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Master's Thesis of  
Political Science and International Relations

Rethinking Jus Post Bellum:  
A Comparative Perspective  
in a Civil War Context

Jus Post Bellum에 대한 재고:  
내전 맥락에서의 비교적 관점

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Graduate School of Political Science and  
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## Abstract

In recent years, although not exhaustive, there is considerable convergence in Just War literature to imply strong support for an emerging set of *jus post bellum* norms. However, the resurfaced moral concept of *jus post bellum* (justice after war) has mainly developed in Western Just War tradition, and its specific rules have been proposed and interpreted as particularly suitable for wars between states. This study focuses on the contents of *jus post bellum*, specifically when applied in a civil war context, and how can Chinese tradition of war ethics contribute to the *jus post bellum* in such a context. I first review the extensive existing proposals concerning the whole framework of *jus post bellum* and sort the principles into three classes and present a discussion of the ethical rationale behind each principle. Then I explore what a just peace should be like in a civil war context and argue that the principles concerning the morality of transitioning away from war are more pertinent for peacebuilding in the aftermath of a civil war. After reviewing the classical Confucian position on war ethics, I further examine the neo-Confucian philosopher, Wang Yangming's *jus post bellum* ideas and practices to uncover its contribution to the *jus post bellum* framework for civil war. In brief, this study offers a new analytical perspective and ethical rationale to understand and underpin post-war justice.

**Keywords:** jus post bellum, civil war, just war theory, Chinese war ethics, Wang Yangming

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# Introduction

*Jus post bellum* (justice after war) has been generally accepted as the third component of Just War tradition and is closely connected to the other two branches of just war criteria, *jus ad bellum* (justice of the resort to war) and *jus in bello* (justice of conduct in war). But there is no consensus about the contents of its specific rules. Scholars often proposed their own versions of *jus post bellum* principles based on different ethical rationales. And the *jus post bellum* frameworks that Just War theorists have offered are more applicable to wars between states. Many of them have mentioned the violation and restoration of sovereignty. And they often try to apply the framework to the U.S. behaviour in Iraq. However, contemporary wars are increasingly not fought between states but are wars involving mainly one particular state's affairs. (Murphy & Radzik, 2013)

Another problem is that war ethics has been studied mostly from a Western perspective, all the more so when comes to the newly emerging *jus post bellum*. Singh and Cordeiro-Rodrigues (2020) point out that a comparative view of the morality of war seems urgent since the rules of war are a global concern. When we explore war ethics as a set of principles or restraints which are universally applicable, it is necessary and instructive to include perspectives from other cultures. Therefore, a Chinese view of just war may have implications for dealing with past and future wars participated by China or Chinese actors, and the rationale and value behind it can be a complement to Western approaches to construct a more universal and inclusive Just War Theory. As Johnson (2015, p.ix) contends, "examination of its normative traditions provides a critical window for a deeper understanding of the values found there, how they have been expressed in the historical self-understanding and development of that culture, and creative reflection on what they may imply for the future."

This study will be a preliminary to fill these gaps. It will focus on the contents of *jus post bellum*, specifically when applied in a civil war context, and how can Chinese tradition of war ethics contribute to the *jus post bellum* in such a context. There is extensive existing literature concerning the whole framework of *jus post bellum*, but overall, their results are incoherent and quite confusing. I contend it may help to clarify these debates if we distinguish different types of war. The existing literature has not fully addressed the civil war situation, which could be a starting point to rethink *jus post bellum*. And the idea of introducing Chinese war ethics would contribute a new analytical perspective and ethical rationale to understand and underpin post-war justice.

In the first chapter, after a brief discussion about the nature of the *jus post bellum* concept, I will investigate its contents by separating and grouping various contentions about *jus post bellum* principles following Murphy's (2015) way of classification. The contentions will be roughly sorted into three classes: 1) the morality of transitioning away from war, 2) the morality concerning how to deal with the violation of *jus ad bellum* and *jus in bello*, and 3) the morality of reconstruction. Then under each sort of principle, the underpinning philosophical rationales will be discussed.

In the second chapter, I will begin by reviewing both Just War and international legal literature to discuss the necessity and possibility of applying *jus post bellum* to evaluate the morality of a civil war, in which conflicts occur mainly between the government of a state and its internal insurgent group(s). Then I will inquire about what a just peace should be like in such a context to provide a theoretical foundation for a set of *jus post bellum* for civil war and conflict. The just peace for civil war is in some ways more difficult to achieve and keep than international conflicts, for "...after a civil war, former enemies have to live together once again,

sharing a common territory and political system, and often a culture and identity as well.” (Quigley, 2019, p.1) I contend that although the three sets of *post bellum* issues mentioned above are all important, the first class is more related and has more binding force if the previous belligerent parties in a civil war aim to achieve a lasting peace.

In the third chapter, from a perspective of cosmopolitan political thought, I will firstly review the Confucian war ethics, and then explore the neo-Confucian philosopher, Wang Yangming’s idea about post-war justice from his military practice and the contents of his public instructions. Wang is worth noticing among all the Confucian scholars for his critical inheritance and innovation of the Confucian war ethics, especially his attitude of giving equal importance to the justice before, during, and after the war. His thoughts and practices in his three main military exploits will be detailed in depth below, which I believe on the moral dimension, can be instructive to war ending and peace restoration in a civil war context.

I expect this study to improve our understanding of *jus post bellum* and the whole Just War Theory in two respects. Concerning the contents, it should include approaches from other cultures, and each Just War criterion will become richer and more nuanced in meaning under a dialogue between different traditions of war ethics. Concerning the scope of application, after some revision of its criteria, it could also be applied to a civil war context, and political borders may be irrelevant, leading to a more cosmopolitan theory of Just War.



# Chapter 1 Jus Post Bellum

In this chapter, I will investigate the contents of *jus post bellum*. The existing proposals of *jus post bellum* principles will be roughly sorted into three classes. Here I will mainly follow Murphy's (2015) way of classification. Murphy contends that the *jus post bellum* is comprised of three sets of rules: the first is the guidance on the morality of transitioning away from war, the second is the morality concerning how to deal with the violation of *jus ad bellum* and *jus in bello*, and the third is the morality concerning reconstruction after the war. (p.46) However, she does not enumerate which specific principles should go with each classification. And as I will discuss later, there are also some principles which ought to be complied with throughout the whole process of war termination and peace building.

But before that, I would like to say briefly about the nature of *jus post bellum*, and other related concepts will be introduced to help identify the position of *jus post bellum* in war ethics, in other words, at what stage should *jus post bellum* become the dominant ethics of war and peace?

## 1.1 The Nature of the Concept

The concept of *jus post bellum* is treated as a moral concept by mainly Just War theorists, or as a legal concept by some international law scholars. But for quite some time, *jus post bellum* had been on the periphery of not only Just War tradition but also legal scholarship. While historically, traces of a tripartite conception of *jus ad bellum*, *jus in bello*, and *jus post bellum* could be found in many traditions. St. Augustine (1467/2003, p.866-870) linked peace to the end of war. He stated that

peace, no matter what kind of peace it is, is the instinctive aim of all creatures, but “a man who has learnt to prefer right to wrong and the rightly ordered to the perverted, sees that the peace of the unjust, compared with the peace of the just, is not worthy even of the name of peace. Yet even what is perverted must of necessity be in, or derived from, or associated with—that is, in a sense, at peace with—some part of the order of things among which it has its being or of which it consists. Otherwise it would not exist at all.” (p.869) According to him, even wars are waged with the ultimate purpose of peace, and peace is the desired end of war.

Grotius (1625/2012) offered a secularized view of Just War. He examined whether it was lawful to wage a war according to the law of nature and argued that a just war would be in accord with the first principles of nature, because its end and aim was “the preservation of life and limb, and the keeping or acquiring of things useful to life.” (p.35) Moreover, he also stipulated what should be done in the termination phase, which included the restoration of things and people (p.408-410), good faith, peace-making, punishments, and the implementation of peace treaties (p.426-448).

Kant also had some *jus post bellum* ideas. For ending a particular war, on the one hand, he was convinced that victory itself did not confer rights on the victors, and it did not imply that the vanquished had to obey. The victors had no right to punish the loser or demand compensation. They must respect the sovereignty and self-determination of the defeated people. On the other hand, for a defeated enemy who was manifestly unjust in war, Kant said that the people of such a country might accept a new constitution of a nature that was less likely to encourage their belligerent tendencies. (Orend, 1999) For ending all wars perpetually, Kant (1797/1887) divided the “Right of Nations” into three categories when comes to the “State of War”: right of going to war, right during war, and right after war. The “Right after War” begins at the “Treaty of Peace”. As to its specific demands, he

mentioned rules such as the exchange of prisoners, respect for the political liberty of the conquered states and their subjects, and amnesty. (p.221-222)

The relatively ancient idea of *jus post bellum* resurfaced against the context of the wide debate on disruptive political conflicts in the post-Cold War era, especially the Iraq War. The concept largely developed in Just War tradition. Concerning its contents, almost all proposals on *jus post bellum* framework are from Just War literature, which belongs to a moral paradigm. There is little relevant international law, except occupation law and human rights treaties. (Lazar, 2000) Some legal scholars argue that there is no independent legal basis for *jus post bellum*. (De Brabandere, 2010; Chayes, 2013) Partly for this reason, legal scholars in different legal paradigms tend to treat it differently. For *example*, international criminal lawyers would often associate or integrate *jus post bellum* with the accountability of war crime and retribution. (Kellogg, 2002; Iverson, 2013) And human rights lawyers would see international human rights law correlated with *jus post bellum* for they share the same aim in peace operations. (Lamont, 2022)

From a legal perspective, Stahn (2008) argues that lack of legal rules does not mean *jus post bellum* as “law after war” has to be exclusive of a moral nature; instead, it should go beyond morality. One may claim that international law has a body of rules and principles that extends beyond moral obligation in the aftermath of conflict. The substantive aspects of peace-making are now being regulated by a number of rules and standards of international law drawn from many areas of law and legal practice, instead of being solely left to the warring parties’ discretion. Some of these duties are independent of state intent since they are connected to practical issues like effective control. The foundations of “*jus*” in the legal sense may be considered to be comprised of this network of laws and regulations, supporting the *jus post bellum* in conjunction with Just War theory.

The importance and usefulness of the legal concept of *jus post bellum* is recognised by some scholars. De Brabandere (2014) has a minimalist perspective on *jus post bellum*. According to him, the legal concept of *jus post bellum* may be best viewed as “an interpretative framework governing the rules applicable to post-conflict reconstruction.” (p.124) Under such an understanding, it is thus seen as a normative collection of principles that would provide direction in how to apply the existing laws controlling post-conflict reconstruction. An interpretative legal framework of *jus post bellum* consists of mainly three principles, proportionality, the accountability of foreign actors, and (arranging the post-war reconstruction) for the population’s benefit. (p.137-138) Lamont (2022, p.8) agrees with De Brabandere’s point of view that *jus post bellum* is an overarching normative framework, and she further points out that it would be useful in the period of transition from conflict to sustainable peace, for it helps identify the applicable laws and it also helps coordinate the interplay between different laws. From her perspective, it may be perceived as a subcategory of international law.

This raises an additional problem concerning the binding force of *jus post bellum*. Should the *jus post bellum* principles be conceived as moral norms or legal norms or a combination of the two? As mentioned above, the Western Just War ideas were first proposed by medieval natural law theorists. According to their perspective, the line between moral and legal is rather unclear. However, although more attention has been given to this issue in legal scholarship, *jus post bellum* has not yet been codified in international laws. Here I take May’s (2012, p.5) position that *jus post bellum* principles are primarily moral norms and a source to inform a verdict and to promote international law-making. Therefore, it should not be directly transformed into legal rules. And the normative *jus post bellum* principles which will be discussed later are not assumed to have legal force unless they have been enshrined in international law.

From a moral perspective, *jus post bellum* has been understood as justice after war, but this definition is quite vague. If we strictly define it as after a truce has been achieved, or more strictly, after a ceasefire or after an armistice has been signed, it will leave a moral vacuum in the period during which the war is winding down, since in reality, war often not ends outright. A seemingly reasonable choice is to just adopt the *jus in bello* principles of military necessity or proportionality to guide their behaviour. The former principle is generally rendered as the necessity of those offensives which are indispensable for securing some military advantage. It is the goal a commander would have in mind, and it requires commanders to think about what would increase their chances of defeating the enemy and how to fight effectively. And the latter holds that the harm that one inflicts in the conduct of war must be proportionate to the good that is protected and must be the least harmful means available. (Frowe, 2011, p.106-107) These two principles may help to specify the legitimate tactics permitted during the war, but neither of them provides any practical guidance concerning the morality of when and how to make the war come to an end. While the problem of which measures should be taken during this immediate period before an armistice seems more like a political matter rather than a military matter. In this way, *jus post bellum* seems not to link as smoothly with *jus in bello* as the latter with *jus ad bellum*.

Mollendorf (2008) notices this gap and contends that in addition to *jus post bellum*, a set of rules named *jus ex bello* should also be included specifically to cope with “the moral questions of whether the war should be brought to an end and if so how.” (p.123) It is comprised of principles such as just cause, proportionality, likelihood of success, and the pursuit of diplomatic remedies. Most of the principles are derived from *jus ad bellum*. Rodin’s (2011) study focuses on the same issues while he uses the term *jus terminatio*. Similarly, Lee (2011) proposes a set of *jus extendere bellum* principles, which he defines as “the moral dimension of mid-war decisions about whether to continue or end a war” (p.280) and treats as an

extension of *jus ad bellum* principles. This trend can be seen as well from Metz's (2017) *jus interruptus bellum* for dealing with the morality of truces.

However, there is also a lack of consensus about whether there should be *jus ex bello* or *jus extendere bellum*. Mollendorf and Lee's arguments are based on the perception that the issue that *jus ex bello* deals with belongs to the middle phase of the war and yet is not identical to *jus in bello*, and *jus post bellum* should be strictly confined to the end phase. In fact, among the various *jus post bellum* proposals hitherto proposed, we could see some scholars included this part, while others did not. The discussion has been complicated by the emerging Latin glossaries. In my view, as long as the rules concerning this period are noticed, it does not matter whether we include it into *jus post bellum* or specifically articulate a set of *jus ex bello*. Besides, in some wars, especially asymmetrical conflicts, the distinction between the war conduct and this winding-down period is rather blurry. A formal truce may not exist, and sparse or frequent battles may occur, which may in turn ask for a more flexible definition of *jus post bellum*. That is partly why I consider Murphy's (2015) classification is more satisfying, for its first set of rules corresponds roughly to *jus ex bello* issues. May (2013) also admits the vague meaning of "post" in "post-war" and he suggests that "mopping up efforts" is a particularly apt description for this period.

Another related concept is transitional justice. Transitional justice "requires the just pursuit of societal transformation." (Murphy, 2018, p.181) It overlaps with *jus post bellum* in that both concern the arrangement after war or mass atrocity has come to an end. It could be argued that a lot of *jus post bellum* principles are also pertinent to achieving transitional justice. The difference lies in that transitional justice is more related to massive human rights abuses and it "often concerns the way to move from an authoritarian regime that did not respect the rights of the people to a democratic regime that does respect rights," (May, 2012, p.6) while *jus post bellum*

orients towards the more general aim of post-war stability. What is relevant here is to point out the difference between the two concepts. In the next chapter, transitional justice will be discussed in more detail in relation to civil war.

## **1.2 Classification of Jus Post Bellum Principles**

In this section, I present the classification of *jus post bellum* principles after my reading of *jus post bellum* literature. Although not exhaustive, there is considerable overlap to imply strong support for an emergent set of *jus post bellum* norms. It should be noticed that the three sets of rules are also interrelated. For example, the just cause for termination principle may also imply that the aggressor is willing to accept war crime trials and compensation, etc., which are parts of the requirements of the second class, but for convenience, this principle goes to the first class.

Moreover, some *jus post bellum* may be more important than others. Different principles may also conflict with each other. The principles below all stress some important issues about post-war justice, but it may not require satisfying all these principles to make a just peace.

The morality concerning transitioning away from war:

### **1. Just cause for termination**

This principle is closely related to the just cause principle in *jus ad bellum* and directly linked to the aim of a just war. Aggressors violate victims' rights and achieve unjust gains, which may give rise to a just war. If we see the aim of a just war as rights vindication, then there would be a just cause for terminating the war when those violated rights have been vindicated. According to Orend (2000), such a just cause includes the elimination of the unjust gains from aggression, the reasonable restoration

of the victim's rights (human rights, territory and sovereignty), and the demonstration of willingness by the aggressors to accept the terms of surrender, which may involve cessation of hostilities, compensation, war crime trials and political rehabilitation. Although Orend's proposals are largely envisaging a war between states, he argues that "respect for rights, after all, is a foundation of civilization, whether national or international. (Orend, 2007, p.580)

## 2. Progress towards closure

Several scholars have mentioned the principle of closure but focused on different aspects. To summarise, this principle concerns more about restraining the presumably just victors' responsibilities, but it also needs the coordination of the defeated aggressors. For the victors, the general requirement is to restrain conquest. Ideally, this process should be rapid. Bass (2004) argues that in most cases they should "get out as soon as possible" and limit the period of the occupation of conquered countries. Walzer (2004) also suggests that they should think seriously about post-victory actions and expend sufficient resources on reconstruction. (Steinfels, 2004) Similar but more explicit opinions can be found in Evans' (2009) sovereignty/self-determination principle. He contends that the just combatants occupying the defeated unjust aggressor or after a humanitarian intervention have a duty to restore the sovereignty/self-determination there as soon as reasonably possible. Williams and Caldwell (2006) suggest that the victors cannot leave the territory in a chaotic situation. They must first restore order, otherwise, the *jus post bellum* will not be considered as being properly complied with. And in a chaotic situation, we cannot assume the defeated people as a political entity, which have a unified voice and are competent to make a judgement on whether they have fully restored sovereignty/self-determination, and



thus some basic *post bellum* assistance is needed. Closure may also entail negotiating a formal peace treaty that requires all belligerents' coordination.

The morality concerning how to deal with the violation of *jus ad bellum* and *jus in bello*:

1. Discrimination

The demands of this principle may be reflected in the peace terms, war crime trials and reparation. It requires the just and victorious state to distinguish between political and military leaders, soldiers, and civilians in the defected state. In particular, excessive and unjust sanctions should not be imposed on civilians and the sanctions must be imposed on those most responsible for the invasion. (Orend, 2000) Unjust soldiers should also be responsible for their wrongdoings.

2. Restitution

This principle is similar to what Orend (2000) contends about the aim of a just war, namely, right vindication, yet it mainly deals with the violation of *jus ad bellum*. May (2012) proposes this principle based on the idea that wrongs are supposed to be righted. Restitution means the "restoring to a rightful owner a rightful owner of what has been lost or taken away," (p.183) especially, the return of occupied territory and goods.

3. Punishment

Concerning the violation of *jus in bello*, Orend (2000, 2007) suggests that the investigation and prosecution should be equally applied to all sides, and he insists the aggressors must receive punishment. Three reasons defend his proposition, first, it will deter future aggression. If there is no

punishment, it will seem like inviting future aggression. Second, it will be an incentive to encourage change and rehabilitation on the aggressor's part if imposed properly and proportionately. Third, there has to be some punishment to avoid disrespect for the victims of the aggression. Williams and Caldwell (2006) contend that the punishment of human rights violations is permitted. May (2012) also proposes the retributive principle, but mainly from a perspective of promoting the rule of law, which may involve actions to support the international and domestic legal institutions, extradition of state leaders to international courts, and reasonable compensation. (p.19-20)

The morality concerning the post-war reconstruction:

1. Political reconstruction

Orend (2007) proposes the rehabilitation principle. The degree of political rehabilitation and demilitarization varies depending on the severity of the aggression and should be determined in anticipation of the possibility of future aggression. And although Bass (2004) advocates a rapid closure, he also points out the exception is in a genocidal state, where some rehabilitation arrangements are necessary. In such an extraordinary case, political reconstruction may involve the change of legal and political institutions and the education system.

2. Economic reconstruction

Imposing taxes on civilians as a source of compensation is not desirable and is generally considered impermissible by scholars, and the new trend is that there should be enough resources left for the defeated country to begin its own reconstruction. To beggar the neighbour is to pick future fights. For the consideration of human rights, Williams and Caldwell

(2006) propose the economic reconstruction principle. Without rehabilitation in some small measure of war-torn economies, it may not be easy to secure the most basic of human rights, the right to basic subsistence. How much responsibility a state that has been the victim of aggression must bear for the economic reconstruction of its enemy? They contend that winning a war and administering a state as an occupying power confers a certain responsibility for the welfare of the people of that state. Not even those who were responsible for the war should be allowed to starve to death. Evans (2009) also sees restoration as part of the duty of the victors.

### 3. Ecological responsibility

This principle is rarely mentioned, but nevertheless important. It derives from the concern that the environment is vital to the well-being of people and could be a potential cause of conflict. Military operations inevitably cause pollution and destruction to the environment. Failing to mitigate environmental damage may in turn lead to diminishing economic productivity and trigger future conflicts (Woods, 2007). Three aspects of exercising ecological responsibility are worth noticing. First, restoring territory for safe occupation and productive uses requires collecting and disposing of unexploded ordnance as well as surplus munitions and weapons. The Unexploded, expended ordnance such as mines and bombs need to be located and then defused or safely detonated and lastly be disposed of. Second, it requires good faith efforts to abate or contain any significant environmental damage, pollution, or hazardous materials the war produced or released. Third, it entails restoring infrastructure and ecosystems which are critical for humans and other life forms to flourish but have been damaged by combat operations. (Clifford, 2012)

#### 4. Engage multinational support and commitment

Clifford (2012) proposes this principle based on the idea that multinational involvement will diminish opportunities for, and the probability of, the victors unjustly exploiting the losers. Successfully engaging multinational support and commitment has the potential to contribute significantly to building a just and lasting peace. And it will also be a good way to fund post-war reconstruction.

The morality concerning all the three aforementioned areas:

##### 1. Right intention

Concerning the morality of transitioning away from war, a just war should neither be ended prematurely, which will fail the aim of right vindication, nor should it be prolonged for gains. In regard to the morality concerning how to deal with the violation of *jus ad bellum* and *jus in bello*, the victorious side should equally be applied to the investigation and prosecution. The vindication of human rights requires equal justice rather than victors' justice. (Williams & Caldwell, 2006) In the reconstruction stage, there should be no self-interest in occupation or reconstruction, as Walzer (2004, p.166) says, "a just occupation costs money, it doesn't make money," and it should not become an opportunity for states to step into other state's internal affairs under the excuse of peacebuilding. Besides, A state must intend to carry out the whole process of war termination and peacebuilding only in terms of those requirements contained in other *jus post bellum* principles. Revenge is strictly ruled out. (Orend, 2000)

##### 2. Proportionality

The aggression needs to be rolled back proportionately. The terms of

peace must be proportional to the end of reasonable rights vindication. Absolute justice is not encouraged and imposing draconian punishments on aggressor are especially to be avoided—Germany in the First World War is an often-cited example. (Orend, 2000) May's (2012) proportionality principle stipulates that the requirements of *jus post bellum* principles must not cause more harm to the population of a party to a war than the harm that is alleviated by the application of these other post-war principles. He calls it the domestic *jus post bellum* proportionality principle. Its international variation stipulates that whatever is required by the application of the other *jus post bellum* principles must not cause more harm to the peoples of the world than is alleviated by the application of these other post-war principles. (p.21)

### 3. Respect for human rights

The right to peace is a fundamental human right. It is the right of every person to live in conditions of peace and security. This right is essential to living a fully human life. And the people of the defeated state never forfeit their human rights. Peace and security are essential to the enjoyment of all other human rights. The right to peace is violated when individuals or groups are subjected to violence, whether physical, mental, or emotional. The human right to peace is best defined as a right to a secure and non-violent world. Protecting this right will conduce to a positive peace. This requires that States aid especially vanquished States to rebuild infrastructure. But it also calls for aid to a State to rebuild (or build) the rule of law. This is a form of collective responsibility that falls in a distributed way on the society of States, and most directly affects the leaders of States. Rebuilding the capacity to protect human rights is crucial for there to be a just and lasting peace. (Hayden, 2005) May (2012) also proposes the rebuilding principle, which stipulates an

obligation to aid states to (re)build the capacity to protect human rights. Another principle derived from it is publicity because people are entitled to such a right to know the substance of the peace arrangements. (Orend, 2002)

#### 4. Forgiveness and reconciliation

A war may be successfully concluded without substantial reconciliation. But for achieving a just peace, many scholars emphasise that reconciliation between the belligerent parties is desirable and necessary. For Rigby (2005), a necessary element in facilitating a just peace is that the socio-cultural scars left by the war are addressed in a manner such that the pains of the past cease to dominate the present and reopen the possibility of future co-existence between former enemies. But how the forgiveness and reconciliation will be carried out will vary from case to case. Evans (2009) discusses forgiveness and reconciliation together. The former he treats as a mindset, which nurtures trust, preparing for the reconciliation to begin. What the reconciliation requires will depend on the circumstances. The process of forgiveness and reconciliation is an interaction between belligerents. They forgive and reconcile with each other. May (2012) contends that the principle of reconciliation contains two kinds of obligation, the first is “to treat those against whom war has been waged as deserving equal basic respect, regardless of which side of the war a person is from,” and the second is “to initiate and conduct war in such a way that one does not unduly antagonize the people with whom one will eventually have to reach a peaceful accord.” (p.21) May (2015) also offers a new account of pacifism from within the Just War domain, which he calls “contingent pacifism” and defines as the doctrine that “armed conflict and war is in principle justifiable but that it is unjustified now and into the foreseeable future, and in the past it is highly unlikely

that wars have been just wars either.” (p.44-45) One of the reasons he gives on why war is highly unjustified is the consideration that war is hardly ended justly. With his particular emphasis on post-war justice, May further argues that reconciliation is one of the most important *jus post bellum* principles. He cites Grotius’s contention, “demanding less than is one’s due”, as the underpinning of a less absolute post-war justice. (p.176-194)

## Chapter 2 Jus Post Bellum for Civil War

### 2.1 The Possibility of Applying Jus Post Bellum in Civil War

I argue that it is possible to apply *jus post bellum* standards to a civil war to assess its morality. From a perspective of political thoughts, first, as I stated in the last chapter, *jus post bellum* as a set of legal rules has not yet been codified by international law, and the *jus post bellum* principles discussed in this study are primarily moral norms, not legal provisions in the realm of international law. Of course, we can try to assess and evaluate the morality of the end of a civil war using these norms. Although the contents of some norms may need revising to be adapted to a civil war context.

Second, the value of *jus post bellum* to civil war or similar situations has been discovered by some scholars. Boon (2014) tries to apply *jus post bellum* in non-international armed conflicts. He points out that although the *jus post bellum* concept associating with both moral and legal tradition tends to focus on international wars and international actors, at the empirical level, it is evident that the *jus post bellum* practices frequently characterise the aftermath of internal disputes. Murphy (2015) in her article sketches a relational conception of *jus post bellum* for asymmetric conflicts and argues that it should be satisfied by cultivating morally defensible political relationships, which express the general moral values of respect for agency and reciprocity. And the main difference between interstate and intrastate lies in the existence of sovereignty. While instead of focusing on sovereignty, some approaches begin to emphasise the individual more. A human security approach to *jus post bellum* may encourage bottom-up processes in efforts of peacebuilding, rather than the institution building of state capacity in a top-down



fashion. (Labonte, 2009, p.214) In addition to that, a cosmopolitan approach to just war insists on the irrelevance of state sovereignty and focuses more on human life (Fabre, 2012, p.130-165). In this perspective, *jus post bellum* can be applied in a civil war context as well.

Third, the Western Just War tradition has a Christian lineage and was further developed by legal scholars in the context of international law, and then applied widely in international conflicts. But the just war ideas from other cultures often originated from their classical thoughts and conflicts between tribes or principalities. Does this difference mean that the former should be applied exclusively in wars between states, and the latter should only be applied in non-international wars? It seems unfair and will run counter to the aim of the construction of a set of more universal and comprehensive war ethics. Therefore, it is not only possible but also normal to apply *jus post bellum* principles in a just war context.

Leaving aside the theoretical contention in the Just War tradition, from a more practical perspective, with the absence of *jus post bellum* or similar standards for guiding the process of civil war termination, how to assess the legitimacy of civil war and guide the peacebuilding operation will become a difficult problem, for both domestic law and international law have not yet provided enough regulations in regard to civil war. Stahn (2008) argues that even as a legal concept, it would have to apply in the aftermath of civil wars, because internal armed violence is already covered by the contemporary *jus in bello*. For example, the first article of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (1977) states that “the situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.” And the

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) regulates in article 3 the obligations when treating people not active in hostilities and the treatment of the wounded and sick in conflict not of an international character. However, there are little *jus post bellum* rules to guide regulate the peace-making activities in internal armed conflict.

Now let us turn to transnational justice, the closest concept to the “civil war version” of *jus post bellum*. The development of the transnational justice conception has been marked by dynamism. It was initially formed in the Nuremberg Trials and Tokyo Trials after World War II. However, contemporary practices of transitional justice are often associated with the third wave of democratization. Driven by this wave, a large number of countries in Latin America, Africa, and Eastern Europe have undergone democratic transitions and are held accountable for the human rights violations that occurred under the pre-transition regimes, making the practice of transitional justice develop rapidly around the world. Almost all countries and regions that have successfully transitioned to democratization have suffered from this transitional problem, and even some countries and regions are still deeply involved in it. It can be said that transitional justice is an unavoidable issue for every country and region that has undergone this process. It has gradually become an important research topic.

Around the 1970s and 1980s, transitional justice mainly refers to human rights violations before a democratic transition. After the Cold War, regional and domestic armed conflicts have gradually attracted the attention of the international community, and transitional justice has been further extended to include human rights violations that occurred before and after the transition. Transitional justice was clearly proposed for the first in response to systematic human rights violations. For Teitel (2003), transitional justice concerns how a society overcomes a legacy of large-scale past abuses towards the end of authoritarian rule or conflict and it

involves interdisciplinary discourse.

According to the UN, transitional justice is “an approach to systematic or massive violations of human rights that both provides redress to victims and creates or enhances opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses.” Its first goal is to gain some level of justice for victims. The second is to reinforce the possibilities for peace, democracy, and reconciliation. Over decades, while the field of transitional justice has expanded and changed, it has also developed a significant foundation in international law. In 1988, the Inter-American Court of Human Rights’ ruling in *Velásquez Rodríguez v. Honduras* determined that all nations have four fundamental obligations in human rights. From there legal foundation for transitional justice first gained its inspiration. These obligations include taking reasonable precautions against human rights violations; investigating human rights violations thoroughly when they do occur; holding offenders accountable; and ensuring that the victims of the crimes receive compensation. (United Nations, 2008) The means of promoting transitional justice usually include various judicial and non-judicial methods such as trial, compensation, truth investigation, and reform. These methods are generally implemented singly or in combination according to specific circumstances.

From the development process of transitional justice research, we can see that the research scope and content are continuously extended and expanded, which are embodied in the following three levels. First, the expansion of the scope of transition used to refer specifically to the transition from an early autocratic regime to a democratic regime, but now also includes the transition from conflict to peace. Second, the scope of justice has also expanded with the expansion of the scope of transition. Originally, it mainly referred to justice issues in the period of democratic transition, and now it also includes justice issues in times of transition from conflict

to peace. Third, with the development of time, the means adopted by transitional justice have also become increasingly diversified, usually including various means of accountability including legal means. Criminal prosecution remains the optimal means of dealing with human rights violations, though some scholars insist. But at the same time, there have been a host of other formal and informal responses, such as truth commission payments, vetting procedures, rescues, and informal and customary practices.

We may regard transitional justice as all processes in which countries and regions after democratic transition adopt various means and mechanisms, including judicial and non-judicial mechanisms, to deal with serious human rights violations that occurred before the transition. According to the development of transitional justice theory and practice, it can be found that its purpose is mainly to achieve justice, reconciliation, peace, democracy, and other goals. And there are complex relationships among these goals. Justice and reconciliation are the direct goals to be achieved through transitional justice, while peace is not only the goal but also the premise and guarantee for the realization of justice and reconciliation. And democracy is the higher goal of transitional justice. In this way, it overlaps with a set of *jus post bellum* for civil war. But not all civil wars involve democratic transition or serious violation of human rights. Another problem is that transition justice usually starts after peace has been achieved, and thus more like corresponding to the latter two classes of *jus post bellum*. It does not offer guidelines for how people should transition away from war.

## **2.2 Just Peace for Civil War**

Lee (2011, p. 240-275) divides civil wars into four kinds. The first is the conflicts between the government and an internal rebellion group seeking to take over the

government, such as the French Revolution and the Chinese Civil War. The second is conflicts between the government and an internal group seeking to form a new state, such as the American Civil War. The third is conflicts between an occupying power and the local government or insurgent group seeking to repel it. The instances would be various anti-colonial struggles. The last kind is ethnic wars, and their aims can overlap with the other three ones, seeking control of the central government, secession or national independence. Regardless of which kind of civil war it is, this study will mainly deal with the more general situations where in the end of war, the belligerents will still be living in the same territory. But we should bear in mind that when applying the *jus post bellum* principles on real-world cases, the principles need to be applied on a case-by-case basis.

Walzer (2006, p.4) points out that a theory of Just Peace is implicit in the theory of Just War. In the Just War tradition, a “just and lasting peace” has been regarded as the self-evident goal of a just war. However, its concrete meaning remains vague. Peperkamp (2020) distinguishes three types of peace. The first is what may be called negative peace, and it is characterised by an absence of war. A negative peace is not merely a ceasefire. Realism often drives us to pursue “just a peace” rather than “a just peace”. The need to establish peace takes precedence over the pursuit of justice, and he concludes that such a peace can be justified even if it is not very just. The point is that accepting some injustices is justified primarily for the sake of stability—a reasonably stable peace. But not any kind of stable peace can be justified. The exception would be peace based on a rotten compromise. A post-war settlement that results in a cruel regime is untenable. The ruling authority must, at the very least, treat people as human beings. However, nowadays this view of peace has become less popular.

The second type of peace is decent peace. According to Lee (2011), the Just War theory goes from the “national defence paradigm” to a new “human rights

paradigm”. It becomes less restrictive and slightly more liberal, and a humanitarian disaster has become a just cause for waging war. In general, individual human rights are being prioritised over the value of sovereignty and state rights. Human security is more important than state security in this new paradigm. This trend may also be seen in various political practices, such as UN peacekeeping efforts, the establishment of the so-called duty to protect and responsibility to reconstruct, and increased emphasis on human rights in foreign policy. What follows from the new trend is a concept of decent peace. It is a stable peace as well, for in achieving decent peace, future hostilities are largely prevented. The issues that sparked the war/conflict have been resolved to a great extent. The new political system upholds the citizens’ most fundamental human rights, including the right to life, liberty, and security. It also implies that if the right to life is compromised by a shortage of subsistence resources as a result of the conflict, providing these fundamental requirements of life becomes a responsibility after the war. The goal is to rebuild a society that is secure and decent based on basic respect of human rights. Just as Williams and Caldwell (2006) contend, just peace exists when the human rights of those involved in the war, on all sides of the war, are more secure than before.

The third type of peace is called positive peace. It is the idea of peace that underpins Evans’ (2009) interpretation of *jus post bellum*. It possesses more positive traits than a decent peace. Indeed, economic reconstruction is a component of establishing a positive peace, but so is physical infrastructure rebuilding and the re-establishment of socio-cultural institutions, practises, and connections. The latter implies that Evans views forgiveness and reconciliation as vital components of post-war peace. There is a need to participate fully and actively in the ethical and socio-cultural processes of forgiveness and reconciliation that are crucial to the development of a positive and stable peace. This view of peace is obviously directed towards the achievement of an ideal concept of a just peace.

Although a positive peace is more desirable and a negative peace has often attracted criticism from people, the three kinds of peace could all be deemed as just peace depending on the circumstances, for they are actually in a continuum most of the time. On one end is negative peace, primarily identified by the absence of war, on the other end is positive peace, marked by the respect of important values, while decent peace exists in between. The peace-building progress could start from striving for a negative peace move to decent peace, and eventually achieve a positive peace.

Murphy (2015) argues that civil wars are symptomatic of the failure of political relations between citizens and/or between citizens and officials to meet the minimum normative requirements of political relations. In light of this, the just peace that a civil war seeks to achieve is one that is based on reciprocity and mutual respect for agency, as evidenced by a systematic observance of the rule of law, the creation of circumstances that might make it reasonable for members of formerly antagonistic groups to have trust in one another, and the (re-) establishment of fundamental capabilities to avoid poverty, be respected, and be recognised as a member of a political community.

A problem for just peace is that justice and peace clash from time to time. For the sake of realising a sustainable peace, some principles may take precedence over others. And some aspects concerning justice, especially procedural justice may be sacrificed. Imagine there might be parties representing the victims of ethnic cleansing in a civil war who decide not to pursue war crime trials or waive the claim for compensation. A just peace needs to seek the maximum possible justice while ensuring that it is an efficacious and sustainable peace. A combination or balance of war crimes trials, truth commissions, and amnesties is more likely to yield results that serve the rule of law and the purpose of peace.

## 2.3 Jus Post Bellum for Civil War

Although the ideal just peace for civil war may inform some *jus post bellum* principles concerning both the violation of the rules of war and reconstruction, my argument is that the first class of *jus post bellum* principles, which deal with morality concerning transitioning away from war are more related in a civil war context to realize a just peace. The second class of *jus post bellum* principles provide some guidelines concerning how to deal with the violations of *jus in bello* in a civil war context, especially when serious violations of human rights have occurred. The third class of *jus post bellum* principles is about post-war reconstruction, which in a civil war context may also imply a reconstruction of the damaged relations between the former enemies. While these two classes of *jus post bellum* are also important, they may become meaningless in certain civil war contexts, and the related questions do not become salient unless the conflicts are wound down properly. The “winding-down” stage is vital to the later process of peacebuilding. And it is not an easy task, for many civil wars and conflicts last for long periods of time without a proper termination.

In the previous discussion, I elaborated that the just peace for civil war does not pursue absolute justice. The principles and processes applicable to internal war termination and peacebuilding are inherently context-specific and complex. According to different circumstances, some principles have to sacrifice in order to promote or achieve what is really valued by the former belligerent parties. Most just war scholars were envisaging *jus post bellum* from the self-defence paradigm, which involves proper dealing with the violation of sovereignty. Now in a civil war context, sovereignty is irrelevant to the dispute between belligerents. Now I will focus on some of the *jus post bellum* and revise them so that they may provide efficacious constraints in forging peace and adequate explanations of the moral



dimensions of civil wars:

1. Progress towards closure

The contentions about this principle proposed by the Just War theorists largely concern an exit strategy, which is to withdraw from the (unjust) vanquished state. But this is not suitable in a civil war context. In my opinion, the progress towards closure must be practised with the attitude of reconciliation, and the society should be disarmed and demilitarised as soon as possible. The specific plans vary among different cases, with may include negotiating, deliberately limiting the frequency of using force, and a ceasefire.

2. Respect for human rights

I consider this principle requires the belligerents to give one's former enemy basic respect, being willing to take their claims seriously does not mean acknowledging that all their claims are equally important. It might be the case that the belligerent parties in a civil war are equally responsible for the right violation which led to the war (the violation of *jus ad bellum*) and the damage caused during the fighting (the violation of *jus in bello*), but there are also situations where one party has done a lot of harm, and therefore it feels unfair for others to bear the burden exceeding the extent to which they should have borne. Sometimes one side in the war is evil enough that they should not deserve trust and the other side(s) should not negotiate with them, and sometimes one side is seen as having no position to make legitimate moral claims against the other side(s). Indeed, not all parties to a conflict are equally responsible for injustices before and during the conflict. The former requirement is irrelevant to the equality of moral responsibility between them.

### 3. Forgiveness and reconciliation

This principle suggests the ideal attitude the belligerents should have, which may be demonstrated in the whole winding-down progress. For example, in the case of a ceasefire, if there exist any conditions for its maintenance, such demands should be made on both sides as a matter of reciprocity. Parties have to be prudent and rational to abandon prejudices. They should also take the ceasefire as an opportunity to foster dialogues and consultation in the future.

The negotiations and peace treaty that make the cessation of fighting may be seen as the first step in the process of repairing relations damaged before and during the war. In order to give credibility to negotiations and the peace treaty, and to further contribute to the repair of political relations, they must recognize outstanding issues that need to be resolved, which again vary from case to case. Reciprocity in negotiations requires mutual understanding and recognition of the other's claims and grievances, at least they should be listened to and considered seriously. The relations damaged by war cannot be repaired by a single peace agreement. Even if the responsible party provides compensation stipulated by the terms of the peace agreement, it cannot completely smooth the previous scars left by war. Only addressing the rights violated by breaches is not sufficient to deal with the damage to relationships caused by such breaches. Moreover, certain conditions for establishing justice such as trust, and reciprocity cannot be determined by the terms of the peace treaty. Rather they are a kind of attitude that ought to be reasonably and feasibly cultivated over time.

During the "winding-down" period, there may also be sporadic fights. It is important that the parties to the conflict do not act in a way that precludes

the possibility of establishing a relationship based on reciprocity in the future. There may be a wide range of means to prevent this possibility depending on the specific context of each civil war. But at least the belligerents should not violate or cross certain ethical boundaries that were previously respected even during the war. It related to the *jus in bello* principles, especially about the legitimate targets and tactics. Some forms of brutality or violence may be ruled out. Crossing previously respected boundaries will eliminate relationships based on reciprocity by removing the possibility of trust. The violation of previously acknowledged restrictions may weaken the possibility of believing that members of the other party have good faith and welcome a peaceful solution to the war.

To summarise, the *jus post bellum* principles dealing with morality concerning transitioning away from war would be more related in a civil war context, which mainly includes just cause for termination, progress towards closure, right intention, proportionality, respect for persons, and forgiveness and reconciliation. But the most important principle will be forgiveness and reconciliation, as such a mindset or attitude is essential for a desirable just peace after a civil war. Without reconciliation, the peace may be a short-lived and fragile one.

## Chapter 3 Wang Yangming's Jus Post Bellum Ideas and Practices

The ethics of war and peace-making originating from classical Chinese thoughts have not yet been fully explored, and to generalise the Chinese Just War Tradition as a whole is not a simple task because it includes influences from various sources. But among them, the Confucian school of thought has been the most vigorous and influential one in China. In this chapter, Chinese war ethics from the classical Confucian perspective will be introduced, and then the neo-Confucian thinker, Wang Yangming's *jus post bellum* ideas and practices will be examined, whose propositions I consider will contribute to the *jus post bellum* in a civil war context.

Wang Yangming (1472–1529) was a neo-Confucian philosopher, politician, and general in Ming Dynasty. His unique conception of ethics was rooted in Confucianism but also supported by a subtle metaphysical view, which may contrast with many modern or Western views. And his military practices were mainly around pacifying revolts under the emperor's instructions, a scene not identical to a typical civil war in modern times. It is little wonder that there would be certain concern and doubt about whether such an interpretation of his ideas would be convincing and whether it could have any valuable implications for our understanding of *jus post bellum*, a concept developed mostly in the West and has strong Western influence. Similar difficulties often arise when scholars try to solve Western problems by offering non-Western solutions. After a closer reading of non-Western texts, what is to be done with the knowledge and ideas thus gained and what implications could it bring to our understanding of political theory? There exist two quite conflicting choices. Some might suggest that the deep immersion in “other texts” will logically lead to a detachment from Euro-American-centric

disciplinary home and instead, they should take on political inquiry within another tradition. Alternatively, some might perceive that the disciplinary inquiry of political theory is inherently comparative, and we could simply start the research of “other texts” under the existing rubrics of the Western political theory. (Godrej, 2011, p.73-74)

However, one may argue that neither of them is satisfactory enough. The first way of treating non-Western text emphasises the impact of Euro-American-centric political theory on how the research topics are framed and how the related knowledge is produced and insists that such impact should be neutralized. This may eventually result in a complete refusal of the hegemony of Western theories, and to some extent, a closure of the possibility of integrating some new sights from other cultures into the existing theory. The second way emphasises more on the spatiotemporal distinction between the thinkers and their ideas. Therefore, the ideas of thinkers from different cultures can be studied together within a discipline of political theory. But it also intimates making “other texts” fit the categories of Western inquiry and its preoccupations, while in fact, it could be problematic to do so.

My answer to such worries is that I will use one of the cosmopolitan political thought methods provided by Godrej (2011, p.76-88), which she calls transcultural learning. One way to carry out transcultural learning is to start “by assuming a commitment to texts and authors as polyvocal, and ideas, practices and ways of life as correspondingly mobile across geospatial boundaries.” (p.76) The ideas, doctrines, beliefs, and practices are treated as flowing, and different scholars may offer different interpretations of the same doctrine. Hence the intellectual resources would never be exhausted, although they were rooted in specific social and historical realities. The units of analysis could be divided into three levels of entities, the macro level entities refer to the whole traditions, for example, the

Chinese tradition and the Islamic tradition; the mid-level entities refer to the entire corpus of a thinker, the thematic ideas within a tradition, the entire texts, or a school of thought; and the micro-level entities could be a specific idea in a given text. The boundaries between these levels are often blurred. What needs to be noticed is that in such a model, which is committed to polyvocality and hybridity, transcultural learning mostly occurs in a piecemeal fashion between discrete micro-level entities, or between discrete mid-level entities. The ideas or texts will travel outside their original context and interact with the new context, and what comes out will not be a pure result of either context.

This model of transcultural learning is particularly suitable for this study. However, some potential problems need to be addressed when applying this model. First is whether we should reject an authoritative or orthodox interpretation and seek to produce creative hybrids. In Chinese scholarship, Wang Yangming's military ideas and practices were often assessed from the perspective of ancient Chinese military culture. The ancient Chinese military culture has a prominent aspect of emphasising practical rationality, reflected in the rational, calm, enterprising, and utilitarian realistic attitude towards warfare. (Zhang & Zhao, 2017) Under this point of view, scholars often focus on Wang's military strategies, in other words, how the troop were trained and how he seized victory through surprise attacks. (Zhang, 1997) And what might be regarded as post-war justice and peacebuilding has often been neglected or simply interpreted as an extension of the Confucian concept of benevolent governance. I argue that it is better not to stick to this orthodox reading and focus more on the moral aspects of his practices. Another problem is that the meaning of Wang's ideas relied heavily on the Confucian values, and his practices were rather parochial to some extent. I argue that we should go beyond the limits and creatively reinterpret his ideas and practices to see what may be asked in order to accomplish peace in a civil war context. What important is to keep the sensitivity to distinguish between what must be tied together with the

original context and what is possible to transform beyond the social, historical, and cultural boundaries. In this way, Wang Yangming's idea will bring conceptual enrichment to *jus post bellum*.

### **3.1 Chinese War Ethics: The Confucian Tradition**

Speaking of Confucianism, the first things people think of are the virtues of “benevolence”, “righteousness”, and “propriety”. Confucius highly advocated virtuous statecraft and virtuous edification of individuals but rarely talked about war ethics. Nevertheless, a humanistic view on warfare and military forces might be inferred from his teaching. His attitude towards war is both realistic and idealistic. On the realistic level, he realized the importance of army building. When his disciple Zigong asked him about government, Confucius replied, “You need enough food, enough weaponry, and the trust of the common people.” (Confucius, 2007, p.81, 7) At that time, food was not only the foundation of human survival but also a representative of wealth. He placed military construction and food production in an equally important position. It is believed that both are the basis for winning the trust of the people, which shows that Confucius attaches great importance to the army.

“To fail to instruct the common people in warfare—you could call that throwing them away.” (Confucius, 2007, p.93, 30) In Confucius' view, not strengthening the military training of the common people is tantamount to abandoning the common people. It should be related to his perception of the environment he was living. Confucius was born in the State of Lu and began to travel around the world as an adult for decades. The State of Lu was originally the fiefdom of Duke Dan of Zhou in the early Zhou Dynasty. Although it retains a strong atmosphere of practising Zhou ritual, in Confucius' time, it can only be regarded as a small country in terms

of its national strength, and it was easy to be invaded by other big countries. Therefore, Confucius advocated instructing the people how to fight in a war as a preventive measure in order to protect them.

When Confucius was serving as Sikou (司寇, the highest official in charge of a state's judiciary, prisons, and public security) in the State of Lu, the State of Qi believed that if Confucius's talents were valued, it would increase the power of Lu and threaten the interests of Qi. When they proposed a friendly meeting with the State of Lu, Confucius asked Duke Ding of Lu to do some military preparation. For Confucius, the deterrence of armed forces is also very important as a form of ritual on major diplomatic occasions.

The idealistic aspect of his view on warfare was mainly reflected in his perception of what caused constant war. Confucius emphasized rites (礼) and music (乐), but the real situation in the Spring and Autumn Period was indeed a sharp contrast to the ideal society Confucius expected. According to Confucius,

“When the Way prevails in the world, rites, music, and punitive expeditions proceed from the Son of Heaven. When the Way no longer prevails in the world, rites, music, and punitive expeditions proceed from the feudal lords, and rarely does this situation continue for ten generations before failure ensues.” (Confucius, 2007, p.115, 2)

The Way (道) here could be interpreted as the system of rites and music, order or a broader meaning of justice or righteousness. Confucius just lived in such a world where the Way no longer prevailed. He believed that it was the destruction of the original social ruling order based on rites and music that led to continuous wars. Therefore, restoring order and the system of rites and music might become a just cause to wage war. Chen Chengzi, one of the dignitaries in the State of Qi, had staged a coup and assassinated Duke Jian of Qi. After being informed of this, Confucius went to court to see the Duke Ai of Lu and required that Chen Chengzi's



behaviour need to be punished. Chen Chengzi assassinated his ruler, which violated the rites, so a punitive expedition may be launched against him. It can be seen that Confucius was not completely opposed to war.

Although Confucius did not oppose war based on the purpose of maintaining the system of rites and music, and protecting the country and the people, he took a very cautious attitude towards using force. Ji Kangzi once asked Confucius about government, saying: "If I kill those who don't follow the Way, and thereby encourage those who do follow the Way, how would that be?" (Confucius, 2007, p.83, 19) He replied that if the aim was to govern people there is no need for killing people because the governor's virtue would naturally have an influence on the people. Confucius advocated that the rulers must themselves desire goodness to guide the people to be good. If apply it in interstate relations, then waging war should not be regarded as the preferred option to correct order and protect the Way.

The later developed Confucian idea about just war tended to be based on the Confucian principles of benevolence and righteousness. There was a distinction between the war in ideal conditions and war in the reality. In ideal conditions, Confucianism would reject war. While in reality, in the time of pre-Qin Confucian scholars, the society was divided, and strife between principalities was ceaseless and inevitable, they held the Confucian virtues to be the fundamental guides of individual behaviour and political affairs and evaluated the morality of wars according to those moral codes, thus the Confucian tradition of war ethics began forming.

One of the most famous pre-Qin Confucian scholars, Mencius, strongly condemned warfare. He expressed strong dissatisfaction with the social status quo of constant warfare. He commented that "wars that arise from territorial contests kill so many people that the fields are packed with corpses; wars that arise from contests over

cities kill so many people that the cities are packed with corpses.” (Mencius, 2009, 4A14) But for him, self-defence against invasion could be justified, and using force against a tyrant could also be justified because, from his view of *renzheng* (仁政, benevolent governance), a virtuous ruler would not let other states’ people suffer under a tyrant. Chan (2014, p.1-23) explains Mencius’s paradoxical attitude towards war. Due to the nonideal political reality in his times, war was sometimes necessary, but even so, war was not amoral, in other words, it had to be engaged in an ideal way, in accordance with morality. The right intention should be manifested by the proper conduct of the army. The ruler of the state of Yan oppressed its people. The state of Qi had attacked Yan and taken possession of it. Then the King of Qi was worrying about other states making plans to attack Qi in order to rescue Yan, and he asked Mencius for advice. In reply to the King of Qi, Mencius commented on Qi’s behaviour and suggested the right way of using military force:

“Now, Yan oppressed its people, and you went and punished its ruler. The people believed you were going to deliver them from out of the flood and fire and, bringing baskets of rice and pitchers of drink, they welcomed your army. Then you slew their fathers and older brothers, bound their sons and younger brothers, destroyed their ancestral temple, and carried off their treasured vessels—how can this be condoned? Certainly the world fears the might of Qi. Now you have doubled your territory but have not practiced humane government; it is this that is setting the troops of the realm in motion. If you will immediately issue orders to return the captives and halt the removal of the treasured vessels, and if you consult with the people of Yan about withdrawing once a ruler has been installed for them, you may still be able to stop an attack.” (Mencius, 2009, 1B11)

In Mencius’ view, a punitive expedition launched to deliver the people from oppression might be justifiable, but the military conduct must follow the moral code, and when the tyrant has been executed, humane governance must be practised following the will of the people.

Whether the war was beneficial to the people or waged for the people was the standard for Mencius to judge whether the war is just. Like Confucius, Mencius

also thought that an unkind ruler could be justly overthrown by means of war. But his view was slightly different to Confucius' in that it did not have to be a ruler waging a just war against another ruler. Mencius gave clear moral support for wars that conformed to the moral code of benevolent governance and fought in a kingly way. Confucius once commented on the performance of the music called Wu (武, Martial), and he said that it was "perfect in beauty, but not perfect in goodness." (Confucius, 2007, p.30, 25) The music Wu was said to date from the reign of King Wu of Zhou, and its content showed that King Wu defeated Shang's forces and overthrew the Shang Dynasty and established the Zhou Dynasty. It was created in praise of King Wu's military exploits. Although the Zhou Dynasty was the model regime in Confucian political ideals, for Confucius, the imperfect point was King Wu's expedition was actually a war launched by a vassal (a minister) against his King and therefore did not conform to what rites required and should be criticized. Mencius's attitude towards King Wu's attack on Zhou was completely different from that of Confucius. Not only did he not think that King Wu was morally tainted, but he also praised King Wu's righteous behaviour for he punished King Zhou's inhumanity and showed benevolence to the people. And because of his inhumanity, King Zhou of Shang was not eligible to be regarded as a true King anymore:

“Then can a minister be allowed to slay his ruler?”

‘One who offends against humaneness is called a brigand; one who offends against rightness is called an outlaw. Someone who is a brigand and an outlaw is called a mere fellow. I have heard of the punishment of the mere fellow Zhou but never of the slaying of a ruler.’” (Mencius, 2009, 1B8)

Although Mencius agreed to overthrow the tyranny through “yibing” (义兵, just soldiers) or “yijun” (义军, just army), he rejected to realise unification through this way. For him, practising benevolent governance was the fundamental way to unify the empire. As long as the ruler kept actively implementing benevolent governance, the people would automatically come to support him and adhere to his instructions. He argued that one who was not fond of killing people would be able to unite the

empire. Because at that time, among all the vassals, there was none who was not fond of killing. And the people had always been waiting for such a ruler. (Mencius, 2009, 1A6) Not being fond of killing was the least requirement of benevolent governance. The ruler must practise virtuous self-edification and implement benevolent governance to win his people's support.

Another prominent Confucian scholar, Xunzi, considered that war could sometimes be justified in the situation where a government practised *ren* (仁, benevolence) and *yi* (义, righteousness) went to defend the defenceless against a tyrant. The states participating in the war do not fight for self-interest such as encroaching on other states' land, plundering property and population, etc. Xunzi and Lord Linwu once held a debate about the crucial points in military affairs. Lord Linwu said that in military affairs, the crucial points lay in favourable timing and circumstances and practising shiftiness and deception. Xunzi refuted that the fundamental task for all use of military forces lay with uniting the people and obtaining their support and adherence (用兵攻战之本在乎壹民). (Xunzi, 2014, Ch.15, 10) For Xunzi, the purpose of war was to ensure that the lives and properties of the people were not violated.

Xunzi always took *ren* and *yi* as the fundamentals of military affairs. However, according to Confucian teaching, one who was benevolent would care for others, and one who was righteous would follow good order. Military forces were for struggle and contest. What use would one have for military forces? During the debate, Chen Xiao asked such a question. Xunzi replied that the benevolent people indeed cared for others. But it was precisely because he cared for others, he hated for people to harm them. Similarly, because the righteous people followed good order that they hated for people to throw the order into chaos. By using military forces, one could prohibit violence and sweep away what is harmful. (Xunzi, 2014, Ch.15, 350) Such comments further clarified that the relationship between war,

benevolence and justice was not a natural opposition. War could be used as a means to realize benevolence and justice. Besides, Xunzi stressed the importance of *li* (禮, rites) as guidance of actions. Speaking of the military ordinances of a true King launching a righteous war, Xunzi said that there should be no slaughter during the war and the prisoners of war should be kindly treated. (Lo, 2015)

Overall, we can see a consistency of emphasis on virtuous statecraft and individual virtuous ethics in the Confucian tradition. Some unambiguous *jus ad bellum* principles—just cause, right intention, and legitimate authority, and some less clear *jus in bello* principles may be inferred from Mencius and Xunzi’s teachings. Although certain correspondence can be found between the Confucian tradition and the Western Just War tradition, there are differences between them. For example, they both claim that there has to be a just cause, but if we adhere to Confucian war ethics, we will probably tend to be more tolerant towards humanitarian intervention when we try to judge its morality. Many participants in the debate over humanitarian intervention contend that the principle of sovereignty should come first when deciding whether or not to intervene. (Qin, 2020) Especially, according to Mencius’ view, any state with a terrible enough administration can be considered a valid target for intervention. Although the specifics of poor governance were not specified, it is plausible to presume that the standard would be lower than the situations that, according to the present consensus in the international community, would normally justify humanitarian action (such as genocide).

Moreover, both put forward the *jus ad bellum* principle of legitimate authority, but the Confucian concept of legitimate authority stresses virtuous edification and is thus richer in its meaning and to some extent more idealistic compared to its Western Just War counterpart. The leader of a state may not construct a perfectly legitimate authority, for such legitimacy is only one aspect. More importantly, the leader must demonstrate some virtuous qualities. Although Mencius and Xunzi had

quite different ideas on what the fundamental aspect of human nature was (Mencius claimed that human nature was fundamentally good, while Xunzi asserted it was fundamentally evil), they both agreed that there are ways for people to improve themselves morally, and they both stressed the importance of appropriate education and learning.

However, there has not been much progress by Confucian scholars to systemize the Confucian ethics of war and to identify the specific rules, that is probably because Confucianism generally considers more about whether the person who launches the war is virtuous rather than what specific kind of behaviour can be justified. Victory would be incidental to a virtuous true King who practised benevolent governance if he launched a just war. And peace and order would also be incidental because the true King was regarded as having received the Heavenly mandate (天命) to save the people from oppression and tyranny. This limitation has led to the problem that this view of legitimate authority could be misused. In Chinese history, insurgents and rebels often contended that they were Heavenly mandated hoping to win popularity with the people and justify their behaviour.

This problem was also reflected in their attitude towards how to deal with post-conflict issues. The classical Confucian war ethics did not produce a systemic set of *jus post bellum* rules to guide the reconstruction and peacebuilding. We may reasonably deduce from their teachings that the *jus post bellum* rules in the classical Confucian war ethics were an extension of the benevolent governance idea in the post-war period. In other words, after the end of a war or conflict, benevolent governance must be practised, and the virtue of benevolence must be manifested in the just victors' behaviour. For example, they should help restore political order, resume normal agricultural production, reduce the burden on the people, and let the people live and work in peace. Thus, the classical Confucian *jus post bellum* idea overlaps with some principles such as right intention, respect for

human rights, and the responsibility for reconstruction. But there still exist some fundamental problems, such as what should be done to the former enemy and their violation of *jus ad bellum* and *jus in bello*, and how the reconstruction should be justly arranged, which were not thoroughly addressed. Furthermore, the benevolent governance concept per se is broad and comprehensive yet it is not enough to cover the various issues involved in the period of transition to sustainable peace. And it indeed provided very few practical suggestions concerning how to wind down the war and how to forge forgiveness and reconciliation and let the former enemies live peacefully together, which is centric to build sustainable peace in a civil war context.

### **3.2 Wang Yangming's Jus Post Bellum Ideas and Practices**

Wang Yangming was a neo-Confucian scholar who mastered both Confucian classics and military classics, but scholarly works about his thoughts are mostly on his neo-Confucian metaphysics and ethics. The existing literature often either treats his military experience simply as an expansion of his philosophical psychology in military practice (Israel, 2008), for one of his famous doctrines is the “unity of knowing and acting” (知行合一), or focuses on traditional Chinese strategic culture (Zhang, 1997; Israel, 2009).

On the theme of *jus post bellum*, as mentioned above, classical Confucian war ethics said very little about post-war justice and how war should be winding down. Only Mencius ever talked about this in the case of the State Yan that the captives ought to be released, the stolen treasures ought to be restored, a new ruler ought to be chosen after consultation with the Yan people, and then the army of the State of Qi ought to be withdrawn from Yan. (Mencius, 2009, 1B11) Compared with the classical Confucian position on war ethics, which mainly emphasises *jus ad bellum*,

Wang's ideas on war ethics are particularly worth noticing for he placed equal emphasis on *post bellum* principles. Besides, Wang's just war ideas have rarely been compared with the western tradition. Twiss and Chan's (2015) first recognise his *jus post bellum* ideas and divide them into two themes, economic recovery and advancement, and social reforms. Both of them aim at the "restoration of peace, security, and prosperity among the common people." (p.167) But questions such as how the wars/conflicts were terminated, and how reconciliation was achieved are not included in their interpretation. In this section, Wang Yangming's *jus post bellum* ideas will be examined from his military practices and the contents of the public instructions he issued.

As an experienced general, Wang's military exploits were mainly reflected in three events. The first was pacifying the banditry in Gannan area (southern Jiangxi) in 1517-1518. Banditry problems in Gannan and Guangxi were serious in Ming Dynasty. In the early Ming Dynasty, the southern Jiangxi mountainous area was still a border society with vast land and a sparse population. The official administrative control and indigenous social forces were weak. This social environment attracted a large number of illegal immigrants, who later became bandits and caused serious and long-lasting unrest. These illegal immigrants came from surrounding areas such as Fujian and Guangdong provinces and mainly consisted of "unregistered refugees" who fled from tax and thus detached from the household registration system, and "uncivilized savages" who had lived in the wilds and not been included in the household registration system originally. (Rao, 2000) Not being within the household registration system meant that they did not have the responsibilities such as paying taxes and offering labour services, but they also did not enjoy the right to property, the right to education, and could not take part in civil service examinations etc. Their migrations gradually resulted in conflicts with local people. Because the ecological environment in the mountains was hostile for plants to grow, they started to plunder lands and money from the



local villagers, which caused some of the latter couldn't afford to pay tax and became bandits. The indirect effect of the conflicts was the breakdown of the household registration system in those areas.

Wang always tried to wind down the conflicts without violence. Through his investigation, Wang recognized the difficulties of the bandits. He considered the approach the imperial court used to adopt would have negative effects. The imperial court had mainly adopted methods of suppressing bandits and exterminating local rebellions, which to a certain extent was conducive to establishing the majesty of the imperial court in the local area and had a positive effect of deterring the banditry in other places. Using violence might further intensify the conflict between the ruling class and the people at the bottom. Even if the rebellion was suppressed here, the rebellion would recur elsewhere, and it would eventually burden the people. Therefore, Wang consider it was not a long-term solution.

Before using troops, Wang Yangming would often issue notices, in which he would first count the crimes of the bandits and contend that exterminating them was doing justice for the heavens and standing on the righteous side of the war. Then, from their point of view, assuming someone did the same cruel thing to them, they themselves would share the same hatred as the victims of their behaviour and would rather die than avenge it. Then, he took another step back and sympathized with the actions of these nest thieves, acknowledging the difficulties in their lives, but they might just be induced by a wrong idea, and they still had a chance to correct themselves. If they change their ways and do better, they would be spared and forgiven. After the banditry was pacified, he established schools and promoted education to instil Confucian moral virtues into local people and former bandits now "new citizens" to help them assimilate into the local community, and also employed a new registration system in Gannan area to promote self-governance

and harmonious social atmosphere and to prevent the recurrence of banditry in the future. (Wang, 1572/2011, 《南贛乡约》, 《兴举社学牌》, 《颁行社学教条》, 《十家牌法告谕各府父老子弟》) These arrangements further consolidated peace between the former bandits now “new citizens” and local people, and the spirit of these arrangements was in accordance with the Confucian benevolent governance.

Wang’s second military exploit was suppressing the rebellion of Prince Ning in 1519. Prince Ning was the emperor’s uncle, and his rebellion actually lacked a just cause, a right intention and in a Confucian view, lacked a legitimate authority for he was not virtuous and rebelled purely for increasing his own power and thus not a true King. He successively bribed the eunuch Liu Jin, the courtier Qian Ning, etc., in order to restore his abolished guards, and expand the sources of troops. He also harboured desperadoes, killed and expelled local civil and military officials and innocent people in confinement, seized land and property from officials and civilians, and robbed merchants’ property. (Zhang, 1739/1974, 3592) A lot of soldiers were forced to join his army.

Wang realized that there are many soldiers who did not voluntarily join Prince Ning’s rebellion, and he intended to pardon these soldiers. For him, the just cause for termination had already vaguely revealed itself, and too much killing would not be conducive to peace. Therefore, before the final battle, Wang asked subordinates to make hundreds of wooden boards engraved with “for those rebel soldiers who hold this board, whose misdeeds would be forgiven, if they stop fighting and come back to the imperial government side” and during the final battle on the Poyang Lake, put those boards into the water. It is said that innumerable rebel soldiers took the boards and fled from the troops. (Wang, 1572/2011, 《征宸濠反间遗事》) Using such a creative way, Wang managed to distinguish the innocent soldiers from those who should be responsible for the war, and to spare the former. Such ways also demonstrated the principle of discrimination. Wang gave the guilty people the

opportunity to correct and do good, and thus the war could end rapidly and in a humane way. The rebellion of Prince Ning was pacified in 43 days, it was precisely because Wang Yangming used various creative means to divide the enemy army that the rebellion could be ended so quickly. Of course, these means could be regarded simply as a military strategy to gain victory, but what more important was that it was a gesture of forgiveness. Wang had always stressed the efficacy of military strategies, but his starting point was to wind down the war sooner and let the local people live and work in peace and contentment.

The third event was pacifying the minority rebellion and local banditry in Guangxi in 1527- 28. Wang insisted that suppressing the revolts was not the ultimate goal, but only one of the means to achieve the goal of restoring the social order and giving peace to the people. He investigated the motive of minority rebellion and judged that the minority tribes were not really fighting against the government, but against each other, due to the conflicts intensified by previous unreasonable governance of the local officials. From Wang Yangming's point of view, this kind of rebellion was on the one hand a violation of the court's law, which deserved to be punished, on the other hand, just civil strife among the minority people, and thus did not have the nature of rebellion against the imperial court. However, his first consideration was not punishment, but rather forgiveness and reconciliation, principles crucial to transition from conflict to peace.

Wang Yangming suggested to the imperial court that the disadvantages of suppressing bandits were much greater than the benefits of appeasement. In his memorial to the imperial court, he stated that the suppression had ten cons, it would damage the emperor's virtue; consume too much money; cause casualties; violate the farming season and disturb agricultural production; deteriorate the relationship with the chieftains; increase the burden on the people; make the morale of the army unstable for soldiers would have to away for a long time. It would also be likely to

cause turmoil among other minorities for gathering troops in one place. And killing the minority people would be tantamount to destroying the defence on the border of the country. In contrast, appeasement would have ten pros: to show the emperor's benevolence; to save money; to reduce casualties; to restore agricultural production; to make the soldiers grateful; to let soldiers from far and near return to their posts without worrying each other; to save manpower; to make the local soldiers feel at ease; to make the people of minority defend against foreign barbarians; to let the people live and work in peace and contentment. (Wang, 1572/2011, 《奏报田州、思恩平复疏》) His suggestions showed Confucian benevolence and the consideration for common people.

After Wang Yangming arrived in Nanning, he issued a notice and sent someone to tell the ethnic minority leaders Lu Su and Wang Shou to care for the innocent victims and accept appeasement, and that the imperial court would exempt them from punishment, and the disputes could be solved by later discussion. At that time, both Lu Su and Wang Shou believed that the notice was a trap set by the court, and they dared not go to accept what Wang Yangming had offered. So, Wang Yangming issued an order to withdraw his army in time and waited for them to come to him. (Wang, 1572/2011, 《奏报田州、思恩平复疏》) In the end, the two came to negotiate, and Wang Yangming exonerated them and tens of thousands of soldiers. Lu Su and Wang Shou were very grateful and immediately withdrew the army and surrendered to the imperial court. And by a constant showing of kindness, he managed to wind down the war rapidly. He tried to make reconciliation with the minorities, gave amnesty to the tribal chiefs and their followers and soon successfully established a policy of self-rule for the area which gained widespread popular support. Finally, Wang Yangming saved the local people from the disaster of war by means of appeasement. And later they used their forces to support Wang to deal with the more stubborn banditry problems.

Wang's *jus post bellum* ideas centred closely on his missions of suppressing rebellions, pacifying local banditry, and restoring order. The social background was different from a civil war or conflict in modern times. Still, his suggestion generally pointed to a right course to deal with war termination and the post-war recovery after that. And later efforts to pacify banditry in Ming Dynasty often followed Wang's pattern. His suggestion and orders, for example, discriminating and giving amnesty to those who were compelled to take part in the rebellion, exhorting the bandits to lay down arms, promoting self-governance within a community, and turning past bandits into good citizens through education, in his case through Confucian virtue cultivation, can be instructive to peace restoration in a civil war context. On the moral dimension, his thoughts and practices demonstrate values such as sympathy for innocent enemy soldiers, readiness for reconciliation, and mitigation of civilian harm, may help a conflict wind down quickly.

What are the implications we may gain from Wang's practices and ideas? And how could these implications engage with the Western Just War tradition and contribute to the *jus post bellum* framework for civil war? I argue that there are mainly three implications. The first is to always put people in the first place and to minimize the harm suffered by the people in the process of transitioning away from war. The second concerns the attitude towards enemy soldiers. Wang considered that there could be many innocent soldiers among the enemy troops, and if possible, those lives should be spared. The third implication is to actively understand each other's motives and demands to expand the possibility of reconciliation. The first may be regarded as an extension of the Confucian view of benevolence and a continuation of the classical Confucian war ethics in the ending period of civil war. For present purposes, no attempt is made to rehearse the related principles or to explore the meaning of benevolence. While the other two are linked to Wang's ideas of pure knowing and the unity of knowing and acting, and I am going to say a few more

words about them.

Wang's ideas and practice were based on his conception of "liangzhi" (良知, pure knowing). When understood broadly, pure knowing refers to the moral consciousness and moral emotion that people naturally possess without depending on the environment and education and it could be many kinds of emotions and acts. The core elements of pure knowing are right and wrong (是非, shi fei), and humane love (the ground of commiseration). If we understand pure knowing in its narrow sense, it simply means the feeling of knowing right and wrong (Chen, 2006). Wang Yangming believes that the only criterion for evaluating right and wrong is pure knowing. The mind does not need to be influenced by what it acquires later for pure knowing exists in human nature just like instinct, without external requirements.

Pure knowing is universal. Everyone has the capability of making moral judgements. It does not conflict with the possibility of making incorrect or inconsistent moral judgements because the capability of moral judgements differs from the contents of moral judgements. We cannot, however, allow wrong or incoherent moral judgements to cast doubt on the fact that one is still making moral judgements, despite the fact that we may disagree with the specific moral judgment's conclusion. (Lu, 2017) And pure knowing can also be understood in Chinese as a noun, the content of pure knowing—Heavenly principle (天理), which is objective. According to Wang, knowing good and evil seems to be the most subjective feeling of the human heart-mind after encountering things. In fact, the truth of good and evil already has a stub in one's heart-mind, which itself is conscience. When people encounter subjective feelings generated by things, they will compare this feeling with the conscience in their hearts. If they are the same, the pure knowing manifested at this time will be displayed naturally. If not, it follows that people's heart-mind are being deceived. If you don't correct the

paranoia of your thoughts in time according to the correct understanding of your conscience, then your heart is not at ease and your intentions are not sincere. Therefore, pure knowing has become the behavioural standard that guides life and practice, and it is also the basis and basic principle for judging good and evil, right and wrong, so as to give people the most direct and accurate guidance.

“The unity of knowing and acting” is Wang’s most distinctive and well-known doctrine. To grasp its significance, let us consider a feigned example. Imagine a bandit who is being questioned by Wang after being caught by the army of the imperial court. If Wang asked the bandit whether he knew that plundering villagers was wrong, the bandit might reply that he knew it was wrong to plunder villagers, but he needed food to survive in the mountains. Wang would deny that the bandit really knew that their behaviour was wrong, because for him, “there never have been people who know but do not act. Those who ‘know’ but do not act simply do not yet know.” And “one cannot say he knows filial piety or brotherly respect simply because he knows how to say something filial or brotherly. Knowing pain offers another good example. One must have experienced pain oneself in order to know pain.” (Wang, 2014, p.267). Merely verbal assent is inadequate to demonstrate actual knowing. He advocated the unity of knowledge and action and believed that knowing and acting cannot be separated. If they are separated, neither of them can be completed.

Without practice, only having the idea of doing good is not really good. In Wang Yangming’s view, only by uniting “knowing good” and “doing good” can we achieve true goodness. The unity of knowing and acting is an important means to promote pure knowing. The real “knowing” is the knowledge about moral behaviour, and the real “acting” is the moral behaviour itself. In other words, Wang Yangming’s “unity of knowing and acting” is also his moral ideal.

Let us now turn to the second implication. It is about how to treat enemy soldiers. Wang reasoned that there may be a large number of innocent soldiers among the enemy forces and if at all feasible, it was best to avoid killing any innocent soldiers. Because pure knowing as a human's innate capability is universal, the enemy soldiers also have their pure knowing and are capable of making moral judgements. A soldier may not genuinely want to participate in war, but due to various reasons, he or she has to join the army and fight the enemy. In Wang's case, some of the bandits and many of Prince Ning's soldiers were forced to fight against the imperial court. He always issued public instructions in order to awaken the bandits' and unjust soldiers' consciences and exhort them to surrender, reconcile and become good citizens. The promise of practising forgiveness and amnesty written in those public instructions would allow them to remake their moral judgement and act accordingly without fear. During the winding-down period of a civil war, it will definitely help end the war quickly. In insisting on this attitude towards enemy soldiers, it is also more likely that a long-lasting peace will ensue.

Just War theorists often tend to treat morality as a completely objective matter, and enemy soldiers are often regarded as evil and immoral and could be killed in the battle because they choose to do the wrong thing. If we adhere to Wang Yangming's teaching, such a view should be rejected. Enemy soldiers' moral judgements matter a lot. And Wang's idea may engage with May's contingent pacifism. May (2015) also concerns that morality as an objective and universal matter, but it has to be interpreted subjectively. The objective morality of participating in war is influenced by the reasonable subjective judgement of a specific soldier. As long as the soldier is not careless in making his or her judgements, the subjective judgement will play a vital role in answering the question of the morality of his or her participation in the battle. For the contingent pacifists, what matters is that "there are very many ways that victims of an attack in war could turn out to be innocent, as a contingent matter." (p.8)



The third implication is that in order to increase the likelihood of reconciliation, both parties must actively understand each other's motives and needs and be willing to take seriously the demand and claim made by one's former enemy. According to his conception of the unity of knowing and acting, Wang Yangming spent a lot of time and energy on field visits. He talked with local people and minority people and investigated what made bandits and minorities take the road of rebellion and what their real demands were. Acquiring this kind of knowledge is vital to post-war justice. As we can see from the aforementioned Wang's cases, behind these rebellions were perennial grievances, and if did not address properly, it would make reconciliation hard to achieve. He also actively thought about the follow-up plan, that in the end of the conflict, how to house former bandits during his investigation. Grievances are one of the key factors that would lead to civil war. A commander like Wang would truly understand the plight of the enemy and would be willing to constantly seek opportunities for reconciliation.

## Conclusion

This study provides a rethink of *jus post bellum*. After my reading of *jus post bellum* literature, I distinguish and sort the existing principles and look into the rationale behind each. Combining with a discussion about the concept of a just peace for civil war, I argue that the morality concerning how to transition away from war is more important when trying to apply *jus post bellum* to a civil war context. Some related *jus post bellum* principles are revised so that they can make sense in a civil war context. I contend that among them, the principle of forgiveness and reconciliation plays a crucial role in internal peacebuilding. In discussing the perspectives developed in the West, a foundation was laid to assist in talking about Confucian post-war ethics.

Specifically, I look to Wang Yangming's idea on *post bellum* issues and argue that on the moral dimension, his thoughts and practices demonstrate values such as sympathy for innocent enemy soldiers, readiness for reconciliation, and mitigation of civilian harm, which may help a civil war wind down quickly. I argue that Wang Yangming's ideas have three implications for *jus post bellum* framework in a civil war context. The first is to always put people in the first place and to minimize the harm suffered by the people in the process of transitioning away from war, a continuation of the classical Confucian war ethics. The second is that, if possible, those innocent enemy soldiers should be forgiven, and their lives should be spared. The third is to actively understand each other's motives and demands to expand the possibility of reconciliation.

This study is a preliminary attempt in response to contemporary *jus post bellum*'s incompetency in assessing the morality of the termination of some civil wars or conflicts. However, I do not think that the discussion should stop here. First, since

warfare is a so fundamental issue in human society, it seems that consulting different paradigms of war ethics to create a more potent and universal conception of *jus post bellum* is warranted. Not only Chinese war ethics, but also *jus post bellum* ideas from other cultures are worth carefully examining. Besides, the applicability needs to be tested on some real-world cases from around the world. Second, the development of *jus post bellum* framework will need more interdisciplinary discourse. It will benefit from a closer look at related disciplines, such as international law, the just war theory, and other approaches.

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## 국 문 초 록

비록 완전하지는 않지만, 근래의 정전론 문헌에는 신생의 *jus post bellum*의 규범에 대한 강력한 지지를 암시하는 상당한 합의가 있다. 그러나 전쟁 종식의 정의(*jus post bellum*)라는 도덕적 개념은 주로 서구 정전 전통에서 발전되어 왔으며, 그 구체적인 규칙은 국가 간의 전쟁에 특히 적합한 것으로 제안되고 해석되어 왔다. 본 연구는 특히 내전 상황에서 적용될 때 *jus post bellum*의 내용에 초점을 맞추고 있으며, 이러한 상황에서 중국의 전쟁윤리 전통이 어떻게 *jus post bellum*에 기여할 수 있는지에 대해 논의한다. 먼저 *jus post bellum* 뼈대에 관한 기존 제안을 검토하고 원칙을 세 가지 종류로 분류하고 각 원칙 뒤에 있는 윤리적 근거에 대한 논의를 제시한다. 그 다음 내전 상황에서 정의로운 평화가 어떠한지 탐구하고 전쟁에서 벗어나는 도덕성에 관한 원칙이 내전 이후의 평화 구축에 더 적합하다고 주장한다. 전쟁윤리에 대한 고전적인 유교적 입장을 검토한 후, 내전을 위한 *jus post bellum*에 대한 그것의 기여를 밝히기 위해 유학자 왕양명(王陽明)의 *jus post bellum* 사상과 실천을 추가로 검토한다. 본 연구는 전후 정의를 이해하고 뒷받침하기 위한 새로운 분석적 관점과 윤리적 근거를 제공한다.

**주요어:** 전후법, 내전, 정전론, 중국 전쟁 윤리, 왕양명

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