Notes

1 Introduction


2. Because I am interested in a war’s issue, I do not look specifically at either peace agreements or post-war constitutions. A war’s issue can be settled even if it is not the result of an agreement between the adversaries or specified in an agreed upon text. In my understanding, the secessionist issue involved in the war in Sri Lanka, for instance, was settled (at least temporarily) when the government forces defeated the Tamil Tigers.


6. Ibid., 148.

7. In fact, Beilin’s argument rests on some wobbly counterfactual reasoning. It is by no means clear, for instance, that an Israeli state established according to the Peel Plan would not have gone to war to expand its territory and that a similar refugee catastrophe as the one in 1948 would then have occurred. In fact, many of the Jewish politicians who agreed to the Peel Plan considered it a temporary first step towards an expanded Israeli state. Bregman, A History of Israel, 30.

13. Donald M. Snow, *Uncivil Wars: International Security and the New Internal Conflicts* (Boulder, CO: Lynne Rienner Publishers, 1996), 25. The best translation of Clausewitz’s *On War* remains Carl von Clausewitz, *On War*, ed. Michael Howard and Peter Paret, trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976). Donald Snow argues, however, that many recent civil wars cannot be characterized in this way, because the belligerents seem to lack the desire to achieve clearly defined political goals, and because the warfare is conducted in a vicious and uncontrolled way. See, Snow, *Uncivil Wars: International Security and the New Internal Conflicts*, 1–2. My conceptualization of war, and of peace, will have little to say about such wars. I believe, however, that for most wars it is possible to detect a genuine political disagreement, even if the war itself is fought, at least in part, by people who do not have a clear political objective.


21. Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province, vol. 2 (New York: Benziger Brothers, 1947), 1359 (Question 40: Of War). Later scholars in the just war tradition added a few more requirements to these three criteria. The most central of these are that a just war must be *proportionate*, that is, it should not do more good than harm; that there must be *reasonable hope* that the goal of the war can be achieved, otherwise, soldiers would have fought in vain; and that the war must be a *last resort*, that is, that there is no other way of achieving the goal than going to war. For a discussion of these and other criteria, see Richard B. Miller, *Interpretations of Conflict: Ethics, Pacifism, and the Just War Tradition* (Chicago: Chicago University Press, 1991), 13–15.


30. Francisco de Vitoria, Political Writings, 302–304 (“On the Law of War,” Question 1, article 3).


33. Augustine, City of God, 866 (bk. 19, chap. 12).


35. The term “laws of war” refers to not only “international law on the conduct of armed conflict and military occupation, but also the law on genocide and on crimes against humanity.” Adam Roberts and Richard Gueff, Documents on the Laws of War, 3rd ed. (Oxford: Oxford University Press, 2000), 2. The laws of war are sometimes used synonymously with the term “international humanitarian law,” which can be defined as “the law governing the conduct of armed conflict.” Steven R. Ratner and Jason S. Abrams, Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, 2nd ed. (Oxford: Oxford University Press, 2001), 10. International criminal law is defined as “a body of international rules designed both to proscribe international crimes and to impose upon States the obligation to prosecute and punish at least some of those crimes.” Antonio Cassese, International Criminal Law (Oxford: Oxford University Press, 2003), 15. It includes war crimes, crimes against humanity, and genocide, as well as other international crimes, such as aggression, torture, and terrorism.

36. For a discussion of jus post bellum ideas among classical just war thinkers such as Francisco de Vitoria, Francisco Suárez, Hugo Grotius, John Locke, Emmerich de Vattel, and Jean-Jacques Rousseau, see Pablo Kalmanovitz, “Justice in Postwar Reconstruction: Theories from Vitoria to Vattel” PhD diss., Columbia University, 2010. A short survey of both historical and current writings on jus post bellum can be found in Mark J. Allman and Tobias L. Winright, After the Smoke Clears: The Just War Tradition & Post War Justice (New York: Orbis Books, 2010).

38. Mark Evans makes a distinction between restricted and extended conceptions of *jus post bellum*. A restricted conception of *jus post bellum* is concerned with war termination and the immediate period after the war. An extended conception of *jus post bellum* is concerned with the issues that arise in, for instance, long-term occupations. In Evans’s view, most *jus post bellum* theories, including Brian Orend’s influential work, are examples of a restricted approach. Mark Evans, “Balancing Peace, Justice and Sovereignty in *Jus Post Bellum*: The Case of ‘Just Occupation’,” *Millennium—Journal of International Studies* 36, no. 3 (2008): 539–540.

39. David Rodin calls this topic “terminatio law,” and argues that we should spell out “the transition from fighting to peace and give guidance to combatants on when they are permitted or required to quit hostilities and sue for peace.” See David Rodin, “Two Emerging Issues of *Jus Post Bellum*: War Termination and the Liability of Soldiers for Crimes of Aggression,” in *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace*, ed. Carsten Stahn and Jann K. Kleffner (The Hague: T.M.C. Asser Press, 2008), 54.


42. Ibid., 489. David Rodin holds that there are cases in which one should stop the war even before a justified goal has been achieved. He takes the case of a war fought in self-defense in order to regain a territory invaded by an aggressive state. If war termination is guided strictly by the criteria of a just cause, the war should end when the territory is recaptured. But what if taking the territory requires a large amount of sacrifice? If we agree that the rule of proportionality has to govern the war effort, that is, that the good of the war has to outweigh the harm, it can be difficult to insist that the war should continue until the whole territory is recaptured. See, Rodin, “Two Emerging Issues of *Jus Post Bellum*: War Termination and the Liability of Soldiers for Crimes of Aggression,” 55–56.


44. Walzer, *Just and Unjust Wars*, 123.

45. The prosecution of war crimes is part of a larger subject often referred to as “transitional justice.” Transitional justice involves both legal and nonlegal mechanisms that states can adopt to address crimes that were committed during a war or during the rule of an oppressive regime, and include truth-commissions,


49. The International Criminal Court does not yet exercise jurisdiction over the crime of aggression. Until 2010, the Rome Statute, the treaty that established the Court in 1998, had not defined the crime of aggression or specified the conditions for the Court’s jurisdiction over the crime. The Rome Statute was amended in 2010 to define the crime of aggression, but the Court will not begin to exercise jurisdiction over this crime until 2017 at the earliest. For a discussion of the process that led to this amendment, see Jennifer Trahan, “The Rome Statute’s Amendment on the Crime of Aggression: Negotiations at the Kampa Get Review Conference,” *International Criminal Law Review* 11, no. 1 (2011): 49–104. The ICC has only sought to put two sitting political leaders on trial. In 2009, the ICC indicted the Sudanese President Omar Hassan al-Bashir for crimes of genocide, crimes against humanity, and war crimes in Darfur, and in July 2011, the ICC issued a warrant of arrest for Libyan leader Muammar Gaddafi for crimes against humanity.


55. John Maynard Keynes, The Economic Consequences of the Peace (New York: Harcourt, Brace and Howe, 1920/1988), 225. Later assessments of the Versailles Treaty have been more positive. According to Sally Marks, for instance, “the real difficulty was not that the Treaty was exceptionally unfair but that the Germans thought it was, and in time persuaded others that it was.” Marks, The Illusion of Peace: International Relations in Europe 1918–1933, 16. An excellent discussion of reparations in the wake of the First World War is also provided by Mark Trachtenberg, Reparations in World Politics: France and European Economic Diplomacy, 1916–1923 (New York: Columbia University Press, 1980).


57. Haig Khatchadourian, “Compensation and Reparations as Forms of Compensatory Justice,” Metaphilosophy 37, no. 3–4 (2006): 429–431. Reparations can be contrasted with compensation, which can be called for in cases where no identifiable party has committed the wrongdoing, for instance, in floods and earthquakes. For further elaboration on the distinction between reparations and compensation, see ibid., 430–433.


60. Walzer, Just and Unjust Wars, 297.


63. For a discussion of how classical just war thinkers, such as Francisco Vitoria, Francisco Suárez, and Hugo Grotius defined the responsibilities of postwar reconstruction, see Kalmanovitz, “Justice in Postwar Reconstruction: Theories from Vitoria to Vattel.” In Brian Orend’s view, Immanuel Kant was one of the first to systematically address issues of postwar justice. See Brian Orend, *Jus Post Bellum: The Perspective of a Just-War Theorist,* 574–575.

64. This is part of what Walzer refers to as the “legalist paradigm,” which defines his core theory of aggression. See Walzer, *Just and Unjust Wars,* 61–62.

65. Ibid., 86. Bass also presents a cultural objection to reconstruction. He asks, “what right does one have to impose one’s political or cultural values on a conquered country?” Bass, “*Jus Post Bellum,*” 394–395.


67. Bush and Scowcroft suggest another reason why attempting to oust Saddam Hussein from power would have been wrong. Extending the war, they claim, “would have incurred incalculable human and political costs.” It would have implied a prolonged occupation, which probably would have alienated the Arab states and some of America’s allies. Evoking the principle of reasonable hope, there was also no guarantee that the attempt to create a better regime in Iraq actually would have worked. Bush and Scowcroft argued, therefore, that not only could they not guarantee that an extended war would have created a better peace, but the cost of such a peace was unacceptable. See ibid., 489.


69. Ibid.

70. Walzer, *Just and Unjust Wars,* 114.


72. Ibid., 397.


75. It is possible, as Orend argues, that the lack of attention to *jus post bellum* is in part a result of the assumed link between *jus ad bellum* and *jus post bellum.* When the rightful termination of war is defined by the justified reasons for going to war, *jus post bellum* does not need to be explored independently. *Jus post bellum* has, in this way, been subsumed under *jus ad bellum.* See Orend, “*Jus Post Bellum: The Perspective of a Just-War Theorist,*” 573.

76. Orend, *The Morality of War,* 162. Orend attempts to define a set of principles that can guide a victorious state, which has been

77. See, for instance, Walzer, *Arguing About War*, 18–19.


82. Bass, “*Jus Post Bellum.*”


84. Ibid., 611.


86. Mark Evans also argues that a theory of *jus post bellum* has to address different endings of just wars, not only those that end in victory for the just side, but also those that end in defeat for the just side, or in a stalemate See, Evans, “Moral Responsibilities and Conflicting Demands of *Jus Post Bellum,*” 163–164. The same position is taken by Bellamy, who argues that when *jus post bellum* criteria are not tied directly to the just causes of war, it becomes possible also to also evaluate the peace after an unjust war. See, Bellamy, “The Responsibilities of Victory: *Jus Post Bellum* and the Just War,” 612.

87. An important exception here is the so-called “independent thesis,” which holds that combatants enjoy the same kinds of rights and obligations regardless of the *ad bellum* status of the state to which they belong. Modern just war theory is often also based on the “symmetry thesis,” which states that belligerents on both sides of the conflict hold the same *in bello* rights and obligations. David Rodin, “The Moral Inequality of Soldiers: Why *Jus in Bello*


89. Or as Bass argues, “the aftermath of the war is crucial to the justice of the war itself.” Bass, “*Jus Post Bellum*,” 388. Walzer believes that it is quite possible to fight a just war in a just manner, but still “make a moral mess of the aftermath—by establishing a satellite regime, for example, or by seeking revenge against the citizens of the defeated (aggressor) state, or by failing, after a humanitarian intervention, to help the people you have rescued to rebuild their lives.” Walzer, *Arguing about War*, 163.


91. Ibid., 162.

92. Ibid., 162–163.


95. Walzer, *Arguing About War*, 18. Bass says: “If one’s goals are mere self-defense, the paradigmatic case of just war, then there is little justification for reshaping a defeated society. One does not have to completely change an enemy country’s domestic arrangements in order to make sure it will not attack again.” Bass, “*Jus Post Bellum*,” 393–394. Williams and Caldwell concur: “*Jus post bellum*, in other words, requires in the case of a war against aggression the restoration of the *status quo ante bellum* with respect to the rights of the victims of aggression.” Williams and Caldwell, “*Jus Post Bellum*: Just War Theory and the Principles of Just Peace,” 317. In the case of a humanitarian intervention, they go on, a just peace requires “the securing of the rights of those whom the intervention was intended to assist.” Ibid. According to Kalmanovitz’s study, “the classical theory puts a strong emphasis on the connection between *jus ad bellum* and *jus post bellum*, and uses the just cause of war as the main guide to assess the justice of a war’s aftermath.” Kalmanovitz, “Justice in Postwar Reconstruction: Theories from Vitoria to Vattel,” 14.
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99. Walzer, Ibid.

2 Some Theoretical Considerations

6. According to the UCDP the issue territory “refers to contested incompatible positions regarding the status of a territory and may involve demands for secession or autonomy (intrasatate conflict) or the aim of changing the state in control of a certain territory (inter-state conflict).” Themnér and Wallensteen, “Appendix 2a. Patterns of Major Armed Conflicts, 2001–10,” 69–70.
7. In his investigation of 177 wars from 1648 to 1989, Kalevi Holsti makes a distinction between 24 different issues, including territory, state or regime survival, enforcement of treaty terms, national liberation, defense of ally, government composition, and balance


10. Ibid.


12. It must be said, though, that in some cases ethnic differences do seem to be the stated incompatibility. This holds especially true in genocides, where the aim is to eradicate a whole population. In the 1994 genocide in Rwanda, for instance, segments of the Hutu population singled out the Tutsis with the aim of extinguishing them. In such cases the issue cannot be classified without distortion as either territorial or governmental. Thus, I do not directly address the issue of how to create a just peace after genocide.


15. Ibid.


19. For the assertion that poor economic conditions is one of the most important underlying causes of internal armed conflict, see Dan
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20. The work of Paul Collier and his colleagues at the World Bank has sparked new interest in the explanatory role of economic factors. Collier challenges the idea that grievances such as ethnic hatred, political domination, or economic inequality explains most internal conflicts. He suggested that the expression of such grievances are not the real motivation but must be understood as propaganda, aimed at the international community, and also as a way to recruit new soldiers. The true motivation of armed rebellion can be more accurately explained by economic incentives, in particular by the desire to capture primary commodities. While armed conflict might impoverish the society as a whole, smaller groups within it can benefit economically from the war. A society will especially be at risk for conflict if it has large amounts of natural resources, and a high proportion of young men lacking education. Paul Collier, “Doing Well out of War: An Economic Perspective,” in *Greed and Grievance: Economic Agendas in Civil Wars*, ed. Mats Berdal and David M. Malone (Boulder, CO: Lynne Rienner, 2000), 92, 97, 110. See also, Karen Ballentine and Jake Sherman, *Introduction to The Political Economy of Armed Conflict: Beyond Greed and Grievance*, ed. Karen Ballentine and Jake Sherman (Boulder, CO: Lynne Rienner, 2003), 3–4. The greed thesis has been challenged on several scores. While the economic opportunities provided by conflict might play a role in the duration and intensity of the conflict, economic factors alone do not cause conflict. In most cases, conflict is rather caused by the interaction of economic incentives, socioeconomic and political grievances, ethnic animosities, and insecurity. See, Karen Ballentine, “Beyond Greed and Grievance: Reconsidering the Economic Dynamics of Armed Conflict,” in *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, ed. Karen Ballentine and Jake Sherman (Boulder, CO: Lynne Rienner, 2003), 260.

21. According to Dixson’s survey of the statistical evidence on this topic, diamonds and oil do seem to increase the likelihood of war, while other gemstones and opiates actually seem to reduce the chances of a civil war. Dixon, “What Causes Civil Wars? Integrating Quantitative Research Findings,” 713–714.

23. Ibid., 4.


29. Ibid., 134, 145–146.

30. This also means the question of how we should create economic justice falls outside the bounds of this book. I should point out, though, that it would be easy to accommodate other types of issues within the basic framework I construct.


35. The Socialist Federal Republic of Yugoslavia was established in 1946.

36. At least for the time being: after a referendum, Montenegro declared independence in 1996.

41. An absolutist view of morality can be seen as the opposite of relativism. An absolutist position may be summed up in what Isaiah Berlin calls the “Platonic ideal.” According to this ideal, all questions have one true answer, and “the true answers, when found, must necessarily be compatible with one another and form a single whole.” Isaiah Berlin, The Crooked Timer of Humanity: Chapters in the History of Ideas (London: John Murray Publishers, 1990), 5–6.
43. Ibid.
46. Ibid., 197–201.
47. Ibid., 209.
48. Ibid., 195.
50. Paul C. Szasz, “The Dayton Accord: The Balkan Peace Agreement,” Cornell International Law Journal 30, no. 3 (1997): 762. I will not use the word “Muslim” to denote the population of Bosnia that did not identify itself as Serb or Croatian, because it overemphasizes the religious element of their national identity.
53. The referendum had been recommended by the European Community, which also helped conduct it. See James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst and Company, 1997), 83–84.


56. Ibid., 253. Anonymous is not entirely correct when he or she says that Western governments and media are to blame for the Bosnian government’s repudiation of the deal. Lack of support for the plan, especially in the United States was a contributing factor, but there were many in the Bosnian government who were against it because it gave away too much to the Serbs and because it killed the hope of a multicultural Bosnia. See Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina* (Armonk, NY: M.E. Sharpe, 1999), 280–281.


58. Ibid.


61. In a democratic country, one can explain the obligation of political leaders with reference to the democratic process. The election of public officials is the source of rights and obligations for both citizens and the public officials. By choosing people to govern them, citizens relinquish some of their political independence (and, many would argue, take on a general duty of political obedience.) In exchange for the authority conferred on them, political leaders take on a duty to do what is in the interest of the people. For a critical discussion of this view, see Carole Pateman, *The Problem of Political Obligation: A Critique of Liberal Theory* (Berkeley: University of California Press, 1985). In a democratic country, then, political leaders and government officials can be seen as trustees; they have an obligation to promote the interests of the citizens. For the argument that this duty is based on a promise, see Raino Malnes, *National Interests, Morality and International Law* (Oslo: Scandinavian University Press, 1994). It is much more difficult to explain why political leaders who have not come to power through a democratic process have the right to make decisions on behalf of
the populations they claim to represent. What is the source of their authority? They might claim that they have the interests of their people at heart, but unless the citizens have given them some kind of mandate, their right to make decisions cannot be explained.


68. Silber and Little, Yugoslavia: Death of a Nation, 303.


71. Holsti, The State, War and the State of War, 39. Whether such conflicts are defined as uprisings, insurgencies, guerrilla warfare, ethnic cleansing, or genocide, one of their consequences has been to drive up the number of refugees and internally displaced persons, and increased civilian deaths in comparison with military deaths. Kaldor, New and Old Wars, 9.

72. Quoted in Fixdal, “Peacemaking in Asymmetrical Conflicts.”

79. See Buchanan and Mathieu, “Philosophy and Justice,” 18.
80. Buchanan and Mathieu, “Philosophy and Justice,” 19.
87. Ibid., 11.
89. Ibid., xiii.
96. Ibid., 208.
98. Ibid., 10.
107. Ibid.
3 Outcomes of Secessionist Wars


2. Not all secessions are the result of violent conflict. For instance, Norway peacefully received independence from Sweden in 1905, and Czechoslovakia was formally split into Slovakia and the Czech Republic in 1993.


10. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 364. It should be pointed out that establishing an acceptable international law on secession will involve other considerations than establishing a moral right to secession. These considerations include that the proposed legal rule is minimally realistic, consistent with other international norms, and that it does not create perverse incentives. For the distinction between a moral and legal right to secession, see Buchanan, “Theories of Secession,” 32, 41–44.


16. Buchanan points out that there might be difficulties in determining whether this principle applies if the would-be seceding group is not closely related to the group whose territory was unjustly annexed in the first place, or if the original group did not have a solid and undisputed claim to the land. Allen Buchanan, “Toward a Theory of Secession,” *Ethics* 101, no. 2 (1991): 330.


18. Ibid., 355.


25. Ibid., 871.


27. Ibid., 177–178.

28. In the spring of 1991, the picture became more complicated as the Serb republic struggled to keep control over the federation. The Slovenian republic had not opted for complete independence at first, but sought, together with Croatia, to negotiate a loose confederation. The Serbs reacted by walking out of the negotiations, and then later declaring martial law. On June 24, 1991, after another failed attempt to reach a negotiated settlement between the republics, the prime minister of Yugoslavia warned authorities in Slovenia and Croatia that, “The Federal Government will use all means available to stop the republics’ unilateral steps towards independence.” Slovenia (and Croatia) declared independence the next day. See Marc Weller, “The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia,” The American Journal of International Law 86, no. 3 (1992): 570. Thus, in the end their bid for statehood can be viewed as preemptive self-defense. The intuition that Slovenia had a claim to secession before it got to this point, however, still stands.

29. The idea of self-determination has gone through several different incarnations. It was present as a moral or political idea both in the American and French revolutions, where it was primarily a principle for democratic self-governance; it had a great impact on the peace settlement after the First World War, as the victors tried to redraw the map according to ethnic settlement patterns; and it has been used as a legal principle of independence for colonial peoples. I use it here as a principle for national self-government. For discussions of the various incarnations of self-determination, see, for instance, Brilmayer, “Secession and Self-Determination,” 179–184; Alfred Cobban, The Nation State and National Self-Determination (London: Collins,


32. David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), 81. Unlike Buchanan, Miller does not aim to establish an institutional right to secession. Rather, his wish is to develop a theory of secession that can articulate principles that will help us when we assess secessionist claims. By “us” he means both those who wish to secede, those who might oppose it, and the international community. Miller, “Secession and the Principle of Nationality,” 64.


35. Ibid., 49, 82–88.

36. Ibid., 87.


41. For a discussion of this objection, see ibid., 104–108.


1998): 79–102; Philpott, “In Defense of Self-Determination,” 352–385. These theories are also called plebiscitary right theories or choice theories of secession.


50. Ibid.


56. This is Goodin’s interpretation of the principle. Goodin, “Enfranchising All Affected Interests, and Its Alternatives,” 52. It is a variation of the all affected interests principle discussed by Robert Dahl, which states: “Everyone who is affected by the decisions of a government should have the right to participate in that government.” See Robert A. Dahl, After the Revolution? Authority in a Good Society (New Haven, CT: Yale University Press, 1990), 49.


67. Ibid., 162–163.

68. It is worth noting that this position is similar to the *remedial right* theory, just more elaborated and even more demanding.


72. Ibid., 6–7.


74. See more in chapter 5.


76. Bose, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*, 16–17. In 1957, Tamils were promised some regional autonomy in a pact between political leaders of the two groups, called the B–C Pact, but political pressure led the Sinhalese leader to abrogate it. See, Ibid., 18–19.

77. Ibid., 20.


79. The Vaddukoddai resolution, printed in Appendix 2, Anne Noronha Dos Santos, *Military Intervention and Secession in South Asia: The*
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85. Ibid., 75.


93. Ibid., 12–13.

94. Walzer, Just and Unjust Wars, 59. Walzer argues, for instance, that neither the United States nor Saddam Hussein’s regime was


100. Ibid.

101. Michael Walzer points to yet another problem: “The problem with a secessionist movement is that one cannot be sure that it in fact represents a distinct community until it has rallied its own people and made some headway in the ‘arduous struggle’ for freedom. The mere appeal to the principle of self-determination isn’t enough; evidence must be provided that a community actually exists whose members are committed to independence and ready and able to determine the conditions of their own existence.” Walzer, *Just and Unjust Wars*, 93.


105. Johnson, “Just War, as It Was and Is,” 23.


120. Ibid., 137.


122. Kaufmann, “Possible and Impossible Solutions to Ethnic Civil Wars,” 147.


124. Kaufmann, “Possible and Impossible Solutions to Ethnic Civil Wars,” 137.

125. Ibid., 139. Matthew Hoddie and Caroline Hartzell believe that institutions can play an important role in managing conflict. In
their view, the security dilemma is not as prominent as Kaufmann assumes. They believe that adversaries have strong incentives to end conflict and negotiate a settlement, but that misinterpretations and uncertainty often prevent them from doing so. Drawing on neoliberal institutionalism, they believe it is important to design institutional rules that can manage conflict in the postwar state. Hoddie and Hartzell, “Signals of Reconciliation: Institution-Building and the Resolution of Civil Wars,” 26. They also argue that third parties can help achieve stability by reducing uncertainty about the adversaries’ intentions. Third parties can also observe and verify compliance with agreements, and help enforce them. Ibid., 25.


127. Ibid., 155.

128. Stability is in these studies usually operationalized as the absence of “war recurrence.”


131. Ibid., 110.

132. Ibid., 118.


4 Outcomes of Territorial Wars

2. More exactly, 43 out of the 79 wars, that is, 54.4 percent, were over territory. John A. Vasquez and Brandon Valeriano, “Classification of Interstate Wars,” *The Journal of Politics* 72, no. 2 (2010): 300. How many wars can be considered territorial depends obviously on how such conflicts are classified. Included in Vasquez and Valeriano’s category “territorial wars” are wars associated with the formation or unification of new states, and wars over adjacent territory of established states. The other issues in their study are policy disagreements, regime, and other. See ibid., 299–300.

3. This number also includes conflicts that did not lead to war. See Paul K. Huth, *Standing Your Ground: Territorial Disputes and International Conflict* (Ann Arbor: University of Michigan Press, 1996), appendix A.

4. Lotta Themnér and Peter Wallensteen, “Armed Conflict, 1946–2010,” *Journal of Peace Research* 48, no. 4 (2011): 525, 533–535. None of these conflicts were categorized as international, but nine of them were considered internationalized, meaning that other states were militarily involved with troop support. Ibid., 528. It is worth noting that Themnér and Wallensteen’s categorization of territory also includes what I classify as conflicts over statehood.


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15. Ibid., 2.
20. Ibid., 574.
24. Indigenous peoples commonly argue that they have a claim to a particular piece of land because they occupied the land first, or at least before the current state system was erected. Contemporary political theorists generally reject this type of indigenousness claim, because it is implausible to claim that being first occupants in and of itself should give rise to a land claim. That is not to say that there are not other good reasons why we should give indigenous populations special land rights. One could argue that such groups should receive land rights as a compensation for injustices they suffered in the past or because they are often discriminated against and disadvantaged. For a discussion, see Gans, *The Limits of Nationalism*, 104–109. For an influential discussion of how to compensate for historic injustice, see Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103, no. 1 (1992): 4–28. The claim of indigenousness is similar to the legal principle of discovery. Discovery was never regarded as sufficient grounds for title to territory—it had to be coupled with occupancy to give rise to title. See discussion in Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (The Hague: Kluwer Law International, 1997), 40–46.
28. For a discussion of Kosovo Polje and its meaning for the Serb nationhood, see George W. White, *Nationalism and Territory*.

29. For a description of Milosevic’s visit to Kosovo and the impact it had on his career, see Laura Silber and Allan Little, Yugoslavia: Death of a Nation, Rev. and updated ed. (New York: Penguin Books, 1997), 37–40.


33. A similar position is taken by Moore in The Ethics of Nationalism, 190.


35. Ibid., 21 (§32).


39. Ibid., 21 (§ 33).

40. Ibid. (§ 31).

41. Ibid., 23 (§ 37).


46. Waldron, “Two Worries about Mixing One’s Labour,” 44.
49. Ibid., 146.
54. Cara Nine, “A Lockean Theory of Territory,” 152. On the other hand, if we do not include metajurisdictional authority in the property right, we have to abandon the social-contract element of the theory. For discussion, see ibid., 153–154.
55. Ibid., 153.
56. Cara Nine defends, therefore, a collectivist Lockean theory without reference to property rights or to individual consent. She argues instead that territorial rights help realize other important liberal values, like liberty, desert, and efficiency. Ibid., 154–164.
61. Ibid., 577.
63. Ibid., 218–219.
64. Meisels, *Territorial Rights*, 126.
68. Ibid.
69. I borrow this term, as well as the two-staged procedure in assessing territorial claims, from Stilz, “Nations, States, and Territory,” 590.
70. Ibid.
73. Serb paramilitary forces had taken control of almost one-third of Croatia’s territory, primarily in the eastern Krajina region and in Eastern and Western Slavonia.
76. Ibid.
79. Regan, Just War: Principles and Cases, 60.
80. Ibid., 61.
83. The Kellogg-Briand Pact is more properly known as the General Treaty for the Renunciation of War. The text of this treaty as well as a number of other treaties and documents relating to law and diplomacy are available at: http://avalon.law.yale.edu/.
86. Sharma, Territorial Acquisition, 120.
90. Ratner, “Drawing a Better Line,” 591. Despite its purpose, however, the application of the principle has sometimes led to conflict. In Latin America, for instance, border disputes sometimes broke out because one could interpret the principle to mean either *uti possidetis juris* (that legal possession of territory was defined by Spanish legal documents) or *uti possidetis facto* (that legal possession of territory was defined by the land actually held at time of independence). See Beth A. Simmons, *Territorial Disputes and Their Resolution: The Case of Ecuador and Peru*. Peaceworks no. 27 (Washington, DC: United States Institute of Peace, 1999), 4. Available at: http://www.usip.org/publications/territorial-disputes-and-their-resolution.
92. Murphy, “Historical Justifications for Territorial Claims,” 533.
93. Ibid., 534.
94. Ibid., 534–357.
95. Ibid., 533.
99. Ibid., 19.
101. Ibid.


107. Holbrooke, To End a War, 363.


110. Quoted in Danner, Stripping Bare the Body: Politics, Violence, War, 302.

111. Ramet, Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the Fall of Milosevic, 232.

112. Quoted in, Tanner, Croatia: A Nation Forged in War, 299.


114. Korman, Right of Conquest, 305.


116. Ibid., 243.

117. Ibid.


119. This debate was renewed in part because of President Bush’s 2003 National Security Statement, which declared that the United States must “stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.” Quoted in David Luban, “Preventive War,” Philosophy & Public Affairs 32, no. 3 (2004): 207.

120. See Kinga Tibori Szabó, Anticipatory Action in Self-Defense: Essence and Limits under International Law (The Hague: T.M.C. Asser Press, 2010), 5. While I use the terms interchangeably here, some scholars make a distinction between anticipation and preemption.


122. Shue and Rodin, Introduction, 3.

123. Walzer, Just and Unjust Wars, 85.

124. See ibid., 82–85.

125. Luban, “Preventive War,” 213. Preventive war is much more difficult to justify, both in legal theory and in moral theory. For discussions, see, for instance, ibid; Shue and Rodin, Introduction.


133. In fact, on June 19, ten days after the war was over, the Israeli cabinet voted for a conditional withdrawal from large parts of the territories (but not from the Gaza strip). The proposal, according to Avi Shlaim, was never transmitted to Egypt and Syria. Avi Shlaim, The Iron Wall: Israel and the Arab World (New York: W. W. Norton, 2001), 253–254.

135. Ibid. Especially with regard to the West Bank, one cannot claim that the intention of these annexations was their assumed military value.
138. Ibid.
140. Ibid., 121.
141. Ibid.
143. Ibid., 10.
144. Ibid., 20.
145. Ibid., 26.
152. Ibid., 84.

5 Outcomes of Wars over Government

1. A caveat is in order here. The choice of political institutions has to be sensitive to the challenges that the particular country faces. Furthermore, institutional design can be a complex and often very technical topic. My discussion will by necessity therefore be quite general.


7. Ibid., 13.

8. Ian Lustick, “Stability in Deeply Divided Societies: Consociationalism versus Control,” World Politics 31, no. 3 (1979): 325. The notion of a deeply divided society might be challenged because it paints a picture of national identities as permanent and fixed. But ethnic differences are not set in stone. Rather, they evolve over time. That said, we do not need to accept a view of ethnicity as unchangeable in order to find the notion of a deeply divided society valuable. This concept highlights that deep cleavages as well as a high degree of hatred and intolerance often mark a post–civil war society. For a discussion, see Ian Shapiro and Courtney Jung, “South African Democracy Revisited: A Reply to Koelble and Reynolds,” Politics & Society 24, no. 3 (1996): 243. See also, Ian Shapiro, “Democratic Innovation: South Africa in Comparative Context,” World Politics 46, no. 1 (1993): 143. An ethnic groups share many of the same traits as a national group, that is, a common history, a shared language and a culture that sets it apart from other groups. But a nation is often thought to be more self-conscious than an ethnic group, and also have a more clearly defined political identity. See discussion in, Adrian Hastings, The Construction of Nationhood: Ethnicity, Religion, and Nationalism (Cambridge: Cambridge University Press, 1997), 2–3.


14. I am here making the common distinction between procedural fairness and outcome fairness, that is, between “fairness as a procedure that gives an equal chance for each participant to affect the outcome,” and “fairness as a tendency of a procedure to produce results that are just.” See David Estlund, introduction to *Democracy*, ed. David Estlund (Malden, MA: Blackwell, 2002), 6.


22. Kymlicka, *Contemporary Political Philosophy*, 4. The idea of equality is also closely connected to the idea of liberty. To the extent that we are concerned about promoting people’s interests, we must be concerned about securing the liberties that protect these interests. To take Kymlicka’s example: if we agree that every person has an important interest in marrying the person of his or her choice, we also have
to protect that interest with a corresponding freedom. Denying a person that liberty would be the same as denying the person’s “equal standing as a human being whose well-being is a matter of equal concern.” Ibid., 139.

23. Ibid., 4.
26. Ibid., 222.
28. Ibid., 71.
30. Clearly, not every majority decision is tyrannical. How, then, do we distinguish between majority decisions that are tyrannical and majority decisions that are not? What most approaches to this question agree on is that tyrannical policies violate individuals’ essential interests or rights. Thus, Robert Dahl interprets Madison’s definition of tyrannical policies to be cases where there are “severe deprivations of natural rights.” See, Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: The University of Chicago Press, 1956), 6. But Fishkin believes the concept of “natural rights” is difficult to define precisely, and prefers therefore to define tyrannical policies as those that destroy the essential interests of parts of the population. See, Fishkin, *Tyranny and Legitimacy: A Critique of Political Theories*, 13, 19.
33. Other historical examples can be found in Lustick, “Stability in Deeply Divided Societies,” 330.
35. Majoritarian democracies, which I will discuss more fully below, can also sometimes be described as political systems based on hegemonic control, but in a most of cases, hegemonic control is exercised in political systems that are not democratic. For a fuller discussion of how democracies can be compatible with hegemonic control, see ibid., 24–25.
37. Ian Lustick argues that “in particular situations and for limited periods of time, certain forms of control may be preferable to the chaos and bloodshed that might be the only alternative.” See, Lustick, “Stability in Deeply Divided Societies,” 344.
41. These include the block vote system, which is essentially a FPTP system in multimember districts, and the run-off system, in which voting takes place in two rounds, and the second round is a run-off between the two candidates with most votes from the first round. For a description of these and two other majority systems, see ibid., 15–16.
42. Horowitz, Ethnic Groups in Conflict, 83–84.
46. Horowitz, Ethnic Groups in Conflict, 84.
50. Ibid., 5. Power sharing can be formally incorporated into the constitution or may exist as an informal agreement between elites. See, David A. Lake and Donald Rothchild, “Containing Fear: The


52. Horowitz’s model has some features in common with consociationalism, such as federalism. But unlike consociationalism, the integrative approach attempts to transcend ethnic group differences. The five main features of this model are: (1) the dispersion of power among the central political institutions; (2) arrangements that decentralize power and make intraethnic competition more important; (3) arrangements that make interethnic cooperation desirable, for instance, through an electoral system such as the alternative vote system (AV) and the single transferable vote system (STV); (4) policies that promote other sources of identification than ethnicity; and (5) politics that reduce differences between ethnic groups and reduce dissatisfaction among the less advantaged groups. For a discussion of these features, see Horowitz, *Ethnic Groups in Conflict*, 597–600; Sisk, *Power Sharing and International Mediation*, 40–45. One problem with this model is that that few countries have the “full packages of all the right institutions.” Thus we have limited information about how this political system would work. See ibid., 44.

53. Lijphart develops his model with respect to European countries, in particular the Netherlands. He is aware that there might be problems connected to transporting this essentially European model to countries in Africa and Asia. See Lijphart, *Democracy in Plural Societies*, 21–24. For a further discussion of some of these problems, see Horowitz, *Ethnic Groups in Conflict*, 571–576.


55. Ibid., 31.


59. Lijphart, *Democracy in Plural Societies*, 41–42. The first and last of these four features—the sharing of executive power and group autonomy—are thought to be the least controversial. For a


63. According to Hartzell and Hoddie, only 1 out of the 38 civil wars in their material that ended in a peace agreement, did not contain some form of power-sharing provision. See, Caroline Hartzell and Matthew Hoddie, “Institutionalizing Peace: Power Sharing and Post–Civil War Conflict Management,” *American Journal of Political Science* 47, no. 2 (2003), 319. It is worth noting that power sharing is here defined more broadly than in Lijphart’s consociational model. As Anna Jarstad points out, in democratic theory, power sharing is usually defined in accordance with Lijphart’s theory of consociationalism, as I have done here. But in the conflict-resolution literature, power sharing is defined as all types of sharing and dividing power among former enemies. See, Anna K. Jarstad, “Power Sharing: Former Enemies in Joint Government,” in *From War to Democracy: Dilemmas of Peacebuilding*, edited by Anna K. Jarstad and Timothy Sisk (Cambridge: Cambridge University Press, 2008), 109.


68. For an outline of these problems, see generally, Rothchild and Roeder, “Power Sharing as an Impediment to Peace and Democracy,” 36–41.

70. Paris, At War’s End, 205.


72. Paris, At War’s End, 6. Paris argues that the same problems are connected to policies of economic liberalization.


74. Paris, At War’s End, 189.

75. Ibid., 188.

76. These elections were to the Bosnia-wide presidency and to the national parliament, as well as to the assembly of the Federation of Bosnia Herzegovina and the National Assembly of the Republika Srpska. The municipal elections, however, were postponed because the situation on the ground was not thought to be ready.


81. For a short discussion of most of these problems, and Arend Lijphart’s response to them, see Donald L. Horowitz, “Constitutional


84. Ibid.

85. Ibid., 812.


90. As Burg notes, lack of elite cooperation must be seen as one of the reasons why Bosnia disintegrated into war. He argues that, “both in their behavior during the electoral campaign, and in their actions upon assuming political power, the leaderships of the three nationalist parties contributed to intensifying the salience of ethnicity for politics, and refused to engage in compromise.” Steven L. Burg, “Bosnia Herzegovina: A Case of Failed Democratization,” in *Politics, Power, and the Struggle for Democracy in South-East Europe*, ed. Karen Dawisha and Bruce Parrott (Cambridge: Cambridge University Press, 1997), 135.


92. Ibid., 49.

93. Benjamin Reilly has termed this approach “centripetalism,” because the hope is to make political competition move to the center, rather than to the periphery. Reilly, “Political Engineering and Party Politics in Conflict-Prone Societies,” 816.

94. Ibid., 815–816.

95. Ibid. For a discussion of how this has been done, see ibid., 818–825.

96. Let us assume that there are 100,000 votes to be cast and three candidates, A, B, and C. Each candidate represents one ethnic group; A represents the A’s, B represents the B’s, and C represents the C’s. Let us also assume that A and B have been expressing
hostility towards the other two ethnic groups, but that C has been accommodating and moderate. We might also stipulate that ethnic group A is smaller than the other two. When citizens vote, they express both their first and second preference. In the first count, we can assume that each candidate gets the support from his own ethnic group, so that although A has fewer votes than B or C, no one has the necessary majority to win. In order to win candidates, B and C have to rely on the second preference of the A voters. Since C has been more accommodating and moderate, we can expect that the A voters would list him as their second preference. Therefore the moderate candidate wins. This account is based on an illustration of the alternative vote system from the Australian electoral Commission, reprinted in Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management*, 19. For a description of other ways to encourage vote pooling, see ibid., 17–18.

106. The PIC is the former International Conference on the Former Yugoslavia (ICFY), and consists of 55 governments and international organizations.

108. Ibid., 26.

109. Ibid., 27.


111. United Nations Secretary-General Boutros Boutros-Ghali, in “An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping,” June 17, 1992, A/47/277—S/24111, paragraph 21. Available at: //www.un.org/Docs/SG/agpeace.html. Thus, peacebuilding operations can be distinguished from peacekeeping operations, which aim primarily at monitoring ceasefires, and more heavily armed peace enforcement operations.


113. Ibid.


117. Ibid., 166.

118. Jens Narden, “Dilemmas of Promoting ‘Local Ownership’: The Case of Postwar Kosovo,” in Paris and Sisk, eds., The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations, 254–255. Jarstad and Sisk calls the local ownership problem the systemic dilemma, that is, the trade-off between international and local control over the peacebuilding and democratization process. See, Jarstad and Sisk, introduction, 11.

119. This is part of what Paris and Sisk refer to as the dependency dilemmas, or the problem that host countries become too reliant on external help. See Roland Paris and Timothy D. Sisk, “Conclusion: Confronting the Contradictions,” in Paris and Sisk, eds., The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations, 308.
123. Ibid.
124. Ibid., 463.
126. Ibid., 465.
132. Ibid., 17.
134. Chesterman, You, the People: The United Nations, Transitional Administration, and State-Building, 239.
135. Ibid., 143.
137. Ibid., 179.
139. Ibid., 255.
141. Ibid., 175.
142. This is one aspect of what Jarstad and Sisk describes as the horizontal dilemma, that is, the question of which political and societal groups to include in a peacebuilding operation. Jarstad and Sisk, introduction, 11. In Paris and Sisk’s terminology, problems related to inclusion of local leaders and groups are referred to as participation dilemmas. Paris and Sisk, “Conclusion: Confronting the Contradictions,” 307–308.
144. See further in Narden, “Dilemmas of Promoting “Local Ownership”: The Case of Postwar Kosovo,” 260–262.
145. These examples are taken from Caplan, “Who Guards the Guardians? International Accountability in Bosnia,” 467.
146. Chesterman, You, the People: The United Nations, Transitional Administration, and State-Building, 147.
148. Ibid., 3.
149. As Jens Meierhenrich points out, there are important connections between lustrations and occupations. One such connection is provided by Article 43 of the 1907 Hague Convention, which states that an occupant “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” This article has been seen to justify criminal justice, because one way to restore “public order” is to prosecute those who undermine it. If criminal justice is justified by the international law of occupations, there is, Meierhenrich argues, a prima facie case for pursuing administrative justice in the form of lustrations. For further discussion, see Jens Meierhenrich, “The Ethics of Lustration,” Ethics & International Affairs 20, no. 1 (2006): 100.


156. A justification for each of these dismissals are available at the website of the Office of the High Representative: http://www.ohr.int/decisions/removalssdec/archive.asp. Technically the ban of the Serb Radical Party was a result of the OSCE refusing to certify the party before the elections. See discussion in, Sumanta Bose, Bosnia after Dayton: Nationalist Partition and International Intervention (Oxford: Oxford University Press, 2002), 276–277; “War Criminals in Bosnia’s Republica Srpska,” 79.


158. Ibid., 3.


161. As Roger Duthie points out, there is no agreement in the academic literature on how these different terms differ from each other. According to Duthie, “purges differ from vetting in that
purges target people for their membership in or affiliation with a group rather than their individual responsibility for the violation of human rights.” Vetting, on the other hand, describes a screening process of public employees in order to promote state security rather than weed out human rights violators. See Roger Duthie, introduction to Justice as Prevention: Vetting Public Employees in Transitional Societies, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 18.

166. For a discussion of the differences between vetting processes, see Duthie, Introduction, 17–38.
171. Ibid.
172. Teitel, Transitional Justice, 150.
173. The reason why this definition of “rule of law” is often called formal, or positivist, is that it involves no judgment on the content of the law. For a discussion, see, Joseph Raz, The Authority of Law: Essays on Law and Morality (Oxford: Clarendon Press, 1979), 214.
174. As Hart points out, this means that there also has to be a criterion that determines when cases are alike or different. For instance, the sanity of a person is a relevant factor in murder cases, but the hair color of the offender is not. See H. L. A. Hart, The Concept of Law (Oxford: Oxford University Press, 1994), 160.
175. See, Rawls, A Theory of Justice, 238–239. The rule of law also implies that laws must provide clear guidelines for prohibited actions and not have retroactive effect. For further discussions of
these principles, see Raz, The Authority of Law: Essays on Law and Morality, 214–216; Rawls, A Theory of Justice, 236–238.


181. Murphy, “Progress and Jurisprudence,” 59.


183. The goal of the police reform was not to punish war-crime violators, but to launch a “comprehensive personnel reform in order to build fair and efficient institutions.” Ibid., 205.

184. Ibid., 188–189.


186. Ibid., 190.

187. Naarden, “Nonprosecutorial Sanctions for Grave Violations of International Humanitarian Law: Wartime Conduct of Bosnian Police Officials,” 348. Deauthorization meant that the officer would no longer be allowed to serve as police, and that the Ministry of the Interior would be obliged to initiate a criminal investigation. Ibid.

188. Ibid., 349.

On the other hand, it seems that the process led to increased public confidence in the police. See, ibid. 192.


In Czechoslovakia, for instance, it was possible to appeal lustration decisions, and most of those who did so were able to clear their names. The attempt to mitigate harm to innocent individuals in Czechoslovakia was further helped by granting individuals the right to file “legal action against the Ministry of Interior for slander.” Ellis, “Purging the Past,” 182.


Teitel, Transitional Justice, 150.


“War Criminals in Bosnia’s Republica Srpska,” 3.


202. Offe, *Varieties of Transitions*, 95. Again, this observation is made in the context of disqualifications in the former Communist countries.

203. The question of ethnic parity has been raised in a similar way with respect to legal proceedings. Here the worry is that the judicial process can be interpreted as a form of victor’s justice where only the crimes of the losers are prosecuted. See discussion in, Payam Akhavan, “Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal,” *Human Rights Quarterly* 20, no. 4 (1998): 780–781.

204. Offe, *Varieties of Transitions*, 95.

205. Quoted in O’Brien, “U.S. Bars up to 30,000 Ba’ath Party Members from New Government.”


208. Ibid.

**Conclusion**


7. Only a little over 120,000 of the estimated 300,000 Serbian refugees that left Croatia during the war returned to Croatia in the following decade. Viktor Koska, “Return and Reintegration of Minority Refugees: The Complexity of the Serbian Returnees Experiences in the Town of Glina” *Politička Misao* 45, no. 5 (2008): 200.


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