Orend’s discourse on post war reconstruction because of the insistence on the importance of a function and apolitical war crime court that is able to equitably proclaim convictions and award compensations at the same time. The establishment of the tribunal must presuppose the belief that it will carry on its duties in a manner that it institutes a legacy of peace and social development that endures practically based on the judgments and convictions it passes. This is in fact considered a fundamental reason for its suggestion as part of the requisite conditions for social reconstruction after war because it is seen as a rectification of the failure of ‘the current international legal regime on war crimes which allows for the establishment only of ad hoc war crimes tribunals that allows many wars to go unpunished’²³.

This second proposition places the practicability of post-war reconstruction on the establishment of a permanent court by the United Nations for this purpose. The establishment of the court will engender long term benefits which includes ‘a consistent judicial system which enables the prosecution of all war crimes in all wars’²⁴. It also suggests that for post war reconstruction to be effective, the international judicial system that is jointly approved by all parties to the United Nation Treaties on war must be allowed to function on a permanent basis to prosecute all war crimes without any inhibition. If well constituted, it presupposes a systematic benefit for the global community with the operation of an impartial international judicial system ‘based on rules of law that are reasonable, impartial and applicable to all’²⁵ and also one that contributes to global peace and the reduction of war and aggression without necessarily curtailing national sovereignty. Likewise, it will also serve the purpose of deterrence to would- be war criminals if they know they will themselves pay a personal price for their crimes.

From the foregoing it is evident that it stands in contrast to Jon Elster’s theory, because this proposition makes it evident that the enforcement of the laws of war for the entrenchment of justice and rights vindication is the most viable approach in restoring social order at the end of war if it is pursued using the appropriate constructs. It is also exemplifying the important argument that to have an effective post war reconstruction, the establishment of a permanent war crimes court is *sine qua non* because in selected cases like the Iraqi war, it has prompted belligerent governments to honour their

commitments to the core values of United Nations of ensuring peace, security and human rights. The cogency of a world crime court is also prominently shown in how it has evidently abated the continuous commitment of war crimes while at the same time enhancing peace by recommending punitive measures for erring states across Africa especially after the Gulf war.

In essence, the suggestion of a better constituted and more effective world war court for war crimes and crimes against humanity places Brian Orend's *jus post bellum* in a pole position ahead because it prescribes the much-needed compelling basis for the protection of human rights through the effective functioning of a war crime court and more importantly, it paves way for the institution of social reconstruction at the termination of war.

Finally, the prosecution of war crime trials through a properly constituted tribunal or court is a germane proposition for the perpetuation of social order after war. It pushes the vista of international relations and conflicts into the sphere of international justice as a condition for the attainment of post war reconstruction. It also emphasises the key role of impartial justice as against diplomacy in resolving dilemmas at the termination of war thereby ensuring that the moral benefit of justice is proportional and not seen as exploitative while at the same time serving its deterrent purpose.

PROPOSITION 3: ECONOMIC RESTORATION AND THE DUTIES TO THE VANQUISHED

Beyond the debates on restraining conquest, political reorganization, vindication of rights and compensations through a war crime court is the question of economic restoration of the vanquished state. The third proposition advances the importance of providing a strong basis for the economic reorganization of vanquished states and the notion that belligerent states are to contribute a quota to the economic development of vanquished states. It expects and suggests that appropriate support should be given to a process of economic reconstruction as a means of ensuring that the effect of the war on the economy of the country is gradually eradicated. It also amplifies the need for external assistance in form of foreign aids, importation waivers and other kinds of economic patronage are made available not only as a means of reducing the impact of war but also as part of a deliberate process to rebuild and sustain the economy of states emerging from the ruins of war consistently over a specified period of time.

The focal point of the third proposition is the idea that redressing the wrong done to the victims of war must include a deliberate effort towards reconstructing their economy which must be approached primarily as a matter of duty owed these states. It includes the argument that there should be no limitation to the extent the aggressor state is expected to go in assisting the vanquished state in restoring its economy to normalcy. Brian Orend creates a linkage between the need to give compensations to the vanquished state that has been hugely made desolate as a result of invasion and the promotion of social harmony and economic development within its border in the right proportion that ensures that war does not recur. Apart from ensuring that war does not recur, it will also fulfill the moral prescription for social reconstruction.

It is important to clarify that the economic restoration of states in the post war era is not be categorised as parts of the punishment for violating *jus ad bellum* and *jus in bello* because the violation of rights during war is not exclusive to the victors alone, instead it should be seen as the concluding phase of the post war reconstruction. The restoration of the economy of war ravage states is to be considered as a major challenge and a task that should be approached with the view to providing support and policies that the aggressor state will be willing to be part of. These policies must include the availability of subsidies and institutional frameworks that will give rise to the inflow of foreign assistance and a steady improvement in the standard of living of the citizens of the state.

It is also important to note that the third proposition consistently calls on the United Nations to encourage the creation of funds to assist post war states towards the provision of employment opportunities which will also help in consolidating the peace process through the integration of erstwhile combatants as skilled and unskilled workers in the emerging industries that will drive the new economy into prominence.

5. RECOMMENDING OREND'S THEORY AS A VIABLE ALTERNATIVE FOR PEACE BUILDING IN AFRICA

Firstly, the viability of Brian Orend's just war theory is exemplified in the significant attention it concentrates on resolving the antecedents of conflicts or war. The argument that wars are to be considered just only when all conflicts have been genuinely terminated and the rehabilitation of both states and its displaced persons have commenced with the sole aim of achieving social reconstruction is instructive. With the setting out of the procedures for the termination of wars, *jus post*

bellum moves from the establishment of just war principles into the recommendation of the procedures through which a just society can be established and how to drive the economy of war-ravaged states. Unlike other positions, *jus post bellum* incorporates and provides answers to the questions of appropriate termination of war, rectification of wrongs done through the war crimes court, the institution of care for the displaced and support for the resuscitation of the economy of war-ravaged states in a bid to effectively achieve transitional justice.

Secondly, it establishes the importance of a legal consequence for beginning and prosecuting a war illegally. It affirms the importance of legal inclusiveness that addresses the perceived anomalies in war. It proposes a basis for the establishment of a more effective judicial system that will replace the existing international crime courts. The proposed judicial system is expected to set the parameters for post-war reconstruction by adjudicating on all claims arising from the conducts of states, political leaders and combatants at the beginning and during the prosecution of war. It affirms that unlike the judicial system that prosecuted war crimes at the conclusion of WWII, there is the need to institute a more effective court system and procedure that is depoliticized for the effective application of justice and award of compensation after war.

The viability of the theory is also seen in the proposition of the need to demand rectification of war crimes and all other forms of rights violation in the course of war. By demanding rectification, the theory explicates the importance of punishment as deterrence while at the same time complementing the arguments for forgiveness and conciliation in Trudy Govier's post war reconstruction theory. As a post war reconstruction theory, the theory begins appropriately because it accentuates the need to institute transitional justice and reforms that are typical of an appropriate post war reconstruction theory. This is done by explaining the importance of ending violence immediately armistice is jointly declared by all parties to the war.

This is considered important in the sense that the theory encourages an effective obliteration of any rancour that could spark conflicts and a resort to full blown war when they are not properly quelled and all dispositions to violence and claims of conquest restrained. Because of its demand for rectification, it addresses the disorderliness created by war by proposing a gradual transition into a just state that is built on the necessity to punish crimes committed during war. It also deploys rectification in the process of peace building by assuring that when priority is accorded the punishment of war crimes, social reconstruction of vanquished states will be more endearing. It affirms the necessity of proportional punishment when there is a breach of international protocol by a state involving the violation of rights of a state or its citizens as a means of ensuring that breaches in international relations are treated as international crimes.

Thirdly, it advocates a kind of market inclusivity that appropriates the responsibilities of economic restoration of post war states and the question of rehabilitation and support for political reorganization in the transitional period as a joint venture to be facilitated by the victor state, international bodies and the vanquished state through the utilization of human and natural resources.

It also reinstates the fact that political rehabilitation is central to post-war reconstruction because it helps to organise and set the political machinery of states in motion and at the same time provide legitimacy for political leaders that can negotiate or take decisions on behalf of the vanquished state as it strives towards reconstruction. The theory creates a basis for the victor states to contribute to the socio-economic development of the vanquished state. It ensures that there is a responsibility on the part of the belligerent state to take up environmental and economic projects towards the reconstruction of vanquished states.

In addition, *Jus post bellum* provides us with a detailed explanation of how wars are to be fought and terminated lawfully. It is a combination of thoughts on international humanitarian law as it affects displaced persons and a practicable contribution to international human rights especially when a state invades another and violates its sovereignty and rights of the citizens. It serves as a template for the comprehension of the roles of international organizations in the termination of wars and the responsibilities of all the parties to war. It elucidates the importance of peacekeeping and peace building while at the same time highlighting the shortcomings and challenges facing institutions such as the United Nations in the area of international relations and arbitration and consequently advocating a stronger and independent court process.

Finally, it creates and explains a moral, practical and legal framework within which post war activities can be carried on with the view of ensuring that post-war reconstruction takes place and all legitimate claims and entitlements are settled.

6. CONCLUSION

It is instructive that we admit that wars are inevitable in human society and also that wars can be fought and terminated justly within a proper legal and moral framework. It is also admissible that a just war is determined by moral considerations at the end of war, and not necessarily by a recourse to the *status quo ante bellum* that is, a return to the original situation that was in place before the declaration of war by states since the '*status quo ante bellum* is the same situation that precisely led to war'²⁸. In essence, this section concludes that the appropriate goal for a justified war is justified peace which is 'a condition one cannot justifiably alter by war'²⁹ but through a resolution of all conflicts, rehabilitation of the victims of war by ensuring that the harms done during war are not only identified but rectified through the provision of answers to questions of economic restoration and transitional justice as a moral duty.

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