



Opinion

JUSTICE, PEACE and *JUS POST BELLUM*

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Larry May, *After War Ends: A Philosophical Perspective*, Cambridge: Cambridge University Press 2012, 248 pp., \$26.45 paper.

Daniel Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation*, Oxford: Oxford University Press 2012, 368 pp., \$29.95 cloth.

Eric Patterson (ed.), *Ethics Beyond War's End*, Washington D.C.: Georgetown University Press 2012, 256 pp., \$29.95 paper.

I. Introduction

In view of the more recent wave of academic literature on justice in the wake of armed conflict, or *jus post bellum*, it is an appropriate moment to examine what has been put forward and to evaluate where this concept stands for the global community today. Each of the three books discussed here, in their own distinctive way, provides us with fresh analysis of the principles that should govern post-war practices, and offer stimulating views on the problem of moving from a position of war to a position of peace and reconciliation. They also question the very possibility of achieving justice and restoring peace at the same time.

To begin, it is useful to put the question of post-conflict justice in historical context. While there are somewhat conflicting claims suggested as to the novelty of the concept of *jus post bellum*, all of the authors in these works agree that the rudimentary elements can be traced through classical just war theory, religious traditions, and the secular beginnings of international law. Additionally, there is agreement that the current generation has witnessed the creation of bold institutions to address injustices of the past in the interest of peacebuilding for the future. These institutions include international tribunals to deal with war criminals, which have led to the creation of a permanent International Criminal Court; some forty truth commissions; a newly appointed Special Rapporteur of the UN Human Rights Council on the promotion of truth, justice, reparation and guarantees of non-recurrence; while reparations and public apologies are becoming more and more common from states for past wrongdoings. While these developments demonstrate a shared awakening to the need to direct our attention towards ways to address the violent conflicts of the past in a form that allows us to move forward, they also expose a divergence in paradigms: namely, we can identify a liberal model focused on rights (historically tainted with a European bias) and a religious model focused on forgiveness and reconciliation. Larry May, Daniel Philpott, and the contributors to Eric Patterson's

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edited volume all make a commendable and concerted effort to navigate the space of overlap between the two.

It is also beneficial to clarify the particular approach that undergirds this review. Because of previous and continuing work on this subject, our particular point of departure will grow out of the just peace literature that has recently emerged. Specifically, our tack reflects David Rodin's contention that within the *jus post bellum* tradition, there is a critical transition phase out of armed conflict that should be conceptually separated from a complete end to hostilities. Rodin refers to this period as *bellum terminatio*.¹ Just as there is a changeover from the rules that govern *jus ad bellum* and *jus in bello*, the former being the transition out of peace into war and the latter being the application of laws once armed conflict has begun, then a complete theory should provide a separate set of moral guidelines to cover this precarious and transitional phase of conflict. In other words, "a body of theory whose function is to regulate the transition from fighting to peace and give guidance to combatants on when they are permitted or required to quite [sic] hostilities and sue for peace."² Our own theory treats this aspect of *bellum terminatio* by building a framework required to negotiate a peace perceived as just and legitimate with the need for *recognition* (thin and thick), *renouncement* and *rule* (see below). Since the authors of the books under review regularly brush up against these very questions in their treatment of *jus post bellum*, this will serve to guide our review.

II. *After War Ends* by Larry May

The first book to be discussed in this review is that of Larry May. He has written an important contribution to the larger literature indicating that he "will say very little about *bellum terminatio*" and restricts himself to the "justice-based considerations after war ends, *jus post bellum* proper".³ That is, May's work concentrates on the moment after the winners and losers to a conflict have been established.

In our view, he begins with an advantaged perspective due to his mixture of legal, moral and philosophical argumentation used to look at justice *After War Ends*. Throughout the book, May puts forward a series of normative principles that are meant to give tangible shape to the tenets that are to ground the concept of *jus post bellum*. One reason why this maiden step towards codification is found to be particularly useful (i.e. putting forward explicit language that can be criticized, accepted or changed) is because May himself suggests that his work might help lay a foundation for future multilateral treaties: "My view is that *jus post bellum* principles are primarily moral principles that are meant to inform decisions about how international law is best to be established down the road".⁴ While many more scholars, jurists and state officials clearly need to weigh in on the subject before this is to happen, it is a welcome opening salvo.

Central to understanding May's approach is to grasp that he builds his work on the premise that justice in this context calls for moderation since building a peace between two war-torn societies involves compromises from both parties. May explores what he considers a necessary moderation through the concept of *meionexia*, or asking less than one's due. He traces the filiation of this idea in the writings of the ancient Greeks and various just war theorists to arrive at the suggestion that,

¹ D. Rodin, 'Two Emerging Issues of Jus Post Bellum: War Termination and the Liability of Soldiers for Crimes of Aggression' in C. Stahn and J. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition from Conflict to Peace*, The Hague: TMC Asser Press 2008, pp. 53-62.

² Idem, p. 54.

³ L. May, *After War Ends: A Philosophical Perspective*, Cambridge: Cambridge University Press 2012, p. 4.

⁴ Idem, p. 5.

we follow the later works of Grotius and see *meionexia*, at least in some situations, as something that victors are counseled to accept in order better to achieve humanitarian goals in the transition from war or mass atrocity to peace. But *meionexia* should be counseled against for victims in that they should still demand all that is their due, and the world community should come together to provide compensation for victims of war and mass atrocity.⁵

For historical support of this proposition, May points to the demands that were made of German citizens in the wake of the First World War (which many think sowed the seeds of further hostilities), and the fact that at the end of the Second World War the victorious allies paid most of the costs of reparation and restitution for the victims of Germany and Japan (leading to a long-term peace in those countries). While this example might be somewhat over-simplified, May fleshes out his hypothesis of *meionexia* in his six normative principles of rebuilding, retribution, reconciliation, restitution, reparation and proportionality throughout the book.

Additionally, May draws on the work of Hugo Grotius to construct the foundation for his normative principles of *jus post bellum*. This is certainly a worthy foundation for the book, and it is a valuable addition to the literature to ground the development of a burgeoning concept by going back to historical writings on the subject. Yet, if there is a shortcoming of the work, it would be found here. This disparagement is not meant to raise doubts about the scholarship or analysis of the author. Rather, the concern is that the manner in which this is carried out in the initial chapters leaves the reader wanting more. That is, the citations are at times overly condensed and limited in their appearance, leaving Grotius with a somewhat muted voice until later in the book.

Admittedly, Grotius's ideas about *jus post bellum* are much less developed in comparison with his conceptions elaborated in the context of private law.⁶ Thus, May begins with limited material. Nevertheless, the manner in which some of the quotations flow into his own normative principles can give the reader the impression that Grotius delved deeply into certain questions and could be thought to be in full agreement with May's conclusions. This unorthodox reading leads the author to gloss over some of the consequences arising from the Grotian theory of the law of nations—especially its relationship to the practices of colonialism and imperialism found in *De Jure Belli ac Pacis*—which can legitimately cast some doubt about Grotius position on post-conflict justice.⁷ Hence, May does not so much provide a “Grotian account of the normative principles of *jus post bellum*” (articulated right at the outset of his work)⁸ as he interprets Grotius's doctrine in the light of his own vision of transitional justice mechanisms.

One particularly intriguing part of the book is the section dealing with reconciliation. The reason why political reconciliation particularly concerns us here is because this aspect of *jus post bellum* is often a part, if not an integral part, of the transition out of war into a peace that will be lasting and just. In

⁵ *Idem*, p. 9.

⁶ For instance, Grotius's had a deep understanding of the mechanisms provided by tort law – including the notion of damage, restitution, compensation – for individuals.

⁷ R. Tuck's inspiring book on *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, Oxford: Oxford University Press 1999, includes an excellent treatment of Grotian thinking about property and its relationship to colonialism. See also, E. Keen, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*, Cambridge: Cambridge University Press 2002.

⁸ May 2012, *supra* note 3, p. 1.

fact, reconciliation can be understood as such a deep-rooted principle for moving out of violent conflict that May draws attention to the fact that soldiers' adherence to the laws of war during conflict can directly affect the ability of societies to resolve conflict and move forward. However, due to the limited scope of this review we will simply highlight May's writing on this subject in the decidedly intriguing section, 'Reconciliation and the rule of law'.

In this portion of the book it is pointed out that while the rule of law traditionally focuses on perpetrators, the bystanders to atrocities are often ignored. As May explains,

Most significantly, bystanders form the bulk of society and the rule of law can only exist where the bulk of society has respect for law and does not acquiesce in the face of violence. For it is the bulk of the society, rather than the few who are perpetrators, or might become so, whose conformity to law is what glues a peaceful society together.⁹

Indeed, this is a critical point of legal philosophy that sometimes goes unobserved since transgressions of law are so much easier to notice than compliance. Thus, May brings focus to a manner in which post-conflict trials might be structured so as to give a larger number of common citizens a role in reinstating the rule of law. Specifically, he discusses the non-traditional *gacaca* process (literally "trials in the grass") used in Rwanda after the genocide of 1994 as one that provides a qualified hope for rebuilding. The fact that tribal elders are given rudimentary training in trial procedures and rules of evidence, while the villagers are the ones to vote on guilt and sentencing, provides May with cautious optimism.

III. Some Literary Context

Countless books have examined the relationship between war and justice from a legal, political, or moral perspective. Surprisingly, there has been very little research on the concept of "just peace" and its history. We have shelves full of excellent studies referring to "negative peace," "positive peace," "armed peace," "perpetual peace," "democratic peace," and "universal peace," but very little has been written in both political science and international law on what is a just peace. Among theories of international relations today, an extensive literature has been devoted to identifying what justice means in an international context, or the more recent, but already sizeable, body of scholarship on the idea that a new kind of world order is developing.¹⁰ Some theorists and practitioners have conducted research on how the post-conflict negotiating process is affected by the "call for justice."¹¹ They have looked at the extent to which such calls influence the outcome of peace negotiations. They have compared case studies to extrapolate the conditions required for a just peace. And they have insisted on the importance of cultural differences, emphasizing how the individual or collective attitudes of conflict parties and psychological factors can shape relations between negotiators.¹²

⁹ *Idem*, p. 106.

¹⁰ On contemporary thinking about justice and international society, see various approaches in D.R. Mapel and T. Nardin (eds.), *International Society: Diverse Ethical Perspectives*, Princeton, N.J.: Princeton University Press 1999. See also P. Singer, *One World: The Ethics of Globalization*, New Haven, Conn.: Yale University Press 2004.

¹¹ Many works have been published on this subject. See, among others, B.F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars*, Princeton: Princeton University Press 2001; P.C. Stern et al. (eds.), *International Conflict Resolution after the Cold War*, Washington: National Academy Press 2000; W. Zartman, D. Druckman, L. Jensen, D.G. Pruitt and H. Peyton Young, 'Negotiation as a Search for Justice', *International Negotiation* 1996-1/1, pp. 79-98.

¹² See R. Fisher & S. Brown, *Getting Together: Building a Relationship that Gets to Yes*, Boston: Houghton Mifflin 1988; W.B. Gudykunst, & S. Ting-Toomey, *Culture and Interpersonal Communication*, Newbury Park, Cal.: Sage 1988; R. Cohen,

International lawyers and legal historians have also participated in the debate over the link between peace and justice, especially by studying the idea of “unequal treaties.” Recently, new attention has been paid to the issue by critical legal scholarship providing us with fresh understandings of the relationship between international law, European history, and colonialism. Works from Gerry Simpson, Antony Anghie, and Martti Koskenniemi insist on the discrepancy between formal equality and substantial political and social inequality, paving the way for the theory and practice of compensatory inequality.¹³ Nevertheless, like international relations theorists, they have paid far too little attention to what precisely a *just peace* could mean.

IV. *Just and Unjust Peace* by Daniel Philpott

Yet, what we find in Daniel Philpott’s book is precisely this: a real attempt to define what a just peace should entail. Philpott, a professor at the University of Notre Dame, falls into the admirable category of scholar/practitioner who brings experience from the field to academic work, and who can propose philosophically sound practices that can realistically be implemented into peacebuilding. Of course, each activity enriches the other and the positive result from the integration shines through in this book. The central question that Philpott explores is the concept of justice immediately in the wake of mass despoliation, and he posits that there are six practices that act as the cogs and gears on the ground in these efforts: 1) building socially just institutions; 2) acknowledgement; 3) reparations; 4) punishment; 5) apology; and 6) forgiveness.

Two features of this work give it its own unique shape in the growing field of *jus post bellum*. The first is that Philpott explicitly puts forward that his approach to political reconciliation (an emphasis on *bellum terminatio*) strongly overlaps with the concept of restorative justice, i.e. finding the delicate balance between forgiveness and punishment. Second, the author compellingly defends the claim that his ethic of political reconciliation is embedded in the religious traditions of Judaism, Christianity, and Islam, and thus “holds great promise for restoring political orders with calamitous pasts” precisely because of this religious grounding.¹⁴

One important understanding that Philpott offers his readers is that political reconciliation often, if not always, will suffer shortcomings and inadequacies. While some choose to take the fact that justice cannot be effectively exercised in all circumstances, or that the inequalities of power structures remain partially intact, to mean that what Philpott recommends is utopian, the author argues otherwise. Philpott explains,

[Reconciliation] acknowledges political evil, holding that evil cannot be reversed, understood, left behind, philosophically ‘solved’, or in any way construed as occurring for a greater good. Reconciliation is not so much a solution to evil as it is a response to evil, a response that in the political realm will always be partially

Negotiating Across Cultures: Communication Obstacles in International Diplomacy, Washington, D.C.: United States Institute of Peace Press 1991.

¹³ G. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*, Cambridge: Cambridge University Press 2004; A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press 2005; M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, Cambridge: Cambridge University Press 2001.

¹⁴ D. Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation*, Oxford: Oxford University Press 2012, p. 8.

achieved, compromised by power, challenged by its sheer complexity, and often delayed in its enactment.¹⁵

This is a key insight into the enormously complex and painful condition that follows the end of conflict. Additionally, it serves to diffuse the criticisms of partisan actors who use it as an excuse to avoid taking less than perfect steps forward. And even if use of the term ‘evil’ might push some to dismiss this approach as too religious, Philpott takes pains to point out that some have found that the “problem of evil has been the guiding force of modern thought”, and not a wholly religious preoccupation.¹⁶

One particularly thought-provoking portion of the book, and an added value to the literature, is Philpott’s discussion of religion and reconciliation. He begins this part with reference to and analysis of the role played by Archbishop Desmond Tutu in South Africa’s Truth and Reconciliation Commission, acknowledging that the liberal critique of religion’s integral role in an ethic of reconciliation warrants a direct response. Liberal sceptics may worry that the rigid dogma of religion is likely to sow divisions — and possibly violent strife — in the rebuilding of already fragile relationships; but Philpott suggests that while there were indeed moments in history when religion played such a destabilizing role, only a highly selective reading of history finds this conclusion dispositive. The author points out that subsequent to the religious wars, religious freedom has been incorporated into the church’s teachings and it has rejected the doctrines that were hostile to liberal democracy. Philpott documents how religious activists, drawing on their theology, have even directly participated in the widening and deepening of liberalism at key historical moments. This argument surely merits pondering.

Overall, Philpott’s advocacy for an inclusion of religion in an ethic of reconciliation is nuanced and reasoned, even though he readily admits that his arguments will not be persuasive to all. What is additionally of interest in this section is the author’s conscious grafting of religious argument onto the secular justifications and language of human rights. Philpott argues that by using reason that is religiously rooted, “propositions of the ethic of political reconciliation can be articulated in secular language while remaining compatible with theological rationales”.¹⁷ It is put forward that human rights language and defences does not preclude religion, nor vice versa. Hence this laudable interdisciplinary method of searching for places of overlap between the differing secular and religious approaches is welcomed.

Despite this added value (and perhaps precisely because this point of inquiry is useful and intriguing), the actual discussions of Judaism, Christianity, and Islam can at times get bogged down in linguistic questions of translation, which gives the impression that the analysis remains superficial. Given the breadth of what Philpott has undertaken, however, this is understandable; and taken as a whole, *Just and Unjust Peace* offers a valuable argument for a place for religion in *jus post bellum*, and certainly sets the stage for further interdisciplinary research on the matter.

V. *Ethics Beyond War’s End*, edited by Eric Patterson

In this volume edited by Eric Patterson the contributors offer a wide variety of legal and philosophical perspectives that complement, as well as contrast with, May’s and Philpott’s views.

¹⁵ Idem, pp. 4-5.

¹⁶ Idem, p. 129.

¹⁷ Idem, p. 115.

These include such well-known and respected writers as Brian Orend, James Turner Johnson, and Michael Walzer, to name but a few. At the same time, it is difficult to compare this work directly with the others of this review, given that the other two works present an extensive and in-depth investigation into *jus post bellum* from the perspectives of the individual authors, this book falls short in offering a coherent overall picture of how the reader can or should view the subject. In the introduction, Patterson himself briefly advances an outline of a more comprehensive framework based upon his own previous writing, using order, justice, and conciliation as the tripartite foundation for ending wars well.

However, as can often be the case with edited volumes, it is difficult to find and follow the thread that holds the chapters of this book together as one unit. Nonetheless, each of the ten chapters of this volume indeed holds its own merit. Unfortunately, due to the scope of this review we can highlight only a small number of them. And although we will at times question some of the particular points that piqued our interest, this should certainly not be interpreted as discouragement for readers to pick up this book. Indeed, often times it is disagreement that provokes some of the most interesting reflections.

First, James Turner Johnson provides a chapter with an overview of the historical parentages of post-conflict justice through apposite attention to classic and medieval just war theory as a touchstone. While many authors in the field use an historical approach, Johnson's treatment of the subject amplifies and magnifies the voices of the just war tradition particularly well. His discussion of Augustine and the difference between *pax* and *tranquillitas ordinis* is particularly illuminating. For Augustine (upon whom medieval just war thinkers relied heavily), *pax* is a condition reserved only for the City of God, while *tranquillitas ordinis* was the objective to which all earthly sovereigns should strive as the moral idea for politics itself — whether it be before, during, or after armed conflict. Based partially on this distinction, Johnson concludes,

When we consider it closely, classic just war thought sets a high bar for a contemporary conception of responsibilities after an armed conflict. Just as the classic conception of just war includes both what came to be designated *jus ad bellum* and *jus in bello*, it also includes what is now being called *jus post bellum*.¹⁸

In addition to finding this requirement for justice regardless of whether there is a state of war or peace, Johnson also draws the reader's attention to the fact that the concerns of classic thinkers for a stable and just state of affairs after conflict were not just moral ones but were also built into their understanding of an integrated system of war, politics, and economics. Soldiering and warring was a part-time activity, because warriors needed to spend time at home to oversee their properties and ensure their continuing productivity. Additionally, "it was emphatically not in the interest of belligerents to employ scorched-earth tactics or to treat the population of the disputed areas badly, for after the war these would add to the political, economic, and military strength of the victor".¹⁹ Thus, Johnson's historical investigation draws out the contours of *jus post bellum* in classic and modern times, and augments the growing literature on the topic.

The next chapter that caught our attention was that of Robert Royal which is curiously entitled, "In My Beginning Is My End". This piece is eloquently argued and focuses on the difficulties of

¹⁸ J. Turner Johnson, 'Moral Responsibility After Conflict': The Idea of *Jus Post Bellum* for the Twenty-First Century' in E. Patterson (ed.), *Ethics Beyond War's End*, Washington D.C.: Georgetown University Press 2012, p. 21.

¹⁹ *Idem*, p. 23.

knowing the precise results of our human actions, especially in the cases when we are forced into combat. It is an interesting argument as it suggests the need for humility in applying *jus post bellum* since we cannot know what the future holds, yet at the same time expresses a brazen interpretation of *jus ad bellum* constraints by implying we can know what is to come of potential future dangers. This incongruent analysis of war's beginning and end is worrisome, especially because it reminds us of a glib approach to foreign policy that can be quite prevalent in some circles today (e.g. neo-conservatism).

Demonstrating his hesitancy for employing strict obligations following armed conflict Royal suggests that “we do not want to compound the inevitable imperfections of everything to do with warfare by judging the cessation of hostilities by criteria that may lie beyond our human means”.²⁰ Starting from this premise portends his comment that “Iraq seems now to be shaping up into a tolerable new regime”, and this assessment helps explain the level of post-conflict standards that Royal would seem to prefer.²¹ As he aloofly suggests, “many countries exist in a kind of chaos anyway, and while no one aims at that directly by going to war, if a benign chaos results perhaps it makes war justifiable”.²²

Holding such a sceptical view of human capacities in *jus post bellum* measures can surely be defensible. However, if only for the sake of consistency, we believe it is necessary to maintain an equivalent scepticism regarding what we can know about future threats before they have fully materialized to cause harm. Regrettably, Royal oscillates to the other side of the spectrum on this question. He indicates that he is primarily concerned with “wars that *must* be undertaken and then terminated without meeting any basic (let alone desirable) *jus post bellum* criteria”.²³ Yet, Royal suggests that the standard for the use of force is as low as the “elimination of an unjust and threatening regime”,²⁴ and that military force can be used “to disrupt a clear threat”.²⁵ At a minimum, one should mention that the UN Charter indicates in Article 39 that “[t]he Security Council shall determine the existence of any threat to the peace” and speaks of self-defence “if an armed attack occurs” in Article 51.²⁶ But only passing mention is made to international institutions, and chiefly to dismiss their relevance.

Of note, the permissive standard argued for by Royal is quite similar to Francis Bacon's rationale for England to invade Spain before it had received an injury at the beginning of the seventeenth century: a “just feare” of the latter state's intentions.²⁷ This purely subjective guideline was rejected at that time and sowed no progeny. Yet at that very same volatile moment in history during the religious

²⁰ R. Royal, ‘In My Beginning Is My End’ in Patterson, *supra* note 18, p. 74.

²¹ *Idem*, p. 69; *cf.* Ned Parker, ‘The Iraq We Left Behind: Welcome to the World's Next Failed State’, *Foreign Affairs* March/April 2012-91, 2; and Human Rights Watch, ‘World Report 2014 – Iraq’, at: <http://www.hrw.org/world-report/2014/country-chapters/iraq> (accessed on 7 June 2014), “Al Qaeda in Iraq and other insurgent groups emboldened by the Syrian conflict and Iraq's political crisis carried out nearly daily attacks against civilians, making 2013 the bloodiest of the last five years”.

²² *Idem*, p. 75.

²³ *Idem*, p. 74 (emphasis added).

²⁴ *Idem*, p. 67.

²⁵ *Idem*, p. 75.

²⁶ *Charter of the United Nations* (signed 26 June 1945, entered into force 24 Oct 1945) 9 *Int. Leg.* 327, pp. 343 and 346 respectively.

²⁷ Bacon wrote, “wherein two things are to be proved, the one that a just feare (without an actual invasion or offence) is a sufficient ground of Warre, and in the nature of a true defensive; the other that we have towards Spaine cause of just feare, [...] not out of umbrages, light jealousy, apprehensions a farre off, but out of a clear foresight of imminent danger” ‘Considerations Touching a Warre with Spaine’ [1624], in *Certain miscellany works of the right honourable Francis Lord Verulam, Viscount St Alban*, London: 1629, p. 8.

wars, Hugo Grotius cogently wrote that “those who accept fear of any sort as justifying anticipatory slaying are themselves greatly deceived, and deceive others.”²⁸ The fact that a focus on material injury and imminence as a trigger for war was a part of what has developed into international law is well worth contemplation.²⁹

The final chapter of this book by Mark Evans who speaks of “Just Peace” as an “elusive ideal” is perhaps the most challenging one. In a rather provocative way, the author begins by stating that “both in the popular imagination and in scholarly writing the concept [of just peace] is at least elusive, and perhaps even unobtainable”.³⁰ He then convincingly argues that they are various way of rendering what a just peace actually is, mainly due to the fact that justice and peace are – among many others – essentially contested concepts, varying in meaning and implications across time and space. Calling for more thinking on this “elusive ideal”, he claims that “just peace can be characterized in general form using thin universal concepts and values which offer initial moral guidance and framing, identifying what needs to be fleshed out more thickly in context and engaging with divergences in conception that typically emerge when we try to convert thin into thick concepts.”³¹

Evans’s contention about the elusiveness of just peace is compatible with a range of ideas put forward in our recent publication on the same subject.³² A just peace, according to the authors, describes *a process* whereby peace and justice are reached together by two or more parties recognizing each other’s identities, wherein each party renounces some central demands, and each accepts to abide by common rules that are developed jointly. Thus, just peace can be seen as a process of accommodation whereby negotiators seek to agree to a fair and lasting peace by crafting it in a manner deemed just by all relevant protagonists. Peace achieved in this way is just because it entails gradual recognition by the negotiating parties of a series of conventions. It is just because it is expressed in a shared language that respects the sensitivities of all parties. In this case, the definition of justice itself will, to some extent, have to be negotiated between the parties involved, recognizing that there is some inevitable tension between the idea of justice and the idea of reconciliation.

As shown by Herbert Kelman, such a process usually experiences different kinds of justice that an agreement might try to achieve, such as “1) substantive justice, achieved through an agreement that meets the fundamental needs of both sides, 2) future justice, achieved through the establishment of just institutions, arrangements, 3) procedural justice, achieved through a fair and reciprocal process of negotiating the agreement, 4) emotional justice, achieved through the sense that the negotiations have seriously sought and to a significant degree shaped a just outcome.”³³ Based on a language-oriented approach, these authors claim that four principles are required to negotiate a peace perceived as just and legitimate, that is, a just peace: *thin recognition*, *thick recognition*, *renouncement*, and a

²⁸ H. Grotius, *De Jure Belli ac Pacis*, Book II, chpt. 1, sec. V in *The Classics of International Law*, J. Brown Scott (ed.), Oxford: Clarendon Press 1925, p. 173.

²⁹ For a skilled discussion on this historical bifurcation, see J. Turner Johnson, *Ideology, Reason and the Limitation of War: Religious and Secular Concepts 1200-1740*, Princeton: Princeton University Press 1975, pp. 81-133 and 208-222; Also, for a discussion of this bifurcation in a contemporary context (i.e., the Bush Doctrine and the Obama Doctrine) see Chapter 4 and Conclusion of S.J. Barela, *International Law, New Diplomacy and Counterterrorism: An Interdisciplinary Study of Legitimacy*, London: Routledge 2014.

³⁰ M. Evans, “‘Just Peace’: An Elusive Ideal’ in Patterson, *supra* note 18, p. 216.

³¹ *Idem*, p. 211.

³² P. Allan and A. Keller (eds.), *What is a Just Peace?*, Oxford: Oxford University Press 2006; revised 3rd edition 2010; P. Allan and A. Keller, ‘Is a Just Peace Possible without Thin and Thick Recognition?’ in T. Lindemann and E. Ringmar (eds.), *The International Politics of Recognition*, Boulder: Paradigm Publishers 2011; paperback edition, 2013, pp. 70-84.

³³ See H.C. Kelman, ‘Reconciliation as Identity Change: A Social-Psychological Perspective’, in Y. Bar-Siman-Tov (ed.), *From Conflict Resolution to Reconciliation* Oxford: Oxford University Press 2004 pp. 122-23.

common *rule*.³⁴ They are adjusted to prevailing circumstances and are prerequisites for a just peace, as well as the steps making such a peace possible. As in the just war doctrine, all conditions are necessary, and only if they are all satisfied are they subsequently considered sufficient for a just peace. However, unlike just war doctrine, these principles also describe a process, and not simply a set of requirements.

From that perspective, the concept of just peace is a *formal* one. Consequently, our definition of it is similar to that of Evans. It focuses primarily on the *form* of a peace development, and says little about its content. The existence of many collective identities and legal traditions is a central feature of the world today, and this makes it impossible to resolve the problems of a just peace by positing one all-encompassing original position (as under universalism) or even by two sets of overarching original positions (one with each “nation” and another among the representatives of all nations). Therefore, only a *formal* theory of just peace can accommodate this human diversity, as each peace will be a particular one, navigating the specific identities involved. In other words, only a content-free concept of just peace will be able to reconcile conflicting obligations that relate to the diverse affiliations, identities, and priorities of the actors within a peace process. It is for this reason that we patently disagree with Evans that a focus on process somehow makes “just peace” elusive.

Finally, as forgiveness and reconciliation play an important role in all three books, we would like to include another criterion that we believe is central to any just peace theory: the principle of renouncement. Concessions and compromises are very often necessary to build an agreement. Some symbols, positions, and advantages have to be given up. However, to reach a *just* peace, it is not sufficient to find a win-win formula for each party; rather, an essential component of a just peace lies in the sacrifices that each party needs to make with respect to the other. Just peace cannot be had on the cheap, with mutual benefits only. Rather, it is a human experience that requires a visible and obvious rapprochement on the human level and that requires visible sacrifices from both parties. In essence, it is indispensable to have the negotiating parties recognize that they each relinquish key demands. Concessions do not necessarily have to be ‘heavy’, but they always need to *signify* a real sacrifice. Aside from the division of territory, sovereignty, and power, negotiations are often marked by one overriding factor — a symbolic, initially non-negotiable issue around which the conflict is structured. That issue may be state unity, religious freedom, constitutional reform, or the role of a language. Each side must then give up symbols, elements of prestige, positions, or principles that for some justified the conflict in the first place. This progress toward renouncement is the price of a just peace.

³⁴ For a recent discussion of these criteria/principles, see Allan and Keller, *What is a Just Peace?* (3rd edition 2010), supra note 32, pp. 195-215.