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Between Justice and Law: The Concept of *Jus* within the Doctrine of *Jus ad Bellum*, *Jus in Bello* and *Jus post Bellum*

1 Introduction

1.1 Key Issue

The question of whether the legitimacy and legality of the use of force can be sufficiently clarified by reference to the rules of international law, arises again in view of Russia's war of aggression against Ukraine, which violates international law. The defense of Ukraine, the alliance loyalty of the Western powers by supplying weapons, and the explicit condemnation of Russian aggression by the United Nations follow the clear rules of international law in the case of a war of aggression. It is therefore clear that under Article 51 of the UN Charter, Ukraine can defend itself against Russia's use of force (Asada 2024, 15). The United Nations Charter states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." (United Nations Charter 1945, Art. 51) This seems to be undeniably the case with the Russian invasion of Ukraine, as the aggression criterion of an armed attack through a foreign state is clearly given here (Hobe and Kimminich 2020, 212–214). The Ukrainian people – the Charter asserts – have a "natural", "inherent" right to individual and collective self-defense against Russian aggression. This is true even if the extent, the objectives and the methods to be used are not that clear (Asada 2024, 14–19). For example, it is debated whether the reoccupation of Crimea is covered by the right of self-defense granted to Ukraine in Art. 51 of the Charter, or whether this cannot be applied in the same way, as it is usually assumed that the act of self-defense must be in close "direct" temporal connection with the armed aggression (Hobe and Kimminich 2020, 213–214; Asada 2024, 14–19).

Even if Ukraine's right to self-defense is legally undisputed, it raises ethical problems. The extent, means and objectives of Ukraine's self-defense, as well as the arms supplies it demands for this purpose, are also the subject of controversial ethical debates. The spectrum of positions ranges from absolute pacifism to calls for the nuclear armament of European states (Meireis 2025).

https://doi.org/10.1515/9783111632742-014

This example – the extent of the Ukrainian people's right to self-defence – shows how ethical and legal questions about the use of force, its limitation and its termination coincide.

It is therefore questionable whether peace ethics can be replaced by reference to the law. As Reuter notes, the juridification of international relations is one of the necessary but not sufficient conditions for achieving the ideal of peace of law (Reuter 2022, 149). The relationship between law and morality in discourses on peace and military ethics needs to be clarified in order to answer this question.

Ethical discussions adressing the issue of war and peace often refer to the distinction between *jus ad bellum*, *jus in bello*, and *jus post bellum* to explain whether and how a *bellum justum* can be conducted (Meireis 2017; Werkner and Liedhegener 2009; Jackson 2011a; Bugnion 2003; Stahn 2006, 2020; Walzer 2005). Although the connection or separation of the three areas of rights is at issue here, they can be found in the vast majority of contributions to the debate on peace and military ethics.

But the question of what exactly is meant by *jus* and whether this understanding differs between the different areas is usually not asked. This raises the question of whether the concept of *jus* differs in the individual aspects *ad bellum*, *in bello* and *post bellum*.

The term *jus* can be understood as juridical rights – i.e., concrete national and international law or concrete legal norms. This seems to be particularly the case for *jus in bello* and refers here, for example, to laws of armed conflicts (Oeter 2017, 146). Or *jus* can be understood as a moral obligation in the sense of a morally upheld right, as seems to be the case in the debate on *jus ad bellum*, for example (Baumann 2008, 420–422). To clarify the question posed, the discourses surrounding the just war theory and the theory of just peace will be examined regarding their respective use of the term *jus*. Finally, it should become clearer which gaps exist between legal and moral rights in the respective use of the terms.

Before we can address the question of whether the closer definitions of the category *jus* in the debates raise a juridical right or a moral claim to justice, we need to clarify how both – juridical rights and moral claims to justice – can be defined and how they relate to each other.

1.2 The Nature of Law

According to Reuter, law can be understood as the "objective set of norms for the external coding of actions" (Reuter 2013, 192; all translations in this chapter are

by the author). Their legitimacy is based on the fact "that they are socially effective, properly established and (at least minimally) just" (Reuter 2013, 192).

If this abstract definition is to be concretized, rules that sanction certain types of actions, regulate compensation for damages, and determine their (judicial) enforcement can be included here (Huber 1996, 42). Law can be understood as a "referential context of norms and legitimating principles" (Huber 1996, 51). Thus, law is a "system of norms that is established according to legitimating principles, that is broadly socially effective, and that has a minimum of ethical justifiability" (Huber 1996, 102). This broad definition specifically may include the following types of law: Constitutions, formal and substantive laws, regulations and statutes, court decisions, international treaties, agreements and conventions (von der Pfordten 2011, 80–81).

It should be noted here that it is not the enforcement of the law by legal force, by instruments of the (state) monopoly on the use of force or by international institutions legitimized to take coercive measures that is alone decisive for the legal character of the norms in question. Especially in the context of international (public) law, the execution of the law is often difficult and only realized by a few institutions that are not universally accepted by all states. Consequently, the law is not defined by its execution (Huber 1996, 63). This applies in particular to the legal norms of international law at issue here. Due to their long historical lineage of juridification of moral and ethical concepts, these norms exhibit a certain international heterogeneity and cannot always be understood as a uniform body. There is no uniformly closed system of international law, at least at its margins (Reder 2013, 160, 167–172).

Despite the vagueness of international law, which may be related to the lack of a consistent legislator, it is possible to identify widely accepted legal sources of international law (Huber 1996, 362–364). These are treaties, international customary law, general sources of law and resolutions of the UN General Assembly and the UN Security Council, as well as so-called "soft law" (Hobe and Kimminich 2020, 139). The enforcement of the international law codified in these legal sources is always subject to certain limitations due to national sovereignty. Overall, however, in its present form it assumes the function of a law of peacekeeping, which to a certain extent depends on voluntary compliance by the community of states (Huber 1996, 364–366).

1.3 The Realm of Moral Rights

In contrast to legal rights, rights in a moral sense can be understood as non-legally guaranteed claims that individuals or communities can make, without

legal entitlement or enforcement of those claims (Baumann 2008, 78–81). Those claims can be made by individuals against other individuals or against communities, or by communities against individuals or other communities (von der Pfordten 2011, 227–229). Nevertheless, moral rights are also legitimate claims, but they must be based on other justifications than juridical rights. They are based on notions of justice, of good and right. The term "good" is used here when addressing particular contexts of justification, while the term "right" is used when making generalizable claims to justice that transcend particular contexts (Meireis 2008, 240–244). The latter is usually the case in questions of peace and military ethics, even if, for example, in the framework of a theory of just peace, religious-Christian imaginations of the "good" are used to claim certain moral rights to a life in peace – in the sense of a meaningful and sophisticated concept of peace (Evangelische Kirche in Deutschland 2007, 50–56).

Moral rights can so be understood in the case of *jus ad bellum*, *in bello* or *post bellum* – with reference to Judith Thomson – as universalizable claims to what "people ought or ought not do, and may or may not do" (Thomson 1990, 33). This definition of "moral rights" corresponds to the definition of morality as the sum of "all actually existing, non-legal, categorical norms existing in a society" (von der Pfordten 2011, 84). Nevertheless, going beyond v. d. Pfordten, moral rights are also to be understood as norms that do not yet exist within a society, but should be applied in it for reasonable, intersubjectively plausible arguments. In this way, moral rights can be understood as rights that moral subjects have in order to satisfy rationally enforceable minimum requirements of justice that can be fulfilled or violated by actions, conditions, or events (Lohmann 2017, 152–153).

1.4 Beyond Legal Positivism and Legal Essentialism

Because of the weak enforcement of international law, the tension between its legality and legitimacy needs to be addressed (Reuter 2022, 155). For example, legal essentialist positions regard moral claims to justice as an intrinsic part of law as law, whereas strict legal positivism categorically separates the two spheres, arguing that they are conceptually or even ontically incongruent. This positioning, in turn, has considerable implications for the question of the right to, in, and after war, since the two meet in several ways, at least argumentatively.

At a superficial level, a dichotomy can be drawn between natural law and legal positivism (von der Pfordten 2011, 107). While natural law positions usually assume a super-positive order of moral norms identifiable by human rationality and set this as the critical standard for positive law, thereby assuming a close argumentative-justificatory connection between juridical and moral rights, at least

strict legal positivism can be characterized by the lack of a morally super-positive standard for the justification of law (von der Pfordten 2011, 110–111).

A closer look reveals that this dichotomy cannot be maintained. Rather, a separation and connection thesis of legal and moral rights should be assumed (von der Pfordten 2011). This means that a justification of the law in terms of legal ethics by moral rights is either impossible, possible, real, or necessary (von der Pfordten 2011, 121).

Here, as a working hypothesis, the possibility of legal-ethical criticism of positive law through moral rights is to be assumed in order to prevent a premature identification of juridical with moral rights, on the one hand, and not to completely separate the two and thus prevent criticism of juridical rights, on the other (von der Pfordten 2011, 80). A distinction should be made between "law as it is and law as it should be" (Huber 1996, 101). Legal and moral rights are then distinguished above all by their reason for validity, their changeability and their form of enforcement, but they always remain related to each other, since both strive for human action and communication processes (Huber 1996, 99). It must therefore be recognized that a "realistic" position on international relations, which relies unilaterally on the (non-)enforcement of international law or on inter-state anarchism, also entails normative positions – i.e., moral principles (Reuter 2022, 152).

In this way, a relational content of justice within juridical and moral rights can be presupposed for the question of juridical and moral rights within military and peace ethics (von der Pfordten 2011, 217). We can therefore speak of justice as a manifestation of right (Lohmann 2017, 156).

2 Jus within the Just War Theory and the Theory of Just Peace

2.1 *Jus ad Bellum*

Not only in traditional just war theory but also in revisionist just war theory and the theory of just peace, the criteria of *jus ad bellum* serve to limit war. They limit war both legally, in the form of international law, and morally, as a justification only for certain forms of the use of force (Haspel 2009, 72). *Jus ad bellum* can so be traced back to the "why" of military interventions or understood as the "right to (wage) war", either as a juridical or moral right (Jackson 2011a, 581). The *jus ad bellum* thus questions the moral and legal legitimacy of the use of military force (Lohmann 2013, 111).

But the legal meaning of *jus ad bellum* can currently only be understood negatively. Although historically it meant a juridical right to war guaranteed by the sovereignty of states, at the latest with the Charter of the United Nations this has been decisively excluded (United Nations Charter 1945, 2.4; Oeter 2017, 140–142). The UN Charter is thus interpreted as a drastic change in the *jus ad bellum* (Keichiro 2015, 1210). In its modern juridical form, *jus ad bellum* is interpreted as a "prohibition of the use of force between states" (Fassbender 2013, 177). The literature usually refers to the Charter of the United Nations and its codified rules on interstate violence (Fassbender 2013, 177–178). According to the UN Charter, there is no longer any positive *jus ad bellum* derived from the sovereignty of states (Lienemann 2017, 311). In juridical terms, the *jus ad bellum* – if we look at the debates on peace and military ethics – comprises exclusively a right of defense (Haspel 2017, 319). Takemura, for example, understands international law as "law governing the right to go to war". It "regulates the use of force as a whole"(2009, 187) and pursues a general prohibition of the use of force in international relations, with the exception of Article 51 or Chapter VII (Security Council) of the UN Charter. The proportionality of the means used is a legitimating and limiting criterion that also underlies the decisions of the International Court of Justice (ICJ). Thus, a negatively understood *jus ad bellum* functions in the debate as a limitation even of the right of self-defense (Christodoulidou and Chainoglou 2015, 1187–1190). The *jus ad bellum* as "international law regulating the use of force" is thus understood as a legal right or a legal limitation of the right (Keichiro 2015, 1209). Newton interprets the *jus ad bellum* codified in international law as a "restrictive body of law" that permits only the lawful use of force (2020, 90). Stahn interprets international law, and with it the *jus ad bellum*, as an "architecture of the law of armed forces", which includes considerations of fair and just peacemaking (Stahn 2006, 929, 941). In its prohibitive form, the *jus ad bellum* thus takes the form of a "law of peace" that limits any use of force – including the use of military force *in* war (Greenwood 1983, 221–223).

To a certain extent, the peace memorandum of the Protestant Church in Germany – which is used here as a central text of just peace theory – also follows the interpretation of *jus ad bellum* as juridical law ex negativo. The memorandum thus rejects the framework of *bellum justum*, since a just war seems impossible according to the prohibition of violence in the UN Charter. A positive right to war in the sense of *bellum justum* is rejected. According to the EKD, there is no juridical or moral right to war (Evangelische Kirche in Deutschland 2007, 66–68). Thus, the memorandum admits the dependence of peace on law and emphasizes the prohibition of violence in the UN Charter (EKD 2007, 57–58, 68). A just war in the sense of a *jus ad bellum* concept no longer has a place in the concept of just peace, since the UN has abolished the just war (EKD 2007, 65–68). The memoran-

dum thus replaces the moral considerations of the *bellum justum* with the concept of "law-preserving force" and transforms the *jus ad bellum* into a moral consideration of the necessary, but never just use of force (EKD 2007, 65–68).

Accordingly, beside the negative juridical understanding of the *jus ad bellum*, it can be interpreted as a moral constraint (Jackson 2011a, 581) and in this way also represents a moral right to war (Baumann 2008, 330). A positive jus ad bellum is thus not juridical, but at best conceivable as a super-positive, self-imposed jus ad bellum – sometimes based on ideas of natural law (Reuter 2022, 155). Positions that advocate a positive moral *jus ad bellum* see certain acts of military force as at least morally justified or even necessary. In other words, war is morally legitimized by the *jus ad bellum*. This is usually justified by a right of the individual to the protection and enforcement of basic human rights. Proponents of a moral *jus ad bellum* thus understand this as a universal requirement, e.g., as a "right of the innocent" (Lohmann 2013, 102–103).

For Walzer – as one of the most prominent proponents of just war theory – the distinction between just and unjust wars lies in a moral distinction that is to be sought beyond a legalistic argument of international law (Haspel 2017, 319). Walzer understands the *jus ad bellum* as a "reason states have for fighting" that allows wars to be qualified as just or unjust. The morally interpreted *jus ad bellum* enables him to distinguish between aggression and self-defense (Walzer 2005, 21). Here Walzer finds the normative structure of war and a moral theory of aggression (Walzer 2005, 44, 231). Buchanan argues in a similar way, using the *jus ad bellum* as a criterion that shows when war can be considered "morally right". He seeks a morally objective justification for going to war (Buchanan 2018, 67–68). In doing so, the *jus ad bellum* forms a "direct action guiding norm" for political leaders (Buchanan 2018, 74). He expands the understanding of the *jus ad bellum* as a resource for justifying wars by interpreting it as a social practice and thus linking public acts of justification and justificatory practices (Buchanan 2018, 81–83). The criteria of *jus ad bellum* thus obtain the quality of institutional processes. The morally interpreted *jus ad bellum* here is an instrument of "moral evaluation of legal institutions for constraining war" (Buchanan, 90) and thereby a subject of moral thinking (Buchanan 2018, 88, 94). In the context of her cosmopolitanism, Fabre also interprets the *jus ad bellum* as moral guidelines and "principles governing the resort to war" (Fabre 2012, 3–4), extending the question of the *bellum justum* beyond state actors to non-state actors. She therefore asks whether a *jus ad bellum* as a moral right to wage war exists for non-state actors (Fabre 2012, 148–149). McMahan interprets the *jus ad bellum* as a moral right in a similar way to the one outlined above. Starting from the assumption that the purely legal perspective of international law always comes to a short end and needs the distinction between permission and excuse (McMahan 2009, 110–111),

he calls for a moral and legal perspective on unjust combatants in (un)just wars (McMahan 2009, 126).

This clearly demonstrates the addition of ethical criteria to a "legalistic" interpretation of the *jus ad bellum* (Haspel 2017, 75). In addition to the legal legitimation, according to the principles of the UN Charter, a moral right to war and a morally just reason for war emerge (Hidalgo 2009, 85). It can therefore be concluded that a *jus ad bellum* in the legal sense is primarily spoken of as a right of limited prohibition of violence. The analysis shows that there is a legal right to war only in the sense of a right to self-defense. Morally, the *jus ad bellum* seems to be much broader. Here the positions diverge strongly regarding the bearers of a right to war, as well as regarding the criteria applied and their relationship to positively established law. The *jus ad bellum*, however, is understood positively in moral terms.

2.2 *Jus in Bello*

In most debates, *jus in bello* is understood as a set of rules for belligerents, codified in the Hague Conventions (1899 and 1907), the Geneva Conventions (1949), and the Additional Protocols of 1977 (Schneider et al. 2017, 62). The Geneva Conventions are considered to be the fundamental principle of modern international humanitarian law as the *jus in bello* (Takemura 2009, 188). A legal regime of the Geneva Conventions is thus assumed (Bugnion 2003, 184). It is therefore first and foremost a set of legal rules for the proper conduct of war. The *jus in bello* standardizes the legal limitation of the use of force in armed conflicts (Baumann 2008, 379). According to Hobe and Kimminich, the *jus in bello* can be understood as "the entire body of rules of international law applicable during an armed conflict to persons present in the area of conflict and to the legal evaluation of combat operations" (2020, 498).

The *jus in bello* "governs the conduct of war" (Greenwood 1983, 221) as its legal regime and can thus be equated with international law (Greenwood 1983, 221, 225). Schmitt sees the two even as synonyms: "*jus in bello* or international humanitarian law" (2010, 319). For Stahn, too, the legal dimension of *jus in bello* predominates (2006, 928). The summary can be that *jus in bello* is "international humanitarian law" (Keichiro 2015, 1211). This means that a legal point of view of *jus in bello* is predominantly represented in the discourse (Takemura 2009, 193).

If *jus in bello* is understood as "law applicable in armed conflicts" (Fassbender 2013, 177), then this law is intended to "keep military conflicts within limits" in order to minimize suffering in war (Fassbender 2013, 185). The *jus in bello* as codified law thus serves to protect the victims of war and to protect soldiers

from unnecessary suffering (Fassbender 2013, 187). *The jus ad bellum* therefore contains defined prohibitions of certain actions and tactics and objectives (Baumann 2008, 386–387) and focuses on the principle of distinction between combatants and non-combatants for the protection of civilians (Koch 2019, 84). These rules are laid down within the armed forces in rules of engagement or rules of behavior and are handed out to soldiers in the form of "pocket cards" (Baumann 2008, 399). International courts are responsible for prosecuting violations of the *jus in bello*. It is through them that the *jus in bello* is also given the power of legal enforcement (Baumann 2008, 405–414).

The *jus in bello* includes conventions and agreements in the sense of international humanitarian law and is therefore understood as codified law (Lienemann 2017, 304, 312). For example, Koch even sees an ethical *jus in bello* as having become obsolete due to the expansion of international humanitarian law (Koch 2017, 847). He interprets *jus in bello* as a "set of norms to which the participants in the war must adhere" (Koch 2009, 111–112). Although Koch admits that "the legal norm [. . .] is not the only criterion [for the assessment of acts of war], it is nevertheless the essential one" (2009, 120), and thus he wants to recognize positive law in its regulatory function. Juridical rights therefore have a normatively ordering function (Koch 2019, 80, 91). Despite the enormous efforts to codify *jus in bello* (Greenwood 1983, 225), a number of contentious legal issues remain within the *jus in bello* discourse. For example, the meaning of *jus in bello* in non-international conflicts is questioned (Bugnion 2003, 169). Is the legal *jus in bello* only applicable in international or also in non-international armed conflicts (Schmitt 2010, 319)? Here, as in other borderline cases, the question arises as to the scope and applicability of *jus in bello* (Stahn 2006, 925). Since the codified *jus in bello* includes international humanitarian law, its applicability in internal conflicts remains controversial (Bugnion 2003, 175). New codifications of the rules applicable to non-international armed conflicts are or were necessary (Bugnion 2003, 192). Therefore, the Geneva Conventions must be interpreted with regard to non-international armed conflicts (Bugnion 2003, 197). This further development can be exemplified by international criminal law, which has followed the development of this problem. Nevertheless, there are repeated calls for reforms of international law (Koch 2019, 90–91). With regard to the *jus in bello* as a whole, we can assume a "juridification of international relations" on the one hand, but also an "ethicization of world politics" on the other (Habermas 2004, 115).

In addition to juridical norms, the *jus in bello* also includes "moral constraints on the justifiability of conduct in war". The "how of military action" is specified by a *jus in bello* that is at least understood ethically, too (Jackson 2011b, 584). However, it must be made clear here that – in contrast to *jus ad bellum* – the ethical discourse on the rules of *jus in bello* presupposes the complex set of rules of the

international law of war (Haspel 2017, 317). Especially the problems of asymmetric warfare raise ethical issues here, since the legally codified *jus in bello* does not seem to be adapted to these types of conflicts. Within such conflicts, the distinction between combatants and civilians required by *jus in bello* becomes increasingly difficult (Koch 2017, 844–845): "The ethical debate also deals with the problems arising from the new forms of warfare" (2009, 122).

Above all, the borderline cases of the application of international humanitarian law and the scope, validity and interpretation of *jus in bello* have been raised as ethical questions in the discussion (Greenwood 1983, 225–229). It is therefore less a debate about military ethics than "ethics of international humanitarian law" (Koch 2019, 87). In essence, it is a legal-ethical debate about the legitimacy and applicability of certain legally established norms. Walzer, Fabre, and McMahan, for example, focus primarily on questions of the ethical legitimacy of the legal norms of international law and not on rights or prohibitions for the use of military force that go beyond them (Koch 2009, 116). Walzer thus defines *jus in bello* as the question of when, how, and whom to kill in war (2005, 41). Together with the *jus ad bellum*, the *jus in bello* for him lies in a common "set of articulated norms, customs, professional codes, legal rules, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct", which he calls "the war convention" (Walzer 2005, 44). Walzer's concept of the "war convention" oscillates between legal and moral perspectives. However, he subjects the norms of law to moral justification or moral criticism (Duquette 2007, 42, 52). Fabre, on the other hand, focuses her ethical considerations of *jus in bello* on the requirements of proportionality (Fabre 2012, 224). She understands *jus in bello* as defining the right to kill in war as an individual right (Fabre 2012, 11). Similarly, McMahan understands *jus in bello* as a proportionality constraint on acts of war by just combatants (McMahan 2009, 198). For him, "*in bello* morality coincides with *in bello laws*. But there may also be uncertainty about their application in particular circumstances" (McMahan 2009, 127).

Looking at the discourse, it becomes clear that *jus in bello* is understood more in juridical than in moral terms. For the most part, *jus in bello* is understood as the legal obligation of combatants to protect life (Koch 2019, 86). The moral questions raised around *jus in bello* refer to the limits of a basically juridically regulated right (Lohmann 2013, 115). The legal-ethical debates are conducted in recognition of the legal codification of *jus in bello* (Koch 2009, 109).

2.3 *Jus post Bellum*

While the distinction between *jus ad bellum* and *jus in bello* has long been part of the debates on *bellum justum*, it must be noted that the discussion on *jus post bellum* is more recent, even if the discourse is often conducted with reference to Kant. All in all, the *jus post bellum* can be understood as the sum of criteria that should lead to a just peace after war. Here the final phase of the use of force is taken into account. The *jus post bellum* has its roots in the ethical discussion about the extension of the aspects of the *bellum justum* beyond the actual war phase (Rudolf 2019, 106–107).

The *jus post bellum* has been "mostly theorized as a moral paradigm" (Stahn 2006, 931). It's then a particular kind of morality of ending wars (Mollendorf 2008, 654). From this perspective, *jus post bellum* asks for "justice after war" and the possibility of a justly ended war (Rocheleau 2011, 582). For the most part, the discourse shows a shift away from a purely legal and institutional understanding of *jus post bellum* towards comprehensive peacebuilding conditions of a just order (Lohmann 2020, 24). The proponents of a *jus post bellum* approach therefore want to discuss "what belligerents owe one another in the aftermath of armed conflicts" primarily from an ethical point of view. They are concerned with an ethical evaluation of warfare, in the sense of an overall ethical evaluation of the use of force (O'Driscoll et al. 2021, 859).

In normative terms, the debate raises negative and positive duties for political transformation and reconstruction after military violence (Rudolf 2019, 108). Restorative and transformative tasks form the core of this debate (Frank 2009, 741). According to Knesebeck, the ethical demands of the *jus post bellum* are the restoration of the rights of the victims, the distinction between those militarily and politically responsible and between combatants and the population, the punishment of war crimes, compensation, and the overall rehabilitation of a just regime (von dem Knesebeck 2014, 134–140). Bass supplements *jus post bellum* with the duty to repatriate prisoners of war and the rights and obligations of post-war reconstruction (2004, 385–390). He emphasizes, however, that the moral imperative to punish the guilty is not the only moral principle at stake. For him, the moral duty to peace outweighs the duty to – juridically interpreted – justice (Bass 2004, 404–405). To maintain and promote peace, he calls for obligations of economic restoration and reparations (Bass 2004, 405–408).

This is aimed at strengthening the state, economic reconstruction, sociocultural repair work, which is why Rigby, for example, calls for forgiveness and reconciliation in *jus in bello* in a similar way – but here again in a clearly more ethically charged way. He is concerned with the question of "a peace that's 'just' enough" (Rigby 2022, 181), which is to be answered by the *jus post bellum*. Forgive-

ness as the beginning of a new memory represents for him the core of a morally interpreted *jus post bellum* (Rigby 2022, 184). This can be interpreted as claims to responsibility after winning a war and ethical obligations to just post-conflict behavior. These are expressed in moral obligations to the defeated party (Braun 2023, 58–60).

If we look at the ethical debate surrounding the *jus post bellum*, we see that it is primarily a matter of embedding the just war theory in the ethics of peace, which is oriented toward the end of military violence (Frank 2009, 739). An ethically understood *jus post bellum* therefore finds its realization in justice after war and should contribute to the promotion of a just peace after an armed conflict (Braun 2023, 57, 61). The rules of peace ethics, the limitation of violence, its – not only legally interpreted – regulatory capacity as well as its orientation towards justice thus find their way into just war theory (Frank 2009, 750). For Evans a just peace perspective requires a *jus post bellum* position and both – *jus ad bellum and in bello* – are seen as morally dependent on *post bellum* (Evans 2008, 535). Looking at the *jus post bellum* is meant to help understand what's morally right and wrong about past wars (Evans 2008, 537). The *jus post bellum* should thus contribute to the clarification of the morality of war and enable a sufficiently just peace (Stahn 2020, 19).

Jus post bellum can, from an ethical perspective, be understood as the promotion of minimal justice (Evans 2008, 539). The strong ethical focus of the underlying debate is certainly also due to the lack of a legal tradition of *jus post bellum*, which is also acknowledged by representatives of a legal perspective on *jus post bellum* (Stahn 2020, 19).

In legal terms, there is an ongoing controversy about post-conflict settings. That's why Günnewig states "*jus post bellum* as a legal concept is still in early stage" (2020, 441). From a legal point of view, these are mostly rules of customary international law of state responsibility, whose clear interpretation and criteriology have not yet crystallized (Günnewig 2020, 446, 469). Rather, a "legal void of jus post bellum" (Günnewig 2020, 470) must be assumed. Customary international law usually only regulates minimum conditions of acceptable behavior after the war (Knesebeck 2014, 132). Here, for example, legal duties and rights after a military intervention are discussed (Haspel 2017, 322–323). International law should therefore increasingly take the post-war phase into account and focus on the fact that an actual just peace-making and not the restoration of the status quo ante is intended (Stahn 2006, 936). This would also require charter-based considerations of jus post bellum and a "post-conflict law" (Stahn 2006, 937). In this way, war crimes could be made legally accessible through international jurisdiction and judged retroactively (Frank 2009, 742). At the same time, the legal implementation of *jus post bellum* requires a pluralistic and problem-solving approach to peace-

making, since international law contains certain normative gaps to a post-war perspective (Stahn 2006, 941). Thus, a comparison with *jus ad bellum* and *jus in bello* also shows that the legal dimension of *jus post bellum* is not as clearly defined as the other two (Fleck 2014, 43). For a juridically understood *jus post bellum*, nevertheless, it can be emphasized in a positive way that, in contrast to *jus in bello*, for example, it shows a specific openness of rules. The *jus post bellum* contains a broad spectrum of different levels of regulation, which covers very different branches of international law. Thus, *jus post bellum* is not always bound by codified legal frameworks and thus allows for a balance of formal and informal approaches (Fleck 2014, 43, 53–55).

Overall, it can be shown that *jus post bellum* clearly predominates ethical considerations. Large parts of the discussion understand *jus post bellum* as a moral obligation and moral right to a just post-war order, to and for reconstruction and social reparation in the sense of restorative justice, which includes coming to terms and dealing with the injustices suffered. In addition to these ethical considerations, however, there is also a growing legal debate about the necessity and possibility of a legally constituted and codified *jus post bellum*.

3 Justice and Law: The Relationship between Juridical and Moral Meaning – Normative Gaps

All in all, it can be assumed that law and ethics are deeply intertwined in the field of military and peace ethics, although the two can be clearly separated from each other.

In examining the state of the discussion, it has become clear that the *jus ad bellum* can only be interpreted ex negativo in legal terms. If, on the other hand, it is interpreted in terms of a moral claim to justice, a far-reaching and controversial debate on the possibility and necessity of war can be discerned. There is a normative regulatory gap here, especially in the contrast between the legal use of *jus ad bellum* understood in a negative sense and the moral use understood in a positive one. The situation is different for *jus in bello*, where the discussion is dominated by the interpretation of legal rights. Here there is a normative gap in which ethics is more concerned with the applicability and borderline cases of juridically codified law than with the critical consideration and super-positive evaluation of the law itself. This is where the ethical debate should be strengthened and conducted in such a way that it can actually function as a critical corrective to juridical rights. Here, ethics must assume its legal-ethical responsibility and

raise moral rights as a claim to justice and its codification in the sense of their enforceability.

The *jus post bellum*, on the other hand, requires a much stronger legal implementation of the moral claims and moral rights raised in the debate. Here, the normative gap is clearly on the side of positive law. While the possibility and appropriateness of a just post-war order is widely discussed in ethical terms, this is still not sufficiently reflected in codified international law and its concrete positive provisions. There is a need to update the international law, which has its roots in ethical reflection on the post-conflict phase.

Overall, the survey of juridical and moral approaches to *jus ad bellum*, *in bello* and *post bellum* shows how closely law and morality are linked and that progress in the field of peace and military ethics can therefore only be achieved through joint interdisciplinary discussion if no normative gaps are to be perpetuated or created. A complete replacement of peace ethics by law therefore seems impossible (Oeter 2017, 115).

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