HERMENEUTIC INQUIRY AND JUST WAR THEORY: FINDING MEANING IN A POST-WAR SOCIETY

A Thesis submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the degree of
Doctor of Liberal Studies

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April 15, 2016
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ABSTRACT

The jus post bellum tenets of Just War Theory serve as a nation’s guide as the tedious task of returning to peace begins. However, one should not presume that the concepts associated with justice and order hold normative value to all human persons in societies. Time and again, programs and policies implemented by victors fail when the notions driving these activities are incommensurate with the principles, ideals and ethical presumptions regarding order and justice among the affected society. The practical reality of modern conflict and demands of jus post bellum should not allow seemingly irreconcilable differences to force actors into a state of paralysis or inaction. The principles, ideals and ethical foregrounding of individuals and societies find their locus in the historical horizon of the individual and the society. How do we achieve order and justice in a society post bellum when the yardstick for measuring order and justice appears indeterminate and variable? This thesis explores possible answers to these questions and others through a hermeneutic conception of inquiry.

The case of post-2001 Afghanistan will be used as a specific historical event in which this hermeneutic conception of understanding and language would have assisted policy makers and practitioners in pursuing a more disciplined approach to post-conflict activities. Understanding specifically will be explored further within the framework of
hermeneutics as a process rather than a goal. By endeavoring to proceed via a hermeneutically informed approach to address this challenge of understanding across historical horizons, this thesis carries an assertion regarding the nature of reality. Discipline in dialogue by the practitioner in a post-conflict society promises a clearer approach to engaging the prejudices present within both our own historical horizon and that of the Other. It creates an environment for differences within the same reality to be seen as opportunities rather than a threat to one’s own ‘way of life’ through the fusion of historical horizons.

Dialogue in the spirit of a postmodern hermeneutic inquiry offers an alternative to both subjective speculation and the objective, normative metanarrative of the Western expression of Just War Theory. Hermeneutics allows the human person to move beyond a mere validation of this tradition solely within the context of one’s own historical horizon. It allows the person to remain open to a process of questioning in which the person subjects their own prejudice to the Other in reflective openness to the questions at hand. The virtual openness of meaning within language (understood as the potential for meaning to be constantly redefined) is the only legitimate claim to truth finite man can make. Through responsible judgment in the pursuit of disciplined dialogue, engaging the event of understanding in the fusion of horizons, the person can engage truth. Truth being the universal nature of human dignity found in freedom – the openness to differ within the same reality.
To my mother, Judith Phillips
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CHAPTER ONE
THE PROBLEM OF ACHIEVING POST-CONFLICT JUSTICE

“The lack of access to justice is a key frustration for many Afghans,”¹ wrote Christian Dennys in 2009, nearly eight years after the country was liberated from the Taliban by the United States and its allies. Unfortunately, history demonstrates that Afghanistan is not unique in its status today as a nation which remains mired in civil unrest and ongoing violence following the cessation of major combat operations. The victors have been unable to obtain a stable and effective war termination. In many instances, these post-conflict periods have been short lived, eventually devolving into civil war (Iraq) or a fractured, unstable peace (Afghanistan). Peace building activities implemented by external parties, such as the North Atlantic Treaty Organization (NATO) in the Balkans or the United States and its Allies in World War II, often involve a clash of cultural horizons. All too often, programs designed to achieve peace and security can be perceived by the affected population as inconsistent with social, religious, or cultural worldviews. This disconnect further exacerbates tensions rather than furthering the opportunities for post-conflict peace.

Decision makers and actors in the West involved in stabilization and peace building efforts in war termination look to Just War Theory to provide a moral

framework for the justification to enter into war (jus ad bellum), the conduct of war (jus in bello), and the incumbent responsibilities of victors at the end of conflict (jus post bellum). But is the normative, ahistorical architecture of Just War Theory sufficient for implementing a post-war peace? Or is there an opportunity to further enrich the dialogue which must inevitably occur? How can the seemingly incommensurate values of the affected population and the victors be overcome to identify policies and programs suitable for both?

The nature of conflict has shifted in the last fifty years - ethnic and religious zeal, civil war, terrorism, and the threat of weapons of mass destruction being utilized in the hands of non-state actors are now an ever-present reality. Possessing the skills needed to effectively recognize and directly engage differences in a fractured, heterogeneous society is becoming an essential requirement for practitioners in post-conflict environments. This thesis seeks to explore whether a hermeneutically informed approach to addressing jus post bellum issues of justice, order, and conciliation can enable both the practitioners and community to transcend the boundaries of normative, ahistorical narratives present within the horizons of differing societies and cultures, thereby increasing the potential for meaningful post-conflict peace while also creating opportunity for future possible dialogues through a fusing of historical horizons.

Asserting values and reinforcing ideologies (political or otherwise) through programs and policies which do not include affected parties can be seen as threatening to the moral and ethical fabric of the affected society. In October 2015, the President of the
United States announced that the security situation in Afghanistan had deteriorated to a point that he had decided to halt any further planned troop withdrawals from the country. This announcement, some 14 years after the United States announced victory in Afghanistan, demonstrates the failure of the victors to achieve lasting order and justice in Afghanistan despite stated efforts to achieve a stable peace. Given the continued challenges present, Afghanistan presents an intriguing case in the failures of post-conflict war termination to achieve lasting peace.

This thesis will explore specific examples where a failure to consider historical conditions within society contributed to failures on the part of the victors in upholding their moral obligations to the Afghan people. The political, social, and religious differences which existed between the victors in 2002 and the Afghan people presented a seemingly insurmountable challenge to the United States and its allies. The victors in Afghanistan have predominantly pursued method-based approaches to implementing “democratic” and economic reforms. These have been pursued with little understanding of the manner in which the population measures order and justice within their own society. These challenges have been further complicated by the decision to continue waging a low-intensity counterterrorism campaign throughout the country.

After fourteen years of post-conflict engagement, the failure to clearly appreciate the horizon from which Afghan society is emerging historically has degraded the victors’ exercise of restraint in the pursuit of an approach in accordance with *jus post bellum*. Sustained low-level violence has had the overall effect of undermining the value placed
on individual human life, particularly non-combatants. This is evidenced by the consistently high death rates among civilians in the country, which continue through today. At the level of the person, one must be able to reconcile one’s own normative belief system, or narrative, with one’s actions. We have seen historically that normative narratives such as Just War Theory are tangibly influenced by historical events. Particularly in the case of matters related to justice in war and war termination, the narrative of the impacted society will also be acutely affected.

Without a genuine dialogue between these competing narratives, the cultural and social gap between the citizens of states will grow. This gap will in turn heighten one’s fear of the alternative narrative. It is in a hermeneutic conception of inquiry that we find an alternative solution to this supposedly inevitable separation and fear. A hermeneutic approach offers an alternative to a continued separation between competing narratives. Hermeneutics accomplishes this by equipping the practitioner to first accept the inherent prejudice present in one’s own historical narrative and then to engage in a deliberate dialogue with another in a manner which is fully present and open to alternative meanings of truth. The next two sections of Chapter One will focus on the approach this thesis will take to equip policy makers and practitioners to undertake a hermeneutic approach in the practical application of their responsibilities in a post-conflict environment.

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2 Though tallying exact numbers of civilian casualties is challenging due to a combination of lack of complete reporting and incorrect reporting, various estimates place civilian casualties at approximately 33-44 percent of all deaths in the period from 2001 to 2011.
Examining The Status Quo – *Jus post bellum* Today

Before turning to an exploration of the tenets of hermeneutic theory, Chapter Two of this thesis will begin with a discussion of Just War Theory. The purpose of Chapter Two will be to fully explore Just War Theory tenets and to introduce the challenges of the victor approach to pursuing stable peace in post-2001 Afghanistan. Just War Theory is composed of several tenets or markers viewed by practitioners as required standards which must be met in order for a nation’s war pursuits to be considered just. This thesis will specifically treat *jus post bellum*, justice in war termination, with a focus on the approach and mechanisms implemented by the United States and its Allies in post-2001 Afghanistan. Other historical examples of attempts at implementing post-conflict order, justice and conciliation mechanisms will also be brought to bear where appropriate or informative as markers of comparison.

*Jus post bellum* is a guide for a nation at war’s end as the tedious task of returning to what just war theorist Michael Walzer refers to as the ultimate goal - “a better state of peace… more secure than the status quo ante bellum.”³ While it is recognized by practitioners and scholars of Just War Theory that the tradition has been shaped by discreet historical incidents (experiences of war) through time, the theory itself is often treated in practice as one in which normative moral truths are held to be absolute. This march through time is believed to have yielded a more complete conception of what the

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just conduct of war should look like in an ideal world. This tradition is essentially a teleology of war which is heavily informed by the Western, Christian historical horizon from which Just War Theory has emerged. The writings of Walzer, Brian Orend, and other contemporary just war theorists will factor heavily in this thesis into drawing out the tenets of *jus ad bellum*, *jus in bello* and particularly *jus post bellum*. As this ‘better peace’ is pursued through policies and programs associated with war termination, Brian Orend maintains specifically that “violations of *jus post bellum* are just as serious as those of *jus ad bellum* and *jus in bello*.4 The pursuit of a just end to war does not afford the victor a moral supremacy in post-conflict decision making. The ultimate goal of a just war termination is a “more secure possession of [both individual and collective] our rights.”5 As such, vindication of rights is considered by many to be one of the primary responsibilities in achieving a just end to war. However, the question remains outstanding - “Whose rights?”

One of the principle debates in *jus post bellum* scholarship today is the distinction between maximalist (rehabilitative) and minimalist (retributive) approaches to rights and duties of the victor in war termination. Alex Bellamy succinctly draws the distinction between the two in his 2008 article “The Responsibilities of Victory: Just Post Bellum and the Just War.” He defines minimalists as requiring cessation of combat at the point the rights of the victim have been vindicated and maximalists as being focused on the

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5 Ibid., 188.
“obligations” which are owed by the victor to the society impacted by the conflict (be it the aggressor society or third party).  

This thesis will necessarily address matters along the spectrum between the two, reflecting the reality of the manner in which post-2001 Afghanistan was practically handled by the victors. The primary emphasis of this thesis will remain on practical matters of importance to human values throughout the discourse.

It is a mistake to assume that the tenets of just war would be equally embraced or understood by all parties to a conflict throughout all phases of war. By simply reading the newspaper today, we see myriad examples in Yemen (a coalition led by Saudi Arabia) and in Syria (a coalition between the Syrian Arab Republic and the Russian Federation) where the use of barrel bombs and cluster munitions in densely populated urban cities are becoming frequent occurrences. The utilization of these munitions from the perspective of *jus in bello* principles would be considered morally unacceptable as they disproportionately cause harm to innocent non-combatants and their livelihoods. However, both coalitions justify the use of such tactics as necessary means by which they are able to achieve military victory, with the overall stated goal of reducing loss of life in the long term by shortening the duration of conflict with decisive use of force.

In the case of *jus post bellum*, time and again we have seen programs and policies implemented by victors fail when the historically-informed presumptions of what constitutes the “the good life,” to paraphrase St. Augustine’s vision of a rightly ordered

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society in his *City of God*, ⁷ are incommensurate with the principles, ideals, and ethical presumptions of the affected populace and its leadership. The dichotomy between these visions is quite stark in the case of Afghanistan and the United States, two societies which do not share a common social or cultural horizon.

Following a brief discussion of *jus ad bellum* and *jus in bello*, the primary focus in Chapter Two will shift to a closer examination of the tenets of *jus post bellum* nestled within the larger tradition of Just War Theory: vindication of the rights of victims; public disclosure of post-war aims; discrimination informing post-conflict policies; proportionality informing post-war policies; punishment; and compensation. ⁸ These tenets will then be contrasted with the effective application of order, justice and conciliation mechanisms in post-2001 Afghanistan. These challenges will be drawn out as a means to set the conditions for a practical discussion of the opportunities which a hermeneutic conception of dialogue creates for both the victor and the affected society emerging from conflict.

**A Hermeneutic Conception of Inquiry as Opportunity**

In seeking to address the challenges raised in Chapter Two, this thesis will turn in Chapter Three to an exploration of the opportunities offered by a hermeneutic conception of inquiry. The hermeneutic meta-principles will be drawn out as a means of

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transcending normative, historical narratives in the application of *jus post bellum* principles. As previously stated, the end result of this exploration is to afford practitioners the opportunity to engage in meaningful dialogue across the seemingly irreconcilable historical horizons of differing societies. This will enable practitioners to arrive at approaches for order and justice which are suitable for the impacted society while also experiencing access to order and justice within the whole of reality. In the pursuit of these approaches, the practitioner must also remain true to one’s own narrative.

Moral and ethical principles find their foregrounding in the historical horizon of both the person and the greater society. The historical horizon is the point at which the historical groundings of the past and orientation towards the future coalesce to form the context from which all present and future experience is mediated for the person in language. Just as a nation is situated within its own historicity, the person is also squarely located within a historical horizon. This horizon is inherently prejudiced by the past but necessarily changed as a result of the continual fusion of horizons occurring in the present and into the future.

How do we then achieve order and justice in a society post bellum when the yardstick for measuring these would seem hopelessly relative? The answer to this question lies in the goal of restoring peace and in the process of building a future peace which fully incorporates the past. Both the goal and the process enable genuine participation in the event of understanding in regards to justice and order for the historically-effected consciousness. However, one cannot presume that these concepts
which ground our actions *post bellum* are static ideas. Rather, the concept of understanding itself will be re-defined through this inquiry in Chapter Three as both a goal and a process within the framework of a hermeneutically informed approach. The first two sections of Chapter Three will discuss the importance of undertaking a study of the hermeneutic conception of inquiry for both international relations theory and for the human person. Once this task is complete, Chapter Three will transition to a discourse regarding the emergence of hermeneutics as an ontology of language.

Hermeneutics, understood as an ontology of language as it will be treated in this thesis, was developed and elaborated by Hans-Georg Gadamer (1900-2002 A.D.) over the course of his life as he struggled with contemporary philosophies of understanding and Being. Gadamer’s philosophical hermeneutics is a cohesive and thorough explanation of experience and a radical shift away from a purely subjectivist perception of the concept of understanding. Gadamer reoriented our focus on understanding as a process by turning away from the I/Thou of the subject-object relationship. He redefined understanding within the framework of the “universality of human linguisticality as a limitless medium.”\(^9\) This is to say that for Gadamer, language itself is a fundamental mode of Being. Language is not simply a tool which is used by man to grasp or articulate meaning which we perceive. He sought to move beyond definitions of understanding which were subject to individual experience. In doing so, Gadamer looked to the

phenomenology of Georg Wilhelm Friedrich Hegel (1770-1831 A.D.) and Martin Heidegger (1889-1976 A.D.) among others, who he would come to describe as situated within their own historical horizons. In moving beyond phenomenology, which will be further explored in Chapter Three, Gadamer built a depiction of the universal nature of understanding as a process mediated through the necessarily finite medium of human language. Gadamer viewed the Platonic conception of dialogue in the manner of Socrates as an ideal in that the Socratic method is a dialectic which approaches the questions of utmost importance to the human condition. For Gadamer, the dialectic method of questioning employed by Socrates, which will also be addressed in Chapter Three, is an ideal goal to be achieved in that it provides a means for openly engaging in dialogue across acknowledged historical differences.

Chapter Three will also delve into greater detail with respect to the genesis of Gadamer’s hermeneutics. This chapter will focus on the role of the historical horizon in shaping language, dialogue and the opportunity such a perspective can have for humanity through the fusion of divergent historical horizons. G.W.F. Hegel describes a process unfolding in the form of dialectic between Spirit (Geist), Idea, and Nature as one of alienation and reconciliation. In this alienation and reconciliation, Spirit becomes more certain of itself in a teleological march toward attaining absolute understanding. Unlike the Socratic method employed by Plato that inspired Gadamer, Hegel sees understanding as a noun, an objective to be achieved rather than a process or dialogue.
In order to achieve his teleological vision, Hegel develops a philosophy which overcomes the “limitation” of human finitude and consciousness. He “finds” his answer in a philosophy of the nature of absolute Spirit and historical reason as a process in which the implicit unity of the divine and of human nature is realized. Through this process, the limitations and imperfections of finite human nature are overcome through the Idea, leaving only the implicit of the divine in its wake.10 While the potential for man to reach this truth is achievable according to Hegel, language handicaps man’s ability to access the historical reason of absolute Spirit.

The supremacy of historical reason as described by Hegel and perceived restrictions imposed by language are rejected by Gadamer. He instead looks to the finite nature of man and the nature of language as validating his theory of infinite possibilities for meaning. This finite nature of man coupled with his situatedness within history shapes the horizon of the individual person – no single individual is able to access the whole of truth, the whole of reality. History influences man’s past as much as his future and language is bound up within this history. Not to be understood as an instrument or capability particular to humans, language “holds open the totality within which we live

our lives… [an] orientation towards the whole”¹¹ which is ever changing as a result of history.

By removing understanding from the realm of being either dependent upon the subjective experience of the individual or as a transcendent, objective goal to be achieved, Gadamer elevates understanding to that of a process. Within the boundaries of this process, the relationship between the participants as mediated in language becomes ontologically more significant than the players themselves. The final section of Chapter Three will narrow the focus down to four particular meta-principles of hermeneutics which can practically inform practitioners and policy makers in approaching war termination with restraint. These four meta-principles are as follows: the primacy of human dignity rooted in historical conscience as the source of values structures; understanding as a process; language understood as a virtual medium in which reality achieves meaning; and the Other as presenting possible alternative truths through a fusion of historical horizons with self. These concepts have implications for both the individual and for human kind as a whole from the perspective of the collective past, present, and future of societies. Once this task is complete, the focus of this thesis in Chapter Four will be to engage in a disciplined dialogue with the historical horizons which inform the matter at hand in post-2001 Afghanistan and which continue to remain a challenge into today.

**Jus post bellum** Filtered Through the Hermeneutic Lens

Dialogue in war termination should be oriented towards this process of understanding as conceived hermeneutically. This approach is preferred as opposed to goal-driven methods formed from pre-conceived, ‘absolute’ notions of order and justice mechanisms. These mechanisms, or methods, are inescapably situated within the victor’s own historical horizon as a result of facts of history incidental to that society. These concepts achieve meaning for the person only in relation to his historically-effected prejudice. In engaging in dialogue with the awareness that understanding is a process rather than a final destination, the human person is able to fully realize his own freedom. He is free to pursue possible alternative meanings for justice and order. In addition, this freedom is affirmed through the recognition by the individual that his own history and future are in turn shaped by his encounter with these concepts as living questions.

Four primary meta-principles of hermeneutic inquiry will be applied in Chapter Four to the challenges discussed in effectively pursuing justice and order in accordance with *jus post bellum* principles in war termination. This exploration can help to identify alternative perspectives which can increase the probability of establishing a more effective peace post-conflict. This thesis does acknowledge that the failures in Afghanistan over the past decade in meeting *jus post bellum* criteria cannot all be resolved by incorporating a hermeneutic conception of dialogue at this point. However, the insights and questions drawn forward through this work will afford practitioners and
policy makers with new perspectives which can be incorporated in the pursuit of justice and order in future conflicts.
CHAPTER TWO

JUS POST BELLUM: FINDING JUSTICE AT THE END OF WAR

Now that the overall approach of this thesis has been outlined, the attention will now shift to 1) an introduction to the Just War tradition before 2) delving into jus post bellum criteria more specifically and 3) culminating with a discussion of the failures in achieving war termination in post-2001 Afghanistan. This three-fold approach will set the conditions for the reader to understand those critical opportunities for a hermeneutic conception of dialogue to influence war termination. The disciplined pursuit of such dialogue will provide for the application of justice and order mechanisms in a manner which overcomes the inherent limitations of the normative historical narratives informing post-conflict policies and methodologies.

In navigating the intricacies of warfare today, politicians and civil servants often struggle to fully comprehend and engage in the language of their military counterparts. While the use of complex jargon and anachronistic terminology can be the source of some of this frustration, there also exists in the realm of conflict a hesitancy to question the means of violence as long as that violence achieves the proposed end state desired by political leadership. At a practical and human level, the violence of war shocks our conscience; we find the imagery of war difficult to comprehend and contextualize within the same reality of peace and the comforts of home. The realm of warfare is a faraway place removed from our day-to-day reality. When speaking of moral, social, and ethical norms within a society, war is often treated necessarily as a case of exceptionalism. The
tradition of just war scholarship does represent attempts by civilized society to engage violence within the realm of words and to place constraints on the acceptable use of violence in the conduct of war.

In this gap which exists between the realm of violence and the realm of peace (the moral status quo for society), Just War Theory engages the limits of morally acceptable actions in warfare. The tradition is also an attempt to articulate ethical and moral red lines which should not be crossed in the conduct of warfare. This tradition views warfare as force conducted between sovereign nations, executed by military power on behalf of political leadership. As such, the military actions in war are governed by the political will of the national leadership, guided by the moral compass of the military chain of command from senior leaders down to the individual soldier. However, as Walzer reminds us, the violence of the necessary in war can subject ‘never’ to its influence. This violence creates a space where chaos reigns when there is no clear moral guidance from sovereign authorities - “… in a state of war, ‘never’ without qualification [does not exist] because in that state, by definition no sovereign rules.”¹ But what of the state we find at the conclusion of war and at what point following conflict does the sovereign begin to rule again? What needs must be met and who has responsibility for fulfilling those needs at war termination? Before answering these jus post bellum questions, a brief introduction to the Just War tradition is warranted with a focus on the principles of primary concern to a discussion of jus post bellum criteria in post-2001 Afghanistan. This next section will provide an introduction to the Just War tradition and

¹ Walzer, Just and Unjust Wars, 11.
be followed by two subsequent sections. The first of these two sections will address the specific questions at hand in post-2001 Afghanistan. The final section of this chapter will propose opportunities for a hermeneutic conception of inquiry to support more meaningful termination to war while remaining within the *jus post bellum* tradition.

**The Just War Theory: Laying a Foundation for Just Peace**

Just War Theory is a system of ideas, a language of conflict, which addresses the manner in which wars should be fought. The language of Just War Theory is derived from the historical precedent from which it arises, and the terminology of Just War Theory reflects the historical horizon of the cultures from which it is derived. In seeking Walzer’s “better state of peace… [one that is] more secure than the status quo *ante bellum,*”\(^2\) Just War Theory concerns itself with the moral conduct of warfare. Morality and the choices man makes in the conduct of war are “not simply made” and then forgotten. These choices are subsequently judged by the community of man, those of the victor, the loser, and the external societies. They are evaluated against the moral status quo present within the given society.\(^3\) Of course, the moral compass of the person is also altered by the experience of war. Human kind cannot passively observe warfare as an objective experience – the experience of war fundamentally alters the fabric of society. Just War Theory has, as a result, evolved from this historical horizon to become a cohesive set of criteria against which conduct in war is believed to be objectively judged.

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\(^2\) Ibid., 121. Italics are not original to Walzer.

\(^3\) Ibid., 106.
Widely considered to be founded in Church doctrine, the tradition of examining justice in war does not historically find its origins solely in Catholic, nor particularly Christian, roots. This tradition finds its origin in the writings and philosophies of pre-Christian thinkers such as Plato, Cicero, and Aristotle, but has been deeply influenced since the introduction of its fundamental principles by Church doctrine. This thesis will focus specifically on the foundational principles of Just War Theory as it has evolved into a set of criteria which attempt to frame the conditions under which a state can justly enter into war and conduct war in a just fashion.  

The current contextual horizon of Just War Theory reflects back to those principles enumerated by St. Augustine of Hippo (c. 354-430 A.D.) and St. Thomas Aquinas (1225-1274 A.D.) and further refined over the past several hundred years with the writings of such authors as Hugo Grotius (1584-1645 A.D.), Emmerich de Vattel (1714-1767 A.D.), Francisco Suárez (1548-1617 A.D.), and Francisco de Vitoria (1492-1546 A.D.). Just War principles have also been codified through international conventions and treaties over the course of the past century in various forms, to include the ten treaties of the Hague Convention (1899-1907 A.D.), the Kellogg-Briand Pact (1928 A.D.), the Geneva Convention (1949 A.D.), the United Nations Charter (which provides not only for the United Nations Security Council but allows for some war crime

4 The very concept of justice, particularly as it is understood from varying historical horizons attempting to access justice will be addressed extensively in this thesis.

5 The intent of this thesis is not to provide a historical accounting of Just War Theory, but in this chapter the writings and thought of these philosophers will be discussed in relation to the criteria for *jus ad bellum, jus in bello* and *jus post bellum*. For a more comprehensive reading on the foundational principles and philosophical history of the tradition, refer to James T. Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1984).
tribunals), the Universal Declaration of Human Rights (1948 A.D.) and its legally-binding sibling, the ICCPR, the Torture and Genocide Conventions, and the Treaty of Rome, which formed the International Criminal Court (1998 A.D.).

This section will specifically address the criteria of *jus in bello* and *jus ad bellum* as a prelude to a discussion of *jus post bellum* in three separate sub-sections. Once this discussion is complete, the discussion will transition into the next section of this chapter to discuss *jus post bellum* specifically in the context of post-2001 Afghanistan. The sub-sections on the three phases of just war (*jus ad bellum, jus in bello, and jus post bellum*) are further divided in order to better enumerate the criteria associated with each phase of just warfare for the ease of the reader.

*Jus ad bellum: The Conditions Which Justify War*

*Jus ad bellum*, justice before war, provides for criteria for determining whether going to war is the just and moral decision at a given time – the goal of which is to qualify the sufficient causes which can justify entering into conflict. This traditional framework is also used to evaluate an opponent or third party actions. It is practically used in modern times through the course of United Nations Security Council discussions in advance of levying sanctions or a decision is made to intervene in a conflict. The principle components of *jus ad bellum* are focused: legitimate authority; just cause; right

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6 Not all of these treaties enjoy universal acceptance, interpretation, or signatories by all countries and peoples.
intention; probability of success; proportionality; and last resort. These criteria guide the reasons and means in the conduct of war in order to enter war for the purpose of a singular objective – a state of affairs “more secure than the status quo ante bellum, less vulnerable to territorial expansion, safer for ordinary men and women and for their domestic self-determinations.”

Declaration by Legitimate Authority. First articulated in the writings of Cicero (106-43 B.C.) and later Augustine, legitimate authority refers to the right of a country or a national sovereign authority which is vested with the responsibility for the civilian population, military infrastructure and diplomatic authority of a country. The sovereign identity can take various forms depending upon the form of government in question. The intent of this principle is to clarify that a recognized head of state, rather than simply any citizen or an opposition party leader for example, is vested with the authority to make the decision to enter into war unilaterally.

Walzer further clarifies legitimacy as requiring the support of the citizens within its own boundaries and self-sufficiency in governance as critical to a government’s functioning. He draws the example of the South Vietnamese government to accomplish either task following the Geneva Convention of 1954, which partitioned North and South

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8 Walzer, Just and Unjust Wars, 120-21.
Vietnam and thus never obtained the status of a truly legitimate government.\textsuperscript{9} In the United States, while the President is able to engage in limited activities without Congressional authorization, the \textit{War Powers Congressional Resolution of 1973} requires that war be officially declared by Congress.

\textit{Just Cause/Right Intent}. The second and third criteria of \textit{jus ad bellum} are just cause and right intent. The combined principles of just cause and right intent are intended to govern the decision making process for the legitimate authority to engage in hostile actions with another state. While Cicero maintained that self-defense was a sufficient cause for entering into war, Augustine introduced in the just war tradition the idea of right intent. In Augustine’s writings, he draws a clear distinction between the act (killing) and the motive (intent) which is the cause of the act. This duality leads Augustine to deny the inherent right to kill in self-defense on the grounds that killing in order to preserve one’s life on Earth does not honor the kingdom of God and displays a lack of virtue on the part of the defender.\textsuperscript{10}

From a Just War Theory perspective today, the purpose of engaging in open hostilities should be based upon the pursuit of a better state of peace. For example, the right of self-defense is recognized as a just reason for entering into conflict today. However, narrow national interests, such as to obtain land access or water rights, would not be permissible. The aperture with respect to what constitutes self-defense is also

\textsuperscript{9} Ibid., 98-99.

ever-evolving with the realm of just war scholarship throughout history. Francisco de Vitoria, for example, advocated for a narrow definition of just cause which maintained that the “sole and only just cause for waging war is when harm has been inflicted.” In doing so, he also rejected religious and cultural differences or a desire to expand religious influence as a justifiable reason for pursuing war. A recent evolution in contemporary Just War Theory has advocated for the permissibility of humanitarian interventions. This would allow for justified armed intervention by outsiders against a country that is causing egregious harm to its own population through human rights abuses, genocide and other means.

Proportionality. The fourth criterion, proportionality, is meant to curb the use of excessive force or “mischief,” which cannot be tied directly to an end state. In the decision to go to war, proportionality speaks to the overall cost versus benefit of entering into conflict. This criteria exercise a demand over the responding country to consider objectively the universal value of entering into conflict. Article 22 of the Hague Convention of 1899 captures the doctrine of proportionality succinctly – “the rights of belligerents to adopt means of injuring the enemy is not unlimited” – with article 23 providing for specific prohibitions in the conduct of war, such as the use of chemical

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12 Walzer, Just and Unjust Wars, 129. The case of South Vietnam makes for a compelling comparison with Afghanistan of war termination approaches pursued by the United States, which would be worthwhile investigating further but is outside of the scope of this thesis.
weapons. Proportionality will be discussed in greater depth in the section of this chapter dealing with *jus in bello*, particularly as it relates to setting ripe conditions for *jus post bellum* work.

**Probability of Success.** The criterion of probability of success is closely tied to the principle of proportionality. Probability of success asserts that the war is not justified if there is no reasonable expectation of victory in entering into war. Wars are costly, both in terms of resources and in terms of the cost of lives lost. In accordance with proportionality, a war pursued with the full knowledge that the state will not be victorious, or at least is highly unlikely to be, is an unjust war. A war entered into with the awareness that winning is unlikely is wasteful, effectively sacrificing life and resources for no purpose. Probability of success does not require, as proportionality does, a cost versus benefit measure, but it requires that the party entering into conflict assess likelihood of victory as an end state.

As Brian Orend highlights, this criteria of Just War Theory is difficult to quantify, particularly given that “the vicissitudes of war are, as we know from history, sometimes among the most difficult phenomena to predict. Even when the odds seemed incredibly long, remarkable successes have…been achieved.” Another aspect of probability of success lies in the challenge of ensuring that it does not become a justification for overwhelming or horrific use of force in entering into conflict. When faced with the

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knowledge that a victory is unlikely, the use of means of warfare which cause unnecessary damage and death tends to become easier to justify. Scholars within the tradition of Just War Theory are also accepting of the need to respond against the crime of aggression by another state – “Aggression is remarkable because it is the only crime that states can commit against other states: everything else is, as it were, a misdemeanor.” As a crime, it is understood that the victim state has the responsibility to its population to at least attempt to repel the aggressor. Once the victim state determines to enter into war in self-defense, the restraint required of the just war tradition still applies. These restraints will be discussed in the next sub-section on *jus in bello* once the criterion of last resort has been addressed.

**Last Resort.** The sixth and final criterion, last resort, demands that countries pursue all means available, including diplomacy, before resorting to the use of force to respond to an aggressor. Cicero first articulated last resort in his *De officiis* as follows:

> Then, too, in the case of a state in its external relations, the rights of war must be strictly observed. For since there are two ways of settling a dispute: first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion.

This concept of resorting to force only when diplomacy fails has carried forth to this day. As stated in Article 2(4) of the United Nations Charter, member states are expected to “refrain… from the threat or use of force against… any state.” This maxim also

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reinforces demonstrably the overarching commitment of Just War Theory principles to restraint as a guiding principle. The concept of restraint itself will become a focal point for this thesis in turning to *jus ad bellum* and the value of incorporating hermeneutic meta-principles into war termination practices.

*Jus in bello: Conducting War in a Just Manner*

Assuming the six *jus ad bellum* principles articulated above have been met and a country has entered into war justly, *jus in bello* asserts that the war itself must also be conducted in a just manner. While the conduct of war primarily falls to militaries, political leadership retains the inherent responsibility to ensure that those military forces engaging in warfare adhere to just principles in their actions. Exercising restraint over military forces can become an uncomfortable position for policy makers. This is particularly so when such oversight necessarily means accepting a higher level of risk to military personnel in order to maintain a balance in the pursuit of a just but also victorious war. In addressing *jus in bello* as it relates to *jus post bellum*, this sub-section will address considerations related to proportionality, discrimination (non-combatant immunity), and the doctrine of double-effect.

*Proportionality*. This criterion maintains an approach which seeks to achieve battlefield or tactical victory in a specific context with an economy of force. Force against military targets should be in proportion to the relative value of the objective being achieved, both specifically in the selection of military targets and holistically in the manner in which the war is waged. Proportionality, much as in the decision to go to war,
is forward looking and must consider the conditions which will need to exist at the
cessation of conflict to enable a return to a more effective state of peace. Walzer
articulates in his work, *Just and Unjust Wars*, that the “utility of fighting limited wars is
of two sorts.... not only to do with reducing the total amount of suffering, but also with
holding open the possibility of peace and the resumption of pre-war activities.” ¹⁸ A
particular concern arises from the perspective of proportionality if this criterion is only
measured in terms of a series of discrete, independent decisions on the part of a single
general or soldier during the conduct of war. The horizon of a single individual or unit
on the battlefield is necessarily more limited in both time and scope. However, the
relative level of harm which that unit can cause to the overall just conduct of the war is
still great when we consider the grave damage to innocent civilians which have been
caued at the hands of single military units and individuals in the course of war.

*Discrimination.* Discrimination refers to what is often called non-combatant
immunity or the belief that innocent civilians (and related targets, such as their houses of
worship, hospitals, and private property more generally) should not be deliberately
targeted or harmed in the conduct of warfare. Exercising discrimination in the conduct of
war requires a judicious restraint and is one of the prevailing meta-narratives within the
larger normative framework of Just War Theory. When we hold individual rights and the
collective opportunity of a country to return to a potential state of peace as the standard
for conduct and decision making in times of warfare, the subjective perspective of
military decision makers to determine what actions are necessary becomes a tangible

¹⁸ Walzer, *Just and Unjust Wars*, 132.
restriction on conduct in war. Engaging in warfare that directly violates the basic human rights of the individual citizen, such as gender-based violence, murder, starvation, torture and false imprisonment of civilians, undermines the desired end state in war which has been entered into justly. Individual rights and the strategic objective of a return to peace should be maintained as the focal point for decision making across all echelons of military command. In doing so, conditions will be naturally established which enable a strategic, long term victory by reducing resentment, reprisal, and instability following the immediate cessation of hostilities.

The writings of Italian war theorist General Giulio Douhet serve as a startling reminder of the dangers in a military strategy focused solely on the perception of military victory as the ultimate end of war rather than a means to achieve peace. Douhet specifically advocated for the direct targeting of civilians, including women and children, as a necessary “vital center” of the enemy’s will to fight. 19 His theories of vital centers is still taught and discussed in U.S. military professional education programs to this day. Discrimination, however, rejects such justifications for the deliberate targeting of noncombatants in war and requires a higher degree of discipline in ensuring such practices are avoided in the prosecution of a just war. In as much, acts of violence committed, such as aerial bombardment, should always place the onus of risk upon the combatant soldier when feasible rather than assuming risk to the non-combatant

19 Giulio Douhet, The Command of the Air, trans. Sheila Fischer (Rome: Rivista Aeronautica, 1958), 47-48. Douhet advocated in his writings that the “will of the people” be considered one of five basic target system centers of gravity in his writings along with industry, transportation infrastructure, communications nodes, and government buildings.
population. This concept which will be important later in this thesis in the discussion of Afghanistan following the fall of the Taliban in subsequent chapters.

**Doctrine of Double-Effect.** Simply stated, the doctrine of double-effect assumes that in all actions in war there exist both intended and unintended consequences. St. Thomas Aquinas first articulated this doctrine as such:

> Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. … Accordingly, the act of self-defense may have two effects: one, the saving of one's life; the other, the slaying of the aggressor. Therefore, this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in being as far as possible.\(^\text{20}\)

The definition offered by Aquinas presumes that the morally wrong effect of murdering another human being is justified in the case of defending one’s life, the separation of the act committed (murder) from the intent (self-defense) is an oft-debated premise. Walzer asserts that it is not sufficient to simply make this distinction. One should also expect that combatants are able to demonstrate what he calls “due care,” in order to prevent moral wrongs or violations of the war convention through their actions.\(^\text{21}\) This principle of due care extends to the actions of the victor and must be carefully considered in the transition from conflict to war termination.

Now that the Just War Theory principles have been addressed and the criteria associated with *jus ad bellum* and *jus in bello* have been articulated, this thesis will now

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\(^{21}\) Walzer, *Just and Unjust Wars*, 154-56.
turn to an exploration of the *jus post bellum* criteria in this final sub-section. The criteria of *jus ad bellum* and *jus in bello* are not lifted at the declaration of victory by a part to conflict. This exploration of *jus post bellum* is necessary in order to set conditions and limitations for achieving a just end to conflict and return to peace following the cessation of hostilities. This next sub-section will also frame the principles by which the victors in post-2001 Afghanistan are measured prior to transitioning to a discussion of the challenges in that particular case in the next section of this chapter.

*Jus post bellum: Concluding War in A Just Fashion*

In moving from a state of war into war termination, the domain of *jus post bellum*, establishing order, justice and conciliation requires a restrained and deliberate approach for the victor that pursues a maximalist agenda in post-conflict resolution. In this transition period, we attempt to both reconcile the moral reality of the war which has occurred with societal norms. There also occurs an attempt to establish a framework designed to prevent a return to violence at the cessation of hostilities. *Jus post bellum* is a new concept within the greater just war framework, and the lack of vast academic scholarship reflecting on the responsibilities of victors following war reflects the recent development of the criteria associated with *jus post bellum*. *Jus post bellum* seeks to address responsibilities (or duties) for which both the aggressor and victor (assuming the victor is the originally wronged victim in the conflict) are accountable. Additionally, the rights of citizens must be effectively addressed. The task of addressing both rights and duties in a just manner is an integral component of re-establishing order that will most
likely fall to policy makers and practitioners. In the words of John Westlake, “the duties and rights of states are nothing more than the duties and rights of the men who compose them.”\(^{22}\) As such, it is incumbent the policy maker and practitioner engage in dialogue with the citizens and leadership of the aggressor state within a framework for rights commensurate with that society’s historical horizon. As Michael Walzer alludes to in reference to the conduct of war, the “moral reality of war [is simply] the opinions of man.”\(^{23}\) Likewise, the return to peace within a society is similarly dependent upon those same opinions, shaped as they are by history. Conciliation will become an impossible task without incorporating the social and cultural norms within a society, shaped as they are by the historical horizon.

Just as restraint is essential to the proper conduct of war within the framework of Just War Theory as a whole, restraint in achieving and normalizing Order is essential to the tenets of *jus post bellum*. Augustine points us to the primacy of Order\(^{24}\) in his *City of God* in relation to the ‘good life,’ emphasizing as follows:

… God inculcates two precepts – the love of God and the love of our neighbor – and as in these precepts a man finds three things he has to love – God, himself, and his neighbor…this is the order…a man in the first place, injure no one, and in the second, do good to everyone he can reach…. And hence the apostle says, “Now, if any provide not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an infidel.”…even those who rule serve


\(^{24}\) Eric Patterson returns consistently to this concept of Order as a primary task, stating in his work *Ending Wars Well* that “preserving and promoting Order [is] a moral imperative as well as a pragmatic one.” Eric Patterson, *Ending Wars Well*, 39.
those whom they seem to commend; for they rule not from a love of power, but from a duty they owe to others.\textsuperscript{25}

The concept of neighbor is not to be narrowly understood in the context of my immediate neighbors, community or society but in the context of the community or individuals over whom one can exert influence, lead or effect. This normative vision of the ‘good life’ is rooted in a teleological vision of moral order. Society restrains the individual and serves as an example of ethical behavior and demands certain responsibilities of the individual. In the same manner, the criteria of \emph{jus post bellum} restrain the actions of the policy maker and policy implementer in war termination.

Brian Orend outlines seven criteria of \emph{jus post bellum} which evoke the requirement for restraint in working towards re-establishing this just order in returning to peace post-conflict: vindication of the rights of victims; public disclosure of post-war aims; discrimination informing post-conflict policies; proportionality informing post-war policies; punishment; compensation; and political rehabilitation.\textsuperscript{26} Articulating the criteria of \emph{jus post bellum} will set the stage for a transition to identifying specific challenges within the Afghan context. The aim of this approach will be to identify opportunities for hermeneutic inquiry to inform a more just approach to war termination in future conflicts. For the ease of synthesis, these criteria have been broken up under two parts within this sub-section on \emph{jus post bellum}: ‘Vindication of Rights of Victims,

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{25}] Saint Augustine of Hippo, \textit{The City of God}, 625-626. Inline original quotation by St. Augustine is a reference to 1 Tim. V.8.
\item[\textsuperscript{26}] Brian Orend, \textit{The Morality of War}, 163-171. Political rehabilitation will not be addressed directly within this section on \emph{jus post bellum}, but will be addressed thoroughly throughout the thesis as a component of order and justice as perceived through the lens of the victors.
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\end{footnotesize}

Vindication of the Rights of Victims, Compensation, and Punishment

The tenets of *jus post bellum* focused on the individual - vindicating the rights of victims, compensation, and punishment – seek to achieve justice by providing restitution to the victim while also punishing the aggressor for actions which violate the war convention. These tenets also assume Order to be a pre-condition within society. Without Order, there is no framework upon which to establish justice mechanisms with any practical utility for victims who have been wronged in the conduct of war. Justice mechanisms can be defined in the tradition of *jus post bellum* as those mechanisms designed to achieve “modest satisfaction to the victims by vindicating their rights, acknowledging evil and criminality and by punishing wrongdoers [in conformity] to the moral principle of incurring what one deserves.”27 In meeting the standards of this moral principle of justice, the mechanisms employed must be both meaningful and satisfying to the individuals. They must also continue be mutually supporting of continued Order within the society as a whole. This presents a precarious challenge for the victor as changes which come into direct conflict with traditional or tribal social systems can be seen as threatening to the population and the balance of power within a society. One of the key failures which will come to the forefront of this section is the lack of predictable and transparent Order within the Afghan society as a pre-condition for the implementation of satisfactory justice mechanisms.

27 Patterson, *Ending Wars Well*, 72-95.
Vindication of the rights of victims. Vindication of rights begins with the individual but is located in the nexus between the individual and his relationship to the society in which he lives. To what rights are all individuals entitled and is there ever justification for retributive justice to be sought as punishment for violating these rights? To what degree is a debt paid to the individual and when does that debt become a loss to the society as a whole? And are there certain acts or violations from which a society can never recover? The answers to these questions must be found from within the society which is most directly impacted by these decisions. In particular, individual human dignity and human rights in relation to the society in question must be maintained as the rule against which we measure just vindication of rights.

Michael Walzer most succinctly captures the distinction between the community and the individual in speaking of the person in his home: “neither his life nor his liberty is secure unless there exists some physical space within which he is safe from intrusion.”28

Even more basic than the man’s rights to liberty and security in his home is the liberty and security of his person – the ability to move unmolested and to engage in his community without fear of bodily harm, prejudice and to retain free will. From this basic concept of the individual’s inherent right to security and liberty, the collective rights of community and of the state take their form in establishing the basis for just war scholarship. The vindication of the rights of man is an essential component of returning a society to the status quo ante bellum. This vindication first acknowledges the violation of

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28 Walzer, Just and Unjust Wars, 55.
those rights and then establishes a community in which transgressions against those rights will no longer occur outside of the community’s accepted justice mechanisms; those accepted both morally and legally.

Compensation. Compensation in *jus post bellum* traditionally addresses the compensation which is owed by the aggressor as repayment to the victim for the cost of war. Compensation is justified based on the premise that the aggressor, in engaging in the actions which led to war, has created a burden for the victim(s) who should be recouped through direct payment or other means of support to the victim(s). Orend points to the terms of the Treaty of Versailles for German repayment of war costs as a contemporary example of this type of arrangement. He quips that such disproportionate demands of repayment are simply to “pick future fights,” which arise from the sense of injustice the Germans felt they endured in their post-war settlement processes. James Turner Johnson echoes this sentiment in his analysis of post-war reparations in World War I. He notes that compensation “had escalated to the idea that the loser should pay the victor's costs in the war,” including the potential for punitive costs as well. In contemporary theory, we see a shift towards an approach favoring rehabilitation and the responsibilities that the victor owes in assisting the society of the aggressor to recover from the impact of war. However, the potential for compensation to be expected by a victim would still be within

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the rights of the victim, so long as the expectation meets the criteria of also being discriminate and proportional to the losses suffered.

Punishment. Punishment in *jus post bellum* involves seeking justice against those individuals and units responsible for committing war crimes as well as punishment against the aggressor country for its *jus ad bellum* violations. The individual and collective acts in bello which must be punished have been classified by Brian Orend in his *Morality of War* as those “deliberately using indiscriminate and/or disproportionate force; failing to take due care to protect civilian populations from lethal violence; employing [inhumane weapons or conventional weapons in an inhuman manner]; employing intrinsically heinous means.” While this is not an exhaustive list, Orend is clearly highlighting actions which appear to be an affront to human dignity and demonstrate a lack of restraint by the offending individual or unit. A historical challenge, which arises with respect to punishing the individual and military units *post bellum*, lies in the manner in which cases are adjudicated and to what extent the victor and its soldiers are held accountable. The establishment of the International Criminal Court (ICC) in the Rome Statute is meant to alleviate the tendency of the victor to overlook transgressions by its own forces by acting as a neutral body for carrying out punishment mechanisms in the case of egregious war crimes. However, not all member states have fully ratified the treaty. The United States is a notable example of a nation which notified the United

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Nations in 2002 that it did not intend to become a party to the treaty. Another challenge with the ICC is that the proceedings lack transparency and access from the perspective of the affected population when one considers the geographic and linear separation between the ICC and the crimes committed.

Post-War Aims: Public Disclosure, Proportionality, and Discrimination

The tenets of disclosure, proportionality, and discrimination will be further drawn out in this section. Disclosure, while not always articulated specifically as a tenet of *jus post bellum*, is an essential component of the paradigm within the modern context given the ready access to information across the global population. We see today that even in the most desolate regions of the world, the expansion of access to mobile technology, internet communication, and social media is shaping the narrative for belligerents on all sides of a conflict. Disclosure in particular will be discussed further within this section in relation to the applicability of hermeneutic principles in shaping our approach to post-conflict activities.

These three tenets are also critical to further investigation of hermeneutic principles in relation to the role of the decision maker and policy maker in the diplomatic arena in approaching the restoration of a minimally just society post war.

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investigation of *jus post bellum* through a hermeneutic lens, the incorporation of
disclosure more fully into a *jus post bellum* approach to peace building becomes more
apparently necessary given the fundamentally necessary existence of dialogue in the
continual development of meaning through the medium of language.

*Disclosure.* Disclosure of post-war aims by the victor is essential to ensuring that
stakeholders, both within the affected country and in the international community, will
have a common reference point with respect to the victor’s aims post-conflict. While
disclosure is discussed at length in *jus ad bellum* scholarship, the importance of
disclosure as a practical component to establishing peace following conflict is essential in
our current historical context. Disclosure provides an opportunity for meaningful
dialogue and for the individual to start upon the path of re-asserting their identity in
relation to society with respect to their rights and obligations. Disclosure of post-war
aims is also essential to garnering international support, diplomatic and financial, for
rebuilding the society in question and in helping to restore the legitimacy of the nation’s
sovereign government within the international arena. Disclosure has historically come in
the form of a formal treaty or other legal declaration. These treaties have contained
declarations of future requirements of the society for rebuilding its legitimacy (holding
elections, removing members of the aggressor party of key positions, demilitarization,
etc.) and actions the victor and international community are obliged to undertake to assist
the society in establishing a legitimate government (financial aid, election monitoring,
building and re-building of key infrastructure and institutions such as schools and hospitals, etc.).

While the post-war aims are often documented in a formal manner, we should consider such a document neither a necessity nor a requirement to meet the intent of disclosure. Neither is disclosure simply a “check in the box” in war termination. Critical to disclosure is to ensure the post-war aims, as they might have an impact on the daily life; security and order for the average citizen are well coordinated with the impacted society. These aims also must be communicated in an effective manner to ensure dissemination and understanding among the average citizen. The challenge of media availability, literacy, rural and remote locations of settlements and various other social factors can affect the decision regarding the most appropriate method for disseminating the post-war aims.

Proportionality. The pursuit of post-war aims must be undertaken with respect for proportionality in the forefront of decision making. As described in the sections on *jus ad bellum* and *jus in bello*, proportionality can be understood as the requirement that the reaction to a belligerent action be limited to that which is as equivalent as possible to right the wrong which has been caused. In the words of Michael Walzer, “proportionality is a matter of adjusting means to ends,” but also includes the warning the caution that

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34 We are seeing this evolution of the need for immediate actions to establish stability operations following the cessation of conflict at the township, city and sub-district level within Iraq in present day with the close coordination which is occurring between the multinational coalition military force conducting operations in support of the Government of Iraq and the Funding Facility for Iraqi Stabilization (FFIS) campaign coordinated by the United Nations Development Programme (UNDP).
“inflation of ends is probably inevitable unless it is barred by considerations of justice itself.”  

In examining means and ends in the practice of *jus post bellum*, decisions regarding the annexation of property, removal of ruling party senior leaders, economic sanctions, reparations and other actions must consider the consequence of such decisions in proportion to the long term impact on the citizens and the ability of the emerging post-war state to achieve order and to set conditions for successful conciliation between the involved parties. Just as Thomas Aquinas identified sovereign authority as the defining bedrock for consideration of the pursuit of a just war, the end aim sought in *jus post bellum* is to restore a sovereign, legitimate authority to the post-war society which is capable of meeting both internal and external demands expected of a sovereign government.

*Discrimination*. Discrimination seeks to ensure an undue burden is not levied on the population of the aggressor nation rather than those directly responsible for the decisions and actions which resulted in the need for war in seeking compensation and meeting out punishment. Discrimination is what Orend refers to as the “from whom” [will compensation be sought and punishment directed] of *jus post bellum*. While Walzer sees opportunity for a proportional approach to compensation without

35 Walzer, *Just and Unjust Wars*, 120.

36 Aquinas, *Summa Theologica*, II-II, Q.40. Aquinas states, “In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war.”

unnecessarily punishing the population, through the leverage of post-war taxes and other collective mechanisms, Orend admonishes that the government of the aggressor post-war state must at least retain the necessary resources to “provide minimally just governance to its people.”³⁸ He turns to the example of Afghanistan in which Walzer’s position would assert that the United States would have been within its right to demand reparations from Afghanistan in order to recover the cost of the damage done by the attacks on September 11th, 2001 in New York City and the subsequent war which ensued. Such a demand on the part of the United States though would have disproportionately undermined legitimate attempts at rebuilding Afghan society given the already alarmingly scarce access to resources and poor economic condition of the Afghan government.³⁹

This discussion of discrimination in Afghanistan brings this chapter to its next section which will focus on the challenges and failures experienced by the victors in post-2001 Afghanistan. While the primary focus will remain on the crucial first few years of war termination in Afghanistan, it is essential to address as well current challenges which remain. Afghanistan has never emerged from a post-conflict environment. This next section of Chapter Two will seek to identify some of the reasons for the continued stagnation with respect to order, justice and conciliation within the country nearly 15 years following the declaration of victory by the United States and its allies.

³⁸ Ibid., 204.
³⁹ Ibid., 199.
The Case of Afghanistan: Failures in Order, Justice and Conciliation

This section of Chapter Two will focus on the case of Afghanistan with specific emphasis on the key failures in establishing order, justice and conciliation in accordance with *jus post bellum* criteria. On the concept of justice in relation to the laws of community, St. Thomas Aquinas states in his *Summa Theologica* the following:

…it should be said that what is right and just is an action which is appropriate for another person in a relationship of equality… it is permissible to kill a criminal if this is necessary for the welfare of the whole community. However this right belongs only to the one entrusted with the care of the whole community. The care of the public good has been entrusted to rulers who have public authority and so only they, and not private persons, may kill criminals.  

These words by Aquinas bring us to the case of Afghanistan and an assessment of the manner in which order, justice and conciliation using the *jus post bellum* criteria as a framework for the Afghan model.

The failure to establish order within Afghanistan appears to stand as one of the lasting failures of post bellum programs and policies by the victors in Afghanistan. An underlying presumption of the just war tradition is the organization of countries along established international political boundaries led by a legitimate authority. This presumption is challenged in the case of Afghanistan where the conflict brought about the demise of the governing authority of the Taliban. This left a vacuum which had to be filled by the occupying authorities until the government and justice structures could be built or rebuilt. It is important to caution however, that the occupier should not be viewed as a substitute capable of administering justice and establishing order on its own.

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Although the occupying authority has a responsibility to facilitate the beginning of this process, the occupying force cannot do so without first establishing a secure environment. This environment must be one in which continued human rights violations and abuses do not continue to occur unchecked.

The community cannot sensibly begin to consider means and standards for administering justice through compensation to victims and punishment of perpetrators if these acts continue to occur in the state of immediate post-conflict peace. A failure to do so increases the likelihood that individuals will seek vengeance for individual wrongs rather than seeking justice through social instruments. In this respect, order must come before acts of conciliation such as punishment and compensation. However, these acts of conciliation, in whatever form they take, can occur as part of an established process which is deliberately pursued to achieve security within the society in question.\footnote{In his book \textit{Ending Wars Well}, Eric Patterson identifies a three-fold framework for \textit{jus post bellum} which requires order, justice, and conciliation as its critical elements. Patterson notes, “Order must precede conciliation, but – and this is a critical point – Order and Conciliation can be intertwined and reinforcing… for Conciliation to develop roots and mature, it must include major political actors (legitimate authorities), not just wishful peacemaking activists, and it must acknowledge issues of security, difference, and justice associated with conflict.” Eric Patterson, \textit{Ending Wars Well}, 163-66.}

The low intensity armed conflict which has continued to this day in Afghanistan following the cessation of combat operations is one of the driving factors which influences the maximal approach to war termination by the United States and its allies. However, the continued prosecution of a counterinsurgency through the employment of traditional and non-traditional combat power has blurred the lines between war and post-conflict stabilization and peace restoration activities. This has also made dialogue
between the occupying forces and the occupied society more difficult. Led by the United States in partnership with the Afghan government and its allies, a simmering campaign to target Taliban remnants and key leaders with ties to Al Qaeda continues and directly undermines programs and initiatives which attempt to assert Order under the auspices of a centralized Afghan government.

The competing priorities of military necessity and establishment of civil society demanded a dialogue which took into account the disproportionate burden that continued violence and conflict places on the individual in society. But rather than pursue an integrated approach between diplomatic and military actions in programs, particularly in the first few years following 2001, the United States and its allies pursued two parallel activities. One of these activities was the establishment of a governmental process, which was based upon a pre-conceived methodology for organizing society. The other was a counterinsurgency campaign, which integrated Building Partner Capacity (BPC) programs through security assistance. The political process focused on achieving order largely reflected Western conceptions of a rightly ordered society. It did not reflect the historical horizon of Afghan society which was based on kinship networks, tribal alliances, and local Islamic traditions. For its part, the counterinsurgency campaign did not effectively take into account the impact ongoing violence would have on perceptions of justice and had the overall effect of undermining order and creating further strife within society.
In terms of the criteria for a public declaration of post-war aims, the United States and its allies produced numerous documents and treaties. They also remained in the forefront of Western media in attempting to communicate the plan to “rebuild” Afghanistan from the ashes of war. *The Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions*, henceforth referred to as the Bonn Agreement, was drafted by twenty-five influential members of Afghan society following the fall of the Taliban. This was accomplished under the guidance and auspices of the United Nations in December 2001 and serves as the principle disclosure framework setting the conditions for war termination in Afghanistan. The agreement provided for specific actions which the Afghan Interim Authority (AIA) would adopt in order to secure the end state of a functioning and legitimate government. This included the establishment of a transitional authority which would remain in place until a *Loya Jirga* could be convened to establish a process for elections and to draft a new Constitution. This agreement also identified the necessity of the United Nations to establish the International Security Assistance Force (ISAF) in Afghanistan to assist with securing order within the country and made several requests of the United Nations member states to accomplish this task.42

The *Bonn Agreement* however, did not involve specific commitments by United States or other Allies to provide supporting activities. In addition, the agreement neither disclosed the intended end state for Allied military presence nor make specific diplomatic

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guarantees for future activities within Afghanistan. The very nature of the Bonn Agreement did not lend itself to these types of commitments. As a matter of course, the openly stated strategic objective of the United States was to prevent Afghanistan from becoming a safe haven for future terror activities. This objective allowed for limited interest in the nation in fulfilling its victor obligations of fostering the necessary components of security, order and justice within the Afghan society. In many respects, the United States’ approach was out of synch with the true situation on the ground in post-conflict Afghanistan.

The post-conflict period in Afghanistan can thus be understood in terms of two phases. The first of which encompassed the time period beginning when the United Nations hosted Petersburg Conference, titled “Rebuilding Afghanistan: Peace and Security,” in 2002 through the formal end of the United Nations Development Programme (UNDP)-coordinated “Afghan New Beginnings Program” (ANBP), aimed at addressing the perception of the victors that peace could be achieved through economic development, which was seen as an accelerator for creating discord within the Afghan society. The program provided for the disarmament, demobilization, and reintegration (DDR) of 61,417 combatants by the time the DDR program officially ended in June 2005.\footnote{43 United Nations News Center, “Afghanistan: UN-backed disarmament programme officially ends,” U.N. News Center, June 30, 2005, accessed December 2, 2015, \url{http://www.un.org/apps/news/story.asp?NewsID=14822}.} President Hamid Karzai established four Afghan commissions as part of the agreement at Petersberg which focused on coordinating DDR within the country – two
addressing DDR requirements and accommodations and two which focused on the vetting, selection and training of forces for the New Afghan National Army. The second period encompasses post-2005 to modern day, beginning with the Disbandment of Illegal Armed Groups (DIAG) program. While the prior ANBP program had met with some successes in certain sectors and geographic areas, the DIAG program, which ran from 2005 through 2010, met with very little success. While the program offered incentives for disarmament and for individual members of illegal armed groups not associated with the Taliban, it did not address the political and social grievances of the membership and supports of the groups. Many of these groups were aligned along traditional tribal and ethnic lines and had long been disenfranchised from the government due to longstanding oppression, lack of social funding, and a fundamental lack of central government. As a result, the program saw inconsistent success in addressing the presence of the over 1,000 bands of Armed Militia Forces (AMF).

Moving into Afghan elections in 2003, the focus of diplomatic negotiations remained on building up those institutions and processes necessary for a democratically-led government rather than establishing a secure and orderly society. These activities have been largely left to military actors to coordinate through Building Partner Capacity and Foreign Internal Defense initiatives. As a result, the United States and its allies


continued to conduct kinetic strikes and raids across the country while concurrently engaging in training programs for Afghan military and police forces. However, the lack of security and political aversions to sustaining combat losses in a “post-conflict” environment prevented coalition forces from having ready access and interaction with military, police and general populations as had been enjoyed in previous conflicts. Conventional armed actors were largely restricted to their bases. Travel was conducted in heavily armored vehicles from point-to-point and training was conducted on identified installations with little oversight of the employment of Afghan forces in their assigned security roles.

An effect of continued military operations in isolation from the Afghan community was a lack of awareness of the civil impact of ongoing military operations outside of statistical figures and abstractions. The Afghan people continued to sustain damage to their homes, buildings and infrastructure throughout the country. This had far-reaching social, economic, and psychological consequences for the community.\(^{46}\) In many respects, to this day, the reach of the Islamic Republic of Afghanistan (IROA) as a governing body does not extend beyond Kabul. Although a system of compensation was implemented by NATO to provide relief to those families and individuals who suffer injustices at the hands of belligerents, the IROA’s limited reach and organizational

effectiveness means that compensation and punishment lacks transparency and organization countrywide. In the words of Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, the continued lack of security within the country demonstrates:

…the unacceptable price the conflict is exacting on the civilian population in Afghanistan… it is high time that States live up to their responsibility to protect civilians, and that the perpetrators of war crimes and other violations understand that they will face justice for what they have done.47

Other than collective bargaining between political and tribal parties in the hopes of cobbling together a functioning government within Afghanistan, the implications of attempting to establish order and to pursue a satisfactory approach to vindicating the rights of victims through compensation and punishment while military operations continued in a post-conflict state were never effectively addressed. The programs for compensation and punishment implemented did not take into account the systems of order and justice in which the Afghan historical horizon emerged. These practices rely upon traditional ethical, tribal and kinship networks as well as deeply held ties to traditional Islamic customs. Thus the first challenge has been identified which hermeneutic inquiry will attempt to inform – how do we reconcile competing normative historical narratives with respect to order and justice in one society while not sacrificing the moral and ethical values intrinsic to the other?

On August 30, 2009 the new Commander of ISAF, American General Stanley McChrystal, issued a strategy recommendation reflecting on the progress that had been

47 Ibid., Introduction.
made in Afghanistan, “the goal of the U.S. military should be to protect the population rather than to focus on searching out and combating Taliban concentrations. Indicators of success such as ease of road travel, participation in local shuras, and normal life for families are more significant than counts of enemy fighters killed.”

McChrystal’s perspective at the time was based on his assessment that although many successful interdiction missions had been executed throughout the country targeting specific individuals and groups suspected of being associated with terrorist organizations, the strategy lacked a focus on restoring security and order to the society at the individual and community level. Detained individuals were immediately whisked away to United States and ally run interrogation and detention facilities. When their “intelligence” value had been exhausted, they were sent away to Afghan prisons or facilities with little support given to assist in shoring up the Afghan judicial system to facilitate a formal rule of law system.

This quick-turn capture and exploit method of rounding up enemies of the state also undermined perceptions of justice within the post-conflict Afghan society. From the public perspective, there appeared to be no rhyme or reason when these interdiction missions occurred within their communities and tribes, and the legitimate tribal kinship structure was equally undermined when those legitimate leaders in the form of tribal elders were able to extract neither explanation nor reparations in many instances for the loss of persons and property within their community. A lack of effective communication

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between occupying forces, the Afghan provincial governments, and the communities further exacerbated this challenge.

In 2011, the U.S. established within the Department of State a Bureau of Conflict and Stabilization Operations, which integrated the existing Office for the Coordinator for Reconstruction and Stabilization (S/CRS, established 7 years earlier) as a rapid-response mechanism for responding to emerging crises and to address issues related to stabilization and transition in support of regional Department of State bureaus. Largely an outgrowth of the lessons learned in Iraq and Afghanistan, this bureau and its staff are currently being put to the test in U.S. planning efforts related to support the transition and stabilization initiatives within Iraq in present day. “Economic strife and political instability”\textsuperscript{49} are identified as primary drivers of threats to U.S. interests in post-conflict states, but the establishment of S/CRS fails to take into account the need to engage in an exploration and dialogue with the inevitable clash of cultural traditions and expectations, particularly from the perspective of the policy maker in praxis.

In the absence of transparency, rumor and fear continued to manifest in a cycle which perpetually undermined legitimate attempts by the Afghan government to establish order across the society. Those living in an open society such as the United States, or Russia by comparison which fought a bitter war in Afghanistan for decades before the

United States, take for granted free discourse regarding ideologies and activities in which the state is engaged. Granted, the threat of violence prevented much meaningful outreach within surrounding communities by foreign forces and personnel engaged in the post-conflict occupation of Afghanistan. However, this challenge was further exacerbated by a failure to recognize the traditional structures of allegiance and information dissemination within the nation as well – a society very much reliant on a tribal kinship structure.

As the U.S. and allied occupation of Afghanistan continued in a fuzzy state of warm conflict without clearly articulated goals for withdrawal in common discourse with the Afghan society, the fear of losing the traditional way of life became more immediate and pressing in the eyes of the population. In the absence of further discourse related to the Bonn Agreement within the whole of society, the general population was left to interpret for itself what this new Afghanistan would become and to protect their lands and way of life from unwelcome change. As exemplified in the failures of the DIAG program and other post-2005 initiatives, the involvement of key political holdouts in the form of tribal leadership and recognizing the influence that clan and ethnic based conflict can cause within a society should also be closely considered. This next section will provide for the identification of several opportunities in which a hermeneutic conception of inquiry can inform actions within the horizon of jus post bellum.
Potential Opportunities for Hermeneutics to Inform *Jus post bellum*

Now that the tenets of *jus post bellum* have been explored as they will be treated in this thesis, attention will turn in Chapter Three to drawing out the meta-principles of hermeneutic theory. These meta-principles provide opportunities to inform *jus post bellum* approaches to achieving order, justice, and conciliation. As astutely observed by Thomas Schelling in his work *Arms and Influence*, “military victory is often a prelude to violence, not the end [of violence].”\(^{50}\) The inability of the victors in the case of Afghanistan to effectively establish order in collaboration with the Afghan people and their government proves no exception. Over 14 years following the overthrow of the Taliban regime, the declaration of the formation of a new Afghan government\(^{51}\) and the establishment of the International Security Assistance Force (ISAF), with the stated purpose of providing for security and restoring order to Afghanistan,\(^{52}\) order and justice in Afghanistan remains elusive. In the case of Afghanistan, we are faced with a society with a mix of social, political, and cultural perspectives informed by a historical horizon distinctly unique from that of the victors. Moral responsibilities to those affiliations are

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guided by concepts informed by traditions grounded in a paradigm of Islamic governance transcends the internal political boundaries within the country. In this case, the victors, the United States and its allies, order was perceived and approached from this just war perspective – originating from a horizon which embraces the concept of the nation state as the model around which order is designed.

The apparently incommensurate nature of these two ideals will be further drawn out in Chapters Three and Four by exploring the historical horizons from which they arise. The preconceived prejudice with which these two paradigmatic approaches, state and governance, to ordering society will be addressed in depth, drawing forward the questions at hand which may have better informed post-conflict engagements and programs in Afghanistan following the cessation of active combat operations. In Chapter Three, hermeneutics will provide the opportunity to begin to overcome the descent into a discussion of the subjective/objective nature of Truth, which inevitably arises from the competing relationship between differing paradigms. This will be accomplished by utilizing the meta-principles of hermeneutics as proposed in the following chapter of this thesis to achieve a fusion of historical horizons through restraint as exercised in a hermeneutic conception of dialogue.
CHAPTER THREE

HERMENEUTIC THEORY: FOUNDATIONS FOR DIALOGUE

Dialogue is generally considered in modern society a valid means of resolving conflict. Deliberate political dialogue between two countries is preferable to entering into armed conflict; it is considered a practical method for identifying a “common” ground between competing national interests. As introduced in Chapter One, dialogue is understood within hermeneutics not simply as a means through which we use language as a tool to voice our own interests or viewpoints; rather, it is a process in which meaning itself is altered through the process of understanding. The person is not engaged in a march through time towards a more perfect understanding of truth, but rather, truth itself is ever changed through the passage of time, virtual yet ever present.

The primary focus of this chapter is to clearly define hermeneutic theory and its meta-principles as proposed within the context of this thesis before shifting to an examination how these meta-principles can inform *jus post bellum*. Before turning to this exploration of hermeneutics however, the relevance of hermeneutics to the greater meta-narrative in which *jus post bellum* is nested must be addressed. How does philosophical hermeneutics understood as an ontology of language have bearing upon the realm of international relations theory? In particular, the relevancy of hermeneutics to the two predominant positivist theories of international relations (liberalism and realism),¹ which

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¹ In this chapter, the two positivist schools (dealing with the structure of international relations in terms of the state/country) of thought, realism and liberalism, will be primarily discussed given that these two schools are most prevalent in international relations theory. Just war tradition finds its roots in positivist interpretations of the international system. Other theories of international relations include:
both view the international system as being ordered based on the affairs of countries operating under the auspices of sovereign governments, must be addressed. Additionally, given that both of these international system narratives are informed by interpretations of the natural condition of man, the applicability of hermeneutics as an ontology of language must also be addressed for the individual. Once these two criteria are satisfied, this chapter will turn to an exploration of the emergence of hermeneutics as a distinct discipline in section three. In the final section of this chapter, the hermeneutic principles will be drawn forward which provide opportunities for resolving the war termination challenges articulated in Chapter Two.

**Hermeneutics and International Relations Theory**

Modern theories of international relations attempt to provide meaningful paradigms for understanding the order of the international political and social system. Simply put – how do we locate ourselves, communities within the greater community of the world? International relation theories attempt to achieve reconciliation between competing claims to truth regarding the manner in which political interaction occurs relative to cultural conventions, social arrangements and multilateral or bilateral treaties. The just war tradition is itself a subset of this larger tradition of inquiry regarding the international order. As has already been established, this just war tradition poses criteria or ideals to which the leadership and militaries of countries should strive to ensure war is pursued and engaged in a just manner.

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constructivism, the claim that rather than human nature influencing the manner in which international order has been established, the order we perceive today is the result of historical and socio-cultural influence; Marxism, which sees economic influence as superseding the order of states; and others.
The nature of conflict and tension between cultural groups or nation-states centers upon situational and historical considerations such as geographic boundaries, access to water rights or claims to other natural resources. Within the framework of international relations theory, particularly for individuals working within the structure of the two predominant theories of realism and liberalism on a grand scale, the individual person is not a consideration in achieving the state’s goals. In these traditional schools of thought, conformity to that country’s grand narrative is the scale of measure for pursuing successful dialogue and interaction between countries. However, there are a wide range of international conventions, such as the *Geneva Convention of 1949*, discussed in Chapter Two, which demand that attention be paid to the rights of the individual and which assert those rights in relation to the authorities of the state. Both schools of thought treat the interests and affairs of the individual as matters which pertain to the affairs of the state in the international arena.

The horizon of possibility within the paradigm of realism is focused upon achieving goals which are in the best interests of the state as the measure of successful diplomatic intervention. In rejecting a higher order, or interests, within the international system beyond that of the interests of the state, realism is oriented towards winning a zero-sum game between countries. The sole objective is to achieve dominance within the international arena and/or within a nation’s hegemonic sphere of influence. Calculations for action are focused upon aiming to achieve that which is minimally required to meet the needs of the country, though the goals may vary depending upon the situational conditions present at that point in time.
Strategically from a realist perspective, “success is the ultimate test of policy, and success is defined as preserving and strengthening the state”\(^2\) at all costs, governed by objective laws which find their “root in human nature.”\(^3\) Like other political theories in modern times, realism holds certain tenets to be normative “facts” of the human condition and the reality of our condition. Realism is grounded in a long philosophical tradition which views nature as chaotic, where man is engaged in an on-going struggle against the forces of nature and against his fellow man. Thomas Hobbes asserts that man only is drawn together in political society in order to escape *summum malum*, the great evil of nature, which he describes as follows:

In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently, not, culture of the earth, nor navigation, nor the use of commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short.”\(^4\)

The realist narrative of the international system is reflective of this view of humanity on a grand scale. The state, as the culmination of individual man in community with no higher authority, will act to preserve its survival and interests at all costs. In the United States, the praxis of *realpolitik*, a sub-narrative of realism and often called power politics, was exemplified by Henry Kissinger under the Nixon White House in his attempts to deal with rival nations such as China and Russia in a practical manner rather than focusing on


socio-political ideals such as democracy. Likewise, adherents of the realist paradigm tend to be proponents of the retributive model of *jus post bellum*.

In contrast to realism, liberal, or liberal internationalist, theories in international relations view states as “embedded in domestic and international society” and therefore governed by the social norms and conventions of the international community. Liberal internationalism also presumes an ability to predict the path of good for society as a whole within the scope of meta-narratives regarding the future of history and the march of progress towards achieving a more perfect conception of human rights and rightly ordered societies.

Taken from a liberal internationalist point of view, the horizon of possibility is stymied by socio-political claims to truth within the bounds of this narrative. Where realism assumes a brutish existence founded upon self-interest, liberal theories in international relations embrace the social philosophies of men such as John Locke, John Stuart Mill and Adam Smith with a view towards embracing greater access to private property, emphasis on individual freedoms, and equality of opportunity as ideal characteristics of functioning civil societies as greater “goods.” These meta-narratives assume an abstract value for achieving good which is independent of the person and demands conformity and allegiance to these objectivist goals. The greater “good”

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towards which humanity is striving within the narrative of liberal internationalism however, is not individual-centered but rather remains focused on the good of the collective. In this respect, concepts of justice and order take on a normative quality and values. In this paradigm, some forms of justice are more appropriate, even better, than others. A goal is established for moving towards perfection in the assessment and application of just practices within ideally ordered international legal and political frameworks. This liberal internationalist narrative influences rehabilitation models\(^8\) in war termination.

Within the construct of this thesis and a discussion on international relations theory in relation to hermeneutics, constructivism must also be mentioned. Constructivism rejects interpretations of international relations which look to fundamental aspects of human nature as the explanation for the manner in which nations interact with one another. From a constructivist perspective, reality is derived from social and cultural constructs. What is perceived as reality within the international system is simply a result of those historical and social circumstances. Constructivism seeks to deconstruct narratives of power within the international system, fundamentally providing the opportunity or cautious hope for the possibility of change within the current power structures in the international arena. While many of the concepts on the surface of this theory are complimentary to the meta-principles of hermeneutics, constructivism seeks to explain the dynamic of the manner in which we can understand the international

\(^8\) Orend, *The Morality of War*, 304-5.
system. Hermeneutics on the other hand, as an ontology of language, seeks to address fundamental characteristics of being and reality itself.

A lengthy comparison between realism and liberal internationalism is not the purpose of this thesis. What has become clear however, in the above synopsis is that the perception of the state of nature in relation to man directly influenced the positivist traditions of international relations theory. Just War Theory emerges from within this tradition. Likewise, these theories continue to inform the interpretations and application of just war principles by their political and military adherents. But the influence of these theories on matters of warfare and perceptions of political order go largely unacknowledged in the practical sense that they are presumed to be *a priori* truths, a result of design. But this presumption of design in the international system – and by extension just war tradition – is false. What is perceived as design is in fact the result of specific, discrete historical incidents. These specific, finite incidents of history have not influenced all realities and historical horizons equally or at all. The “truth” of this order and design in the international system, and likewise the preference in the Western, European mind for ordering states according to political boundaries under the guidance of a sovereign legal authority is also a result of these same discrete, historical incidents or events.

Hermeneutics does not change the continued evolution of international relations theory. What hermeneutics does is shed light through careful interpretation. Hermeneutics attempts to bring about understanding with respect to *how* historical consciousness engages in dialogue with these and other competing narratives. This
awareness and responsible engagement with hermeneutic meta-principles will fundamentally shift the practitioner’s engagement with the reality of the narrative through discipline in the process. Awareness of the fact of hermeneutics will allow for restraint to be practiced in coming to judgment on matters of war termination policy and practice while still remaining true to the historical narrative in which *jus post bellum* is situated. Hermeneutics, thus, is not an alternative to *jus post bellum*, but provides for the opportunity to more clearly appreciate the true nature of *jus post bellum* – a single narrative, one such reality, with respect to the conduct of war which has arisen from a particular historical horizon.

**Hermeneutics and the Person**

Before moving into the examination of hermeneutics in the next section of this chapter, this section will address the importance of a hermeneutic discipline in relation to the human person. This will be accomplished with much the same approach as in the previous section regarding hermeneutics and international relations theory. National decision makers filter and process facts and assumptions placed before them and engage in decisions and dialogue with other leaders on behalf of their nations. No matter the theory of international relations to which any individual statesman or diplomat ascribes, engaging in dialogue, as a means of resolving conflict remains a matter of choice. The person makes a decision both to initiate negotiations between states and to continue that dialogue when faced with seemingly insurmountable obstacles to achieving one’s goals.
A hermeneutic conception of inquiry equips the person to realize this practical responsibility while also fully realizing freedom.

The practical demand of statesmanship requires both earnest work as well as the ability to engage in genuine discourse in order to make decisions on behalf of one’s nation. Whether one adopts a particular policy or program based upon well-informed, conscientious conclusions which rely upon empirical data and method or simply based upon intuition or insight, the person still retains the practical, moral and ethical responsibility for the consequence of those decisions. The earnest statesman will seek to fully develop his understanding of a particular topic and the potential consequences for certain actions in reference to his own personal philosophies. In some cases, the statesman may even be able to fully expand on his own philosophy as it relates to his decision making, having spent years in study and through acquired experience. Aristotle considered this type of development, through deliberate study and tending to one’s experiential growth with an orientation towards the intellectual, as the essence of life. He viewed this form of development to be the ultimate ‘good’ - “And thinking in itself deals with that which is best in itself, and that which is thinking in the fullest sense with that which is best in the fullest sense…. the act of contemplation is what is most pleasant and best.”  

Gadamer’s hermeneutics builds upon this responsibility to continue to grow one’s intellect. This growth involves careful attentiveness to exploring the prejudices which

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frame our reality. Our reality is not only shaped by the present but fundamentally framed by our past. In fact, we participate in the whole of reality in a way which is both finite and transcendent in the virtual character of language. Prejudices inform our participation in reality in that they come forward into the event of understanding as historical horizons come into contact with one another. As human persons, our future is continually acted upon by the past and present, a never-ending dialogue shaped by and consisting in language.

The facts of history will remain facts, but the prejudices which have drawn forth from those facts are both ever present and ever changing. In order to be truly free to exercise the fundamental aspect of human dignity which sets mankind apart from other animals – freedom – the individual must be open to the relationship with the Other. Later in this chapter, Gadamer’s rehabilitative concept of prejudice will be addressed in relation to freedom, the individual, and the process of understanding. It is critical at this point to highlight that prejudice does not carry a negative connotation for Gadamer. Prejudice simply reflects the influence of our historical horizon and is a necessary condition of humanity. We cannot help but to engage the present through the lens of the past – hermeneutics as an ontology of language, though, helps the person to be aware of the influence of this prejudice as a necessary condition for realizing freedom. Gadamer articulates the care which must be taken with prejudice by the person as such:

That is why a hermeneutically trained consciousness must be, from the start, sensitive to the text’s alterity. But this kind of sensitivity involves neither “neutrality” with respect to content nor the extinction of one’s self, but the
foregrounding and appropriation of one’s own fore-meanings and prejudices. The important thing is to be aware of one’s own bias…\textsuperscript{10}

The relationship, which occurs in understanding and will be examined in the next section, is the method through which the individual is able to recognize free will. Restraint in judgment is required of the individual in engaging in understanding. The individual must be able to both recognize his own prejudice and the Other without losing oneself to complete subjectivity. This responsibility to oneself as a person is of consequence to both the individual and for human dignity. With respect to human dignity, Hugo Grotius speaks plainly from within the horizon of European, Christian civilization - “God created man “free and \textit{sui iuris},” so that the actions of each individual and the use of his possessions were made “subject not to another’s will but to his own.”\textsuperscript{11}

This responsibility also translates to \textit{accountability} on the part of the policy maker and practitioner as individually responsible for their words, actions, and programs in a post-conflict environment.

This thesis seeks to highlight for the statesman the importance of remaining open to the questions which stand at the root of conflict as of equal, if not greater, importance in looking forward to find an acceptable outcome for war termination. By reflecting in a disciplined manner upon the prejudice which one carries forth from the historical horizon, the Other is able to speak for itself rather than being spoken for or simply


ignored. It is in this event of understanding of being that brings to “language the whole of this meaning [and] allows an infinity of meaning to be represented within it in a finite way.”\textsuperscript{12}

Essential to the event of understanding, the implication for this dialogue will be explored through a thorough investigation of the speculative quality of language as both infinite and finite. Within the event of understanding in dialogue, we are able to access in the finite word the infinite possibilities of being present in the virtual character of language. As persons, we have an at least minimal responsibility to oneself to be an active participant in this event – “to say what one means – to make oneself understood… is behaving speculatively when his words do not reflect beings, but express a relation to the whole of being.”\textsuperscript{13} In this manner, hermeneutics does not propose a departure from self or an abandonment of one’s values for the sake of an endlessly subjective experiment but a deeper exploration and dialogue with self in relation to the Other.

The hermeneutic concept of the process of understanding as ontologically more significant than either participant brings this thesis to an inquiry into hermeneutics. The role of responsibility to self and the realization of human dignity through a hermeneutic conception of dialogue will also remain of paramount concern throughout this thesis. As stated in the introduction to this chapter and in Chapter One, the primary purpose of this thesis is to explore how, through a revitalized conception of responsibility, hermeneutics

\textsuperscript{12} Gadamer, \textit{Truth and Method}, 465.

\textsuperscript{13} Ibid., 469.
can inform war termination policies, programs, and actions situated within the *jus post bellum* framework of Just War Theory.

The purpose up to this point has been to paint a clear picture of the just war tradition narratives which have influenced the current challenges faced in Afghanistan with respect to achieving order, justice, and conciliation. The introductory sections of this chapter have also provided context for the applicability to the state as well as the individual and implications for human dignity. This chapter will now turn towards an examination of hermeneutics as a discipline. This will include an examination of the four meta-principles which offer an opportunity to overcome the challenges articulated thus far: the prejudice of the historical horizon; hermeneutics as an ontology of language; understanding as a process not a goal; and the fusion of horizons through discipline in dialogue. Before doing so, a discussion of hermeneutics within the context of Gadamer’s historical horizon is warranted as a foundation for the meta-principles to be discussed.

**The Foundations of Hermeneutic Thought**

This section of Chapter Three and its sub-sections will focus on Hans-Georg Gadamer’s conception of hermeneutics as it emerged from the horizon of the philosophical discipline of phenomenology. The field of phenomenology generally posits that reality is the perception or understanding within human consciousness of objects/events, “phenomena,” and as such, reality is nothing more than what the individual perceives. Though the work of each philosopher who contributed significantly to phenomenology conceived of understanding in a slightly different manner, a key
component of phenomenology at the time of Gadamer’s writing was that understanding remained subjective to the individual experience. While Edmund Husserl (1859-1938 A.D.) is considered the father of phenomenology, the writings of Friedrich Schleiermacher (1768-1834 A.D.), Hegel (1770-1831 A.D.), Wilhelm Dilthey (1833-1911 A.D.), and Martin Heidegger (1889-1976 A.D.) each provided important contributions to the field which would emerge as identifiable with hermeneutics.  

It would be the work of Martin Heidegger which most significantly advanced the concept of understanding in a direction which provided Gadamer, who was a student of Heidegger, with the basis for his development of understanding as finding its foundation in the historical horizon of language - outside of the individual and the capacities of the mind alone.

Beginning with Husserl’s phenomenology allows for a disciplined introduction of the evolution of hermeneutics into ontology, distinct from other philosophical disciplines, and which critiques even philosophy itself. Husserl’s interest in philosophy, having originally been trained as a mathematician, grew from an interest in pursuing a common foundation which reconciled both philosophy and science. While Husserl was initially concerned with questions related to experience in world which could be conceived of as equally objective and subjective in nature, his focus would eventually lend itself to a perspective of conceiving the world from the perspective of the person rather than a

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14 The writings of Danish philosopher Søren Kierkegaard (1813-1855) are not addressed in this thesis but as a contemporary of Hegel, it is worth noting that his work on the subjective experience is a direct response to the objectivity of Hegel’s writings and the subjugation of individual to the will of the community and state, a matter with which Kierkegaard was specifically concerned.
reality that existed separate from that perception. Husserl was most concerned with the manner in which psychology applied the methods of the physical sciences without taking into consideration that the experiments being performed were being performed on humans. He viewed these experiments as essentially missing the essence of the human condition, those aspects of human freedom which are often taken as common sense or intuitive of the human condition. Husserl conceived that it was possible for an individual to clearly conceive of phenomena by carefully bracketing outside influence and preconceived notions of the phenomena, essentially suspending individual judgment in order to achieve synthesis with the object or essence under consideration. This suspension of judgment would become a key critique of Gadamer with the work of Husserl and subsequent philosophers, which Gadamer viewed as self-alienation.

Schleiermacher’s contribution to hermeneutic inquiry is preoccupied with his intent to prove religion as separate from the realm of physics and ethics and to recast faith as an immediate feeling of oneness with Infinity through perception. He sees immediate perception and feeling, those subjectively focused faculties of man, as the true marks of a pious, faithful individual. He denies that faith is a “peculiar way of contemplating the


16 The positioning of Schleiermacher within the hermeneutic tradition is one of contention given his assertions regarding religious feeling and the unabashedly subjective perspective he takes with respect to intuition/perception in his writings. Hegel (in 1822 in his preface to Hermann Hinrich’s Die Religion im inneren Verhältnisse zur Wissenschaft) and Gadamer (in 1960 in his Truth and Method) both openly critiqued Schleiermacher’s philosophical propositions and contributions to hermeneutics.
world” that man only approaches from an ethical or metaphysical perspective.” 17 He asserts in his philosophy that religion is the realm of the intuition, or immediate consciousness, of the individual – an “immediate consciousness of the universal existence of all finite things, in and through the Infinite, and of all temporal things in and through the Eternal.” 18 Schleiermacher sees perception and intuition as the true focus of pious individuals in pursuit of their true religion, and attempts to show that the essential nature of this perception is separate from the knowledge of this feeling and from the moral legislations that men attempt to impose.

Schleiermacher holds that “religion is essentially contemplative” but does not focus on the “existence of a finite thing [nor does it have anything to do with] your knowledge of God [nor] the first cause.” 19 These concepts reside outside of the realm of religious feeling the moment man becomes fully aware of them through conscious contemplation. He further elucidates this difference between action and perception in his writings on morality. 20 By discerning between the realms of knowledge (science), action (morality) and intuition/perception (religion), Schleiermacher is attempting to create a dependency of the knowledge and action upon perception/intuition in the distinction of


18 Ibid., 37.

19 Ibid., 36.

20 Schleiermacher characterizes morality as such: “always shows itself as manipulating, as self-controlling… whereas piety appears as a surrender, a submission to be moved by the Whole that stands over against man [not the] consciousness of freedom.” Ibid., 37.
intuition/perception as the summation of all things Infinite as a “complete vision”\textsuperscript{21} of the Whole. Schleiermacher is asserting that though science, morality and religion are separate entities, their interdependency demands that those men who would call themselves scientists or moral men must also embrace the feeling aspect of religion or they will fall short in their execution of these other two aspects of life. In religious intuition, man experiences an all-encompassing emotion, but the failure of religious dogma is in seeking to accomplish the impossible by retaining in “memory an imperishable trace of what is necessarily fleeting… unless you will go back to the first beginning of consciousness.”\textsuperscript{22} His vision of this fleeting union is eloquently captured as follows:

\ldots phenomenon of your life is just the result of this constant departure and return\ldots you lie directly on the bosom of the infinite world\ldots[and] in that moment, you are its soul\ldots in this way every living, original movement in your life is first received.\textsuperscript{23}

Schleiermacher’s depiction of immediate intuition/perception in religion clearly articulates a conception of the interplay between the Infinite and the finite existence of man as different from the realm of Ideas and knowledge. Schleiermacher’s vision of religious perception/intuition, while a subjective experience of the individual, brings out an idea of interplay, of conversation between the objective nature of the Infinite and the subjective nature of the individual. However, Schleiermacher shirks the influence of the

\begin{thebibliography}{9}
\bibitem{21} Ibid., 37.
\bibitem{22} Ibid., 42.
\bibitem{23} Ibid., 43-44.
\end{thebibliography}
historical horizon of man in his writings, drawing the religious experience of
intuition/perception to a point of abstraction.

The writings of Hegel rest firmly within this phenomenological horizon and
present a direct challenge to the vision of the subjective, autonomous man in relation to
the Infinite. While both Schleiermacher sought to salvage the concept of God from the
writings of Immanuel Kant, Hegel turns to reason rather than intuition to accomplish this
task. Hegel’s speculative reasoning holds that this Being, understood as God, exists
completely outside of the realm of reasoned man, inaccessible except through revelation
at the whim and discretion of this Infinite Being. According to Hegel, God reveals
himself to us in a manner in which only God could – in an eternal manner. Hegel does
not view the person as engaging in a subjective process of discovery with our fellow man
and with the Infinite. He sees the person instead as a pawn of sorts within a universal
system in which “absolute Truths” reign. In this system, the individual does not have a
discreet relationship with God or the Infinite but views God as an “other” to man, the first
of many paradoxes Hegel describes in his philosophy. Hegel conceives of a systematized
philosophy and theology in a grand teleology moving forward for the betterment of
mankind and community. For him, religious Truth is given by God and only grasped by
human reason through the unfolding of the Absolute Spirit over time through God.

Hegel’s concept of God becoming real to man through the manifestation of God
in Christ among humankind allowed the implicit unity of God in man as revealed through
Adam to become the explicit identity of God and man in Christ on Earth. Hegel sees this
in the process demonstrated by the implicit potential of Adam through his fall into
consciousness and embracing the finite in man. For Hegel, God is unfathomable through
human reason, the Infinite which only comes in revelation – “It lies essentially in the
notion of religion, - the religion, i.e., whose content is absolute mind – that it be revealed,
and, what is more, revealed by God.”²⁴ Hegel’s teleological vision of the absolute Spirit
holds sway over mankind in a manner which denies freedom and looks towards a Truth
which is also absolute but remains inaccessible in its entirety to mankind.

It is with the writings of Martin Heidegger, particularly the publication of Sein
and Zeit,²⁵ that hermeneutics takes its ontological turn away from the study of
communication in the world towards understanding the very fundamental essence of
being. Heidegger defines understanding in his work as a mode of existence rooted firmly
in the historical. In his hermeneutic philosophy, understanding affords the ability to
access the potential possibilities for being within the context of the world around us as an
interaction or a response rather than manipulation of static ideas and concepts. With
respect to language, Heidegger also made an essential connection, which laid the
foundation for Gadamer’s later work:

Words and language are not wrappings in which things are packed for the
commerce of those who write and speak. It is in words and language that things

²⁴ Hegel, The Essential Writings, 322. Italicics are original to the Weiss edition of Hegel.
²⁵ Originally published in 1927 in Heidegger’s native German, Sein and Zeit is also accessible in
English: Martin Heidegger, Being and Time, trans. John Macquarrie and Edward Robinson (San Francisco:
first come into being and are. For this reason the misuse of language, in idle talk, in slogans and phrases, destroys our authentic relation to things.\footnote{26 Martin Heidegger, \textit{An Introduction to Metaphysics}, trans. Gregory Fried and Richard Polt (New York: Doubleday Anchor, 1961), 11.}

Heidegger was directly concerned with the nature of truth itself. He was particularly concerned with the virtual character of language and the event of appropriation, \textit{das Ereignis}. Beings for Heidegger possess an inner depth which is poised to be revealed only through the process of revealing and concealing possible in language and the event of appropriation. By nature, beings exist in the temporal, not only belonging to the present. “As unhiddenness (\textit{aletheia}) truth is always an opposition of revealment and concealment. The two belong together.”\footnote{27 Hans-Georg Gadamer, \textit{Philosophical Hermeneutics}, 226. This quotation is part of the original introduction by Gadamer to Martin Heidegger’s work \textit{Der Ursprung des Kunstwesens} (Stuttgart: Reclam, 1960).} In \textit{Ereignis}, Being and time are reconciled in the event, discretely drawing forth through this event that which distinctly belongs to Being in the present.\footnote{28 Martin Heidegger, \textit{On Time and Being}, trans. Joan Stambaugh (Chicago: University of Chicago Press, 2002), 24.} For Heidegger, self-understanding and understanding of the other are interdependent. Gadamer builds upon these concepts of understanding, language and experience in his writings.

H.-G. Gadamer rejects the type of subjective interpretation of reality captured in the writings of Schleiermacher but also does not see the same objective concept of Truth which Hegel envisions unfolding in Spirit through history. In grounding reality in a linguistically mediated historical horizon, Gadamer is concerned with the very nature of truth itself. Gadamer himself was concerned with the practical application of
hermeneutics in the everyday world, writing extensively on contemporary issues related to scientific inquiry and method (the foundation which led to his writing of Wahrheit und Methode), European society and culture, and world politics. It from within this framework of the practical application of hermeneutics that this chapter will now turn in this next sub-section to an exploration of the four meta-principles of Gadamer’s hermeneutics identified in the introduction to this thesis: the prejudice of the historical horizon; hermeneutics as an ontology of language; understanding as a process not a goal; and the fusion of horizons through discipline in dialogue.

_Understanding as a Process: Transcending the Subject-Object Dichotomy of Knowledge_

Gadamer viewed the writings of his contemporaries and those who came before him as limited due to a key failure among philosophers which rested in their alienation from both their aesthetic consciousness and their historical consciousness. For him, understanding is a “mode of the event of being,” a being which is constantly being operated upon by history and embraces the whole of experience within this history. As a result, understanding takes on an objective quality rather than simply describing the subjective experience of the person’s perception. He moves this event of understanding away from the “I/Though” of the subject-object relationship. With Gadamer, the person is no longer the measure of subjective truth, and truth becomes firmly rooted in the historical rather than standing outside of time and experience.

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Through his introduction of play as a metaphor for removing the subjective nature of a person-centered phenomenology, Gadamer expands upon Heidegger’s conception of the event of understanding. He is thus able to eloquently characterize the relationship between the person and this process of understanding through the metaphor of play. Gadamer’s description of play also quite clearly elaborates his critique of aesthetic consciousness and the alienation of the person from self among his contemporaries. In engaging in play, the player must fully lose himself in the play for its own sake. Though the rules or bounds of play remain, the player must remain open to the range of possibilities which play presents. The defined rules exert demands upon the players almost without consciousness as the game unfolds, but the object of play is not for the player to simply follow the rules but rather to play for the sake of the game. The player is acted upon by the experience of the game, and emerges changed as a result of the game. Turning this metaphor of play to the everyday matters of human existence, let us elaborate briefly on the similarities between play and the individual encounter with the horizon of a work of art as it holds significance for understanding and self-understanding given Gadamer’s concern for the false prophecy of the aesthetic.

The idea of separating art as an object from the history which it calls forth for the purpose of subjective aesthetic enjoyment is abhorrent to Gadamer and one which he spends a great deal of time in *Truth and Method* addressing. To relegate art to the realm of subjective aesthetics denies the historical situatedness and horizon of the work of art, relegating the artwork to the role of simple object. Simultaneously, this barren aesthetic approach also denies the sense of self inherent to the hermeneutic approach, isolating the
person from himself and his history by denying *his* voice in the dialogue between horizons. The relationship between the person and the work of art has primacy over both the person and the art work – art does not exist solely to be aesthetically appreciated by the person at his leisure. The person regarding art loses himself in the experience, aware of his own position within his historical horizon but at the same time remaining open to the historical horizon through which the work of art communicates. If one remains open to the question which forms the consciousness of the work, the person is afforded the opportunity to step more fully into the movement of dialogue.

In engaging with a work of art, the dialogue which unfolds is conducted through the medium of language as the painting engages us from the viewpoint of its own historical horizon. The horizon of the work of art is not merely confined to that of the artist. As a historically affected entity, the work is able to speak with its own voice. The voice of the work is neither dependent nor wholly independent of the person engaging in dialogue with the work of art. Thus, Gadamer presents the notion that the relationship between the two in this dialogue of understanding in language is ontologically more significant than either the art or the person. To lose oneself in the play of this dialogue is to open oneself up to the possibilities present in the virtual whole of possible meanings as the horizons of self and art are fused.

Gadamer’s description of the individual encounter with art stands in sharp contrast to the fruits of an encounter with art which is grounded in the subjective aesthetic pleasure of the person gazing upon an object. In coming to understanding
according to Gadamerian terms, the person is alienated from self while at the same time more fully finding himself in the possibilities posed within the bounds of another horizon. The potential for other possibilities for truth is brought to the foreground through this openness to engage in the process of understanding rather than passively enjoying the work for its aesthetic pleasure alone. Only through this openness to the process of understanding can further possibilities for meaning be integrated into the horizon of the person. In this process, the alienation the individual experiences is one from which the individual can return fully whole while simultaneously remaining open to the questions which support this process of understanding. The experience itself rises above the horizon of the person as well as the horizon of the work of art in this instance, according to Gadamer:

In the experience of art we see a genuine experience (Erfahrung) induced by the work, which does not leave him who has it unchanged… the experience of the work of art includes understanding, and thus itself represents a hermeneutical phenomenon – but not at all in the sense of a scientific method. Rather, understanding belongs to the encounter with the work of art itself, and so this belonging can be illuminated only on the basis of the mode of being of the work of art itself.\(^30\)

To behold a work of art as a subjective object which exists for only one’s pleasure rather than for what it truly is – the artist’s experience of being – is to refuse to participate in the process of self-understanding. To speak of art only in terms of beauty, the color or the striking character as it pleases is a false subjugation of the art to the status of object. In subjugating the object as present only for one’s enjoyment, the beholder is also subjugated and alienated. In truth, the aesthetic quality of the work of art can never be

separated from the non-aesthetic character of the experience of being. The aesthetic and the non-aesthetic nature of the work speak in unison in an answer to the question which called forth the work from the artist. In this same manner, the aesthetic and the non-aesthetic actively questions the person in their experience with the work of art. This experience creates a fusion between the distinct historical horizons from which the person and the work of art both emerge. Both bring forth prejudice, shaped by history, culture, and lived experience forward into dialogue with the work of art. This prejudice is forever changed; in fact, truth is forever changed, as a result of the event of understanding which occurs.

With Gadamer, the person is no longer the focal point for measuring truth as either a subjective experience or an objective goal. The horizon of the person is not shaped merely by his conscious observation of objects within a world created for him. Experience is out of the individual’s control, constantly engaging him in the process of understanding. Gadamer asserts that preeminence of this understanding and of the hermeneutical experience as ‘prior to all methodological alienation because it is the matrix out of which arise[s] the questions that [understanding] directs.”31 The world is constantly operating upon the person in the process of understanding, and the “mirror of language,” which will be addressed in the next section, reflects everything which the person perceives.

31 Gadamer, *Philosophical Hermeneutics*, 26 and 32.
Gadamer’s philosophical turn away from the subject-object relationship and his work to redefine understanding is grounded in the essential nature of language as both virtual and living – the “universality of human linguisticality as a limitless medium.”\textsuperscript{32} By removing understanding from the subjective experience of the individual, Gadamer elevates understanding to be understood as a constitutive ontological dimension of humanity. With this elevation, the relationship between the participants in dialogue with one another, as mediated in language, becomes ontologically more significant than the players themselves.

Language, however, cannot simply be taken as the discrete words and phrases of the language unique to a linguistic group or society but, rather, captures the essence of human perception in experience with world. Experience of the outside world is a necessary condition of our history, just as the synaptic firings in the inner workings of our brain when we experience sensations of hot and cold are a necessary condition of our physiology. A lit stove is hot to the touch and the sensation of “burning” will be experienced the moment bare skin touches the heat, long before the mind is able to grasp the implication of the pain sensation. However, the “mirror of language”\textsuperscript{33} is the only medium through which the individual can reflect upon their perception of pain – in this mirror the relationship between self and pain, heat, hot or cold springs forth. In language,

\textsuperscript{32} Ibid., 25.

\textsuperscript{33} Ibid., 26.
the sensation of heat and pain have meaning. Language is the medium through which the event of being, in this case pain, achieves meaning for the individual in the finite moment. This finite moment forever orients the individual in future events of understanding in which heat and pain take on ever changing meaning in relation to the continued experience of future finite moments.

This mirror of language can be described as speculative in the same manner in which our experience of the world is not simply dynamic and renewed fresh with each new encounter. Rather, language is historically oriented within the context of traditions that have “come down to us [and are] again brought to speak in our understanding and interpretation” of what is present-at-hand.\(^{34}\) Where Hegel’s philosophy of understanding speculated in a forward-looking manner and attempted to overcome history in anticipation of a future anticipated reality in line with his teleological vision, Gadamer’s understanding of speculation is very different. Rather than being forward-looking, Gadamer grounds speculation in the relationship between language and the reality of experience. Where Hegel views language as a component of or as subordinate to the statement in his philosophy, Gadamer views the speculative nature of language as the medium through which reality is achieved – reflecting one’s historical horizon simultaneously past and present with the promise of future realities to come.

The Latin *speculum*, from which the English speculative is derived, has its roots a long history of usage which is inward reflecting or encompassing in nature. True to the

\(^{34}\) Ibid., 452.
entomology of this word, the medieval tradition of *speculum* literature, which experienced its greatest popularity in the 12th through 16th centuries, was developed as a means of capturing a complete field of study within a single volume of work in much the same way as the modern encyclopedia. These works served to catalogue the full historical development of a specific topic in an all-encompassing manner which reviewed the present in the context of the past. Though a crude comparison, modern day coffee table books which publish in writing or photography a historical record of a university, town or specific topic of interest are a legacy of speculum literature. In Gadamer’s philosophy of hermeneutics, speculation is true to this concept - the future is anticipated through reflection of history in the present. Rather than looking forward, the speculum of language (“mirror of language”) seeks to capture the penetration of meaning within a word or statement into the virtuality of language. In its historical situatedness, language finds a foundation which, while finitely accessed by man, possesses infinite possibilities in understanding.

The subordination of language to the statement in Hegelian philosophy, where the statement is the result of a dialectic isolation or reductionism, is clearly opposed to the concept of dialectic in the tradition of hermeneutic inquiry. The reduction of dialogue into statements of reason has unfortunately become one of the key components of the post-conflict method. Current practices focus on reducing an argument to a few salient points of contention upon which all parties can “agree” while leaving those matters which are just “too difficult” to fester unaddressed. In reality however, those unaddressed matters are already present in dialogue but remain hidden in the singular historical
horizon of the party to which they belong, acting upon the event of understanding in
dialogue in a fashion which undermines the negotiation process in an insidious way. In
failing to recognize and to bring them forward in dialogue in a deliberate manner, the
interests of the country remain unaddressed. Additionally, the person is alienated from
self in the context of their historical horizon.

Gadamer asserts the ontology of understanding in terms of the historical
situatedness of being, Dasein. Dasein is grounded in the continuity of customs and
traditions of humanity. This continuity affects as well the very nature of language, which
Gadamer expresses in terms of the der Mitte der Sprache (“language as centering the
human relation to the world”\(^{35}\), the virtuality of language. The relationship between the
simultaneous momentariness and eternal continuity of the word, which “breaks forth as if
from a center and is related to a whole, through which alone it is a word,”\(^{36}\) cannot be
separated from one another:

Every word causes the whole of the language to which it belongs to resonate and
the whole world-view that underlies it to appear. Thus every word, as the event
of a moment, carries with it the unsaid, to which it is related by responding and
summoning. The occasionality of human speech is not a casual imperfection of
its expressive power; it is, rather, the logical expression of the living virtuality of
speech that brings a totality of meaning into play, without being able to express it
totally. All human speaking is finite in such a way that there is laid up within it an
infinity of meaning to be explicated and laid out. That is why the hermeneutical
phenomenon also can be illuminated only in light of the fundamental finitude of
being, which is wholly verbal in character.\(^{37}\)

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\(^{37}\) Ibid.
The virtuality of language thus brings with it a whole of meaning as well as inherent questioning all at once, placing the prejudices to which we belong at risk. But what of this prejudice? The very nature of our being as historically situated and the influence of history on language indicates to us that we cannot separate ourselves from our own prejudice. Though we often strive to deny this influence of history upon our thinking and actions, we cannot escape the truth of its effect. The person can only seek to be conscious of this prejudice as understanding, language and our own horizon cannot be separated or alienated from one another.

*Prejudice of the Historical Horizon: Cultivation of Character*

Rather than being alienated from the Other as a result of prejudice, Gadamer constructively affords the opportunity to understand how one’s historically grounded prejudice is inherently open to the Other. An hermeneutically informed approach offers an alternative to a continued separation between competing narratives. The hermeneutic approach accomplishes this by equipping the practitioner to: (1) accept the inherent prejudice present in one’s own historical narrative; (2) cultivate the continual transformation of prejudice through self-awareness; and (3) remain fully present and open to the inevitability that reality will forever be altered moving into the future as a result of the fusion of competing historical horizons.

Aristotle asserts that in a community of language, the person is not conscious of the influence of this language on his frame of thinking. The prejudice of the language of this community, though Aristotle does not use the word prejudice to describe this idea,
creates a state of mind in which the terms used by community are commonly understood. The person and the community are “always already in agreement”\(^{38}\) as a result of this common language. For Gadamer, it is in language that the agreement between infinite and the finite achieve, simultaneously, the identity of being as well as all possible futures of being in a disciplined awareness of one’s own prejudices. In this dialogue man, realizes the truth of freedom - to be open to remaining in conversation with the past, present and future of history. In being responsible for one’s own identity, due diligence is required to foster this identity. The individual has a responsibility to remain open to all possibilities of meaning and truth unveiled through this freedom of access to these possibilities.

Certainly, there is no lack of anxiety in this experience, particularly when confronted by alternative possible truths which are in direct opposition to one’s own finite and historically grounded perspective of truth. This anxiety or friction, when present in the international arena, is often a driver of conflict between countries competing to vindicate a narrative which is held to be essential to the survival of the country itself. But accepting one’s own prejudice (and thus the perception of truth) as necessarily historical, and so prejudiced by history, is a foundational meta-principle of Gadamerian hermeneutics.

This historical horizon is both constant and changing as the individual’s understanding is mediated through the necessarily finite medium of human language.

\(^{38}\) Ibid., 444.
However, from Gadamer’s perspective, much of the Western philosophical tradition made the mistake of assuming that the Western historical experience was necessarily the only valid historical experience. Philosophers and thinkers emerging from this tradition found themselves too readily accepting of truth as an objective norm achievable through a “correct” experience and interpretation of reality.

The horizon of the individual is not shaped merely by his conscious observation of objects within a world created for his pleasure. The historical world is constantly operating upon the human person in the “mirror of language,” as we have come to know language. The concept of the speculative nature of language becomes clearest in Gadamer’s meaning when he speaks of the horizon of the person and the objectivity of understanding as a process. Understanding is not something to be achieved or obtained by the temporal, finite person. The historical horizon experiences a constant state of renewal in the process of cultivating change. As humans, we are bound to history. In the language-bound experience of being, the prejudices of our horizon are continually shaped through understanding. The process of understanding and our access to reality is shaped in history and in language, equally exerting influence upon the present as well leading to a future shaped by the present.

In the process of calling into question the foundational principles of methodological proof as the only means for accessing truth, Gadamer draws a sharp distinction between knowledge and understanding. In science, we are able to grasp finite concepts and gain access to knowledge. We are not necessarily situated to have access to
the broader and more inclusive horizon of historical understanding, what Gadamer refers to as “historically effected consciousness.”

For Gadamer, even knowledge is subject to the influence of the historical – “To be historically means that knowledge of oneself can never be complete.”

Gadamer chooses to elaborate upon Aristotle’s distinction between “practical wisdom” (phronēsis), which can be applied in a situation of deliberate judgment by man in everyday life, and theoretical knowledge (episteme) as too simple a comparison.

Gadamer turns to Socrates, who sees a failure of techne, such as that found in the applicable skills found in tradesmen, to effectively capture the type of knowledge which “constitutes man and a citizen as such.”

The judgment of men who are aware of themselves is identifiable as a certain skill they possess or quality of decision making and action which we all find difficulty to explain or point to directly as a quantifiable skill. We often simply say they are men of “good” judgment. Certainly, the skills possessed by men of good judgment are not taught in a classroom or trade program like that of a

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39 Gadamer, *Truth and Method*, 299-301. Gadamer uses the German term *wirkungsgeschichtliches Bewußtsein*, defined as “an element in the act of understanding itself and, as we shall see, is already effectual in finding the right questions to ask.” Ibid., 301. Italics are original to Gadamer.

40 Ibid.


carpenter or painter, but we would still refer to these characteristics as skills in common conversation. There appears to be a tension which exists between these skills or knowledge and judgment.

Gadamer attempts to reconcile the perceived “tension” between these types of knowledge and the implications for the historical horizon of the individual and community. This objective is achieved in many respects through the manner in which Gadamer shapes the concept of the German term *Bildung*, historically associated with cultivation and the “rising up to humanity through culture.”43 Building upon Immanuel Kant’s idea of “cultivating a capacity”44 in the form of naturally derived talent as a duty to oneself, Gadamer reflects upon the constructive aspects of this concept in the changing nature of man in cultivating his own individuality.

Rather than a transformation which eradicates the old and replaces man with a new capacity or knowledge, *Bildung* is a mediated process in which man realizes the “sense of himself.”45 Quoting Wilhelm von Humboldt, “in our language [German] we say *Bildung*, we mean something both higher and more inward, namely the disposition of mind which, from the *knowledge and the feeling of the total intellectual and moral endeavor, flows harmoniously into sensibility and character.*”46

43 Ibid., 9.
44 Ibid.
Bildung embraces a common theme of remaining open to moving beyond the self as the sole means of developing one’s character and as the determinant of being. The understanding of Bildung as cultivation, flowing intimately into a relationship between sensibility and character is critical to “keeping oneself open to what is other – to more universal points of view.” This openness to the viewpoints of “possible others” is ontologically significant in moving towards an understanding of Dasein, which does not have a teleological goal in mind.

As Gadamer states, “once a scientist has discovered the law of a natural process, he has it in his power. No such thing is possible in the natural experience of the world expressed in language.” The historically situated nature of understanding makes this type of possession or absolute comprehension impossible. The person cannot possess understanding in the same manner in which information is acquired or knowledge can be derived from an interpreted theory of natural science as is understood today. In comparison with modern scientific understandings of the term theory, classical definitions underscore the manner in which the Greeks approached theory as wholly dependent upon, rather than abstracted from, experience. Where modern science seeks to obtain access to an external, abstract law, theory in the Classical understanding of the

Weinsheimer and Donald G. Marshall (New York, NY: Continuum, 2004), 9. Translation in text is by Weinsheimer and Marshall. The original German text written by Humboldt in this edition of Gesammelte Schriften reads as follows: “Wenn wir aber in unserer Sprache Bildung sagen, so meinen wir damit etwas zubeleib Höheres und mehr Innerliches, nämlich die Sinnesart, die sich aus der Erkenntniss und dem Gefühl des gesammten geistigen und sittlichen Strebens harmonisch auf die Empfindung und den Charakter ergiesst.”

47 Gadamer, Truth and Method, 15.

48 Ibid., 450.
term meant “sharing in the total order itself.” This formulation is clearly articulated in Aristotle’s philosophy of ethical care of the soul in which the highest virtue of man is found in contemplation. Through contemplation, one’s self can be fulfilled. For Gadamer, the sensibility and character of conscience, which is required of man, is fostered through a conscious cultivation. This cultivation involves, nay requires, an ever-evolving character of man, similar to contemplation in engaging in dialogue. Most critical to this process is “keeping oneself open to what is other – to other, more universal points of view.” The prejudice of the historical horizon is understood in this context – a cultivated prejudice of which the person must remain mindfully aware.

The gulf separating praxis can also be reconciled with theory in the same manner in which Aristotle elevates political praxis through a relationship to theory. In the writings of Aristotle, the role of civil society can be understood as having the specific purpose of preserving tension between theory and practical matters of concern in order to foster the cultivation of the person. Gadamer emphasizes the importance of cultivation in the sense of the person as a matter of both theory and praxis. There is a need to recognize that the truth is not only found in clarifying and logically analyzing concepts and ideas but is intimately intertwined with the matters of the everyday reality of human existence.

_Discipline in Dialogue with the Other_

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49 Metaphysics, I, 121f, as quoted in Gadamer, Truth and Method, 451.

50 Gadamer, Truth and Method, 15.
Engaging in dialogue in the spirit of hermeneutic inquiry seeks to encourage both working through the matters at hand while insisting those engaging in such dialogue remain open to and cognizant of the questions at hand which have led to conflict. This approach embraces the inevitability of dialogue’s outcomes – the questions which remain unanswered will inevitably need to be addressed in future dialogue. By 1) remaining open to the question at the root of conflict, 2) speculating upon the true nature of conflict, and 3) engaging in dialogue which encourages open discussion, statesmen can make progress in fostering a community of disciplined dialogue. This renewed openness to the question will prove to be more fruitful in language in the future than dialogue pursued without consideration for the horizon of the question.

Disciplined dialogue is not meant to be understood as strictly limited to the work of the negotiating table. Dialogue, understood hermeneutically, is the framework of approach for all experience, mediated in language. Through discipline in dialogue we fulfill the individual responsibility for realizing self-understanding through recognition of freedom in the Other. This is the primary requirement of “responsibility” in its most basic ontological and existential sense. These qualities of freedom and responsibility are of ontological value to the historical human person as measures of the primacy of human dignity, a dignity for which all persons have the responsibility to themselves to preserve. The full recognition of human dignity as the primary ontological measure of value can only be realized through a disciplined dialogue which remains open to the potential for infinite possibilities for meaning to unfold in the medium of language.
Rather than closing ourselves off to the experience of dialogue’s happening, we have a responsibility to our own identify in freedom to remain always actively open to the process of understanding while fully aware of the finitude of our historical prejudice. The statesman and the diplomat both have unflattering and primary responsibilities to themselves to continue to preserve their own dignity while at the same time pursuing resolution to the situational, inherently historical considerations at hand. The responsibility to the preservation of dignity through the recognition of freedom and the openness to meaning should not be considered arbitrary or secondary to the resolution of this situational consideration. The event of understanding in dialogue is the only meaningful way in which finite man experiences the potential for the infinite through his active participation in the finite event. The person must give himself over to this relational process of understanding in dialogue.

Dialogue must not be understood merely within the context of a specific transaction or situational goal. It is understood to be situated both within and consequential to the truth of understanding as a whole of ideas. “Just as the individual words acquire their meaning and relative unambiguity only in the unity of discourse, so the true knowledge of being can be achieved only in the whole of the relational structure of ideas.”51 Dialogue is not only of consequence in matters of finite import but also to the openness of truth – to actualize through this discipline the myriad possible futures of being.

51 Gadamer, Truth and Method, 429.
Gadamer goes to great lengths in his discussion of the historical horizon to eradicate the tendency to foreground one’s own horizon as separate and distinct from the historical horizon of the Other. At the same time, he acknowledges the naiveté in one’s presuming that two could ever be simply assimilated into a single unified horizon. The task of hermeneutics lies not in “covering up this tension… but in consciously bringing it out”\textsuperscript{52} into the light through disciplined dialogue. The horizon of the historically situated person is of critical concern at this juncture in elaborating on the tension which exists between truth and freedom.

In dialogue between persons of differing horizons place differing emphasis upon the consequences derived from the fruits of dialogue. These differences can vary widely with subsequent consequences having varying levels of value (risk versus reward) to the stakeholders engaged in dialogue. Gadamer articulates this concept as a “fusion of horizons,” as such:

In fact the horizon of the present is continually in the process of being formed because we are continually having to test all our prejudices…. Hence the horizon of the present cannot be formed without the past. There is no more isolated horizon of the present in itself than there are historical horizons which have to be acquired. Rather, understanding is always the fusion of these horizons supposedly existing by themselves…. In a tradition this process of fusion is continually going on, for old and new are always combining into something of living value, without either being explicitly foregrounded from the other.\textsuperscript{53}

The perception of truth of the participants engaging in dialogue has a power onto itself which has a tendency to shape their engagement and the perceived consequences of dialogue. In this circumstance, resolution can be too narrowly defined as seeking a

\textsuperscript{52} Ibid., 305.

\textsuperscript{53} Ibid., 305.
“closure” to the situation at hand which has given rise to the need for dialogue. Dialogue approached in this manner seeks to vanquish freedom in favor of finite truths. This approach must be avoided at all costs as it is a disservice to both the individual and to the community. The polarization of truth and freedom can be overcome through a discipline of dialogue which emphasizes the question in dialogue as opposed to the search for the answer solely sought in conflict resolution.

Finally, a tradition of disciplined dialogue creates a community and culture which honors the judgment of the person in the praxis of war termination. Judgment is only warranted as responsible, however, based on the degree to which it has submitted itself to discipline in dialogue. In recognizing the freedom of the person across from him at the table, the negotiator opens himself up to the infinite openness for meaning which hermeneutic inquiry promises to unfold. This approach is not one of method. It is freedom exercising itself responsibly in practical application, fully actualizing self-understanding. This openness to the question is a stepping stone towards remaining ever-open to the ontology of freedom. In recognizing the horizon of the Other, the practitioner is in turn recognizing the bounds of his own finitude and the prejudice, which arises from this finitude. Though bounded by the finite nature of humanity within a historically situated horizon, this prejudice does not preclude man from engaging in disciplined dialogue. The result of this dialogue is to honor dignity of one’s fellow man and self by remaining “free-to-differ within the Same of truth.”54 Truth is achieved in the universality of freedom enacted as responsibility. While a claim to access the whole of

54 Ambrosio, “Dusk and Dawn,” 49.
truth cannot be asserted within the finite boundaries of humanity, the universal nature of freedom remains virtual in the medium of language.

Being can only be interpreted and understood through language in a meaningful way within the boundaries of understanding, a process which we have established individuals are not able to access in entirety. In language, there exists a real tension between infinite openness of meaning and the historical reality of human finitude. To say that the “truth of things resides in discourse… which means, ultimately, in intending a unitary meaning concerning things – and not in the individual words” underscores the inability of a singular word or propositional statement to be considered an exact or precise truth in its own right. At no time within history can the “virtual whole” of meaning contained within the utterance of a single word be accessed by the individual, finite man. Engagement in disciplined dialogue which remains conscious of the ontological character of humanity and the nature of language and understanding embraces this undeniable process rather than turning a blind eye to the nature of our relationship with reality.

Words may be spoken within the specific situation or event of dialogue, but these words do not convey all of their historical meaning, the whole of being, in the situational moment. In this respect, the virtual openness of meaning within language is the foundation upon which truth rests. In the assertion of judgment in the relationship or play of disciplined dialogue, humans evoke the truth of freedom.
The assertion of judgment in disciplined dialogue, framed by the medium of language in engaging the process of understanding from the grounded prejudice of one’s historical horizon, is the matter to which this thesis now turns. The aim of this inquiry is to create opportunities for a better state of peace in the tradition of *jus post bellum*. This will be accomplished by equipping practitioners with a practical means for transcending the limitations of the normative nature of the narratives which inform their historical horizon. Drawing out the framework of order, justice, and conciliation as essential components of a just peace, the four meta-principles of hermeneutics articulated in this chapter will be investigated in Chapter Four within the context of post-2001 Afghanistan.
CHAPTER FOUR

ESTABLISHING ORDER POST BELLUM: COMPETITION OF IDEAS

Now that the *jus post bellum* criteria have been explored and the meta-principles of hermeneutic theory have been elaborated as they will be treated in this thesis, the focus will narrow to addressing the challenge of competing models for establishing post bellum order and justice.¹ As observed by Thomas Schelling in his work *Arms and Influence*, “military victory is often a prelude to violence, not the end [of violence].”² The inability of the victors in the case of Afghanistan to effectively establish order and justice in collaboration with the Afghan people and their government proves no exception. Over 14 years following the overthrow of the Taliban regime and the formation of a new Afghan government,³ meaningful order and justice appear largely absent.

The victors, the Afghan government, and the people of Afghanistan are still struggling to navigate a satisfactory way forward for both. In the case of Afghanistan, we are faced with a society with a mix of social, political, and cultural perspectives on ordering their society. These ideas also demonstrate a strong historical grounding in

¹ Conciliation as part of the *jus post bellum* framework will be addressed in relation to both order and justice, but the failures in Afghanistan with respect to the foundational building blocks of order and justice need to be thoroughly addressed before conciliation can legitimately be considered. For the purpose of discussing the potential for hermeneutic conception of inquiry to provide meaningful insight to the matter at hand, the primary focus of this thesis will be on order and justice within the framework of *jus post bellum.*


tribal/kinship networks as well as religiously informed customs. Moral and ethical responsibilities to those affiliations are informed by a paradigm of Islamic governance and tribal custom. This paradigm transcends the political boundaries which define the state today as understood within the context of current international relations theories and Just War Theory.

In Afghanistan, the victors sought to establish order and justice frameworks from a position centered within the just war tradition paradigm – originating from a horizon which embraces the concept of the nation state as the model around which order is designed. The apparently incommensurate nature of these two paradigms will be further drawn out in the first two sections of this chapter by exploring the historical horizons from which these competing traditions arise. The historically effected prejudices with which these two paradigms approach order and justice will be addressed in depth to draw forward opportunities. The goal will be to draw forth opportunities where hermeneutic conception of inquiry may have better informed post-conflict engagements and programs in Afghanistan following the cessation of active combat operations.4

The final section of this chapter will seek to apply the same approach in order to address the challenges of order and justice found in post-2001 Afghanistan as a model for the potential value of applying hermeneutic discipline to the just war tradition. The end

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4 The definition of active combat operations also will play into the discussion of order from the perspective of the Afghan people and the victors operating within Afghanistan during subsequent stability building years within the country. As discussed in Chapter Three, order and security are intrinsically linked. Failures in security to degrade the attainment of an acceptable return to a pre-conflict order and potentially a better state of peace.
result will be that this chapter will provide a framework for breaking the bounds of normatively-derived concepts of Truth by drawing out the truths of the respective historical horizons in dialogue with one another. Careful emphasis will remain on the medium of language as a mode of being and the Other as presenting possible alternate truths through this deliberate dialogue.

**Order and Justice: Competing Historical Horizons in Dialogue**

In the treatment of the *ante bellum* ideal in society in Chapter Two, the emphasis in just war scholarship trends towards a focus on a return to either the status quo or a better state of peace within the established norms of the society in question. To establish order from the perspective of modern Just War Theory presupposes the existence of the concept of the modern state. In fact, Just War Theory takes for granted that the notion of the modern state as it is understood today is the normative model for ordering society. In “Aftermath of War,” using the First Gulf War (1990-1991) as his example, Michael Walzer typifies this ideal of returning to normalcy which takes for granted the state as a given entity. He writes that “we insist that the aggressor state makes things as much as it can, just like they were before…this view is the definition of a just outcome.”[^5] However, Walzer has also noted in his work that some argument could be made for expanding this approach to include regime change in the following circumstances:

… extreme cases of genocide or other gross violations of human rights on the part of the state. Such violations would allow for a foreign state or coalition of

states... to replace the government or, at least to begin the process of replacement.\textsuperscript{6}

In this particular discourse, Walzer notes there are limits to what victors can accomplish in terms of replacing government structures and institutions. Specifically, he says:

States are not bound to do (or try to do) what they are not able to do. The probably of success, which plays a critical role in \textit{jus ad bellum}, plays the same role in \textit{jus post bellum}. [For example] The United States is not obligated to create a Swedish-style social democracy in Afghanistan... for the simple reason that we can’t do that.\textsuperscript{7}

Walzer’s statement captures the essence of the matter at hand with respect to the ability of the United States to conceive of and implement a type of governance completely alien to the Afghan historical horizon. But would a U.S.-style democracy even be in the realm of the achievable simply because the victor in this instance is familiar with this model when the vanquished are not? The questions being pondered in the reader’s mind at this moment most likely revolve around what form of \textit{state governance} would be most suitable for the \textit{citizens} of Afghanistan to help \textit{restore} order to society. Are these questions even valid? In order to consider these questions, it is necessary to first delve into the prejudice of the Western, Christian historical horizon from which the language of citizen, state and government springs forth.

In the next the sub-section of this chapter this prejudice will be engaged through a careful dialogue with this language of order along with a review of the subsequent implications for justice in the community when no higher order exists within the borders

\textsuperscript{6} Walzer, \textit{Just and Unjust Wars}, x.

\textsuperscript{7} Walzer, “The Aftermath of War,” 42.
of the state. We will find that the state in this historical horizon “cannot be countermanded and cannot, as a law, be appealed to any higher order”\(^8\) than the State itself. While recognition of the legitimacy of sovereign state is necessarily a country to country recognition within the norms of international law, the hermeneutic conception of inquiry provides a framework for engaging in a fusion of horizons between them. This will allow the practitioner to more fully appreciate the consequences of this event of understanding which is occurring in Afghanistan – both between the historical horizon of the past and the present in Christian, European thought and the horizon of the Afghan people. This chapter will now turn to a discussion of the rise of the state in Europe, beginning with the Enlightenment.

**Western European Concept of the State: Christianity by Another Name**

The concept of returning to the status quo which existed *ante bellum* in the context of Just War Theory presupposes commonality between the victor and the vanquished. This concept also implicitly and explicitly requires that order be imposed through the mechanism of a centralized state and its bureaucracy. Approaching the challenge of restoring order *post bellum* is prejudiced by the historical horizon of the victors - the United States, its Allies, and in fact, the entire world order reinforced by these countries. In the case of Afghanistan, the visions of order and justice conceived of by policy makers and post-conflict reconstruction practitioners are grounded by the modern nation state. Order and justice are understood finitely through this medium of

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language in which state has become their embodiment. As persons, these practitioners and policy makers can only access a finite portion of the total reality of justice and order. They are a historically mediated product which arises from a horizon which is distinctly influenced by the Enlightenment and the Treaty of Westphalia (1648 A.D.).

The cultural and intellectual change, which occurred in the period flowing from the French Revolution up until today within Western intellectual thought, springs forth from a tension between the reason of man and the Divine. This tension finds its nexus in the inability of modern man to reconcile logical, scientific positivism as the “ultimate ruler of life” with the key tenets of Enlightenment thought – autonomy, progress, toleration, empiricism, optimism and the wondrous order of nature. The Enlightenment was an age when technological advances and new discoveries engaged in a constant assault upon outdated notions of truth and understanding as being concrete goals within the grasp of the human person. Through today, man’s perceptions of knowledge and truth have remained in a state of forced change. Empirical reason gained favor in the Enlightenment with advances in science and medicine at the hands of empirical reason. These advances were exemplified in the works of Isaac Newton and other natural scientists and extrapolated as methods for gaining access to truth by systematically observing the natural order of nature and world.

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9 See Gianfranco Poggi’s *The Development of a Modern State: A Sociological Introduction* (London: Hutchinson, 1978) for a discussion on the rise of the nation state in Europe and the transmission of this structural concept of governance internationally.


11 Exemplified through a careful study of the facts as one is able to ascertain them through experience and logical reflection.
Truth, as perceived within the context of the Western paradigm, has achieved realization within the political arena with idealist Democratic visions of society. The foundations of this paradigm are firmly rooted in a teleological vision shaped by the marriage of religion and Enlightenment thought. In developing a concept of truth which stands outside of the practical reason of mankind, a de facto dichotomy of sorts was born which cleaved an inseparable gap between nature and freedom, faith and reason. In much the manner the Greeks anthropomorphized their gods, bestowing upon them finite human traits, man was given the impossible task in the post-Enlightenment West to fill the void left by the eradication of the Divine by human reason. In effect, finite man was required to rise up and become a personified idea of ‘good.’ He was charged with the responsibility of taking on a universal duty to elevate self to “complete moral perfection” through his own reasoned faculties in method. This moral perfection was to be discovered from within rather than through faith or tradition. However, it was not clear the exemplar that philosophers such as Immanuel Kant were looking for could be found within the construct of this morally legislative reasoning. Man found himself alone in his finitude.

This state of solitude creates tension and fear when confronted with alternative narratives which do not support the truths of reason through interaction with the horizon of the Other in the form of the infinite and mysterious. In the time period of the Enlightenment, the primary assault on the reason of man appeared to come in the form of

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faith. Disquiet with the dogma of the Catholic Church was a natural outgrowth of this assertion of power of individual autonomy and the faculties of reason to understand the human condition. Man was determined to reason matters regarding the Infinite and the Divine on his own grounds rather than through the mediation of a priestly aristocracy. Perhaps man’s situation could be explained as simply finite historical point given that time is a condition of man’s physical existence. The next section of this chapter will delve into this Enlightenment struggle between faith and reason as giving rise to the state as Other to the Divine in legislating ‘good’ within communities of man before turning to the rise of state within this historical horizon in the subsequent section.

The Enlightenment: From Revelation to Reason

Though the Enlightenment can be truthfully characterized as a period of optimism and hope for building a better future for man, the nature of finite man’s relationship with the infinite has remained a matter of everyday concern beginning with the Enlightenment. As man began to move from the fiefdoms of Medieval Europe into the towns and city centers of an increasingly commercialized existence, he increasingly came to define himself as an autonomous individual. Catholic Church doctrine also came under scrutiny with this shift away from rural, agrarian community life. The question was no longer whether Christianity would be judged according to the standards of reason alone as developed in the early days of the Enlightenment. The question became what role reason played in ethical and moral thought, either in concert with or as an alternative to faith and revelation. Another question rose to the foreground as well – under whose authority
should ethical and moral behavior be judged? Should this legislation come from above through the interpretation of miracles and grace from above or can man legislate (or create) his own ethical and moral actions?

Miracles and revelation would be placed in the cross-hairs of Enlightenment philosophers seeking to understand the role either could have for an intellectually enlightened humanity looking to reason as the foundation of its metaphysics. Skepticism of miracles led to a search to identify rational proofs for the existence of God. This search resulted in intellectual struggles during the time of the Enlightenment between those wishing to preserve mystery and revelation within the structure of the teachings of Christianity as outside of reason and those who sought to define a natural religion. This natural religion relied solely on reason alone. In order to most directly highlight this tension, the writings of John Locke (1632-1704 A.D.), a devout and orthodox Christian by his own admission, serve to elucidate one viewpoint on this matter. Locke sought to demonstrate that revelation can be considered above reason without succumbing completely to revelation as contradictory to reason. Additionally, Locke’s writings will illuminate the importance of language as the medium for understanding reality within this historical horizon. Locke is also important to the greater discussion in this thesis chapter as he establishes a separation between faith and government upon which the next section of this chapter will focus.

As an empiricist, Locke defines the ‘idea’ not as an innate concept but one which is brought to light in man’s mind through the sensory experience of the external world.
For Locke, the names (ideas) of substance, objects and things we assign in our mind to these objects must not be considered the same as the true knowledge of the nature of these ideas. “Our ideas of...substances... [are] nothing but certain collections of simple ideas united in one subject... coexisting together.”

Man is limited to accessing the nominal, the idea, of the external object with no innate ability to observe the true essence of the object except through the limited nature of our language to communicate these ideas. Locke views language (words) as being the object of communication, no matter how poorly man is able to utilize this tool to faithfully describe or communicate the idea held in his mind. This distinction between the idea (which the mind is able to grasp) and reason are intertwined.

For Locke, there is a triad between the object, the idea in the mind, and language used to convey this idea. The words used to convey the idea are subject to change as the idea of the object is changing in the mind. It is obvious from this construct that Locke considers language to be an unreliable mediator of the ideas of the object formed within the mind. This is a limitation which he does not necessarily explore further in his writings. However, the imperfection of man’s own language in the mind of Locke informs his philosophy and belief that man is not able to obtain the same kind of knowledge through reason which God provides in revelation.

In defense of revelation as commensurate with reason, Locke carefully draws out an explanation to identify revelation as not being contradictory to reason, as opposed to

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those things which he views as quite contradictory to reason. For Locke, “the existence of GOD is according to reason; the existence of more than one GOD is contrary to reason; the resurrection of the dead, above reason.”\(^{14}\) In this example, the idea of more than one God is impossible. However, the concept of the resurrection of the dead is simply something that reason is not able to explain – it is above reason. In Locke’s description, revelation and reason become equally viable methods for obtaining knowledge. Genuine religious knowledge, however, can be attained through an avenue other than reason alone - that of faith through revelation.

Faith, for Locke, is an acceptance of a concept based “upon the credit of the proposer, as coming from God in some extraordinary way of communication”\(^{15}\) - revelation. Neither does Locke assert revelation and reason as mutually exclusive means of obtaining access to knowledge. Rather, he accepts the premise that there may be truths passed in revelation which are equally attainable through man’s faculty of reason. Of note, he does not distinguish explicitly why this would need to be the case in some instances but perhaps not in others, but this is not a discrepancy of particular consequence for him given the larger framework in which he is working.

It is essential to note at this point, however, that Locke is unwilling to make the intellectual leap to assert the ontological primacy of man’s own reason as actually equal to that of the revelation provided through a transcendent God. The “Word of God” remains inaccessible to man. Man is then left with his sole faculty for discerning the

\(^{14}\) Ibid., 322-3.

\(^{15}\) Ibid., 355.
validity of revelation in his good reason when it comes to the historical existence of miracles. For Locke, the demonstration of miracles represent the practical proof that the performer of said miracles is in fact a valid agent of God sent to witness Divine knowledge to man. Jesus Christ represents to Locke the standard bearer of one who has come to Earth to perform miracles in fulfillment of prophecies as demonstrable proof that the revelations of Christ are genuine. These miracles stand as evidence enough for the reasoned to be accepted as above (and compatible with) reason as long as no contradiction can be discerned. There is a certain reasonableness, Locke asserts, in accepting a miracle. Though the miracle itself may initially appear contradictory to reason, it is not actually contradictory if the miracle has been predicted or explained as a means of proving the genuine nature of the message the conveyor seeks to convey. In this respect, one is within the bounds of reason to accept the mystery of revelation as necessary in the history of man for conveying the truths of Christianity to humanity.

Locke did not stand alone in his conviction of the inherent mystery present in the relationship between man and God, but those Enlightenment philosophers who opposed the willingness to accept the need for revelation were also numerous. The writings of Locke are important, however, as they represent a precipice or a conceptual fork in the road in Enlightenment thought and the future of philosophical and theological discourse. For those philosophers committed to the annihilation of authority from above, Church dogma asserted through claims to knowledge outside of reason was perceived as a tool used to control the spiritual lives of its followers. The acceptance of unverifiable miracles captured in the Bible was anathema. For the Deists of England, France, and
Germany, the miracles proclaimed according to the Bible were treated with thinly veiled hostility. For intellectuals committed to reasoned religion such as Voltaire, the miracles of Christianity became cannon fodder for what amounted to a declaration of war on absurdity and superstition – *Ecrasez l’infâme.*

A more moderate treatment of the issue of miracles than that of Voltaire which strikes directly at the heart of man’s relationship to the infinite and seeks to methodically outline a historically informed ontology is that of German figure Gotthold Ephraim Lessing (1729-1781 A.D.). In his writings, Lessing appears ambivalent to the heated discussions regarding the historical accuracy of miracles, which he considered to be merely accidental truths of history. Lessing instead focuses on the lessons of the stories of the Bible in relation to the historical reality of man’s finitude. He sees the progression of the Christian faith as an essential component in the historical evolution of man’s reasoned faith. For Lessing, the actual reality of history’s progression remained ever-present in his thought. He compels the individual to investigate the true moral grounding of one’s own reason. While he acknowledges the stories of the Bible may not necessarily be faithful historical accounts of events as they unfolded, reason is able to discern the validity these stories and thus paves the way towards greater knowledge of universal truths for historical man.

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16 “Crush the infamous thing.” A common salutation used by Voltaire beginning in the 1760s as a condemnation against the Catholic church and organized religion in general.

17 According to Lessing, the “accidental truths of history can never become the proof of necessary truths of reason.” Gotthold Ephraim Lessing, “The Education of the Human Race,” in *Lessing’s Theological Writings*, ed. Henry Chadwick (Stanford: Stanford University Press, 1956), 18. Lessing means to question the logic in presuming simply because a certain act occurred one must then accept the metaphysical implications claimed to flow forth from a simple act having occurred.
In comparison to his contemporary Immanuel Kant’s (1724-1804 A.D.) form of practical reason, Lessing postulates that the historical reality of the intertwined progression of the Christian faith is necessary to man’s continued development towards a higher universalized truth. The truths the person perceives to understand in this age are in essence incomplete and will be further refined as man progresses in history. In terms of man’s relationship with God, Lessing’s vision seems to be that of a teacher tending to one’s students. God corrects the error of his pupils’ ways and guides them towards a higher order of truth throughout history. This happens incrementally as man progresses through history up through each stage of consciousness – the Bible serving its role for people of the age as “the non plus ultra of their knowledge.” Lessing’s vision of moving forward towards a higher order of truth rings true in the writings of Locke. Unlike Locke, Lessing did not envision Christianity as shining forth as the last true religion in a sea of competing ideologies.

Lessing is important to this thesis regarding the horizon of the European state and individual in that his writing is representative of a subtle shift away from the objective truth of reason as standing autonomously outside of history. He embraced the reality of history as the medium in which both reason and religion are grounded. For Lessing, both must travel the path of history in order to develop beyond the current stage of finite humanity’s access to the play of Divine truth currently attainable in this historical act -

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18 Kant will be discussed in more depth in the next section of this chapter. At this time, it is sufficient to understand practical reason as man’s innate ability to reason his own morality and faith without external influence.

19 Ibid., 93.
Christianity. This teleological vision of history as progress gives rise to a vision of the state as progress in later philosophy.

The Rise of the Concept of the State in the West

The concept of the state in the modern European context reflects the historical, temporal nature of its linguistic roots in Enlightenment thought. In the reliance upon rational, logical thought as separate and distinct from the Divine, the state becomes a necessary entity for organizing community and sanctioning the moral and ethical code of this community of independent, reasoning man. Wael Hallaq asserts the state as possessing the following five necessary, dialectic form-properties:

1. the concept of state constitutes a specific historical project which is the result of European history;
2. the concept of state sovereignty is necessarily free of moral value but is “little more than a replacement and substitute for the Christian conception of free will;”\(^{21}\)
3. the state has a monopoly on legislation of law and enforces its own law through violence;
4. the bureaucratic organs of the state are a necessary component of state which maintain the status quo in which a political elite exercise control and authority over the masses;
5. and the myth of the state/society dialectic in truth is in fact an arbitrary perception as the state necessarily forms and penetrates the culture of

\(^{20}\) The concept of the state is specifically derived from the historical horizon of the Christian, European society but applies to models of proper order as understood by the United States and other Western, non-European nations.

\(^{21}\) Hallaq, *The Impossible State*, 27.
society, possessing alone the power to destroy and create social order within its borders.\textsuperscript{22}

A critique scholars have expressed regarding the modern state in its current form is that the state is a substitution of Christianity and the precepts of the sovereign will of the God. Within this horizon of state, the state alone becomes the “God like Law-giver par excellence.”\textsuperscript{23} This substitution has the ultimate consequence of replacing the Is (fact of law) from the Ought (justice) in terms of moral and ethical life for man and community. However, before turning to a discussion of Is/Ought, it is necessary first to further explore the concept of the collective sovereign will in the modern state and the structure of the state in terms of its traditionally accepted elements (territory, power and people),\textsuperscript{24} the separation of legislative powers, and the separation of church and state as understood in the dynamic of the modern state.

The origin of state finds itself in the concept of the sovereign. States are bound by political lines, geographic features which demark the beginning of one state and the end of another, within which the sovereign authority of the state possesses ultimate power

\textsuperscript{22} Hallaq, 23-36. These five form-properties as described by Hallaq have been paraphrased in this writing in order to capture their character as Hallaq’s work in \textit{The Impossible State} utilizes a “sub-heading” format for each and then explains in greater detail within the text. Hallaq has defined the five form-properties as such: “1. The State is a Specific Historical Project… 2. Sovereignty and Its Metaphysics… 3. Legislation, Law and Violence… 4. The Rational Bureaucratic Machine… [and] 5. Cultural Hegemony, or the Politicization of the Cultural.” Italics are original to Hallaq.

\textsuperscript{23} Ibid., 27-29.

\textsuperscript{24} Hans Kelsen treats these three elements extensively in his work \textit{General Theory of Law and State} (Cambridge: Harvard University Press, 1945). Although this thesis will not address time in relationship to the definition of the modern state, the temporal aspect of the state will be important to the discussion later in this chapter with respect to Islamic governance. For Kelsen’s treatment of the elements of the state, see Hans Kelsen, \textit{General Theory of Law and State} (Cambridge: Harvard University Press, 1945), 207-268.
in relation to the sanctioning of law, economics, and social interaction among the citizens of the state. The political, the activity of politics as a relational matter, is the locus for establishing the collective identity of the population of the state. The political is fundamentally relational in nature, described in existential terms by the postmodern thinker Carl Schmitt as a mutual, non-reducible relationship between friend and enemy. Schmitt characterizes this relationship as follows:

Let us assume that in the realm of morality the final distinctions are between good and evil; in aesthetics beautiful and ugly; in economics profitable and unprofitable… The specific political distinction to which political actions and motives can be reduced is that between friend and enemy…. The political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions.25

Where Schmitt’s political philosophy in relation to the friend-enemy distinction has been derided as antagonistic, particularly as a result of his involvement with the National Socialist Party in Germany, it provides a compelling perspective on the relationship between individuals and between states from the perspective of the political. Sovereignty finds its locus in this interpretation in the relationship – the good could not exist independently of the evil nor the beautiful independently of the ugly.

Schmitt rejects moralizations of the political which attempted to negate the distinction between friend and enemy. He instead asserted that the attempt to negate this distinction would simply result in loss of political identity by being overtaken through violence by the political entity (state) with the stronger identity – “When a people no

longer has the strength or will to hold itself to the realm of the political, the political does not thereby disappear from the world. It is only a weak people that perishes.” The state exercises this strength and will to define the enemy internally through legislation and externally in the manner in which it establishes itself in relation to other states.

The existence of the other in the enemy becomes a necessary measure against which the state engages in the political as a sovereign entity. This concept of the friend-enemy relationship will be discussed further in this chapter as well as the conclusion of this thesis in regards to the implications for just war tradition as a result of the prejudices which have formed as result of the experiences of post-2001 Afghanistan. This section will now turn, however, to a discussion of the legislating function of the modern state and the state as substitute for the Divine as realized through the separation of church and state in liberal democracies such as the United States.

Instrumental to the accepted construct of a modern state in this European tradition is its legislating function. “To give laws, to implement the laws and to interpret the laws…” are the defined legislative functions of state. These responsibilities are separated so that to “…each of the three functions corresponds a branch of government: laws are given by legislature, implemented by an executive and interpreted by a judiciary.” Essential to this separation of powers is the premise that the consolidation of the state power to give, implement, and interpret law into a single entity or person (e.g. as in a

26 Ibid., 36.

monarchy) would too easily give way to tyranny. This is taken to be particularly dangerous if the legislature, elected by the people, is not the entity giving law within the state order. In his conceptualization of separation of power, Charles de Montesquieu eloquently paints his perception of the necessary balance to prevent this from happening as follows:

... as in a country of liberty, every man who is supposed a free agent ought to be his own governor; the legislative power should reside in the whole body of the people. But since this is impossibly in large states, and in small ones is subject to many inconveniences, it is fit the people should transact by their representatives what they cannot transact by themselves.

Democratic governance is taken to be the ultimate expression of individual free will in the collective form within this paradigm – the choice to live one’s life according to how one chooses without infringing upon the freedom of one’s fellow citizens. Law is meant to express this concept and provide for a means for punishment for failure to abide by the norms of the state. The assumption being that the law, as a necessary medium of the state in form, also expresses the collective agreement of the moral ‘good.’

The assumption from this perspective then is that instituting a democratically elected form of government in which the rule of separation of powers is observed enables the population to legislate their society in a manner commensurate with their moral and cultural norms. Implementing a form of government with a democratically elected

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28 As already discussed in the prior chapter with respect to the international system and jus post bellum, the existence of states which are not democratic remains preferable to a lack of central governance. This idea will also be further explored in the section on order in post-2001 Afghanistan as well later in this chapter.

The legislative branch of power in states emerging from conflict, in turn, has become the method through which this goal is achieved. The separation of power is viewed as a necessary means to achieve the end goal of order. Samuel Huntington notes in his 1968 work, Political Order in Changing Societies, that while political reform sometimes leads to more stability, it also can “exacerbate tension, create violence…”\(^{30}\) The United States in particular, according to Huntington, never experienced the process of establishing order as a nation itself, having “enjoyed the fruits of democratic revolution without having to suffer one. So also, America was born with a government, a political institution and practices imported from seventeenth century England.”\(^{31}\)

But what of law as it has become known today through the modern state and its citizenry? If morality is, to quote Hegel, “living in accordance with the customs of one’s land,”\(^{32}\) then what becomes of a land in which the value-free scientific method comes to rule based on “universally valid laws…[which] cannot, as law, be appealed to any higher order?”\(^{33}\) Gadamer is quite critical of the final result of this project of natural reason and empirical science in modern political society. He is particularly concerned with its implication for individuals residing in this morally abstract, reasoned collective. He sees that as “the social order develops forms of such power…the individual is hardly

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\(^{31}\) Ibid., 7.

\(^{32}\) Hegel as quoted in Gadamer’s Philosophical Hermeneutics, 113.

\(^{33}\) Hallaq, The Impossible State, 25-6.
conscious at all any longer of living out his own decisions.”

Gadamer’s concern of course here is with the alienation of self, which is realized linguistically by the presence of a universal law which holds itself to be outside of history. This brings this discussion to the matter of separation of church and state within this society today.

The notion of separation of church and state would not be possible without the Enlightenment, just as the paradigm of modern state would not be possible. With knowledge of the natural world through method came questions and suspicion of authority, including moral and religious teachings. Immanuel Kant’s “An Answer to the Question: ‘What is Enlightenment?’” represents just such an appeal to reason as the source of truth. His writing and practical political philosophy also reflect the philosophical struggle between the natural world and the bonds of tradition, religion, and other external sources of authority with which Lessing and others also had struggled. Kant’s answer to his self-titled question is for the individual to seek release from these bonds in asserting one’s freedom through practical reason - “to use one’s own understanding without the guidance of another.”

In Kant’s political philosophy, the state preserves freedom, both particularly and collectively, providing for the ultimate protection against the infringement of one’s own freedom by another as such:

... in accordance with pure rational principles of external human right...the freedom of every member of society as a human being; the equality of

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each with all the others as a subject; the independence of each member of a commonwealth as a citizen.\textsuperscript{36}

Kant recognizes within this set of principles that happiness, which he identifies as uniquely subjective to the individual experience, is not a principle by which the state can be understood. Neither is happiness a measure by which laws should be formed. Rather, the driving principle should be mutual preservation of freedom as of universal value for the citizens of the state. The collective must also “agree unanimously to the law of public justice.”\textsuperscript{37} In recognition that unanimous agreement is highly unlikely or even impossible in matters of legislation, he also asserts “the actual principle of being content with majority decisions must be accepted unanimously and embodied in this contract; and this itself must be the ultimate basis on which a civil constitution is established.”\textsuperscript{38}

In the consolidation of majority rule and the primacy of free will within the state, the concept of state achieves the singular ability to legislate and implement both restrictions and opportunities for individual freedom. This is done independently of external influence originating from outside of state. The state achieves supremacy of freedom (power) over all other forms of social, religious, and cultural order (people) within itself (territory). State is uniquely equipped with the authority for violence (rule of law and authority to punish) to enforce its continued existence. Everything within the

\textsuperscript{36} Immanuel Kant, “On the common saying: this may be true in theory but it does not apply in practice,” in \textit{Kant’s Political Writings}, ed. H. Reiss and trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1970), 74. The commonly accepted abbreviation of this work, “Theory and Practice,” will be used in subsequent references.

\textsuperscript{37} Ibid., 28.

\textsuperscript{38} Ibid., 78-9.
state exists solely because the state allows. The state penetrates society and possesses the sole power to destroy any aspect of society it deems necessary. Paradoxically, this ensures that the state is the only authority through which freedom is recognized. For Gadamer, the rise of the state represents just the sort of incidental series of events which form the historically effected prejudice through which all encounters with order are filtered through in language. Man situated in this horizon is prejudiced to view order in terms of meeting the finite qualities aligned with the language of state, unable to access the virtual whole of order in its infinite possibilities without engaging in the event of understanding with the Other in a disciplined manner.

Simply accepting the normative qualities vested in this finite access to the virtual whole of order is in direct opposition to freedom. This alienates the person by placing free will in a position where it is subservient to collective will. The modern state becomes not a means through which freedom is realized as the goal (or end) but rather “that end for which all others can be sacrificed.”\(^3\) The citizen becomes the means through which the state is able to achieve its self-promoting end. The state alone retains the authority to make exception to its rules and can call upon its citizens to sacrifice their ultimate freedom, their right to life, in the name of the state. In alienating law (state) from external authority, the state thus can only be understood to give, implement, and interpret law, which furthers the primacy of the state’s continued freedom. The modern state could be considered the penultimate achievement of the alienation of moral values

from transcendent truth that is offered in religious doctrine. The resulting experiment is what Michael Nazir-Ali refers to as “the human propensity toward order, and the corresponding fear of disorder… [a need for an] underlying order in the cosmos.”

Granted, history demonstrates the continued influence of faith-based morals to varying degrees within modern states and their corresponding laws. However, we do also see that the composition of the society and its degree of homogeneity (culturally, religiously, and ethnically) influences the degree to which the expressions of law can be tied to a religiously-derived concept of moral right. In all cases, however, the state becomes the sole legislator of the continued persistence of these traditions – selecting to maintain those which serve the purpose of perpetuating its continued existence. In the words of Carl Schmitt – “formulas of the omnipotence of the state are, in fact, only superficial secularizations of theological formulas of the omnipotence of God” - faith in another form.

As already stated, moderated linguistically, the state comes to represent an idealized representation of freedom. This finite reality of freedom is truth for those emerging from this particular historical horizon, but it only represents one possible truth, as finitely accessible within the virtual whole of freedom. This concept returns the focus to the reality of state as uniquely situated within the European and now Western historical horizon. This reality of state is itself finitely understood and is a relatively recent

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41 Carl Schmitt, *The Concept of the Political*, 42.
conception of the “proper” manner in which society can and should organize even within this tradition. Law in this paradigm serves the sole purpose of perpetuating state. From this perspective of this horizon, mediated in language, morality is no longer the giver of law. Law simply exists as what is or has come to be as permitted by state.\(^{42}\) We see in practice today that the judicial branch of the United States, for example, does not deliberate the inherent moral value of laws. Rather than consider whether the law “Ought” to exist from a moral or ethical perspective, the high court simply considers whether the law “Is” applicable given its factual relationship to the state and “what [already] is.”\(^{43}\) Law is the manner in which the state achieves and preserves its own autonomous existence. F.A. Hayek questions this practice of giving law as a new, modern innovation. This particular legal tradition, according to Hayek, seeks to create (or see design in) law as a fact which is already given when in fact this perception is a limitation of our ability to comprehend the spontaneous nature of how government and the state have come into being.\(^{44}\) Hayek’s critique again reflects on language as a mode of Being – the horizon in which state has sprung forth becomes a reality which frames all interaction with world. Those emerging from this horizon can only approach the event of understanding from a position which recognizes order within the existence of state as a reality in language.

\(^{42}\) Hallaq, The Impossible State, 89-92.


Within this critique it is critical to again refocus this dialogue to remind the practitioner that the purpose is not to caste judgment upon the notion of the modern state. As the meta-principles of hermeneutics require, the intent is simply to be aware of the prejudice borne of this historical horizon and to bring this prejudice to the foreground in one’s dialogue with the Other. Discipline in judgment is required in order to realize one’s freedom responsibly. Now that the concept of Is/Ought has been brought to the foreground, the next section will transition to a brief look at the opportunities for a fusion between the horizons of the European and Islamic horizons with respect to order and justice as a transition to a discussion of the historical horizon of Islamic governance in the subsequent section of this chapter.

**Is versus Ought: The Opportunity for a Fusion of Horizons**

The focus of this chapter now turns briefly to an exploration of the opportunity which presents itself in dialogue with competing truths regarding order. In divorcing law in the modern state from “Ought,” the socio-cultural history of Western society today has in many respects embraced the “Is” of law and state as synonymous with the “Ought” of morality and ethics society in achieving order. Questions of morality are viewed by many as according to the laws of the state alone. Those codes or moral norms not included in the legal code of the state are held as simply subjective to the individual, beneath the realm of concern for the state. As such, the non-legalistic realm of moral and ethical behavior comes to hold no value for the individual as citizen as a member of the political community.
Friedrich Hayek addresses the challenge of Is/Ought in law and societal order extensively in his *Law Legislation and Liberty: Rules and Order*, calling the phenomenon a result of the ‘synoptic delusion’ derived from the philosophical traditions of Descartes, Hobbes and Rousseau. The ‘delusion’ is characterized by Hayek as the belief that the human mind is capable of reason through its own faculties alone and that it is possible for all knowledge of the natural world, society, and rules to be known to a single individual or mind alone.\(^\text{45}\) For Hayek, custom, morals, manners (and law) are an inalienable aspect of society and of human nature, regardless of whether man is able to specifically articulate the rule of law in language in his adherence to such rules. This statement can be taken further – the virtual nature of language and the finite nature of man makes one hundred percent concurrence or perception of a law or moral norm impossible.

Hayek rejects social theories which take institutions, organizations and governments to be a result of deliberate design (an approach he refers to as ‘constructivist design’). Fusion in the event of understanding of law is possible. He contends that these ordering mechanisms are the result of history – “the experience of generations.”\(^\text{46}\) This concept of experience, custom, and inherited norms stands in stark contrast to the social contract of Rousseau and many current political science approaches to establishing order. These same approaches pursued in post-2001 Afghanistan have proven problematic. Hayek prefers not to use what he terms the “Hegelian” label of state but rather considers government to be simply another example of an ordering mechanism. He asserts there

\(^{45}\) Ibid., 11-17.

\(^{46}\) Ibid., 11.
are important distinctions between the rules that his two types of ordering mechanisms employ: 1) spontaneous (or grown) order and 2) made order. Spontaneous order, according to Hayek, organically develops between organizations, individuals, and other forms of society in pursuit of their own interests. Made order are those rules an organization necessarily employs internally to maintain the preservation of customs - the process by which the rules are established.\textsuperscript{47}

In turning to an examination of the paradigm of Islamic governance, Hayek’s final warning that it is “not possible to mix”\textsuperscript{48} the rules of differing organizations and spontaneous order should be kept in the forefront of one’s mind. In approaching \textit{post bellum} programs/policies, judgment is required by the practitioner to be aware of the finite access to order achieved in the linguistically mediated horizon of this tradition. Now that we have speculated on order within the Western, Christian historical horizon and its reality as a an ultimate sovereign, bound by geography, the attention of this thesis will now turn to order and justice as conceived within the paradigm of Islamic governance in this next section.

\textbf{Islam and Moral Order: The Path and the Individual in Community}

In turning to the paradigm of Islamic governance, addressing the interplay between sovereignty, human dignity, and the proper rule of law will remain fundamental to an effective approach to engaging this historical horizon. The event of understanding

\textsuperscript{47} Ibid., 35-47.

\textsuperscript{48} Ibid., 48.
entered into through this thesis work with this paradigm will inevitably be tempered by the prejudice of one’s own historical horizon. Critical to this undertaking is to approach this experience with full awareness that this cannot be an objective assessment or analysis of the seams which might exist between the paradigm of state and the paradigm of Islamic governance. The reader should, rather, remain fully aware of the questions which have brought this thesis to this point. The inherent truth of the finitude of our human condition influences all – the human person is a historically grounded being unable to access all of truth. We are only capable of engaging with and achieving meaning within the limitations of our earthly existence. Through discipline in dialogue, the person can hope to maintain an orientation to remain open to the hope of possible future truths for generations to follow. Practically speaking, if the human person possessed the perfect answer to the question of how to order society with full respect for human dignity, just qualifications for war would no longer exist. War would only be a matter of choice for other selfish purposes and means.

A starting point for the discussion of order and justice within Islamic governance is a recounting by Hugo Grotius of Plutarch’s attribution to Anaxarchus in his The Rights of War and Peace, “GOD does not will a thing because it is just; but it is just, that is, it lays under an indispensable Obligation, because GOD wills it.”49 In Islam, this concept of the sovereign supremacy of God’s will is embodied through Shari’a Law. This is the

49 Hugo Grotius, The Rights of War and Peace, ed. Richard Tuck (Indianapolis: Liberty Fund, Inc., 2005), 1:164. Capitalization of GOD is original to author as is the use of italics to emphasize particular words.
ultimate representation of the moral law or code that God wills for mankind.\footnote{Hallaq, *The Impossible State*, 50.} Rather than a ruler or elected body being responsible for the creation, legislation and implementation of Sharī’a Law, the community, or āmma, exercises this legislative function as a whole. The person simultaneously retains access to and responsibility for his actions in relation to his responsibilities to God and in relation to the community. The legislative function of the Sharī’a is balanced through the custom and tradition of community. In Afghanistan these traditions are pre-Islamic tribal and kinship networks, the largest of which is the Pashtun tribes predominating southern, eastern and central Afghanistan. The *pashtunwali*\footnote{The Pashtuns are the largest ethnic group within Afghanistan, comprising approximately 40-45% of the population, but the Pashtun historical horizon and the code of ethics particular to the Pashtun should not be understood to be shared either mutually across all of the 60 approximate tribes within the Pashtun people or by members of other ethnic groups and tribes within Afghanistan.} code of ethics will be expanded upon in the next section in particular as it relates to the events of understanding occurring in that context.

The schools of Islamic jurisprudence have been assumed by the greater community rather than being based on either 1) the political boundaries of a state as understood within the European paradigm or 2) the authoritarian control of a dynasty without a fixed border as was customary during the early development of Sharī’a. This balance between the abstract consideration of moral right/wrong and the concrete conduct of members of the community in their everyday life is a compromise between the ideal of the Infinite and the reality of finite practical existence. Historically, Islamic scholars have taken the position that in this paradigm of Islamic governance, the legislative authority is
not bound by the political boundary we associate with state in the modern context. Rather, the authority resides within the community which operates under the foundations – legal, social, moral – provided through Sharī’a. This is a community which is understood to exist in service of God’s sovereign will and which requires mutual accountability to one another in service of this will. But what does this balance look like in practice, recognizing the historical reality of the co-existence of political power exercising regency over the practical affairs of man and the demands of the will of God?

In the paradigm of Islamic governance, sovereignty is not understood as a collective will exercised through the mechanisms of the state. Rather, sovereignty is understood as expressed through the individual in a relational context of community. This involves two parallel, but not necessarily joined, pursuits – the pursuit of a path of moral righteousness in accordance with the demands of God’s sovereignty and the practically necessary aspects of responsible coexistence within a human society. Coexistence of both should be mutually supporting. The duality and complementarity of these two aspects of life – the spiritual and the practical – in one’s daily existence required a consultative approach to order in society. This approach necessarily levies a great deal of personal accountability on the individual in relation to his neighbor. Modern day applications (and Western interpretations) of Islamic governance as identifiable with or subordinate to state, are an oversimplification of this tradition. Particularly the conflation of Sharī’a Law as being of the same nature as the legal

paradigm of the state are simply attempts to make Sharī’a “fit” the reality of “state.” This conflation is also a reflection of the collision of the horizons of these two traditions in current society as Islam has struggled to find its place in the new norm of the purportedly faith-agnostic modern state.

Endeavors within Islam to understand the Will of Allāh in relation to the existence of mankind is fundamental to the foundational principles of order and justice within Islamic society today. The continued evolution of usūl al-fiqh (Islamic jurisprudence) as both sovereign to the individual and a shared responsibility within community rather than the political apparatus of state reflects this perspective. Just as we see the tension between reason and tradition in relation to free will in the West, the Muslim experience has a parallel discourse revolving around the refutation of kalām, and disputes concerning the true nature of ḥikmat. The effects of struggles to remove the influence of kalām (and ḥikmat informed by kalām) from religious pursuits within Islam are evident in the principles for usūl al-fiqh used today in various Islamic schools of thought. This struggle is also partially responsible for the conflation of the paradigms of state and Islamic governance in modern day discourse.

In the timeframe leading up to the 17th century, the conversation regarding the relationship between the sovereignty of God and that of human dignity and freedom

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53 Kalām. Literally translated as “speech” or “word.”

revolved around *kalām*. These focused on resolving considerations of the Tawhid (Divine Unity) of Allāh with that of human free will. Diverging understandings of these ontological considerations subsequently have influenced the *uṣūl al-fiqh* of the primary Islamic schools’ applications of Shari‘a Law and Islamic governance in modern day society. It is worth noting that disputes largely center on distinguishing those rules which properly belong to Allah and those that belong to the authority of man. Variations in applications of Shari‘a Law are due in large part to divergent schools of thought with respect to man’s ability to reason independently of the Truths of nature.

Self-reliance on personal knowledge and individual perception, along with the schools of Islam, which allow for greater sovereignty for man, has come to be viewed within Orthodox Islam and by fundamentalists\(^55\) as a direct assault upon the Qur‘an and Will of Allāh. Moderate Muslims and Westerners also fall into this false narrative. These interpretations fail to recognize the central role of what Hayek described as the spontaneous, organically developed relationship\(^56\) between the individual, community, God, and the ruling dynasty (or reigning political base) within the paradigm of Islamic governance.

Attempts to legislate that which is independently sovereign to God and independently sovereign to the individual and community within the single agency of the

\(^{55}\) The term fundamentalism is used here in its proper usage to reflect those who wish to return to a prior time, or condition, for the Muslim community. This time is generally accepted as the conditions which existed for the Islamic community during the life of the Prophet Muhammed. The form this return to prior conditions takes varies depending upon the extent to which the school of thought, group or individual attempts to adhere to literal interpretations of the Qur‘an, Shari‘a Law and the sunnah.

state is in fact the most direct threat to the pursuit of the correct moral path as properly understood in Islam. This union is a direct assault upon both God’s sovereignty and the freedom of the individual to find his way to the moral good. The alien is forced upon both the individual and the community, and respect for human dignity in the realization of one’s own freedom is lost. Realizing human dignity in Islam comes in the form of the voluntary actualization of the dual nature of the person’s obligations – *Haqq Allāh* (obligation to God) and *Haqq an nas* (obligation to the neighbor/people in community).

These dual obligations are not the responsibility of the commoner alone within this tradition. This spirit harkens to the Quranic verse, 256 of al-Baqara, “there is no compulsion in religion.” The ruler or prince has a reciprocal responsibility to his subjects to afford the opportunity for satisfaction of these obligations. Traditionally, the faithful execution of this responsibility by the ruler could be called upon, enforced or questioned by any member of the *ūmma* if they believed a particular action or ruling to be unjust. The responsibility of the ruler also included the obligation to seek the counsel of others within the community, particularly the opinion of the *ulema,* to provide counsel on matters of moral and ethical consideration in daily life.

The Prophet Muhammad serves as the role model for this practice of seeking counsel. He is well documented, for example, as having sought the deliberate consult of

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57 Quran 2:256.
58 “And the believers, both men and women, are in charge of one another.” (Qur’an 9:71).
59 The *ulema* did not traditionally hold public offices in the manner in which public office is understood today as a direct agent of the state.
his Companions in the decision to engage his enemy in open battle rather than to fight from behind the confines of the walls of Medina in the Battle of Uhud. But to what extent, when considering the requirement to seek consultation (referred to as shura), is the ruler or individual truly making a decision for himself (or a king for his people) when the path has already been made clear and Allāh has provided the way? Is not the role of the ruler to ensure his subjects abide by the path through any means necessary to guarantee entry to heaven and preservation from hell? Certainly, this justification has been used by autocratic dictatorships which claim Islamic teachings and doctrine as the basis for their authority.  

In the face of an unchanging and preeternal Will in Allāh, what implications do we see within Islam for freedom or is man’s fate eternally predestined? Rather than considering the Will of Allāh as essentially precluding freedom for man, Islamic scholarship reconciles both of these Will’s with the belief man is able to act according to his own reason and human will. The issue of predestination and man’s free will was one of the first great paradoxes debated in Islamic philosophy. In many respect, this debate rages today, but the outward manifestation of this debate does not openly acknowledge the source of this tension within such movements as the Arab Spring of modern day. In order to grasp the depth of the implications for this debate on the issue of order from this historical horizon, an exploration of the matter of free will and Divine will is required.

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Hanafi doctrine, the predominant school of Islamic jurisprudence of interest to our exploration of restoring the status quo in post-conflict Afghanistan, is informed in its approach to this discussion by an understanding of Allāh’s Will as possessing two characteristics: 1) command, where the individual is charged with a standard but is left to choose whether or how to follow the path provided by Him; or 2) irada, the will of Allāh which “comes into being immediately.” Ideally, man should walk the path of righteousness as defined through the Qur’an and the teachings of the Prophet Muhammad (hadith). However, Islam accepts that as a precondition of man as a finite creation he lacks perfection in reason, thought, and will.

According to Islamic teachings, “destiny, good and evil, is from Allāh Most High.” The Prophet Muhammad’s teachings and the Word as revealed in the Qur’an serve as practical guides for following the correct path to paradise in the afterlife. Allāh has provided in revelation the Truth of the way. However, man must engage in a personal struggle, the Islamic emphasis of jihad, to stay the path. Man exercises his

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61 Imam Abu Hanifa (699-767 C.E.) is the founder of the Hanafi school of fiqh, one of the four surviving schools of Sunni Islamic jurisprudence. The four schools are Hanafite, Mālikite, Shafi’ite, and Hanbalite. The Hanafi school in Central Asia, Afghanistan and Pakistan. The Mālikite school in North and West Africa. The Shafi’i school in Egypt, Yemen and Somalia, and the Hanbalite in Saudi Arabia.

62 Ahmad ibn Naqib al-Misri, The Reliance of the Traveler, trans. Muh Ha Mim Keller (Beltsville, MD: Amana Publications, 1994), 42. This concept of choice or deliberate (gnomic) will represents the will man possesses to make decisions in relation to the natural will (path), which has been laid out for him by God. An important aspect of the Islamic faith in comparison to Christianity is that no man or prophet, neither Jesus Christ nor the Prophet Muhammed, is possessed of either natural or Divine will. According to Church doctrine, Christ possessed both natural will (thelema) as well as Divine will but not gnomic will. See Migne, PG. 91 (Paris, 1860); Ian A. McFarland, “‘Naturally and by Grace’: Maximus the Confessor on the Operation of Will,” Scottish Journal of Theology 58, no. 4 (November 2005): 410-433; Joseph P. Farrell, Free Choice in St. Maximus the Confessor (South Canaan, PA: St Tikhon’s Seminary Press, 1989).

freedom in either choosing to follow the correct path laid out for him or choosing to succumb to temptation. In addition to the responsibility of the individual, Islam also emphasizes the role of community (ūmma) in realizing the actuality of the paths to Knowledge provided by Allāh through his Messenger and the other prophets – “Allāh’s hand is over the group, and whoever dissents from them departs to hell.”

The renowned Islamic theologian Al-Ghāzāli sees the natural order of the world and the detail within it as indicators of Allāh’s Providence over his creation. This detail and order would not be possible without a Creator who intends his creation to be a certain way, including man. For Al-Ghāzāli, however, human perceptions of design in cause and effect are fallacies inherent to the finite condition of man – in all things, Allāh is both cause and effect. Man simply cannot understand the whole. This idea, referred to as occasionalism in Al-Ghāzāli’s theology and philosophy, will be further explored in the next few pages in relation to order specifically. The relationship between an intended path and a servant of Allāh who must find the light of this path is critical to the Islamic teleological vision of salvation. Islam, like Christianity, maintains the Divine Ouσία as ever separate from man, unattainable even in death and resurrection in the afterlife.

However, it remains man’s responsibility to perform the struggle necessary to move ever closer towards the light of Divine Knowledge as stated by theologian Ahmad ibn Naqīb al-Misrī – “the servant chooses to do acts on the basis of a desire within himself, not because he knows Allāh’s knowledge, and he is held responsible for his

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64 Ibid., 25.
choice even though it corresponds with Allāh’s externally preexistent knowledge.65

Like a teacher to humanity, a creation whose purpose is to know Allāh, Allāh knows his community of believers and the ones which have and will learn the lessons as revealed by Him. He also already knows who will falter on the path to knowledge and be condemned to a hellish eternity.

But what of the existence of evil in a world that is crafted by a Creator whose perfection exceeds all concept of perfection? In al-Ghāzāli’s description of those harmful traits of humanity such as desire and anger, he points to the importance of evil and harm as counterbalances to perfection. Without evil, man would be unable to recognize the perfection present in Allāh as wholly desirable.66 We see this language as well in the writings of St. Thomas Aquinas as well as more recently in Pope John Paul II’s apostolic letter *Salvifici Doloris*, in which he discusses the individual experience of suffering: “the reality of suffering is explained through evil, which always, in some way, refers to a good.”67 In this respect, Pope John Paul II, al-Ghāzāli, and Ibn Sinā seem to agree on the purpose and even the necessity of evil and imperfection. Evil serves as a point of reference for man to Good. Good would not so clearly shine forth if it filled all of creation equally.

65 Ibid., 29.


Where al-Ghāzāli and Ibn Sinā differ in their philosophy regarding evil is on the necessary existence of a best of all possible worlds (perfect world) as a result of a Necessary Being. Ibn Sinā distinguishes that although Allāh did not create out of necessity, the perfection of this world must necessarily be that of a Divine nature. The existence of evil must be a necessary accident of existence for the recognition in creation of a perfect world to be possible - the harm that this evil causes pales in comparison to the perfection of existence. For al-Ghāzāli, evil is an active agent and cannot simply be accidental to existence. Allāh is perfection and in the best of all possible worlds looks upon his creation with mercy. In His mercy, pain and suffering is also in his Wisdom (which we cannot seek to fully understand). It is a part of Allāh’s desire for His creation to be able to recognize the path to Knowledge. There is no necessity in the manner in which Allāh creates, only his Wisdom and Mercy.

Al-Ghāzāli points to the fallibility inherent in man’s finitude as the limiting factor in being able to properly comprehend, or to realize in life, the true nature of Allāh’s path for humanity.\footnote{68 al-Ghāzāli, The Ninety-Nine Beautiful Names of Allāh, 39-40. Al-Ghāzāli states, “our… understanding of Allāh [is either more different] than sugar’s sweetness is from the pleasure of intercourse…[or]closed…there is no path that will result in man becoming ‘a Lord.’”} This seems to confirm the assertion that the coupling of Sharī’a with the laws of state are incommensurate given man’s finitude and inability to fully comprehend Allāh’s intention. Man’s role is to strive to follow the path in all aspects of his life, but he must retain the freedom to choose. This also serves to reaffirm human dignity as primary within the paradigm of Islamic governance. From this perspective, the command of Allāh lights the al-Tariq (path) which man must self-select to follow. The individual
alone, unable to fully comprehend the completeness of Allah’s Wills, must also remain in active dialogue with the community and with the ulema assisting as interpreters.

This assertion is an affirmation of Hanbali teachings of a conversation relayed by Imam al-Kabir (d. 217 A.H.) concerning a dispute between Abū Bakr and ‘Umar regarding whether evil originated from Allāh or from individual man. The final outcome of this dispute is that all originates from Allāh.69 Man still possesses the freedom to choose to follow the al-Sharī’ah (law), the al-Ṭarīqah (path), and the al-Haqīqah (truth) in his daily life and has not already been condemned to his eternal fate from the moment that Allāh created man. However, Allāh in his omniscience already and always knows the path the individual will take. These questions of man’s free will lend themselves to continued discourse within Islam and among decision makers charged with serving as caretakers of the faithful (imams, ulema, and others) as to what rules are properly adjudicated by man and what rules are already given by Allāh and thus not subject to the purview of fiqh.

Ahmad Ibn Naqib al-Misri maintains in his Reliance of the Traveller that it is through the Prophet Muhammad’s teachings and acts that mankind is given a specific

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69 According to tradition, the two Companions of the Prophet took this dispute to the angel Israfil who judged “between them that all destiny, good or bad, is from Allāh.” Israfil (Judeo-Christian, Raphael). Abu ‘l-Muntaha al-Maghnisawi, Imam Abu Hanifa’s Al-fiqh al-Akbar Explained, 69. The belief in angels is one of the Articles of Faith within Islam. Al-Maghnisawi expands on Abu Hanifa’s description of angels as “subtle bodies capable of taking on different forms…those who are absorbed in the ma’rifa (gnosis) of the True one…[and] those who manage the affairs from the heavens to the earth.” (Abu l-Muntaha Al-Maghnisawi 2007, 67). For early contemporary Christian descriptions of the angels and celestial hierarchy as conceived within that faith, see Dionysius the Areopagite, The Mystical Theology and the Celestial Hierarchies (Whitefish, MT: Kessinger Publications, LLC: 2010); see also the original in Dionysius, Celestial Hierarchy in Patrologia Graeca, ed. J.P. Migne, Paris, 1857-1866, v. 3.
guide for following the true path towards paradise in the afterlife. This path is the manner in which Allāh reveals the proper life that man should lead in his daily actions. Knowledge of this correct path is only obtained through the guidance of a Messenger and provides man with three types of Knowledge: fard al-‘alyn (personally obligatory knowledge), fard al-kifaya (communal obligatory knowledge) and recommended knowledge. These three types of Knowledge represent the decisions that man inherently retains as subject to his own free will. The Hanafi school maintains that though the individual still retains a choice in following the commands of Allāh, he will certainly be condemned to eternal damnation for choosing not to follow the path. Al-Misri reconciles the paradox of free will as such:

…the servant chooses to do acts on the basis of a desire within himself, not because he knows Allāh’s knowledge, and his is held responsible for this choice even though it corresponds with Allāh’s eternally preexistent knowledge….those who lived in one of the intervals after the death of the prophet and before a new one has been sent were not responsible for anything and deserve neither reward nor punishment. 

This brings this exploration back to the issue of design and order addressed in the previous section in respect to al-Ghāzāli’s occassionalism. Al-Ghāzāli evokes the fallibility of man in relation to the Divine Unity of God. He bringing us to reflect upon our condition and inability to know the Truth as it has been articulated by Him – the One whose ultimate knowledge is defined by our “inability to know” and who “gave to each things its created existence.”

Much as F.A. Hayek sees error in the perception of

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71 al-Misri, The Reliance of the Traveller, 3 and 814.

design where design does not exist in the organs of the modern state, al-Ghāzāli asserts the human perception of cause and effect in nature is an inherent limitation resulting from the finite nature of man. Man cannot possibly conceive of the laws of nature which are, according to Al-Ghāzāli ultimately at the mercy of Allāh’s will. Our knowledge remains ever inadequate - “He is the one who burns, not the fire or the person who lighted the fire.”\(^{73}\) In light of these teachings, man, himself a created being, appears quite dependent upon the teachings of those appointed by Allāh to identify the path of salvation. In the absence of a Messenger, the only recourse for mankind is to hold as true as possible to the teachings of the last living Messenger, the Prophet Muhammed. As Ibn Hanbal teaches, “we submit to it [teachings], even if we do not know its explanation. We do not talk about it. We do not argue about it.”

Unfortunately, simply mimicking the actions of a Messenger who lived 1,300 years ago is difficult with advances in society, such as the manner in which people exchange goods and services and technological adaptations. Muslims searching to follow the true path today must rely on \textit{qiya}s (analogy), the correct definition of \textit{ijma’} (consensus) and other methods to ensure that they both understand and adhere to the teachings of the Prophet Muhammed in light of the Will of Allāh. \textit{Uṣūl al-fiqh} is an approach which has been employed for centuries in attempts to reconcile the actions of man in contemporary societies with the teachings of the Prophet Muhammed. The absence of a Prophet (both before and after the death of the Prophet Muhammed) creates

\(^{73}\) al-Misri, \textit{The Reliance of the Traveller}, 814.

\(^{74}\) Imaam Ahmad bin Hanbal, \textit{Foundations of the Sunnah}, 50.
the need for an acceptable manner for providing order within the Muslim community without compromising either the Will of Allāh or man’s free will. Widely accepted as the founder of *uṣūl al-fiqh*, Imam Al-Shafi’i was the first to articulate his conception of the proper path into a compendium that was both concise and useful to his followers in that of the *Risala*. For Shafi’i, the *sunnah* was the sole source of law, traceable back to the Qur’an. Seeing these as mutually supportive, he claimed that “neither does the Qur’an abrogate the *sunnah*, nor the *sunnah* the Qur’an.” ⁷⁵ Hanafi jurists accept *istihsan* (preference) and ’urf (custom) in their *uṣūl al-fiqh*. They rely upon *itiyhad* to determine the correctness of a legal opinion when multiple hadith provide for variation in interpretation. The Malikis and Hanbalites, being the more conservative of the four schools, only accept *ijma’* (consensus). Additionally, they proclaim that consensus was only possible in the time of the Prophet Muhammed in Medina when he was among his Companions. ⁷⁶

Adherents of the Shafi’i and Hanbali schools assert that the Shafi’i a remain faithful to the acts and teachings of the Prophet Muhammad as “religious obligations” ⁷⁷ and condemn *qiyas*. ⁷⁸ The ultimate source of precedent therefore lies in careful observance of the acts and teachings of the Prophet Muhammad, found in the *sunnah*. Of

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⁷⁸ Ibid., 31.
utmost importance in understanding this approach is accepting that these schools are attempting to be both realistic in light of their theology and unchanging, just as the Word of Allāh in the uncreated Qur’an transcends time.\textsuperscript{79} They are attempts to live in a manner as consistent as possible with the Prophet Muhammed. In these schools, adherence means fundamental adherence to the Qur’an and living in a manner as close as possible to the way of society during the time of the Prophet Muhammed and the Companions of the Prophet Muhammed. It means to avoid all possible innovations in interpretation and change.\textsuperscript{80} This approach, in many ways, reflects a deeply borne fear among its adherents of straying too far from the true Path. It also exhibits a distrust of all things which cannot be tangibly tied to the way of life contemporaneous with the life of the Prophet Muhammed.

Fathi Osman asserts in his writings that movements such as Jamaludin Afghani’s Salifiyah typify this form of reflective ideology. Salifiyah doctrine seeks to return society to an earlier period of perceived greater morality and adherence to the rightly guided path of Islam. In certain cases in modern states, such as Iran and Pakistan in recent times, rulers and leaders have attempted to fill this vacuum by serving the role of both political authority and religious leader. Imam Ruhullah al-Khomeini defends this practical approach as follows:

The general purpose for the sending of prophets, then, is so that men’s lives may be ordered and arranged on the basis of just social relations and true humanity

\textsuperscript{79} Imaam Ahmad bin Hanbal, \textit{Foundations of the Sunnah}, 128.

\textsuperscript{80} Ibid., 8-9.
may be established by men. This is possible only by establishing government and implementing laws. 81

These movements arise from the event of understanding which occurred as a consequence of (and a response to) the colonizing endeavors of the West and infusion of political theories brought about by Enlightenment 82 – an equivalent to liberation theology for the Muslim world.

While secular Western societies, shaped by the influence of the Enlightenment, often look upon the fiqh of Islamic Sharī’a as “backward” or unprogressive, the methodology is reflective of a deeply engrained sense of the theology from which these schools derive their ʿusūl al-fiqh. In many respects, these approaches can also be understood as highly speculative – seeking the root of the question which must be addressed practically in the present. Likewise, from the perspective of a jurist of one of the four school of Sunni Islam, a legal code which ignores completely the Word of Allāh and the teachings of the Prophet are perhaps a little short sighted. The challenge for order post-conflict will be in engaging in a process of understanding which will form a fusion of horizons which agree to differ within the same truth. The consequences for the restoration of order will also differ within this fusion of horizons. As a result, the judgment of the individual engaging in this dialogue must be well cultivated. The next section of this chapter will now shift to the practical consequences of this fusion of


horizons, further drawing out the failures of the victors in Chapter Two and proposing the manner in which a hermeneutic inquiry could provide for opportunities drawn from consequences of the nature of practical considerations in post-2001 Afghanistan.

**Finding Order and Justice in Afghanistan**

Gadamer’s hermeneutic conception of inquiry focused on the practical applications of this ontology of being for the natural science, the political, and in everyday life. As he articulates in his work the *Idea of the Good in Platonic-Aristotelian Philosophy*, originally published in 1978:

> In practical philosophy the concern is not with the idea of the good or with the polis that displays consummate justice – even if in his politics Aristotle is not averse to using the ideal model state as a tool in his thinking. Above all else, his concern is with the right thing to do. Thus the true *arche* (starting point), as he says with startling radicality, is the “that,” *to hoti* (EN 1095b6, 1098b2). He means that we must start with our practice itself and the living awareness that we have in it of what is *homologoumenon* (agreed upon as good).\(^{83}\)

This reflection naturally brings this thesis to the question of the practical application of the hermeneutic conception of inquiry and the historical horizons discussed in the prior sections of this chapter to addressing the challenges of *jus post bellum* for post-2001 Afghanistan. What opportunities does this hermeneutic conception of inquiry afford the policy maker, practitioner and Afghan citizen in achieving order and justice, thereby setting conditions for meaningful conciliation? These opportunities will be highlighted within this section by drawing forward the discipline in dialogue required to realize the differing consequences which are possible within the fusion of horizons occurring in the

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Afghan situation. Careful emphasis will be placed on the critical nature of public declaration, proportionality, and discrimination in particular in accordance with *jus post bellum* ideals.

Eric Patterson captures the spirit of this practical approach to *jus post bellum* policy and practice in relation to order post bellum – “States should do the hard work of planning and security forecasting with the pragmatic goal of eliminating threats, deterring future aggression, and establishing a robust Order.”84 The quasi-rehabilitative approach to war termination taken by the United States and its Allies following the declaration of victory over the Taliban in 2001 was grounded in the perception that the Taliban as a sovereign authority represented a continued threat to peace. This perception precluded an option which would practically allow the Taliban to remain the sovereign authority within the country. The perspective of senior leadership within the victor nations at the time was that to allow the Taliban to remain in power would be to allow Afghanistan to continue to harbor terrorist organizations. Such a solution would only further undermine order both within Afghanistan and within the international system. This tension between order for the people of the society within the country and the need for order within the political system is particularly critical to the manner in which approaches to establishing order were pursued post-2001 as articulated in Chapter Two of this thesis.

The particular challenge in Afghanistan lies within the differing historical horizons with regard to the proper ordering of society and what justice means in such a

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society. This is most critical with respect to the two-fold challenge of achieving a result which was acceptable for both the victors and the Afghan people. However, the historical horizon of the Afghan people consists of concepts of order and justice informed by both Islamic and pre-Islamic cultural traditions which do not accept the Western vision for implementing centralized, sovereign governance that does not represent a threat to international security (both to the paradigm of state and militarily). In the case of Afghanistan, the opportunity to approach the challenge of order and justice lies within a restrained approach to engaging in a disciplined dialogue with the Afghan population which takes into account a full appreciation for the historical horizon of both the victors and the vanquished Afghan nation.

In particular, the notion that political legitimacy is necessarily tied to the auspices of centralized government is a reality within the historical horizon of the Western, European precepts of *jus post bellum* itself. This prejudice must be carefully brought forth as a truth which is contingent upon the particular experience of this historical horizon. This “truth” of the sovereign state is not a truth which is experienced in reality by the vast majority of the Afghan population, a historical horizon shaped by Hanafi Islam, ethnic and tribal codes (including the Pashtun’s *pashtunwali* codes of ethics), and other circumstances of the history for the Afghan people. As Gary T. Bass highlights in his article, “*Jus post bellum,*” “the mere fact of military victory is hardly a demonstration

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85 Eric Patterson identifies three parts to order in *Ending Wars Well*: military (traditional security), governance (domestic politics), and international security. Patterson, *Ending Wars Well*, 46.
of superior political organization or cultural values." In particular, the victor approach to political and cultural reconstruction within Afghan society and the continued engagement in post-conflict counterterrorism operations would have benefited greatly from a hermeneutically informed approach which attempted to engage in genuine, deliberate dialogue with the truths of this particular culture.

The victor approach to reconstructing Afghan society, both politically and culturally, did not take into account the historical horizon from which Afghan society emerges. The approach which was pursued in Afghanistan was done so from a position which presumed a democratically elected central government as the objectively superior means for ordering society. This approach reflects a deeply engrained value system within the Western, European historical horizon which sees democratically elected governments administered from a central authority as inherently just and a means for protecting individual freedoms. Unfortunately, from the Afghan perspective, centralized political governments, particularly those which are viewed as imposed by external authorities are in direct opposition, an “anethma,” to justice and individual freedom.

A disciplined approach to engaging in dialogue with Afghan society would have provided for a potential framework which took into account the influence of qawm, in

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88 *Qawm* is an informal tribal and kinship network, or series of networks more properly, through which Afghans gain access to loans, alliances, social support mechanisms, and other informal associations within Afghan society.
shaping daily social and political activities within the country. The Afghans, particularly the Pashto, have prided themselves for centuries on repelling the influence of foreign invaders. Although they have been subject to various national identifiers as a result of historical circumstances associated with the Durand Line, many tribes have been successful in resisting attempts by central governments to levy local taxes for centuries. The fierce independence of Afghan tribes contributes directly to viewing one’s position in society in terms of qawm(s) rather than national allegiance. For the Pashtun tribes in particular, the manner in which pre-Islamic pashtunwali concepts of individual responsibility combine with Islamic conceptions of the individual in relation to community form the linguistically moderated reality for notions such as freedom from authority, honor [nang], revenge [badal], and chivalry.

In the victor approach to post-war declarations of intent and the pursuit of DDR programs, such as DIAG as mentioned in Chapter Two, this bottom-up approach to governance among the Pashtuns and the broader Afghan community was perceived as a “lack of governance” which needed to be overcome. These “ungoverned spaces,” as they have become referred to, are understood as an Other to the model of the greater international system and the post-Westphalian West. For the victors, this method of

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89 Tim Bird and Alex Marshall, Afghanistan: How the West Lost Its Way (New Haven, CT: Yale University Press, 2011), 15-19. The Durand Line is the name given to the 1948 division by the British government between eastern Afghanistan and then-British India (now Pakistan) along geographic boundaries rather than communities, effectively dividing the ethnic Pashtun tribes into two separate countries to create a buffer against Soviet influence in British-controlled territories. The implications of the Durand Line have had far-reaching political, military and ethnic consequences to this day.
organizing among the Afghan people is considered diametrically opposed to the model of
governance which creates the “better state of peace” just war theorists seek.

Understood from a hermeneutic lens, the reality of ‘ungoverned spaces,’ reflects
the very essence of the virtual whole of language. The very idea of ‘governed’ brings
forward with it a host of unspoken beliefs, prejudices, and historically derived precedence
which remains unsaid. A reality of governance and what governance is meant to be is
communicated, but the meaning of governance is entirely different when understanding is
approached from the perspective of the Afghan living within an entirely different
historical horizon. The governance referred to by the victors was a particular idea of
governance which was required in the minds of the victors within Afghanistan. This was
best articulated by then British Prime Minister Gordon Brown – “there can be only one
winner: democracy and a strong Afghan state.” United States Senator Susan Collins,
then ranking member of the U.S. Senate Homeland Security and Governmental Affairs
Committee articulated in a 2010 Time Magazine article (nine years following the initial
invasion) a sentiment regarding justice which echoes this perspective - one of the
responsibilities of the victors must be to help “Afghans craft a just and humane society
that they will defend.”

A critical perspective Senator Collins and Prime Minister Brown fail to recognize
is that the Afghan people have been defending a just society for centuries – based upon

91 Rob Stigile, “Collins Details Course of Action to Remove Taliban from Power,” Time
news/collins-details-course-of-action-to-remove-taliban-from-power/.
their historically-affected understanding of the reality of justice and order. The Pashtun perspective in particular, given their historical horizon and the influence of Hanafi principles related to the proper way of life, they have been continually striving to maintain the ‘good’ within their communities against overwhelming odds. What must also be considered from the victor perspective is that the complicated intricacies of alliances and affiliations in line with qawm should not be assumed ‘anti-democratic’ or lacking in justice. At the heart of the qawm, which is patriarchal but not necessarily hierarchical, lies a deep-seated reliance on the dignity and equality of the individual in relationship to his community. The practice of qawm is also heavily tied to a sense of responsibility and demands of honor in relation to family and qawm.

The clash between the individual and the state is exacerbated in the victor public declaration of demanding justice through a centralized government. The idea of installing democracy specifically in the form of a strong Afghan state both fails to adhere to the jus post bellum principles of proportionality and discrimination and fails to provide for a clear discipline in dialogue with the reality of the Afghan historical horizon. Gary Bass makes an interesting observation regarding proportionality in jus post bellum which is informative in this situation. He draws a comparison between total war for a higher moral principle and complete political rehabilitation in his article “Jus post bellum:”

If political transformation of the enemy is the objective of war, then that war will likely be a total war, for one cannot remake a country unless one has taken it over militarily. A jus in bello insistence on proportionality in the fighting might be seen as applying to jus post bellum too. As George Kennan argued, “A war fought in the name of high moral principle finds no early end short of some form
of total domination”…. This argument against total war, while usually coming from realists, is at times made just as forcefully by liberals.92

Discipline is required on the part of the policy maker and practitioner to ensure that the enthusiasm for democracy as a particular form of government derived from the historical horizon of the Western, European tradition does not become a crusade unto itself. A measured approach by the victors which accounted for the Afghan perspectives on government in a meaningful way, by thoroughly incorporating the *shura* and *jirga* processes as actually practiced among the people for example, would have been reflective of the discipline required. The *Bonn Agreement* represents an attempt by Afghan leaders to take this approach, but a failure on the part of the victors to participate in the process of understanding as it relates to governance and the role of the state in Afghanistan individual and community affairs created an abortive attempt. While *jirga* and *shura* are traditionally reflective of tribal and clan affiliations (or based upon larger federations under *qawm*), the *Wolesi Jirga* currently formed in Afghanistan is formed based on popular vote within the political boundaries of the Afghan provinces. This has the effect of continuing to cut across tribal and clan affiliations which have existed for centuries in Afghanistan.

A similar lack of discipline in dialogue or appreciation for the historical horizon of the Afghan people specific to the influence of *qawm* in organizing society is demonstrated in the failures of the DIAG DDR program post-2005 (also discussed in Chapter Two). An approach to incorporate the commanders and tribal leadership of the

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lashkars, referred to by the victors as illegal armed groups, into the disarmament process during the run-up to Afghan national elections would have been an obvious requirement for a policy maker or practitioner approaching this within a hermeneutic approach. Given the impromptu nature of lashkars, their continued existence within Afghanistan is an indicator that the particular tribes or clans which have held jirga to initiate them feel that there is some grievance or wrong that has been committed which requires an armed response. By ignoring these grievances, attempts at implementing centralized state mechanisms for disarmament were destined to be disjointed and to fail to resolve the requirement for badal at the community level according to Pashto principles. The rhetoric espoused by the victors as part of public declarations of intent, such as the comments by Prime Minister Brown above, were simply reflections of this lack of discipline in approaching the situation at hand in achieving war termination in Afghanistan. More importantly, the failure to approach the event of understanding regarding justice resulted in a greater separation between the Afghan reality and victor

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93 Rather than utilizing organized policing forces, Pashtun tribes have traditionally formed lashkars on an impromptu basis as the result of a jirga decision to related to justice, which should be carried out against an offending family or individual who has committed a violation against the community. Lashkars can be formed in order to conduct warfare as well. The expectation is that all able-bodied men who belong to a tribe or clan will participate in the Lashkar barring any justifiable reason for recusing themselves.

94 Badal is a concept within the pasthunwali code of ethics, which is quite complimentary to just war propositions related to proportional justice. Though violence is sometimes an accepted outcome (execution, the exchange of daughters for marriage among tribes, etc.), badal is legislated through community-based practices via the jirga to ensure that ample investigation is conducted into the offending incident as a means for ensuring that justice is carried out in an equitable manner. For further discussion on badal and other concepts within the Pashtunwali codes, consider the following readings. Tim Bird and Alex Marshall, Afghanistan: How the West Lost Its Way (New Haven, CT: Yale University Press, 2011). Bruce L. Benson and Zafar R. Siddiqui, “Pashtunwali – Law for the Lawless, defense for the stateless,” International Review of Law and Economics 37 (2014): 108-120. Armando Geller and Shah Jamal Alam, “A Socio-Political and –Cultural Mode of the War in Afghanistan,” International Studies Review 12, no. 1 (March 2010): 8-30.
reality of order and governance rather than a fusion of horizons. At this point in time, fifteen years into post-war Afghanistan, these historical horizons are now further apart with respect to the consequences of the European, Western concept of governance and order than before.

Before concluding this section and chapter, the matter of violence as it relates to order and justice in society must be addressed in relation to war termination within Afghanistan. As briefly discussed in Chapter Two, the counterterrorism campaign in Afghanistan which has continued to this day is a fundamental challenge to order within the Afghan society. In continuing to pursue kinetic strikes, detentions, and other armed interventions within the country, the victors have not only failed to engage in a dialogue with the Afghan people regarding justice. They have failed to engage in speculative dialogue with respect to their own prejudice in relation to justice emerging from their own historical horizon through the event of understanding.

Specifically, the stated goal of the war in Afghanistan was to create an environment which would make the citizens of the victor nations (and the world purportedly) safe(er) from the threat posed by Al Qaeda and the Taliban – to create a just environment which would set the conditions for conciliation both internally and with the external international community. Hermeneutic meta-principles would have enabled decision makers and policy makers to pursue a much more adept approach at achieving these goals while at the same time remaining faithful to the just war tradition.
The manner in which reparations to victims of violence incurred by the victors in the conduct of their counterterrorism campaigns displays a stunning lack of discipline in dialogue with the Afghan horizon as it relates to honor and revenge, specifically within the *pashtunwali* code. The complex system of *badal* mediation and *jirga* as a mechanism of bargaining and mediation has developed within Afghanistan in order to provide compensation for victims without requiring violence upon the aggressor as a means for resolving all disputes. While the final mediated solution which is achieved through *jirga* among the clan or tribe leadership often involves payment in the form of property, exchange of wives, livestock or another form of currency (though not cash), the form of compensation must be agreed upon by the parties to the negotiation. Without agreement, the *jirga* cannot simply enforce payment unilaterally, but the *jirga* is responsible for enforcing the temporary truce, *thega* (*‘putting down a stone’*), which must be put into place until the dispute is resolved.

The victors made an attempt to honor this process by instituting a complicated restitution and compensation system to reimburse the cost of damage to homes, loss or injury to family members and other collateral damage incurred through the course of counterterrorism operations. While this was an attempt at honoring this aspect of *pashtunwali* and modeled after other similar programs in past conflicts, the simple act of repayment (at a fixed rate and cost basis) falls short of meeting the expectation of negotiated settlement and revenge according to this ethical code. The critical component of this justice system for it to be considered just is the negotiation process, as well as the

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hierarchical interference of the *jirga* as the respected executor of the arbitration process. By not honoring this process, the victors were failing to provide a just solution to those Afghans who were wronged by victor operations. Victims were essentially victimized twice – denied property and subsequently denied honor through *badal*.

A key tenet of a hermeneutic conception of inquiry lies in the disciplined approach to the event of understanding. This discipline provides for the opportunity for new meaning as a condition of the virtual nature of language, creating opportunity to cultivate good judgment. In pursuing a strategy which focused on counterterrorism without regard for the impact on order within society, the victors remained blind to the consequences of the continued degradation of justice in Afghanistan as a whole. Their judgment as a consequence became further undermined in subsequent engagements and decisions by failing to realize a meaningful fusion of horizons. The simultaneous actions of installing a centralized government responsible for order and justice while continuing to violate the sovereignty of that same government and its people through continued military operations degraded both order and justice.

Order within the international system and order within the domestic structure of Afghanistan have now attained new truth across multiple historical horizons which continue in dialogue with one another. This dialogue, however, remains undisciplined. The assertion by Prime Minister Brown alluded to previously speaks to the lack of discipline which created the environment for this to occur – the domestic politics of a single country, specifically, the type of political system adopted now, directly affects
perceptions in the international realm. We are seeing the effects of this emerging reality with respect to the manner in which justice and order are understood in other conflicts in which these same victors are engaged today outside of Afghanistan.

Through the fusion of horizons which occurs in this event of understanding in post-conflict Afghanistan, the consequences of attempts to rightly order society have become more challenging from the perspective of the victors. This has been caused by a failure to be fully aware of the prejudices which shaped the horizon of order and justice in the case of the Afghan people and awareness of the continued influence of this prejudice today. The reality of the perception the victors face a zero-sum game is simply a result of the outcomes of the events of understanding which have occurred to date in negotiating the virtual whole of order and justice which is possible for finite man. Perhaps self-reflection and awareness of these prejudices will be able to shape future dialogue as order continues to achieve future realities in history. This thesis will conclude in the next chapter with a dialogue on the consequences for *jus post bellum* and for the practitioner as person from within this fusion of horizons in the present and future.
CHAPTER FIVE
CONCLUSION: RERAINT AND JUDGMENT IN POLICY MAKING

This thesis sought to explore whether a hermeneutically informed approach to addressing *jus post bellum* issues of justice and order could enable both the practitioner and the affected community to transcend the boundaries of normative, ahistorical narratives present within the horizons of differing societies and cultures. The goal of this inquiry was to increase the potential for meaningful post-conflict peace while also creating opportunity for future possible dialogues through a fusing of historical horizons. The discourse of this thesis has afforded for a careful consideration of the tenets of *jus post bellum* in conversation with the meta-principles of hermeneutics through the lens of post-2001 Afghanistan. In discussing the opportunities a hermeneutic conception of inquiry affords the policy maker and practitioner in regards to implementing effective war termination activities, the primary consequence which has come forward from within this thesis is the need for restrained judgment on the part of the policy maker and practitioner in war termination actions from within the historical horizon of *jus post bellum*.

Effectively tempering decisions, policies, and programs, however, requires discipline in dialogue. This discipline is achieved only through responsible judgment on the part of the policy maker and practitioner in thoroughly foregrounding one’s prejudice. This was accomplished to some degree in Chapter Four through an exploration of the differing historical horizons with respect to order and justice. However, this should be
considered a guide for the policy maker and practitioner given that each individual must engage in speculative reflection centered from within their own historical horizon as a matter of hermeneutic discipline. This work represents the approach which the author has undertaken, in speculating on the author’s own prejudice. In reading this thesis, the reader must also foreground one’s own prejudice as a matter of approaching the event of understanding with this thesis as it emerges from its own historical horizon.

As has been drawn out in Chapter Three of this thesis, the event of understanding occurs in the fusion of horizons as a matter of fact. This event of understanding is ontologically superior to the participants to the event and carries forward with it the opportunity for access to new meaning for order and justice within the whole of reality. However, participation in this event of understanding requires judgment on the part of the policy maker and practitioner in order to fully realize freedom as discussed in both Chapters Three and Four. In the next several pages of this final chapter, the consequences for the policy maker and practitioner will be examined in reflecting on the *jus post bellum criteria*. This will be accomplished specifically in relation to those opportunities afforded through a hermeneutic conception of inquiry in recognizing the universality of freedom.

The criteria of *jus post bellum* were articulated as follows in Chapter Two: vindication of the rights of victims; public disclosure of post-war aims; discrimination informing post-conflict policies; proportionality informing post-war policies;
punishment; compensation; and political rehabilitation.\textsuperscript{1} While political rehabilitation was not expressly discussed as a stand-alone tenet of \textit{jus post bellum} in Chapter Two, Chapter Three and Four of this thesis dealt extensively with the implications of political rehabilitation in relation to order and justice in post-2001 Afghanistan. The United States and its Allies pursued an approach to war termination which was at times minimalist and at times maximalist. However, a consistent theme throughout the post-2001 period in Afghanistan has been a perceived need on the part of the victors to rehabilitate the government of Afghanistan. This pursuit is grounded in the belief that a strong centralized government is required in accordance with the Western, Christian metanarrative with respect to the primacy of state within the international system.

A primary precept of Gadamer’s hermeneutics is that the hermeneutic conception of inquiry allows the person to remain free to differ within the same reality. This recognition also ensures the person does not become further alienated from self and awareness of one’s historical horizon. A practitioner who enters the event of understanding with a full foregrounding with respect to one’s prejudice is in fact fully realizing the universality of human dignity by recognizing the freedom of the Other to differ within this same reality. This also means that the consequences of the event of understanding in the fusion of horizon will also differ as discussed in Chapter Three. Taking the opportunities drawn from the dialogue of Chapters Two through Three, this chapter will now turn to the opportunities which have presented themselves in respect to the \textit{jus post bellum} criteria.

\textsuperscript{1} Brian Orend, \textit{The Morality of War}, 163-171.
With respect to the criteria for public disclosure, consistent and disciplined messaging of post-war aims is critical to ensuring the position of the victor is communicated effectively from a practical policy perspective. However, this public disclosure must first involve a foregrounding of one's own prejudice, both from the perspective of the person and from the horizon of the state (as represented by the policy maker). As language is the mode of being, public disclosure requires discipline in the dialogue which is pursued between both states at the international level and persons as policy makers and practitioners. Without a speculative, responsible dialogue from within one’s own historical horizon, the person cannot responsibly approach the event of understanding with the Other.

The scholar of international systems theory recognizes at this point the tension which can arise between the horizon of the person and the interests of the state on the surface. Engaging in this dialogue in a responsible manner is a responsibility which befalls the policy maker and practitioner. It should be fully expected that this task is an uncomfortable one as the freedom of the person is drawn into direct dialogue with the rights of the state as understood within the Western metanarrative in particular. However, this dialogue must be pursued in the best interest of the person, both as human and as citizen of the state, and the state itself. As the dialogue of this thesis has identified, particularly in Chapter Four, the alienation of self is a component of state as understood today.

If a policy maker or practitioner believes themselves compelled to take an action
which is in the interest of state, better to have an appreciation of the potential consequences of that action as a result of responsible engagement in the event of understanding. In addition, as this thesis has demonstrated, a failure to exercise responsible judgment in carrying out policies and programs in the absence of hermeneutic discipline has only served to undermine the ‘best interests’ of the state from the perspective of the Western, Christian paradigm anyway. This brings this chapter to the critical juncture of discussing the virtual nature of language in relation to order and justice from the perspective of the *jus post bellum* criteria.

‘Democracy,’ ‘order,’ and ‘justice’ differ in reality for persons of converging historical horizons. As discussed in depth in Chapter Four, centralized government, while not necessarily directly opposed to *pashtunwali* social, ethical and justice systems achieves the character of opposition as a result of the lack of dialogue pursued by the victors in post-2001 Afghanistan. Regardless of intent, there are consequences for the future of order and justice as a result of this fusion of horizons which occurred between the Afghan people and the victors. However, the approach to this fusion of horizons lacked the discipline required by a hermeneutic inquiry. As a result, ‘ungoverned spaces’ have become a challenge or obstacle which now must be overcome at almost any cost it would seem. This has in turn undermined pursuits to vindicate the rights of the Afghan people satisfactorily for more than a decade. Instead of looking to opportunities to engage within the existing social, ethnic, and tribal structures already present within Afghanistan which embrace justice as accessed by the Afghan people, these customs and norms were ignored or co-opted. A hermeneutic conception of inquiry allows for
differences within the same reality but requires restraint in foregrounding one’s own prejudices and to fully give one’s self over to the event of understanding.

In this respect, the *jus post bellum* criteria of proportionality is informed by and influences public disclosure and the pursuit of justice and order within a post-conflict society. Inherent to understanding language as the mode of being and the fusion of horizons which occurs in the event of understanding is the ontological supremacy of freedom. Freedom by its very nature is proportional. Through the event of understanding we recognize that the finitude of man also creates absolute freedom of opportunity within the whole of reality.

Freedom necessarily requires that no person, regardless of their power, stature, or military might can possess perfect knowledge of reality. Reality and truth are ever changing as a result of the virtual nature of language. Thus, the policy maker and practitioner must exercise careful judgment in carefully weighing all war termination activities in terms of proportionality. This is particularly necessary to ensure that the consequence within this reality for both self and the Other are considered rather than simply the consequence as perceived by self alone when taking action or developing policy.

The meta-principles of hermeneutic inquiry also serve to restrain actions in terms of discrimination, compensation, and punishment as well. The hermeneutic meta-principles provide an opportunity to avoid both subjective as well as objective applications of *jus post bellum* in practical conditions. This is accomplished by allowing
the policy maker and practitioner to focus on the consequences of the event of understanding rather than subjective or objective measures of evaluation for success. Through the pursuit of disciplined dialogue in the form of shuras and jirgas in the earliest days of war termination, from the smallest ethnic, religious, and tribal affiliations up to the national level, much of the disconnect experienced today within Afghanistan regarding order and justice may have been more thoroughly addressed. While the loya jirga and wolesi jirga were implemented through popular election and appointment by President Karzai at the behest of the victors, the implementation of arbitrary democratic processes and quotas based upon provincial offices were not reflective of mechanisms used organically by the people of Afghanistan.

As a result, the ability of these bodies and architectures to both voice the requirements and concerns of the Afghan people and to, more importantly in many respects, communicate the intent of the victors within Afghanistan was compromised early on. Inconsistent communication and decisions regarding mechanisms for compensation and punishment, coupled with a lack of discrimination in the handling of these programs, continue to erode the basic rights of the Afghan person vis-à-vis his identification as a citizen of Afghanistan. With no consistent Afghan governmental structure or organization across the provinces in terms of the manner in which it engaged with the traditional qawm and tribal hierarchy, the central government continued to be seen as an impediment to justice and order rather than a source of support for the Afghan people. As a result, dialogue was completely lacking in many regards between the Afghan people and the victors.
The *jus post bellum* principle of discrimination is informed and enhanced through a responsible application of hermeneutic inquiry. Discrimination is required not simply in limiting the negative impact to civilian populations with respect to victor activities but also in the discriminate approach to the application of justice and order mechanisms within a society which is unlike one’s own for the policy maker and practitioner. This aspect of discrimination brings this this chapter to a final reflection on hermeneutics as an ontology of language and the consequence of this for the human person, the policy maker and practitioner.

Gadamer asserts hermeneutics as an ontology of language in terms of the historical situatedness of being, grounding *Dasein* in the continuity of customs and traditions of humanity present in the historical horizon. This continuity affects as well the very nature of language, which Gadamer expresses in terms of the *der Mitte der Sprache* and the virtuality of language. As discussed in Chapter Three, he is concerned with the relationship between the simultaneous momentariness and continuity of language as it springs from the center of meaning and the questioning that occurs. This questioning is a consequence of our prejudice being put at risk, entering into play. How does this effect the policy maker and practitioner? What are the consequences of drawing forth this prejudice and bringing it forward into the event of understanding?

The very nature of our being as historically situated and the influence of history on language indicates that the human person cannot separate self from one’s own prejudice. Though the person strives often to deny this influence of history upon one’s
thinking and actions, the truth of prejudice’s existence cannot be escaped. The person can only seek to be conscious of this prejudice as there is often no clear separation from the viewpoint of the man between understanding, language, and his own horizon.

This thesis went to great lengths in Chapters Three and Four to eradicate the tendency to view one’s own horizon as separate and distinct from the historical horizon or that horizon encountered in dialogue with another. At the same time, this thesis also acknowledges Gadamer’s assertion that it is naïve to presume the two can also be assimilated into a single unified horizon. The task of hermeneutics lies in consciously bringing out the tension between horizons, shining light on it through deliberate dialogue. The horizon of the historically situated person is of critical concern at this juncture in elaborating on the tension which exists between truth and freedom. While this thesis focused on the responsibility of the Western practitioner and policy maker, it should be understood that equal responsibility lies with the Afghan counterpart in exercising the same discipline required by hermeneutic inquiry. There is clear opportunity for future discourse with respect to exploring both Afghanistan and other post bellum environments in dialogue with differing historical horizons.

As discussed earlier in this chapter, individuals of differing horizons derive different consequences from the fruits of the event of understanding. These differences can vary widely with subsequent consequences having varying levels of value to the stakeholders engaged in dialogue. The truth of the situation of those engaging in dialogue has a power onto itself which shapes their engagement and the perceived goals of
dialogue. In this circumstance, resolution is too narrowly defined as only seeking closure to the situation immediately at hand which has given rise to the dialogue. Policy makers and practitioners who approach war termination from this viewpoint only seek to emphasize and assert over the Other what they perceive to be truth. This ‘truth’ stands in direct opposition to freedom and to the truth of reality. This polarization of truth and freedom can be overcome through a discipline of dialogue entered into responsibly. This discipline requires an emphasis on the question in dialogue as opposed to arriving at an answer which does not speculate on the question or leave opportunity for new questioning.

A tradition of disciplined dialogue creates a community and culture which both recognizes and emphasizes the responsible judgment of the person in the praxis of war termination. In recognizing the freedom of the person across from him at the table, the negotiator opens himself up to the infinite openness for meaning which hermeneutic inquiry promises to unfold within the event of understanding. This approach is not one of technology but is a primary example of the universality of freedom itself in practical application. This openness to the question is a stepping stone towards remaining ever-open to the truth of freedom itself as of ultimate ontological value.

In recognizing the horizon of the Other, the practitioner is in turn recognizing the bounds of his own finitude and the prejudice which conveys with this finitude. Truth is achieved in the universality of freedom. While a claim to access the whole of truth cannot be asserted within the finite boundaries of humanity, the universal nature of
freedom remains virtual in the medium of language.

Being can only be interpreted and understood through language in a meaningful way within the boundaries of understanding, a process which we have established individuals are not able to access in entirety alone. In language there exists a real tension between infinite openness of meaning and the historical reality of human finitude. No singular word or statement to be considered an exact or precise truth in its own right. At no time within history can the ‘virtual whole’ of meaning be contained within the utterance of a single word. At no time can this ‘virtual whole’ be accessed by the individual, finite man. Engagement in disciplined dialogue, which remains conscious of the ontological character of language in the event of understanding, embraces this undeniable process rather than turning a blind eye to the nature of our relationship with the whole of reality.

The virtual openness of meaning within language (understood as the potential for meaning to be constantly redefined) is the only legitimate claim to truth finite man can make. Through responsible judgment in the pursuit of disciplined dialogue, participating in the event of understanding in the fusion of horizons, the person engages truth. Truth being the universal nature of human dignity found in freedom – the openness to differ within the same reality.
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