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### Could respect for Jus post bellum require us to be Machiavellian in our respect for the Jus in bello ?

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# Jus Post Bellum

*Restraint, Stabilisation and Peace*

*Edited by*

Patrick Mileham



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# In Our Obedience to *Jus Post Bellum*, could Respect for *Jus in Bello* Require Us to Be Machiavellian?

*Marie-des-Neiges Ruffo de Calabre*

## 1 Introduction

‘Who wants the end, wants the means’, said Rousseau in *Le Contrat Social*. That equally could be the summary of the advice which Machiavelli gives to his prince. From this thought, which may justify even cruelty, can one construe a positive principle in the framework of the Just War Theory, especially regarding *jus post bellum*? Indeed, had an understanding of *jus post bellum* been widely developed – which it has not – its relationship with *jus in bello* certainly remains to be analyzed. Postulate for a moment that in the context of the Just War Theory, the ultimate ‘end’ must be the ending of war, the prolonged cessation of hostilities, and true respect for the ideal of *jus post bellum* due. So I argue that the ‘means’ pursued beforehand can logically only be argued in due respect of the criteria *jus in bello*. That of course means that workable criteria can be encouraged and developed, even if as today there is much uncertainty, well as explained by other authors in this book.

Asking questions in these terms, with what we might call the evocation of Machiavelli’s figure or model, makes it additionally possible to renew an interrogation into the necessity of virtue of the soldier. In wartime, what are the relations between these two great traditions, namely virtues ethics and the theory of Just War? Do they presuppose each other, mutually, or are they so independent that we can unashamedly do without one or the other? In other words, should we believe that if the soldier is virtuous in combat, the precepts of a Just War will be unnecessarily redundant? Or, and more difficult to defend, is it possible for a soldier to conduct a Just War while being morally abject, as one imagines an adherent of Niccolo Machiavelli to advise against?

The third alternative implies, without absolutely compromising the morality of the preceding hypothesis, can one respect *jus in bello* without being truly virtuous, but only in conformity to the virtue of following the rules? In passing I suggest that would be the only possible moral action accepted by Kant. Or, by calculated interest because the future respect of *jus post Bellum* is at stake. In other words, is the link between respect for *jus in bello* and *jus post bellum* justified by mere legalism, utilitarian pragmatism or the pursuit of virtue of itself?

For lack of space we shall leave aside the non-confrontational aspect of the first-mentioned, legalistic motivation, certainly the latter.

However we need to clarify a methodological point before proceeding. We have just evoked virtue. For those who have noticed the title of this chapter – ‘In our obedience to *jus post bellum*, could respect for *Jus in Bello* require us to be Machiavellian?’ – even to mention Machiavelli in a reflection on both Just War and ‘virtue’ must appear as a historical contradiction and, *a priori*, you are right. So why are we using this contradiction? It is precisely because Machiavelli might be presented as the very antithesis of both the theory of Just War and the actions guided by moral virtue alone, that we can propose, by contrast, two positions. The first is a position in favour of the link between *jus in bello* and *jus post bellum*, and the second is the throwing light on the link between Just War and virtue ethics. One method, perhaps, is to test the link by process of counter-intuition: so the question is can thinking counter-intuitively be an ethical means leading to ethical ends? Does respect of *jus post bellum* require we are already virtuous in adhering to the concept of *jus in bello*? Do we respect the Just War Theory only as far as aiming efforts towards the end of the hostilities, whatever the means used, as a sort of wish-fulfilment? In brief, can we wage a Just War without virtue?

To try to answer all these many questions, we shall consider the possible links between respect for *jus in bello* criteria and *jus post bellum*. The first will be chronological, since by definition *in bello* precedes *post bellum*. The second will be about human concerns, since individuals and forces present are identical. Once these links (or differences) will have been established, we should be able to determine the substance of the pursuit of virtue or the substance of utilitarianism in respect of *jus in bello* with regard to *jus post bellum*. To do this, we shall use logical arguments. These will be weighted and put into perspective – through an exegesis of the Machiavellian contribution – in order to serve our global empirical approach aiming to establish the existing link (or not) between virtue and respect for the Just War. In doing so, we will inevitably be confronted with three possible objections, namely of historical, philosophical and pragmatic natures. This will be the occasion to dig far deeper into the arguments, knowing that war-fighting happens in the real world, being actuality not merely a ‘mind game’.

## 2 Main Arguments: The Chronological Dimension

In the relationship between *jus in bello* and *jus post bellum*, several scenarios are possible. In the first, an ideal one, the hostilities conducted in respect of *jus in bello* have indeed led to a lasting peace, that is respectful of *jus post bellum*.

In the second scenario, hostilities seemed to be conducted with respect to *jus in bello*, but later *jus post bellum* in reality is transgressed. For example, the peace agreement which was signed was inequitable and resulted in the resumption of hostilities. The best historical example of this is of course the 1919 Treaty of Versailles, perceived by Germany as a wholly unjust *Diktat*, victors' justice, prompting another World War. Indeed, an unfair peace treaty violates the aim generally established for *jus post bellum*, namely to establish the conditions for a lasting peace.

The third scenario reveals that during the hostilities, *jus in bello* was not respected, that is at least by one of the belligerent parties. Even assuming that it is the most law-abiding army which won the war, respect for *jus post bellum* is threatened in this case by the other nation's army or armies. From an opponent who has not respected *jus in bello* during the fighting, it is possible for us to fear that he will not respect *jus post bellum* either. This kind of adversary could decide, independently of a treaty instituting a just and equitable peace, quickly to re-open hostilities. In this sense, non-respect of *jus in bello* can serve as an indicator of the fragility of any future respect for *jus post bellum*.

But the opposite is also possible. If a victor has been virtuous in the conduct of the war, his future decisions could more easily be accepted by the local population, because they had suffered *in bello* abuse by the adversary. In this configuration, respect for *jus post bellum*, even when threatened by some attempts to re-open hostilities would be reinforced, thanks to the support of the population. We shall return later to Machiavelli's position on conditions in which the attachment of the population to the established order guarantees the stability of the state.

The fourth scenario of course is when neither *jus in bello* nor *jus post bellum* have been respected. We then face an endless cycle, in which it is more than likely that the *jus ad bellum* will not be respected either and, for irony, to maintain the Latin language, *ad infinitum*.

Finally, imagine the possible logical combination in which *jus in bello* would not be respected, but only *jus post bellum*. This scenario would imply that a war conducted with barbaric means could lead somehow to a stable peace. Chapter 10 on the 1995 Dayton agreement for Bosnia and Herzegovina is a good case study. Such a hypothesis, if confirmed, would undermine any conviction we have in the Just War Theory. This scenario corresponds rather to the application of Machiavelli's tentative advice, addressed to the prince eager for conquests – 'So a prince must not worry if he incurs reproach for his cruelty so long as he keeps his subjects united and loyal',<sup>1</sup> and that includes after war. So my five scenarios can be shown for greater clarity in the Table below.

<sup>1</sup> Machiavelli, *The Prince* (Penguin Classics 1961) 95. Please note that the 'prince' Machiavelli writes for and about, in our interpretation nowadays of his texts we use the terms 'statesman'

TABLE 1 Five chronological scenarios in the relationship between *jus in bello* and *jus post bellum*

	Respect for <i>Jus in bello</i> ?	Respect for <i>Jus post bellum</i> ?
1.	Yes, respectful	Yes, a lasting peace
2.	Yes, but then disputed	No, cease-fire, maybe a treaty, then broken
3.	You, yes respectful	If you win, yes, but you might remain threatened
	Others, not respectful	A fragile cease fire or treaty
4.	Neither party respectful	No peace
5.	Neither party respectful	Yes(?)ceasefire is possible, with a fragile peace.

But can we really believe that a ‘sanguinary’, bloodthirsty, leader and brutal fighter can obtain a serene peace? The only type of peace he could obtain, in assuming that it could last for some time, would only be established by the setting up of an authoritarian regime. It is therefore clear at this stage that contempt of *jus in bello* criteria, even if a lasting peace can be ensured thereafter, will be paid for by the absence of democracy. The motive for the dictator to remain in power will push him to adopt all authoritarian measures across the whole spectrum of Human Rights in his nation, which many people would recognize as the opposite of respect for *jus post bellum*. We will return to this case later.

### 3 The Human Dimension

What we call the ‘human dimension’ refers to the character, virtuous or not, of the participants in a conflict, in relation to how the war has been conducted and, maybe separately, to the achievement of the cessation of hostilities.

First imagine some war-fighters respectful of the principles of *jus in bello*. This respect may be due to the possession of the virtue of prudence, or *phronesis*. Another hypothesis is that the belligerents have only adopted an appearance of virtue, by cunning, in order to obtain lasting peace. If we consider that

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or ‘national leader’ etc to cover a number of categories of national ‘office’ held by men and women. In some of the quotations I have added some extra commas, for clarity.

the fighters were virtuous, the link between respect of *jus in bello* and *jus post bellum* is then established. Because the true excellence of the character of the combatant, if such virtue is acquired, can then remain during the war, as in a time of peace.

If the combatants were not virtuous but merely cunning, this skill also remains, whether applied in time of war or relative peace. However, the link between *jus in bello* and *jus post bellum* is then less justified by the permanence of the character of the peace, which nevertheless remains a factor, but leading more towards the teleological end-point, the ending of hostilities. It is this aim, which is already being pursued during the war, and which continues after the conflict, could then constitute the link between *jus in bello* and *jus post bellum*. We find here the hypothesis which constituted our starting point. So can we be Machiavellians in our obedience to *jus in bello* in order to obtain respect for *jus post bellum*? We shall frequently return to this central question.

Whether cunning or virtue is adopted as the driving force of good behaviour, Machiavelli would say to us, from his own time, about a successful ruler using authoritarian means, that

Above all a prince must live with his subjects in such a way that no development, either favourable or adverse, makes him vary his conduct. For, when adversity brings the need for it, there is no time to inflict harm; and the favours he may confer are profitless, because they are seen as being forced, and so earn no thanks.<sup>2</sup>

This has resonance for us with the consensus needed for any nation, from today's liberal-democracies through the spectrum to authoritarian regimes. The reason for good conduct before and after the fighting should therefore never change. Since if a leader is only cunning, it will be too late to become virtuous, and if he was virtuous to start with, the only cunning would be an insincere shift of character, likely to confuse, diminish or destroy popular confidence.

In the case that the fighter does not respect a Just War, the reason can also be double-edged. First, this lack of respect may be due to an absence of virtue, for example because of ignorance of the Geneva Conventions in the Law of Armed Conflict. A first solution for a person to achieve greater respect for Just War could therefore be remedied by formal education in the Conventions. Second, this lack of respect may not be due to ignorance, but to a deliberate

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<sup>2</sup> Machiavelli (n 1) 66.

determination not to respect Just War principles. In this case, we will say the professional military officer does not believe in constraint in the conduct of war-fighting. However we cannot go into the deepest reasons here to seek such motivation, but the underlying idea is that unbridled use of force would make it possible to galvanize sufficient strength of willpower more quickly to ensure victory by his soldiers. However this attitude corresponds to the hypothesis of our fifth scenario above.

To find an equivalent of this situation, in which cruelty would suddenly give place to peace, we read in Machiavelli that 'So it should be noted that when he seizes a state the new ruler must determine all the injuries that he will need to inflict'<sup>3</sup> in asserting his authority. But what the attentive reader of Machiavelli will remember, is that this precept is not expressed to the prince who Machiavelli thought best. No it is earlier stated in chapter eight that 'when a man becomes prince by some criminal and nefarious method...' and 'of those who come to power by crime'.<sup>4</sup> Further proof that this type of behaviour does not correspond to democratic values and is not worthy of the soldiers who fight, as it jeopardizes their good name and reputation.

Both *jus in bello* and *jus post bellum* principles impose respect for the host and victim populations. If the soldier does not do it by virtue, he must do it by interest, as Machiavelli says

Violence must be inflicted once for all; people will then forget what it tastes like and so be less resentful. Benefits must be conferred gradually; and in that way they will taste better.<sup>5</sup>

In other words, people will not easily forget your past actions and quickly forgive you. But what would happen to the stability of the peace thus obtained, against the attempts of some enemy party to re-open hostilities? Furthermore Machiavelli tells us that

Now, as far as his subjects are concerned, when there is no disturbance abroad, the prince's chief fear must be a secret conspiracy [at home]. He can adequately guard against this if he avoids being hated or scorned and keeps the people satisfied: this, as I said above at length, is crucial. One of the most powerful safeguards a prince can have is to avoid being hated by

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<sup>3</sup> Machiavelli (n 1) 66.

<sup>4</sup> Machiavelli (n 1) 61, 62.

<sup>5</sup> Machiavelli (n 1) 66.

the populace. This is because the conspirator always thinks that by killing the prince he will satisfy the people'.<sup>6</sup>

This love of the people constitutes one of the conditions for stability and order, and we find here the Renaissance version of the principle of 'winning hearts and minds', albeit in some cases through fear.

Another condition for gaining and maintaining popular support, according to Machiavelli, is if he is foreign to the country, a prince as leader, has to try to rely on the pre-existing order if possible: then

There are none of the difficulties encountered in a new principality: although the prince is new, the institutions of the state are old, and they are devised to accommodate him as if he were a hereditary ruler.<sup>7</sup>

However, this particular advice does not seem to have any connection with *jus in bello*. Another difference we can draw from Machiavelli's thought is that while the conduct of soldiers may not vary between *in bello* or *post bellum*, that of the population might be very different. If adhering to the criteria of *jus in bello*, local civilians should not participate in hostilities: in *jus post bellum*, the active support of the population in peacekeeping is essential. The role of civilian population is therefore different in each category, a difference which explains why respect of *jus in bello* by warring soldiers can or may pre-condition the success of a future just peace, *post bellum*. This maybe answers the question implicit in the book title, does restraint in war lead to a safe and lasting peace?.

#### 4 Can We Lead a Just War without Being Virtuous?

Machiavelli enunciated his advice by relating the whole question of conduct to the necessity of the prudence of the prince. The virtue of prudence is central to the professional military officer as well, today as before. As a reminder, according to Aristotle, prudence is precisely that capacity which deliberates closely on the means to reach the right end. It enables us to apply universal

6 Machiavelli (n 1) 103. The circumstances and world-wide reactions to the deaths of Saddam Hussein, Osama Bin Laden and Muammar Gadaffi are cases in point when their rule or influence was destroyed. Readers will recognise many other modern-day case studies which mirror Machiavelli's insights in this chapter.

7 Machiavelli (n 1) 113.

principles in identified circumstances, and thereby contribute to the moral debate. Thus, it is generally accepted that the military officer must be prudent. However, it may be asked how this same imperative of prudence leads Machiavelli sometimes to recommend immoral activities. This is because there are certain circumstances and instances requiring the idea and practice of prudence which, applying to changing circumstances, makes Machiavelli say that the prince should not always be good.

The fact that a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous. Therefore if a prince wants to maintain his rule he must learn how not to be virtuous, and to make use of this or not, according to need.<sup>8</sup>

Moreover, Machiavelli states that for the prince, true virtue itself is less desirable than the appearance of virtue.

A prince, therefore need not necessarily have all the good qualities... but he should certainly appear to have them. I would go even so far as to say that if he has these qualities and always behaves accordingly he will find them harmful: if he only appears to have them they will render him service.<sup>9</sup> 'Therefore one must be like a fox, in order to recognize traps, and a lion to frighten off wolves. Those who simply act like lions are stupid'.<sup>10</sup>

Thus we finally understand that prudence for Machiavelli was not identical with that of Aristotle. Machiavelli's prudence is more akin to cleverness and cunning. As a consequence, the prince is encouraged to act bravely like a lion, but also cunningly like a fox.

We must conclude therefore that at times today's professional officer has to be ruthless. Ruthlessness must be a duty and a virtue from the start if the war is justified according to *jus ad bellum* principles. However his (or her) ruthlessness *in bello*, must be selected ruthlessness, in accord with target 'discrimination',

8 Machiavelli (n 1) 91.

9 Machiavelli (n 1) 100.

10 Machiavelli (n 1) 99. One is mindful of Isaiah Berlin's book, *The Hedgehog and the Fox* (Weidenfeld and Nicolson 1953), an amusing essay based on a fragment of verse by the 7th Century Greek poet Archilochus. The hedgehog, like Plato, suggests he has 'one big idea', which he defends with his spikes, while the fox, like Aristotle, tries persistently to outwit him by cunning.

'proportionality' of force, consequences of 'double-effect' and other principles taught to professional military persons.

Having this argument in mind, must we admit that law-abiding behaviour during war-fighting can only be the result of an appearance of virtue, a skilful trick then, as Machiavelli would have recommended? The answer resides in the understanding of the virtue of prudence according to Aristotle. We have seen that for Machiavelli prudence is only cleverness and cunning, and that we could respect *jus in bello* by cunning, which can be more effective in order to obtain, as noted before, the participation of the population to respect of *jus post bellum* in the future.

We therefore find in this situation both astuteness and pragmatism, and that good means are usually needed for a good end, namely a deeper respect for the Just War. This conjunction of the cleverness and the pursuit of the Good corresponds precisely to the use of the virtue of prudence in Aristotle. In other words, any clever officer pursuing good means and good ends, as the Just War requires, will act virtuously *de facto*, even without necessarily being consciousness of it. Thus, the link, both chronological and human, between respect of *jus in bello* and *jus post bellum* confirms the intrinsic necessity of virtue inherent in the officer as a professional agent. The absence of virtue would only be cunning, and as Machiavelli teaches us, cunning alone would not guarantee constraints needed for the justified use of force and a lasting peace.

However, there are two more arguments. The absence of virtue, manifested by the absence of a good end aimed for, could be only cunning as Machiavelli teaches us. However, if only cleverness does not aim for a good end as well – namely to guarantee a stable peace – it could not guarantee the constraints of the Just War. For example, a terrorist might be clever, but he does not really aim for a stable peace but rather to exercise the physical power for magnifying a psychological effect of a violent action. Cunning leads him to wage a random, violent and cruel war, deliberately in complete contradiction to any respect for *jus in bello* and *jus post bellum*.

Thus, to the question asked in the introduction if we can respect the Just War Theory without being virtuous, the answer must be no. If you read Machiavelli's advice too quickly, you might have been tempted to think that virtue is not particularly necessary in war for achieve a lasting peace. But, in reality, far from escaping it, we pursue true virtue as soon as we use good means for a good end, and even if we are not necessarily aware of it.

To dig deeper, although the present debate has attempted to persuade that the link between respect for *jus in bello* and *jus post bellum* is justified by the end sought, namely, a lasting cessation of hostilities, we cannot end without confessing to some weak arguments. Let us therefore consider that while our

general contention is complete, some of the points raised in this section are intended to stimulate the reader desirous of more thorough scrutiny, where details seem contradictory. Taking forward the chapter title question, the major objections are three; they are historical, philosophical and pragmatic. The reader will perhaps point out more, being free to engage in an endless debate long after this chapter ends.

## 5 Historical Objection

Next let us evaluate the historical objection. Are there not, in history, events in which democratic nations have perpetrated war crimes, without this preventing a subsequent lasting peace? If this were the case, our argument that Machiavelli's advocacy of cruelty could only be applied to the usurpers of states would be inaccurate. Or, at least, too optimistic about human nature. Indeed, for us the word 'usurper' excludes in our minds those actions contrary to *jus in bello* deliberately undertaken by democratic governments. This objection requires a multi-step response. If the question is whether democratic nations have ever committed war crimes, the answer is unfortunately 'yes'. It is possible to prosecute individuals accused of war crimes at the International Criminal Court (ICC, established in 2002), and nation-states in the International Court of Justice (ICJ, from 1945) at The Hague. However, we are aware that, to date, only 124 countries in the world have ratified the Rome Statute of 2002 for the ICC, recognizing the jurisdiction of this Court. Some major countries have not recognized it, namely the United States, Russia, China and India.

The possibility that democratic nations could be guilty of breaking the Geneva Conventions and the Laws of Armed Conflict, and thus breaking certain principles of *jus in bello*, corresponds to a variant of two cases of logical combination which we have evoked in the course of our argument. It should be noted that we do not pretend to confuse the content of the Geneva Conventions or the rules of engagement with the principles of *jus in bello*, even if certain criteria of *in bello* (as well as *ad bellum*) find a legal translation in these texts. As a reminder, we mentioned the possibility of partial respect for *jus in bello*, that is to say, by only one of the belligerents. Indeed the fifth scenario in the table above indeed indicates a total disregard of the principles of *jus in bello* by all adversaries.

Since reality is never purely black or white, the historical objection suggested here makes sense. It may happen that only partial observance takes place, namely that non-systematic infractions are found, in spite of the will generally present with in the opponent (or ourselves) to follow the principles of *jus in*

*bello*. We find ourselves in a more nuanced position than those presented in our five scenarios above. We shall have occasion to return to this point when we come to the pragmatic objection.

Apart from mistakes committed through ignorance or error of judgment, it has happened that deliberate massacres have been perpetrated by soldiers in recent years belonging to democratic nations. The notorious instance of US soldiers committing gross atrocities at My Lai during the Vietnam War, is an example. Given the American failure being an aberration of normal conduct, we could consider that this does not necessarily detract from the strategic relevance in the long term of respecting *jus in bello*, even if in the short- and medium-term such acts diminish the moral standing of such soldiers and such a nation. A counter-argument would be that the way in which the North Vietnamese treated American prisoners cruelly, Senator John McCain being living proof of this fact. Finally a safe and lasting peace treaty was concluded between the parties namely the Paris Peace Accords in 1973, all parties being reconciled in the knowledge that the war hardly proved a wise episode in history.

We can also look at the case of the bombing of civilians in Hiroshima and Nagasaki in Japan in 1945, using the newly invented thermo-nuclear weapons. Even now the legitimacy is disputed, though the United States obtained the capitulation of Japan thereby and the peace concluded which is still lasting.

Two well-known voices stand out. Hannah Arendt in *Eichmann in Jerusalem* early on considered this bombing of the Japanese population as war crimes,<sup>11</sup> while John Rawls, in a 1995 article, wrote that

We should be able to look back and consider our faults after fifty years. We expect the Germans and the Japanese to do that – ‘Vergangenheitsverarbeitung’ [process of coming to terms with the past] – as the Germans say. Why shouldn’t we? It can’t be that we think we waged the war without moral error!<sup>12</sup>

If a democratic nation could deliberately commit such war crimes, it is because it seems possible for a democracy to adopt the standards and conduct of the ‘usurpers’ of another state, as Machiavelli described the situation, witness the dilemma of putting into effect the UN’s 2006 Responsibility to Protect project. So, bear in mind our primary argument is, how can we consider that

<sup>11</sup> Hannah Arendt *Eichmann in Jerusalem: A Report on the Banality of Evil*, (Penguin 1963–2002).

<sup>12</sup> John Rawls, ‘50 years after Hiroshima’, *Dissent*, Summer 1995, 6–7. <https://www.dissentmagazine.org/article/50-years-after-hiroshima-2> accessed 15 February 2020.

having adopted bad means, *in bello*, it has been possible to establish, *post bellum*, a democratic regime such as the one that Japan knows today?

Let us answer with another question: can we consider that a deliberate massacre of innocent civilians, without absolute necessity,<sup>13</sup> comes within a democratic struggle? No. So if this action is not done in its name, is democracy guilty? The answer to this question will depend on the reaction of the democratic state itself. However to denounce, judge and condemn those guilty of war crimes is a necessity for peace to return, even if the culprits belong within the democratic camp. We join here the obligation *post bellum* to seek to do justice and to punish crimes committed *in bello*, so that peace has a better chance to last.

However, an example given by Machiavelli of this justice after cruelty can reveal a certain cynicism which, in our opinion, a democracy should guard against, but which illustrates the temptation in *The Prince*, namely the then contemporaneous case of Messer Remiro d'Orco. If the example is only *post bellum*, the logic is the same if the events took place during *in bello* and *post bellum*. Briefly Caesar Borgia chose this blood-steeped man to secure the Romagna, which he did quickly by confirming his violent reputation in action. When he had accomplished his duty, Borgia had him judged and executed in front of the members of the population. The reason?

Knowing also that the severities of the past had earned him [d'Orco] certain amount of hatred, to purge the minds of the people and to win them over completely he determined to show that if cruelties had been inflicted, they were not his [Borgia's] doing, but prompted by the harsh nature of his minister.<sup>14</sup>

What we learn from this historical example is nothing more than the application of the classic 'scapegoat' metaphor, whose calculated judicial killing diverts attention from the other notable culprits, here the Duke of Valentinois. We perceive a form of cynicism, that of a political authority which condones violence by modestly turning a blind eye, before feigning the government's innocence – 'clean hands' – by chastising the denounced man to save its own reputation.

13 In the sense of Walzer's 'last resort', although we do not see how a civilian massacre could ever represent any kind of remedy. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (4th Edn, Basic Books 2004).

14 Machiavelli (n 1) 57–58.

Thus at the same time, we may find in Machiavelli a variant of the ethical problem known as ‘dirty hands’; namely, to act badly but for good political reasons. Dirty hands, for example, could include professional executioners who kill condemned men and who thus accepts that they are dirtying their hands forever. Such an objective action seems that the spilling of blood of condemned persons is ‘innocent’ the claim being fully ‘justified’. Executioners tend to be so professionally detached from their feeling that they inwardly believe they have just another ordinary job of work to do as any man. Snipers adopt the same detachment in ruthlessly performing their task. Militarists can also adopt such degrees of insensitivity, but one has to question where pathological killers fit in with such company.

More precisely, evil action even as perpetrated by the professional military can be recognized as contradictory – like the biblical injunction ‘do not kill’ – but it is nevertheless accomplished as a voluntary duty, representing a politico-military necessity covered by the Law of Armed Conflict. The political context is significant, dirty hands apply only if, as French historian Stéphane Courtois relates ‘there is a disjunction between the (political) need to act and the (moral) availability of a justification’.<sup>15</sup> Hence, dirty hands represent an ethical paradox, because the political necessity of an intentionally bad moral action does not constitute a justification, or even an excuse for an intrinsically wrong action. Thus, one should not confuse the old adage that ‘the end justifies the means’<sup>16</sup> with the problem of dirty hands. With dirty hands, the end would not justify an immoral means.

Traditionally, such kind of justification is excluded from the Just War Theory, whether it be *jus in bello* or *jus post bellum*, because the foundations of this theory draw on Christian doctrine. Indeed, Saint Paul in his Letter to the Romans tells us, ‘Shall we say, “Let us do evil so that it may come out of good”, as some people accuse us of saying it? They deserve their condemnation’.<sup>17</sup> This verse is the origin of the intrinsic wrongfulness of doing evil even to obtain a good, but leaving this responsibility to God alone, ‘vengeance is mine, I will repay’<sup>18</sup> – arguably God being himself innocent of evil. So here we find one of the irreconcilable points of divergence between Machiavelli and the traditional theory of a Just War. Cruelty cannot be tolerated nor ordered by authority, on the pretext that it the authorities will resort to justice after the event, thus preserving appearances. The well-known phenomenon of double effect pertains.

15 S. Stéphane Courtois *Enjeux philosophiques de la guerre, de la paix et du terrorisme*, (Laval University Press 2003) 88.

16 Note, this sentence does not actually appear in *The Prince*.

17 *The Bible*, Saint Paul, *Romans* 3, 8.

18 *The Bible*, Saint Paul, *Romans*, 12, 19, quoting *Deuteronomy*, 32, 35 (King James Bible 1605). See also perhaps the most controversial statement of all in the Judao-Christian Old Testament Bible ‘I make peace and create evil’, *Isaiah* 45, 7.

Nevertheless, a democracy must, if it wishes to follow its own ideal of government, agree to make amends for all possible faults, as Rawls wrote, even and above all if it belongs to the victors' camp, without hiding behind the practices described above of the scapegoat or the convenience of dirty hands. Otherwise, and we follow the spirit of Machiavelli's other counsels, peace may be established, but as we have presented above in our general argumentation a climate of serenity and mutual trust cannot be fully restored; old geopolitical tensions can easily re-emerge. The reader will draw on this point conclusions which will seem good, so we shall not advance further for our part in circumstances which go beyond us. As Dominique de Villepin, then French Minister of Foreign Affairs, summed up in his address to the UN Security Council when France was opposed to the war in Iraq in 2002, 'But let us not forget that after winning war, we must build peace'.<sup>19</sup>

## 6 Philosophical Objection

After this historical objection, it is time to treat the philosophical objection, namely would Aristotle have adhered to our reasoning that we can be virtuous 'without our knowledge? To put it another way, if moral action requires the rectitude of intention, so to be considered virtuous, must we not at least desire to be so from the beginning? Traditionally, any simulation of virtues, as Machiavelli suggested, does not suppose that virtues actually possessed by persons claiming to be so. To behave 'as if' one is virtuous can deceive the population, but that does not make us virtuous. To pretend to tell the truth is to lie, and to pretend to be faithful is to deceive. For Machiavelli, as we have seen, the question of the possession or not of virtue does not influence the choice of behaviour, since the appearance of virtue is sufficient or even proper, according to him. Thinking of the study of 'virtue ethics', indeed the well-known US Writer Philip Bobbitt likewise astonishes by asserting that 'Machiavelli is a profoundly ethical writer'.<sup>20</sup> Bobbitt is noted for counter-intuition yet firm rationality.

Let us return to the logic of our main argument. In rephrasing our central argument, if the respect of *jus post bellum* may necessitate being Machiavellian in our obedience to *jus in bello*, does not it make him who thought himself a disciple of Machiavelli a virtuous man? Would Aristotle have adhered to this

19 UN Security Council debate for Resolution No 1441, 2002.

20 Only recently discovering Bobbitt's book, of course I have worked wholly independently of him in studying *The Prince*. Bobbitt's is a very strong claim. He continues that Machiavelli has 'a passionate insistence that we look at the world as it is and do not pretend otherwise, lest we harm the public as a consequence of acting on our platitudes'. His '... advice to statesmen is don't kid yourself'. Philip Bobbitt, *The Garments of Court and Palace. Machiavelli and the World that he Made* (Atlantic Books 2013) 161.

logic? Could one believe that one could be virtuous by accident'? Of course, it can be said that it has happened that people have performed heroic acts almost without their knowledge, in the sense that they were not premeditated. The newspapers are full of these stories of seemingly anonymous persons,<sup>21</sup> whose heroic character may have been revealed in the tragic circumstances of the attacks. These heroes have above all responded to an instinctive impulse rather than to a long rational reflection on the right and good action to be undertaken. If we consider that these actions reflect courage, and courage is a virtue, then we should be able to say that these people have shown themselves virtuous by accident.

This is where some methodological clarification is needed. Even if one can present such people as not having premeditated their act of bravery, they did not act under the influence of madness. In other words, they were in full possession of their reason and were aware of their action. To say in this case that they are virtuous by accident can only be an abuse of language. Therefore, to speak correctly, let us recall what virtue consists of according to Aristotle. Virtue, he writes, corresponds only to the excellence of the function; it is above all a practice. So, according to Aristotle, there are examples of excellence in the practice of evil, such as the good sycophant (who turns professional whistleblower) or, somewhat perversely, the good thief (who gives evidence in court against his erstwhile colleagues) as they perform skilfully their unpopular if virtuous function of denouncing wrongdoing.

At that point, it does not seem that Aristotle and Machiavelli's ideas could contradict each other, with the possibility that a cruel king might be designated as 'virtuous'. By oxymoron he would simply be a 'good tyrant' for Aristotle, and a 'prudent prince' for Machiavelli. More precisely and emphatically, we have seen that the link between respect of *jus post bellum* and *jus in bello* can be the fruit of a reflection on a long-term end, the end of hostilities. We have seen that the conjunction of a practical reflection and a decision on the means to be put into effect in order to obtain a good end is the very characteristic of Aristotelian prudence. But the philosophical objection here is whether the prudent man should be aware that he is seeking, self-consciously, to achieve prudence in order to be recognized as such.

We lack historical examples for this virtue of prudence, so let us see what can be said of another virtue, wisdom. The Bible tells us that Solomon had asked God for exceptional wisdom for which he is well-known even today. It

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21 Let me here record their names in public gratitude Stone Spencer, Alek Skarlatos, and Anthony Sandler, Chris Norman, Mark Moogalian and Damien A. [who wished to remain anonymous], who decisively prevented the Thalys train attack from a potential terrorist massacre, while travelling from Amsterdam to Paris as it crossed Belgium on 21 August 2015. [https://en.wikipedia.org/wiki/2015\\_Thalys\\_train\\_attack](https://en.wikipedia.org/wiki/2015_Thalys_train_attack) accessed 11 December 2018.

would soon be deduced that after this divine gift, Solomon was conscious of being wise. A more careful rereading of the narrative leads us to point out that Solomon presented his request as a young man. This request for wisdom is all the more astonishing. To solicit to become wise, rather than anything else, should not such be a blatant tautology? In this case, Solomon, already wise, was actually humble in his heart and unaware of his existing capacity for wisdom. The divine gift comes to perfect the humble person, who then enters into a 'state of grace', or 'charism' – using religious terms of deep significance.

Thus, perhaps it is not important for a person to recognize himself as the possessor of a virtue to practice it already. To improve it, on the other hand, self-consciousness must be necessary: we must learn precepts, such as those of *jus in bello*, for example, if we want to respect them. Instinct does not do everything. It may be interesting to compare this question of the consciousness of the possession of a virtue with the only appearance of virtue in Machiavelli. If Solomon did not perceive that he was already wise, the ruler who simulates a virtue is perfectly conscious that he does not possess it. One can thus simulate a virtue, without practicing it, and practice it without being aware.

Our final two examples are perhaps symbolic, those requiring humility and courage, two virtues dear to soldiers. True humility, being the righteous consciousness of one's own value, who could affirm himself to be humble? To claim this virtue may pass for an act of pride, and not to admit to be humble if one is, is false modesty. It is a virtue that could only be recognized by others, but which we can hardly claim for ourselves. Here too, it is more common to be aware of the absence of this virtue than of its possession. For courage, the case is more subtle. We have already mentioned instances when people put their lives at risk to protect others. It is this behaviour which is expected of a soldier deployed operationally. It may happen that an individual, decorated for his action on the battlefield, in reality is reluctant to confess openly that he has indeed been courageous. Like humility, this tendency to modesty regarding the possession of this virtue can be a potent sign of true courage. Searching for danger would not be courage, just as boasting of a military exploit can be mere bravado and vulgar vainglory. Insofar as one individual practices a virtue, it seems possible, according to the Aristotelian paradigm and outside observers, to assert that this individual possesses such-and-such a virtue, whether he consciously or unconsciously practises it.

## 7 Pragmatic Objection

Finally, the pragmatic objection. The uncertainty which characterizes the course of human life, as well as the variability of international relations and geopolitical equilibrium, may they not render our attempts to create some

general rules and logical behaviours obsolete in our globalized world? We would be tempted to answer certainly', but it depends on the status we give to our forward-thinking. Just like respect for ethics, *jus in bello* or *post bellum*, it seems impossible to believe that these conceptions are anything but ideal models. Reality is always more complex, more unpredictable. Any attempt to model such notions perfectly can only be doomed to failure. The statistics show this very well with 'long tail models', so called referring to the particular shape of a graph or 'bell curve' of human behaviour. Diversity is more diverse than what we might think of as simple majority behaviour.

This raises the question of the status of our work. If we know that it is useless to hope to freeze reality, why do we try? Simply for the same reason that we all try to respect ethics, morals and laws, not just in war but on a daily basis. We ourselves conduct our endeavours to achieve excellence of the outcomes in the Aristotelian sense. We try to determine *a priori* the best conduct, in order to be able to make the right decision in advance, according to the particular circumstances. This excellence in conduct, excellence in the use of *phronèsis*, is never attained in practice, since virtue is not a 'status' for Aristotle, it has to be proved 'in practice'.

This allows also us to answer the implicit question that stems from this reasoning, namely the feasibility of respecting principles of *jus in bello* and *post bellum*. If perfection is unattainable, logically no one is bound to the impossible. So how can we evaluate action? Should we consider intention or consequence? If intention is essential, any virtuous actions accomplished 'by accident' would not be considered true 'moral' actions. Unless, of course, what we as an external observer assume was a unreflecting action, was in reality deliberate by its author. Often deeply held intentions we cannot judge. So the courts cannot rule on intentions unless they are manifested into concrete actions witnessed by others. In the end, the evaluation of action at the level of intention remains to be consciously observed over time by many people, hence the necessity of education at least to form sufficient degrees of moral consciousness, an *habitus* in the Aristotelian sense, to follow 'the Good'.

## 8 Relevance for Today

Finally over the years since 1945, more and more once-'princely' nation-states have become constitutional liberal democracies, with a growing sense of *res publica* as public goods and consensual political power subject to law and governance. All such national leaders now are compelled, rightly or wrongly, to act 'in the national interest', within their broader understanding of global

*Realpolitik*. We see this every day on the world stage. Owning the nation's monopoly of the use of force, military power is necessary but dangerous.

The contradictions remain. The most profound question which can agitate the minds of our soldiers is whether a democratic nation can truly prevail against the acts of aggression, terrorism and evil war-fighters such as those of ISIS? Who can win on the field? Ruthlessness as cruelty or moderation? It is in answering the question that the importance of the link between *jus in bello* and *jus post bellum* appears. Machiavelli, who did not fear the use of deliberate cruelty, gave to his prince lessons which reverberate to the present. This, however, is impossible without the support of the population, unless an abject dictatorship is established.

Against such evils, Machiavelli himself said that, far from being passive, maybe

...in republics there is more life, more hatred, a greater desire for revenge; the memory of their ancient liberty does not and cannot let them rest.<sup>22</sup>

So where is human virtue to be found? Machiavelli said that in the republics, war has to be conducted by valiant and capable chiefs. 'A republic must appoint its own citizens, and when a commander so appointed turns out incompetent, [the government] should change him, and if he is competent, it should limit his authority by statute.'<sup>23</sup> Respect for the laws of war by all persons, notably professional military persons based on International Humanitarian Law, has the aim of promoting and maintaining peace, therefore goes hand in hand with the practice of virtue.

Thus the moderation of our democratic nations in combatting the violence of other aggressive, authoritarian and characteristically pre-modern nations, exemplifies many of the Machiavellian methods in defending democracy. Their tenacity in the struggle for freedom as the ultimate consequence of peace continues unrelentingly. No defeat can therefore be final. Striving for peace goes on.

<sup>22</sup> Machiavelli (n 1) 49.

<sup>23</sup> Machiavelli (n 1) 78–79.