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Jus Post Bellum and Transitional Justice, Edited by Larry May and Elizabeth Edenberg

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Jus Post Bellum and Transitional Justice. Edited by Larry May and Elizabeth Edenberg. New York, NY: Cambridge University Press, 2013. Pp. 335. £65.00 hardcover.

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In their introductory chapter, editors Larry May and Elizabeth Edenberg clearly and succinctly illuminate the core organizational framework of their collection of eleven thoughtful and erudite essays. They bring together in one volume the contrasting and often conflicting theories of transitional justice contra *jus post bellum*. Whereas the latter focuses on securing a just peace in situations where a new and democratic regime is formed in the ashes of conflict, the former highlights the principles, practices, and processes that facilitate the replacement of autocratic regimes with democratic ones. While collected essays by diverse experts on complex and controversial topics often fail to achieve coherence, in *Jus Post Bellum and Transitional Justice* the opposite holds true. Three carefully crafted cases lay a solid foundation for four later chapters that draw upon the case materials. The later chapters highlight the key principles and concerns that animate specific legal, ethical, practical, and tactical considerations. Taken together these describe enduring democratic peace processes as the desired end of a just war. Two subsequent chapters examine the role, processes, and efficacy of truth and reconciliation commissions. And then, two concluding chapters evaluate *jus post bellum* and transitional justice by examining political reconciliation, the constitution of peace, and the peace process.

Three opening case studies by Shunzo Maijima, Lawrence Douglas, and Michael A. Newton consider, respectively, the American occupation of Japan, prosecuting Nazi war crimes in the Federal Republic of West Germany, and community-based justice endeavors in Afghanistan to provide concrete data on different conflict resolution scenarios. Maijima analyzes the role of Douglas MacArthur as Supreme Commander of the Allied Power during the 1945-52 American occupation of Japan. The latter is generally acclaimed as an exemplar of successful military occupation cases in modern history, using *jus post bellum* principles of rebuilding, retribution, and proportionality. But in this case, although he was forced to abdicate, the application of collaborative impunity exempted Emperor Hirohito from indictment. While this tactic provided both stability to, and encouraged cooperation from, the Japanese it also kept issues regarding the moral responsibility of the emperor off the agenda. In the second case, Douglas parses the contribution of a prohibition under German law of *Rückwirkungsverbot* (retroactivity), in the prosecution, or rather, the failure thereof, of perpetrators of Nazi-era atrocities. He examines how misapplications of the principle and politics came to work in tandem, thereby subverting the ends of justice to the benefit of, perpetrators of, and accomplices to, the worst of Nazi atrocities. Finally, Newton probes more deeply into the delicate balance of power and authority requisite to state cooperation and accountability through close examination of the complementarity principle, as a “critical node” (78) for articulating when and how the ICC might override the prerogatives of state sovereignty in community-based efforts, using the decade-long work to build a rule of law in Afghanistan as his exemplar.

On broader principles, Charles Jalloh examines an inherent ambiguity in Article 7(2)(a) of the Rome Statute in its reference to a state or organizational policy requirement for defining perpetrators of crimes against humanity, and therefore eligible for processing through the International Criminal Court. The authority of the latter should be clearly articulated and viewed as legitimate by the populations served. It would also be beneficial to allow the ICC to encompass within its jurisdiction conflicts that involve nonstate actors. For these reasons, Jalloh argues for an amendment to the Rome Statute to achieve greater clarity in the specifics of what makes a crime admissible as a crime against humanity. Max Pensky examines the diffusion of responsibility dilemmas in his essay on amnesties and *jus post bellum*. Pensky argues against theorists who see evidence of “a crystallizing norm” (171) that views amnesties for high level perpetrators as contrary to law. He notes that while the Southern Cone blanket amnesties of the 1970s and 1980s would not achieve international recognition today, the *pro tanto* duty to prosecute can nonetheless at present be overridden by a compelling case that an amnesty policy might animate the broader human rights principles and goals of which that duty forms an integral part. Gabriella Blum and Natalie Lockwood query the logic of international norms of reparations, which currently limit the definition of victims to those who have suffered violence from genocide, war crimes, or crimes against humanity. These omit from consideration victims of incidental war damage and victims of natural disasters. By what logic, they ask, do war victims merit special treatment from the international community? And, finally, Jovana Davidovic examines the “muddling” (217) of international criminal prosecution with reconciliatory and restorative goals by attaching the Trust Fund for Victims to the ICC in the transitional justice process. These two functions would be better achieved by separate entities, with the latter providing a means of bringing justice to the international community for crimes against humanity and the former as a tool to for compensating individuals. By coupling the two and encouraging wider participation, contrary to other opinions, the ICC may find the goal of ending impunity and establishing security through an international rule of law to be impeded rather than aided by victim participation and a diverted focus on harm to individual victims.

Two additional chapters examine the significance of truth commissions. Cindy Holder contributes insights into the social construction of knowledge by reference to feminist empiricists and their conception of truth, which is centered on “empirical adequacy” (251). The latter aims at maximizing transparency by close examination of the assumptions regarding the creation and reception of narratives that recount meaningful, relevant, and “truthful” experiences. Similarly, Margaret Walker uses the Latin American phrase “nunca mas” (263), never again, to express widely held hopes that truth and memory about violent and authoritarian regimes of the past will prevent their return. Truth commissions for Walker provide pedagogical tools for teaching victim populations about human rights, increasing awareness of violations, inhibiting future violations, and providing exemplars of citizen mobilization.

The volume closes with two chapters that examine *jus post bellum* and transitional justice through the lens of political reconciliations and peace-building efforts in the wake of violence and war. James Bohman approaches *jus post bellum* as a two-level process. The first views peace-building as an integral part of reconstructing the political society toward the goal of becoming more democratic and transnational. The second emphasizes entering into a global multilevel dialogue about peace and justice

to fortify the peace process, a process aided by the emergence of intermediary organizations. And, finally, Colleen Murphy and Linda Radzik seek to integrate *jus post bellum* concepts and theories with *jus ad bellum* and *jus in bello* so as to broaden the parameters within which normative ideas in the just war tradition and related dialogue occur.

Taken together, the essays edify the interested reader in compelling cases, concepts, and theories needed to make distinctions that illuminate peace strategies in a world replete with violence and conflict: just as well as unjust wars. The editors, I think, have achieved their stated goal: "We hope the readers of this collection will be inspired to think about how to achieve a just and lasting peace in parts of the world that have rarely seen either and also to wonder whether war is the best way to solve the world's problems." While the book may challenge readers new to international law, it provides them with a well-crafted and worthwhile set of essays that bring the most vexing contradictions within reach.