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Jus Post Bellum: Justice After War in Fourteenth-Century War Treatises

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ABSTRACT

This article examines the legal and moral framework concerning justice after war in Giovanni da Legnano's *De Bello, De Represaliis et De Duello* and Honoré Bouvet's *L'Arbre des Batailles*. Throughout these works various principles can be identified which are similar to the modern term *jus post bellum*. The authors presented various objectives determining the correct time to end a conflict. They also established specific actions concerning the seizure of property, the treatment of prisoners, and the negotiation of treaties. These actions balanced justice and mercy allowing previously warring nations to be reconciled.

Introduction

The just war tradition has developed legal assertions grounded in both pre-modern and modern intellectual history, which philosophers and social scientists have argued should govern the international law of war.¹ Traditionally, this set of theories was supported by two categories labelled *jus ad bellum* (justice when going to war) and *jus*

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¹See: Rosemary B. Kellison and Nahed Artoul Zehr, 'Tradition-Based Approaches to the Study of the Ethics of War', in Brent J. Steele and Eric A. Heinze (eds.), *Routledge Handbook of Ethics and International Relation*, (Abingdon: Routledge, 2018), pp. 208-220; David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction*, (Wilmington, DE: ISI Books, 2012); Alex J. Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge: Polity Press, 2008); Henrik Syse and Gregory M. Reichberg (eds.), *Ethics Nationalism, and Just War: Medieval and Contemporary Perspectives*, (Washington, D.C.: Catholic University of America Press, 2007); Brian Orend, *The Morality of War*, (Peterborough, Ontario: Broadview Press, 2006); Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York, NY: Basic Books, 2015).

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in bello (justice within war).² However in 2000, the Canadian philosopher Brian Orend added the term *jus post bellum* (justice after war) to produce new principles that might guide modern armies out of increasingly complex conflicts.³ Orend produced ethical principles which included the correct moment to end a conflict and how to negotiate the proportional punitive and remedial actions against a defeated enemy.⁴ Orend argued that Immanuel Kant's book *Perpetual Peace* (1795) was the first to discuss claims similar to *jus post bellum*.⁵ Other philosophers have traced its beginnings to other early-modern thinkers including the neo-scholastic theologian Francisco de Vitoria (d. 1546), the Anglo-Italian Jurist Alberico Gentili (d.1608), and the Dutch Humanist Hugo Grotius (d.1645).⁶ This continual investigation demonstrates the importance of historical reference to the *jus post bellum* debate.

Despite medieval thinkers being previously linked to *jus ad bellum* and *jus in bello*, currently few have attempted to locate *jus post bellum* principles within medieval

²Cian O'Driscoll, 'Security and the Ethics of War', in Steele and Heinze (eds.), *Handbook of Ethics*, p. 179; Carsten Stahn, 'Jus Post Bellum', *American University International Law Review*, 23, 2 (2008), pp. 311-347 (pp. 311-312); Robert Kolb, 'Origin of the Twin Terms *Jus Ad Bellum/ Jus In Bello*', in *International Review of the Red Cross*, 37, 320 (October 1997), p. 553; Geoffrey Best, *Humanity in Warfare: Modern History of the International Law of Armed Conflicts*, (New York, NY: Routledge, 1983), pp. 8-9; Bellamy, *Just Wars*, pp. 124-128; Corey and Charles, *Just War Tradition*, pp. 72-74.

³Brian Orend, 'Jus Post Bellum', in *Journal of Social Philosophy*, 31, 1 (Spring 2000), pp. 117-137, pp. 123-124, pp. 128-129.

⁴*Ibid.*, pp. 123-124, 128-129.

⁵Orend, 'Jus Post Bellum', pp. 118-119; Immanuel Kant, 'Toward Perpetual Peace: A Philosophical Sketch', trans. David L. Conclasure, in Pauline Kleingeld (ed.), *Toward Perpetual Peace and Other Writings on Politics, Peace and History*, (New Haven, CT: Yale University Press, 2006), pp. 67-109, esp. pp. 67-71, pp. 94-109.

⁶Orend, 'Jus Post Bellum', pp. 118-119; Larry May, 'Jus Post Bellum, Grotius and Meionexia', in Carsten Stahn, Jennifer S. Easterday, and Jens Iverson (eds.), *Jus Post Bellum: Mapping the Normative Foundations*, (Oxford: Oxford University Press, 2014), pp. 15-26, pp. 20-21; Alexis Blane and Benedict Kingsbury, 'Punishment and the *jus post bellum*', in Benedict Kingsbury and Benjamin Straumann (eds.), *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*, (Oxford: Oxford University Press, 2010), pp. 241-265; Stephen C. Neff, 'Conflict Termination and Peacemaking in the Law of Nations: A Historic Perspective', in Carsten Stahn and Jann K. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition*, (The Hague: Asser Press, 2008), pp. 77-92; Carsten Stahn, "'Jus Ad Bellum", "'Jus In Bello"... "'Jus Post Bellum"'? – Rethinking the Conception of the Law of Armed Force', *European Journal of International Law*, 17, 5 (2006), pp. 925-934.

sources.⁷ These academic works are helpful and add much to the current discussion of the just war tradition, but more could be added with further investigation of medieval peace making and post-war principles. These may produce new perspectives on the ending of war both analogous and distinct to today's theories. It may also help date the origins of the theory to an earlier time. Previous studies have used medieval canon law (ecclesiastical legal codes) to recognise corresponding principles to *jus ad bellum* and *jus in bello*.⁸ This article likewise uses canon law to describe the moral and legal implications for late-medieval actions after warfare. Two figures stand out as obvious choices to provide an initial analysis of medieval *jus post bellum*, Giovanni da Legnano and Honoré Bouvet.⁹

Arguably one of the most celebrated jurists of the fourteenth century, Giovanni da Legnano was a doctor of canon and civil law from the University of Bologna and wrote

⁷Most historians have rejected this premise as the prevailing theory has been there was no complete 'just war theory' in the Middle Ages; see: James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200-1740*, (Princeton, NJ: Princeton University Press, 1975), pp. 21-22, p. 36; Robert C. Stacey, 'The Age of Chivalry', in Michael Howard, George J. Andreopoulos, and Mark R. Shulman (eds.), *The Laws of War: Constraints on Warfare in the Western World*, (New Haven, CT: Yale University Press, 1994), pp. 27-39, pp. 30-31; however it was criticised in: Rory Cox, 'Historical Just War Theory up to Thomas Aquinas', in Seth Lazar and Helen Frowe (eds.), *The Oxford Handbook of Ethics of War* (Oxford: Oxford University Press, 2018), pp. 99-117; one of the few historians researching the end of war in this period is the early-modern legal historian Randall Lesaffer, see: Randall Lesaffer (ed.), *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One*, (Cambridge: Cambridge University Press, 2004); Randall Lesaffer, 'The Three Peace Treaties of 1492-1493', in Heinz Duchhardt and Martin Peters (eds.), *Europäische Friedensverträge der Vormoderne*, (Mainz: Institute for European History, 2006), pp. 41-52; only one scholar has addressed *jus post bellum* from the perspective of the Ancient Greeks: Cian O'Driscoll, 'Rewriting the Just War Tradition: Just War in Classical Greek Political Thought and Practice', *International Studies Quarterly*, 59, 1 (March 2015), pp. 1-10; also see: James Brundage, 'The Hierarchy of Violence in Twelfth- and Thirteenth-Century Canonists', *The International History Review*, 17, 4 (December 1995), pp. 670-692; Frederick Russell, *The Just War in the Middle Ages*, (Cambridge: Cambridge University Press, 1975); Maurice Keen, *The Laws of War in the Late Middle Ages*, (London: Routledge, 1965).

⁸Cox, 'Historical Just War', pp. 99-117; Russell, *Just War*, pp. 55-212.

⁹Modern practice has addressed him as Bouvet; however, older sources have named him as Bonet. In this essay I have referred to him as Bouvet unless otherwise used in the sources.

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treatises on a wide range of legal topics.¹⁰ One of these works, *Tractatus de Bello, de Represaliis, et Duello* systematically described the law of war according to Roman and canon law as well as natural philosophy and astrology.¹¹ Legnano most likely wrote the treatise during Barnabo Viconti's siege of Bologna in 1360 as a handbook for practical legal exercise for his students.¹² Legnano was famous in his lifetime and his work has been long lasting, largely due to the work *L'arbre des batailles* by Honoré Bouvet.¹³ Bouvet was a late fourteenth-century Benedictine prior, doctor of decretals, and French royal official.¹⁴ His work was written between 1386 and 1388 as a didactic text intended to popularise canon legal texts (like the *de Bello*) for a secular audience.¹⁵ To this end, he wrote in the vernacular middle-French and popularised the ideas of Legnano, while adapting them to the unique French martial experience during the Hundred Years War.¹⁶ Bouvet in part wrote the work as a guidebook to restore France to its pre-war status, and to instruct soldiers after seeing the destruction caused across the French countryside during the war against England.¹⁷ Both works presented complex attitudes towards warfare and passionately desired the end of war.

This article argues that there was a legal structure which presented principles to be followed at the conclusion of warfare in the works of Giovanni da Legnano and Honoré Bouvet. It begins with their theories determining when it is the correct

¹⁰Legnano advised four Popes and was later regarded as 'another Aristotle' by Iohannes Garzon in 1450, it is also likely that he was referred to in Chaucer's 'Clerk's Tale' and that he was one of the jurists that advised Charles V in his resumption of the Hundred Years War in 1369 see: Rory Cox, 'Natural Law and the Right of Self-Defence According to John of Legnano and John Wyclif', in Christopher Given-Wilson (ed.), *Fourteenth-Century England VI*, (Woodbridge: Boydell Press, 2010), pp. 149-170, p. 152; Thomas Holland, 'Introduction', in Giovanni da Legnano, *Tractatus de Bello, de Represaliis et de Duello* pp. trans. and ed. Thomas Holland, (Buffalo, NY: William S. Hein & Co., 1995), pp. xvii-xxi; John P. McCall, 'Chaucer and John of Legnano', *Speculum*, 40, 3 (July 1965), pp. 484-489; G.M. Donovan and M. H. Keen, 'The "Somnium" of John of Legnano', in *Traditio*, 37 (1981), pp. 325-345, p. 327. For a list of Legnano's surviving MSS see: John P. McCall, 'The Writings of John of Legnano with a List of Manuscripts', in *Traditio*, 23 (1967), pp. 415-437.

¹¹Legnano, *de Bello*.

¹²Legnano, *de Bello*, p. 354; Holland, 'Introduction', pp. xii-xiii, xxvii.

¹³Honoré Bonet, *L'arbre des batailles d'Honoré Bonet*, ed. Ernest Nys, (Brussels: Muquardt, 1883); Honoré Bonet, *The Tree of Battles*, trans. G.W. Coopland, (Liverpool: University of Liverpool Press, 1949).

¹⁴G. W. Coopland, 'Introduction', in Bonet, *Battles*, p. 15-16, p. 25.

¹⁵*Ibid.*, p. 21.

¹⁶Around 84% of the work is a paraphrase of the *de Bello*; *Ibid.*, p. 21, p. 26.

¹⁷Bonet, *Battles*, p. 79.

moment to cease a conflict and who should instigate its end. Next the article looks at the punitive actions after the conclusion of active warfare. This section examines the limitations and legalities surrounding the seizure of property and the exchange of prisoners. The article finishes with Legnano and Bouvet's comments concerning truces, treaties, and the relationship between people groups.

Just Cause for Termination

The first aim of the *jus post bellum* theory is to identify the correct moment to cease hostilities and begin the transition to peace. This period begins after the reasonable defeat of the enemy or after the defeat of one's own side. Within this moment, violence has largely ceased, but peace has not yet been established. This period is what *jus post bellum* principles are designed for, to guide the process to a fair and lasting peace. The first designation of the just war tradition, *jus ad bellum*, determines the timing of this moment.¹⁸ *Jus ad bellum* requires a just cause with the intention of peace, and this likewise dictates the cessation of violence.¹⁹ Accordingly, Orend argued that *jus post bellum* should govern actions after the aggressor's gains had been eliminated, the rights of victims had been reasonably restored, and the aggressor had willingly accepted the cessation of hostilities.²⁰ Without achieving these goals, justice would not be complete and the war would need to continue. Similarly, to continue past those accomplishments would risk future injustice.²¹

Although not identical to modern *jus post bellum* theories, Legnano and Bouvet did argue that war could have either legitimate or illegitimate goals. In a just war, combatants needed to strive for a just cause and cease fighting when it was achieved. Legnano and Bouvet defined all wars (both just and unjust) as 'a contention arising by reason of something discordant offered to human desire, tending to exclude discordancy.'²² In order for a war to be classified as lawful, it would need to be publicly declared by a *princeps*, or one recognising no higher earthly authority, through the

¹⁸This is often the major criticism of *jus post bellum*; in that it is unnecessary as the goals have already been stated within the stated just causes of the conflict. See: Mark Evans, 'Moral Responsibilities and the Conflicting Demands of *Jus Post Bellum*', *Ethics and International Affairs*, 23, 2 (22 June 2009), pp. 147-164; Alex J. Bellamy, 'The Responsibilities of Victory: *Jus Post Bellum* and the Just War', *Review of International Studies*, 34, 4 (October 2008), pp. 601-625; Brian Orend, '*Jus Post Bellum*: The Perspective of a Just-War Theorist', *Leiden Journal of International Law*, 20, 3 (September 2007) pp. 571-591, pp. 573-74.

¹⁹Orend, '*Jus post bellum*', pp. 119-21.

²⁰Ibid., pp. 123-24, pp. 128-29.

²¹Orend, 'Perspective', p. 580.

²²Legnano, *de Bello*, p. 216; Bonet, *Battles*, p. 81, Bouvet used slightly different language but was generally the same definition.

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pursuit of a just cause against a deserving target.²³ Unlike earlier medieval attempts at limiting warfare, these later thinkers largely focused on justified authority, with only peripheral attention given to just cause and just intention. Both the pope and the emperor (or other temporal rulers) had the authority to declare different types of war.²⁴ In the same way, the end of war was also determined by that same authority who had the responsibility to gain and maintain peace within their own spheres of influence. The pope was obligated to maintain peace within Christendom, to protect Christian doctrine and Christian pilgrims, to punish non-Christian violations of the law of nature and Christian sins against the gospel. The pope also had the duty to fight heretical and schismatic emperors and restore previously held Christian lands.²⁵ Meanwhile the emperor's legal power extended over lands previously held by the Western Roman Empire, with the primary obligation of defending the 'mystical body [*corporis mystici*]', or the church and the empire.²⁶ In both treatises, the emperor was specifically able to make war on his enemies [*hostes*].²⁷ *Hostes* was a Roman legal term, defined as public declared enemies.²⁸ In other words, the emperor was supreme in defending the Holy Roman Empire against both external invaders and internal rebels.²⁹ These detailed examples demonstrate that those in authority decided the correct moment when a just victory had been achieved.

Besides maintaining a clear hierarchy of authority, both Legnano and Bouvet considered specific examples of a just victory. Although the end of war would be determined by authority, those persons still needed to act within the law. The pope would be required to end any conflict he had ordered upon the conquest of the Holy Land, or the submission of heretical sects. He also needed war to cease after the repentance of sinners against the gospel and offenders of natural law. While all people could legally protect themselves and their property, the emperor had the ultimate obligation to protect the political community of Christendom.³⁰ Therefore, secular rulers fighting a defensive war would need to declare victory after the repulsion of the

²³Legnano, *de Bello*, p. 276.

²⁴They also allowed *de facto* sovereign princes to declare war; Legnano, *de Bello*, pp.231-33; Bonet, *Battles*, pp. 126-30.

²⁵Legnano, *de Bello*, p. 232; Bonet, *Battles*, pp. 126-28.

²⁶Legnano, *de Bello*, pp.155, 232-33, pp. 307-08; Bonet, *Battles*, pp. 128-29.

²⁷Legnano, *de Bello*, pp. 93-94, pp. 232-33, '*cum Imperator sit princeps saecularis, superiorem non habens in saecularibus, nisi forte, ut dixi, quod ipse potest indicere bellum contra hostes suos*'; Bonet, *Battles*, p. 128.

²⁸*The Digest of Justinian*, ed. Theodor Mommsen and Paul Krueger, trans. Alan Watson, (Philadelphia, PA: University of Pennsylvania Press, 1985), 49.15.24.

²⁹Legnano, *de Bello*, pp. 232-33, Bonet, *Battles*, pp. 126-27.

³⁰Legnano, *de Bello*, pp. 297-99; for further discussion about medieval self-defense see: Cox, 'Right of Self-Defence', pp. 149-69.

enemy, the retrieval of stolen goods, or after oppression had been punished.³¹ These rules are very similar to the modern principle of proportionality, stating that armed conflict is used only necessarily as a last resort and that it does not go beyond its specific requirements.³² These proportionally sanctioned actions determined the just actions during and after conflict. To pursue victory in an unjust manner would not only risk the future relationships between peoples, but also the purity of the combatants' souls. Both internal and external concord was required in the medieval definition of peace.³³ As some victories were neither just nor legal, an unjust peace would make the entire conflict unjust. Bouvet was especially poignant on condemning this type of victory. Bouvet stated: '[I say that] a man or a people is more victorious in battle when in a state of grace... even though the sinner is stronger in body than he who is in a state of grace.'³⁴ Although good and evil means could achieve victory, only the just could gain the true goal of peace. Bouvet included seven biblical and historical examples of victorious but immoral men as proof that while an unjust victory could be achieved, its benefits were short lived.³⁵ These seven rulers were not content with the justice gained from their conflicts but lusted after more lands to conquer and more wealth to hoard.³⁶ Although such successes gained earthly wealth and status, they

³¹Bonet, *Battles*, pp. 128-129, pp. 139-140.

³²An example of the modern concept of proportionality is in Article 52 of Protocol I in the Geneva Convention, see: International Committee of the Red Cross (ICRC), 'Article 52', *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3,

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4>. Accessed: 26 April 2021; see also: Henry Shue, 'Last Resort and Proportionality', in Lazar and Frowe (eds.), *Ethics of War*, pp. 260-76; Adil Ahmad Haque, 'Necessity and Proportionality in International Law', in Larry May (ed.), *The Cambridge Handbook of the Just War*, (Cambridge: Cambridge University Press, 2018), pp. 255-272.

³³For example, Aquinas argued that even when the wicked were outwardly at peace inwardly they were at war, see: St. Thomas Aquinas, *The Summa Theologiae: Charity*, Vol. 34, trans. by R. J. Batten, (London: Blackfriars Press, 1974), pp. 197-99; Gregory M. Reichberg, *Thomas Aquinas on War and Peace*, (Cambridge: Cambridge University Press, 2017), esp. pp. 17-33.

³⁴Bonet, *Batailles*, p. 149, 'je dy aussi que vraiment selon l'escripiture en bataille ung homme ou ung peuple est assez plus victorien quant il est ne estat de grace...combien que le pecheur soit aussi plus fort de corps comme celui qui est en estat de grace'; Bonet, *Battles*, p. 157.

³⁵Bonet, *Battles*, pp. 156-157: Nimrod, Nebuchadnezzar, Alexander the Great, Saul, Assur, Octavian, and Holofernes.

³⁶Bonet, *Battles*, pp. 156-157, similar explanations to Augustine's concept of the lust to dominate, *libido dominandi*, see: St. Augustine of Hippo, *City of God*, trans. Gerald G.

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would also perpetuate the cycle of conflict and injustice. Post-war justice was not only a political action but a spiritual reality. A victory done with the wrong intention and in the wrong way would be short lived and punished by God. It would be better to be defeated, yet protect the purity of one's soul, than to be victorious in an unjust conflict.

A defeat would be justified in two instances, when there was no chance of victory, or upon the realisation of one's own injustice. Actors in a legal war were still required to adhere to the cardinal virtues of justice, temperance, fortitude, and prudence.³⁷ In the face of overwhelming odds, this meant that sometimes surrender was the only moral option.³⁸ One should face the enemy in accordance with all the virtues not only courage.³⁹ Legnano stated: 'And that a brave man should sometimes flee is obvious by reason, for one should flee from dangers which are beyond man's strength.'⁴⁰ To continue to fight beyond one's power would not be prudent; it would be reckless and would turn virtue into vice and a just war into an unjust war. Legnano reasoned that the preservation of a virtuous life was better than a needless death.⁴¹ It would be better to accept defeat and pursue justice at a later date than to needlessly die. In another example, Legnano argued that that one-hundred men in a defensive position should not surrender to one-hundred attackers, since they had a reasonable chance of winning that battle.⁴² Although this demonstrated when not to surrender, it implied that surrender was an option given the right circumstances. If the end of war was not glory, then only a just victory could achieve war's virtuous end. When necessary, it would be more prudent to choose temporary defeat and pursue justice, than die and forfeit the possibility of rectifying the just cause forever.

However, Bouvet was more restrictive in his allowance of surrender.⁴³ For example, if fighting the Saracens, death would mean the salvation of one's soul and therefore surrender should never be an option.⁴⁴ Additionally, combatants were obligated to their lords and were bound to courageously serve them, even to death.⁴⁵ However, Bouvet also argued that the just could surrender. He used the defeat and capture of

Walsh and Grace Monahan, (Washington, D.C.: Catholic University of America Press, 2008), pp. 51-52.

³⁷Legnano, *de Bello*, p. 241.

³⁸*Ibid.*, p. 241; Bonet, *Battles*, p. 122.

³⁹Legnano, *de Bello*, pp. 241-244.

⁴⁰*Ibid.*, pp. 106, 248, '*Et quod Aliquando fugiendum sit forti, patet ratione, nam pericula supra hominem sunt fugienda.*'

⁴¹*Ibid.*, p. 252.

⁴²*Ibid.*, p. 239.

⁴³Bonet, *Battles*, p. 122.

⁴⁴*Ibid.*, p. 122.

⁴⁵*Ibid.*, p. 122.

St. Louis during the Seventh Crusade (1248-1254) as an example of a just defeat.⁴⁶ If the saintly king of France could be overcome, then any conflict could end in any way according to the unknowable will of God.⁴⁷ Bouvet attempted to rationalise this by stating, 'And if sometimes wars oppress the good and the just, it is for the increase of their glory.'⁴⁸ Even the just were human and therefore sinners. War disciplined and corrected their small personal sins and unjust actions, destroying their earthly ambitions yet saving their souls.

The second possibility of defeat was the intentional ending of war upon the realisation of injustice on one's own side. While questioning fortitude as a virtue, Legnano found a complex range of emotions and intentions that could be present during a war. Legnano found that the courage which allowed soldiers to attack was only virtuous when used towards a moral end.⁴⁹ 'For the end of fortitude in war is the common good. And any man who makes war for the sake of gain is not brave, but rather avaricious.'⁵⁰ Upon discovering the presence of an immoral goal, the previously virtuous side would need to cease the conflict and begin the process towards peace. Bouvet concurred with this statement and added that virtue was more important than worldly honour. Bouvet said, 'Yet it is better that he [the one in the wrong] should incur some little shame, rather than defend his ground in a false quarrel.'⁵¹ This means that a premature end to an unjust war was better than the potential for sin. Along these lines, Bouvet also required immorally attained possessions to be returned immediately.⁵² This rule even applied to inherited property.⁵³ To continue a defensive war over illicit possessions would be immoral and needed to end upon realization of wrongdoing. Importantly, in all of these situations the decision to end a conflict (either in defeat or victory) needed to remain just and affected the overall legitimacy of the conflict. A just war fought for too long (after the just cause) or too short (a defeat without honour) would become unjust.

These late-medieval authors demonstrated the correct time to end a conflict, either in victory or defeat. The justified ending of war was connected to its beginning,

⁴⁶Ibid., pp. 157-158.

⁴⁷Ibid., pp. 157-158.

⁴⁸Bonet, *Batailles*, p. 150, 'Et se aucunesois less guerres grisvent les bons et les justes c'est leur accroissement de gloire'; Bonet, *Battles*, pp. 157-158.

⁴⁹Legnano, *de Bello*, p. 240.

⁵⁰Ibid., pp. 99, 240, 'Nam finis fortitudinis in bellicis est bonum commune. Et si aliquis bellat propter lucrum, non est fortis, immo avarus.'

⁵¹Bonet, *Batailles*, p. 236, 'Mais encore lui est il mieulx prendre ung peu de honte que defendre le champ sur faulse querelle'; Bonet, *Battles*, pp. 202-203.

⁵²Ibid., p. 140.

⁵³Ibid., p. 140.

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ensuring that the causes for the conflict were resolved. A just victory would resolve the illegal actions done against the 'moral' side. It remained within the realm of virtuous punitive action and would not transgress into individual vengeance. When one was found not pursuing the 'common good [*bonum commune*]', but personal gain, the only prudent action was to stop fighting and sue for peace. Alternatively, if one faced overwhelming odds, it was most prudent to retreat or surrender and fight another day. Nevertheless, the end of fighting would not restore the relationship between enemies. The pursuit of justice needed to continue after the actual war, providing post-war punishments and reconciliations.

Just Punishments After War

In the next phase of *jus post bellum*, Orend has said an international commission should be established to ensure punishment of crimes committed during and after the war.⁵⁴ Continuing with its peaceful intention, his principles demand reasonable punishment of criminals with the goal of rebuilding a defeated nation and restoring its relationship with the rest of the world.⁵⁵ Reparations and reconciliation allow justice to be made but they also prevent future conflicts by refusing to demand unreasonable concessions.⁵⁶ Likewise both Legnano and Bouvet demonstrated the continued need for justice after the completion of violence within the correct control of property seized during war and the proper treatment of prisoners of war.

When discussing captured soldiers, Legnano acknowledged that according to Roman civil law captives should become the slaves of their captors.⁵⁷ However, Legnano did not agree with this from a Christian standpoint. Instead, he used canon law to argue that mercy should be given to captives. Although captors gained the temporal right to own their prisoners this would endanger their souls and place doubt on their just intentions. Legnano used a quote from Gratian's *Decretum* to argue this stating, 'as violence is rightly meted out to one who fights and resists, so quarter is granted to the vanquished or the captured.'⁵⁸ Thus the text argued that unarmed, captured soldiers should be given mercy. This treatment of captured soldiers had also changed within contemporary customary law. Legnano stated that modern customs no longer

⁵⁴Orend, 'Jus post bellum', p. 124.

⁵⁵*Ibid.*, pp. 128-29.

⁵⁶The classic example of this is the Treaty of Versailles (1919), see: Larry May, *After War Ends: A Philosophical Perspective*, (Cambridge: Cambridge University Press, 2012), pp. 9-10; Catherine Lu, 'Reconciliation and Reparations', in Lazar and Frowe (eds.), *Ethics of War*; pp. 545-46.

⁵⁷Legnano, *de Bello*, pp. 254, 270; *Digest*, 49:15.

⁵⁸Legnano, *de Bello*, p. 254, '*Sicut debellanti et resistenti violentia debetur, sic victo vel capto venia conceditur.*'; Gratian, *Decretum*, in A. Friedberg (ed.), *Corpus Iuris Canonici, Vol. 1*, (Leipzig: Bernhardi Tauchnitz, 1879), C.23, q.1 c.1.

allowed for captured soldiers to become slaves, providing further protection to captured soldiers.⁵⁹ However, beyond these statements, Legnano was largely silent on the rights of returned soldiers. For example, he only gave scant attention to ‘*postliminium*’ a Roman law code which guaranteed the restoration of rights and property to captured soldiers.⁶⁰

Nevertheless, Bouvet expanded on this silence and provided contemporary context for the treatment of prisoners. He agreed with Legnano about captured soldiers. Although Roman law allowed the enslavement of captives, it could no longer be permitted in a Christian society.⁶¹ He denounced the enslavement of captured enemies as a ‘most inhuman, and cruel thing [*tres grant inhumanité et tres laide chose*].’⁶² In place of enslavement, the custom of ransoming (returning captives for a certain price) had arisen throughout the Middle Ages, and by Bouvet’s lifetime had become a major source of revenue during war.⁶³ Although better than enslavement, Bouvet commented that it could also tend towards cruelty through the extortion of money.⁶⁴ Bouvet accepted this custom, but said it should be limited. Prisoners were to be given food and companionship while incarcerated.⁶⁵ When asking for the ransom price, the cost should not be so high ‘as to disinherit his wife, children, relations and friends, for justice demands that they should have the wherewithal to live after the ransom has been paid.’⁶⁶ Bouvet also limited the types of persons who could be captured. He exempted the insane, children, clerics, the blind, and women.⁶⁷ To attack and capture such people would be considered illegal pillaging, not a just contribution to warfare.⁶⁸ Surprisingly, Bouvet also extended this protection to ploughmen and their assistants.⁶⁹ Bouvet protected them because all of society relied on them for food despite their likely contribution of supply to the enemy.⁷⁰ Attacking ploughmen at work undermined the foundation of the economy, creating more misery than was necessary. This helps

⁵⁹Legnano, *de Bello*, p. 270.

⁶⁰*Digest*, 49:15.

⁶¹Bonet, *Battles*, pp. 134, 151-152; Legnano, *de Bello*, pp. 254, p. 270.

⁶²Bonet, *Batailles*, p. 137; Bonet, *Battles*, pp. 151-152.

⁶³See: Rémy Ambühl, *Prisoners of War in the Hundred Years War: Ransom Culture in the Late Middle Ages* (Cambridge: Cambridge University Press, 2013).

⁶⁴Bonet, *Battles*, pp. 152-153.

⁶⁵*Ibid.*, pp. 152-153.

⁶⁶Bonet, *Batailles*, p. 140, ‘*non mie lui desheriter ne sa femme ne ses enfans ne ses parens et amis, car droit veult qu’ils aient de quoy vivre apres ce qu’il aura payé sa finance*’; Bonet, *Battles*, pp. 152-153.

⁶⁷Bonet, *Battles*, pp. 182-185.

⁶⁸*Ibid.*, p. 183, p. 185.

⁶⁹*Ibid.*, pp. 188-189.

⁷⁰*Ibid.*, p. 188.

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explain Bouvet's underlying principle of post-war justice. The end goal of a just war was the restoration of peace; therefore, the victor's actions should not threaten the future survival of the enemy's population, economy, and society. In this same vein, punishment in the form of retaining despoiled property would also be limited in order to restore peace.

In this period, the most-common form of post-war punishment was the taking of spoils. Legnano commented that Roman civil law declared that all captured goods became the property of the captor in a 'public war [*bellum publicum*].'⁷¹ This was also based on the law of nations.⁷² Yet, as with the laws concerning captured persons, canon law changed the victor's moral obligation. Just as prisoners were no longer slaves of their captors, so too the taking of enemy property was limited. In a public war only the moveable goods of the enemy could be seized, thus leaving the buildings and land.⁷³ This meant that private conquest of enemy territory was both illegal and immoral and brought undue suffering on the enemy. Legnano also included the 'prince's portion [*principis portio*]' as a limitation when discussing captured property.⁷⁴ Legnano stated: 'he [the prince] may decree that anyone capturing anything in war shall become the owner of things captured and shall detain persons until he can present them to his superior.'⁷⁵ He confirmed that this was both for punishment and rewards after the war.⁷⁶ This duty of distributing captured goods was placed on the leaders to give to the deserving.⁷⁷ This process separated simple theft from despoliation and provided a system where a side could more easily prove just intentions. Soldiers could not be thought to have fought for financial gain after willingly surrendering their spoils to their commanders. In the same way, leaders who redistributed those goods could not be seen as acting immorally.

Bouvet also allowed limited spoilation of the enemy. This corresponded to contemporary practice as raiding across the enemy's countryside (*chevauchée*) was

⁷¹Legnano, *de Bello*, p. 269.

⁷²*Ibid.*, p. 269.

⁷³Legnano, *de Bello*, p. 270.

⁷⁴The prince's portion was mentioned in the *ius militare* see: Gratian, *Decretum*, D.I c.10; Isidore of Seville, *The Etymologies*, trans. Stephen A. Barney, W. J. Lewis, J. A. Beach, and Oliver Berghof (Cambridge: Cambridge University Press, 2006), p. 118.

⁷⁵Legnano, *de Bello*, pp. 123-24, 269, '*Principis...potest statuere quod quilibet capiens aliquid in bello illo efficiatur dominus rerum captarum, et personam detineat doec praesentet superiori.*'

⁷⁶*Ibid.*, pp. 269-70.

⁷⁷*Ibid.*, pp. 254 & 270.

one of the most common tactics during the Hundred Years War.⁷⁸ Bouvet consented that sometimes the taking of civilian property was necessary for justice to be achieved, since non-combatants helped the unjust side with aid and supplies.⁷⁹ Not only were soldiers' goods liable to seizure but also the property of all culpable civilians. It is likely that Bouvet allowed despoilation out of contemporary military necessity. He agreed that the innocent could often suffer in war, and these actions could not be blamed in every instance.⁸⁰ Nevertheless, he seemed to have abhorred it personally and clearly forbade illicit raiding: For example, he wrote:

[soldiers should] not bear hard on the simple and innocent folk... for these days, wars are directed against the poor labouring people and against their goods and chattels. I do not call that war, but it seems to me to be pillage and robbery.⁸¹

This might seem contradictory. However, Bouvet was making a distinction between licit despoilation and illicit raiding. There were several ways to distinguish between the two. As already seen in Legnano's *de Bello*, the 'prince's portion', protected both leaders and soldiers from accusations of illegal intentions.⁸² Bouvet likewise said all spoils should be given to the king or the 'duke of battle [*duc de la bataille*]' and distributed by desert.⁸³ Bouvet also forbade the taking of plough animals.⁸⁴ Like their human counterparts, these animals were essential for the future survival of the community. Bouvet acknowledged the contemporary military necessity of raiding, but also wanted to limit it to ensure that the future peace was not threatened by these punitive actions. Although it might seem problematic to allow the victorious leaders to determine just and unjust spoilation, Bouvet was assuming that these leaders had already declared a legal war and had fought in a moral manner. Accordingly, the virtuous prince would also be able to determine what was legal and illegal spoilation. The prince was also responsible for confiscating the wages of those deemed fighting

⁷⁸Bonet, *Battles*, p. 189; C. Allmand, 'The War and the Non-Combatant', in Kenneth Fowler (ed.), *The Hundred Years War* (London: Macmillan, 1971), pp. 163-183.

⁷⁹Bonet, *Batailles*, p. 141, 'se vraiment les subjets du roy d'Angleterre lui donnent ayde et faveur pour faire guerre à l'encontre du roy de France, les François peuvent bien guerrier le peuple anglois et gaingnier de leurs biens et prendre des biens sur leur pays et ce qu'ils en pourront avoir ne ja ne sont tenus quant à Dieu de les rendre'; Bonet, *Battles*, pp. 153-154.

⁸⁰Bonet, *Battles*, p. 154.

⁸¹Bonet, *Batailles*, pp. 142, 211, 'se doivent bien garder à leur pouvoir de traiter durement les simples gens et innocens... car aujourd'huy toutes les guerres sont contre les povres gens laboureurs, contre les biens et meubles qu'ils ont. Pourquoi je ne l'appelle pas guerre mais tres bien me semble estre pillerie et roberie.'; Bonet, *Battles*, p. 154, p. 189.

⁸²Legnano, *de Bello*, p. 269.

⁸³Bonet, *Battles*, p. 134, p. 149, p. 150.

⁸⁴*Ibid.*, pp. 188-189.

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for illegal reasons like wealth or glory.⁸⁵ This again limited theft and gave a greater chance for a peaceful relationship to exist in the future.

Although different from modern punitive actions, medieval thinkers also saw the need for continued punishment after the war. They argued that the taking of property both punished the enemy and compensated the victors. Similarly, captured soldiers were not to be enslaved, but ransomed for a reasonable price. Above all, these actions had two goals: to correct both the original injustice which caused the war and the injustices committed during the conflict. However, they also wanted to ensure punitive actions did not go too far and so destroy the likelihood of peace. In this way, captives and despoilation were limited by type and ransoms were checked by individual affordability. These measures punished the enemy but still allowed the defeated nation to rebuild, preventing future war. This new relationship would be determined through fair negotiations and legally binding treaties that restored the peoples' relationship to each other and so doing, re-established peace.

Truce and Treaty Negotiation

The final stage in by *jus post bellum* is the return of the defeated nation to the international community.⁸⁶ In this period the immediate post-war relationship of reparations and reconciliation ends, with a legally binding agreement which ideally restores the status quo prior to the crimes which began the conflict.⁸⁷ These treaties redefine the aggressor state, discourage further aggression, and decentralise power away from the criminals in the goal of creating a more just country.⁸⁸ Likewise, Legnano and Bouvet both provided guidelines by which the ends of medieval conflicts were agreed and established.

The *de Bello* only slightly touched on the topic of truces and treaties. However, Legnano did demonstrate their importance through the special treatment given to ambassadors and through several examples of international relationships. Ambassadors were responsible for the important job of negotiating with former enemies.⁸⁹ Legnano described this office as requiring both tough 'labour' and 'high intellect, and knowledge' and were deserving of a high salary.⁹⁰ Having praised their

⁸⁵Legnano, *de Bello*, p. 269.

⁸⁶Orend, 'Jus post bellum', p. 124; May, *War Ends*; pp. 19-22.

⁸⁷May, *After War*, pp. 183-186; Lu, 'Reconciliation', pp. 538-552.

⁸⁸Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008), pp. 105-126, p. 108.

⁸⁹Legnano, *de Bello*, pp. 236-238.

⁹⁰*Ibid.*, p. 265.

position, Legnano demonstrated high regard for the arbitration of peace.⁹¹ He also exempted them from reprisals (punitive actions within states), indicating strict legal protection while negotiating truces and treaties.⁹² Like today, these treaties were designed to restore the status quo. Legnano provided several categories for relationships between nations including enemies, neutral nations, and allies.⁹³ Treaties would have been designed to change enemies into either neutral nations, or allies. Legnano's example of a non-aligned relationship was the Tartar Khanate, which maintained a trading relationship with the Latin west.⁹⁴ This restoration of trade would likely have been the main ambition of ambassadors outside of Christendom. However, Legnano considered the 'Roman' people as constituting one legal entity.⁹⁵ As Christians, they ought to recognise each other almost as one nation. Yet Legnano indicated this was not realistic, as not all western princes recognised the authority of the emperor.⁹⁶ However, it is likely that Legnano desired Christian nations to be allies. Within this relationship he argued that agreements of friendship ought to be made and observed to the letter.⁹⁷ These negotiated legal contracts provided the exact guidelines by which future relationships would exist. Thus, allies were not obligated to go to war with their friends unless specifically agreed to beforehand.⁹⁸ In the context of finalising peace, future relationships needed to be strictly defined by the treaty, returning sovereignty and authority to the defeated nation.

Bouvet more precisely discussed truces as a part of warfare. He defined a truce as a 'royal surety', or a promise made by the king on behalf of his followers to the temporary end of a conflict.⁹⁹ This promise signified three things, 'first, it gives surety to persons, secondly, to goods, and thirdly, to a hope of peace.'¹⁰⁰ In order to be effective, truces needed to make peace through a sealed oath holding rulers to the promise of moral intentions and the realistic abilities to stop the conflict. However, Bouvet's experience of truces was far from perfect. He claimed that all soldiers

⁹¹Ambassadors were also supposed to be paid at the beginning of their mission for maintenance and if they refused to go should give back all of the money. *Ibid.*, pp. 266, 268.

⁹²*Ibid.*, p. 319.

⁹³*Ibid.*, p. 233.

⁹⁴*Ibid.*, p. 233.

⁹⁵*Ibid.*, pp. 232-33.

⁹⁶*Ibid.*, pp. 232-33.

⁹⁷Legnano, *de Bello*, p. 258; Bouvet also made the same argument, Bonet, *Battles*, p. 137.

⁹⁸Legnano, *de Bello*, p. 258; Bonet, *Battles*, p. 137.

⁹⁹Bonet, *Battles*, p. 189.

¹⁰⁰Bonet, *Batailles*, p. 212, '*car premierement elle donne seurete aux personnes, secondement aux biens et tiercement esperance de paix*'; Bonet, *Battles*, p. 190.

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attempted 'a thousand ways of degrading their faith and their safe-conduct; so that it is very difficult to make with them a truce or safe conduct so secure that, by trickery, they do not find some flaw in it.'¹⁰¹ Medieval soldiers were portrayed as attempting to find as many ways as possible to bypass their legal obligations. He gave two specific examples of immoral ceasefires. In the first, leaders used a flag of truce to lure an unsuspecting enemy into an ambush or imprisonment.¹⁰² In the other, an army attacked a town despite a previous agreement to the contrary.¹⁰³ Both led to unjust victories and were described by Bouvet as being equal to perjury.¹⁰⁴ By not keeping faith with the enemy, the 'royal surety' could not be trusted, and put the prospects of peace into doubt. In order to stop these violations, Bouvet recommended two punishments for the breaking of truces. On the individual level, he said that anyone seizing anything over five shillings during a time of truce should be executed.¹⁰⁵ This would prevent anyone from disobeying their leaders and continuing the war without permission. On the national level, if one king broke the truce, then the other king could also legally break the truce.¹⁰⁶ Thus the benefit of a 'fake' truce would be negligible, as it would be considered an unjust action that justified another declaration of war.

The Tree of Battles also considered the protection of diplomatic envoys. In the treatise, clergy were forbidden from fighting and were primarily seen as peace makers.¹⁰⁷ For this reason, Bouvet gave those in clerical offices free and legal movement between Christian lands.¹⁰⁸ Legally, clerics represented a separate hierarchy and were able to arbitrate discussions through their neutral status.¹⁰⁹ However, because of their 'neutral' position, they could not legally represent sovereigns, thus secular officials would also need to be present in negotiations. These secular ambassadors required temporary permission to enter the opposing king's lands.¹¹⁰ Rulers were expected to

¹⁰¹Bonet, *Batailles*, p. 212, '*Si treuvent mille manieres de barater leur foy et leur saulfconduit tant que à tres grant paine peut on avoir avec eulx treves seures ne saulfconduit que par cautele ils ne trouvent en lui à dire*'; Bonet, *Battles*, p. 190.

¹⁰²Bonet, *Battles*, pp. 154-155.

¹⁰³*Ibid.*, pp. 154-155.

¹⁰⁴*Ibid.*, pp. 154-155.

¹⁰⁵*Ibid.*, p. 190.

¹⁰⁶*Ibid.*, p. 192.

¹⁰⁷*Ibid.*, p. 187.

¹⁰⁸*Ibid.*, p. 188; these included prelates, chaplains, deacons, *conversi*, hermits, and pilgrims.

¹⁰⁹However, in practice they were far from neutral during the Hundred Years War. See Rory Cox, 'The Hundred Years War and the Church', in Anne Curry (ed.), *The Hundred Years War Revisited*, (London: Macmillan, 2019), pp. 85-110.

¹¹⁰Bonet, *Battles*, pp. 161-162, pp. 164-165.

be generous, allowing permission to enter their kingdom within reason.¹¹¹ However, like truces, the allowances and protections of envoys were not always adhered to. Ambassadors were responsible for their own protection and were advised to only reluctantly trust their hosts.¹¹² If captured, the envoys could not always count on being ransomed and could be impoverished during missions.¹¹³ Bouvet also advised kings not to trust their counterparts and to not travel to other kingdoms unless absolutely necessary.¹¹⁴ In an ideal situation the kings themselves would be present, but due to dangers posited by peace negotiations, medieval treaties involved a long process of negotiation, ratification and publication between envoys and royal courts.¹¹⁵

Although Bouvet did not extend his discussion of truces to final peace treaties, he did provide guidelines for how kings should justly interact with other rulers. Bouvet characterised the ideal king as treating all matters wisely, '[able] now to do rigorous justice, another time to grant mercy, according as the time and case shall require...'¹¹⁶ Specifically, this would mean the king should be temperate to his enemies and charitable to the poor.¹¹⁷ He should also protect the Church by handing over all heretics, schismatics, miscreants and infidels to the ecclesiastical courts.¹¹⁸ During negotiations, the king would need to be slow to anger and not too light in his responses to ensure that other princes regarded him as wise with a worthy purpose.¹¹⁹ During arbitrations the king was to only act towards truth and light and not be moved by earthly persuasion.¹²⁰ In this way, peace was again determined by the sovereign and its justice was dependent on his character.

Through treaties, a just war would end in the same way it began, decided by one having no higher authority, and for the sake of peace and truth. Both Bouvet and Legnano demonstrated the importance of truces by giving special privileges to diplomatic

¹¹¹Ibid., pp. 164-165; this was similar to Gratian, *Decretum*, C.23 q.1 c.3.

¹¹²Ibid., pp. 162-163, pp. 190-191.

¹¹³Ibid., pp. 162-163.

¹¹⁴Ibid., pp. 190-191.

¹¹⁵This was best described by Pierre Chaplais, 'The Making of the Treaty of Paris (1259)' in Pierre Chaplais (ed.), *Essays in Medieval Diplomacy and Administration*, (London: Hambledon Press, 1982), p. 238; see also: Jenny Benham, *Peacemaking in the Middle Ages: Principles and Practice*, (Manchester: Manchester University Press, 2011), pp. 11-12.

¹¹⁶Bonet, *Batailles*, p. 254, '*fois faire justice rigoureuse, une aultre fois misericorde, selon que le temps et le cas le requerront...*'; Bonet, *Battles*, p. 212.

¹¹⁷Bonet, *Battles*, pp. 211-21.

¹¹⁸Ibid., p. 211.

¹¹⁹Ibid., p. 213.

¹²⁰Bonet, *Battles*, p. 212.

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envoys and by making treaties the final word of obligation between nations. Bouvet also provided a more in-depth description of negotiations including a guarantee through ‘the royal surety’ ideally providing confidence that a peace would realistically be made and kept. Finally, Bouvet also provided advice to kings, encouraging them to be wise, just, and merciful in their relationships with others. Although these tenets look different from post-war justice described today, these authors did understand the need for guidelines between war and peace and they provided various limits on combatants in order to ensure a longer lasting peace.

Conclusion

Legnano and Bouvet both had complex ideas when it came to the waging and ending of war. Several principles could be identified between these two authors. Throughout their post-war philosophy they continued to emphasise the power and responsibility of the *princeps* as the instigator towards peace, the final judge of post-war punishment and mercy, and the final authority in truces and treaties. They also argued that all actions in war (including its end) needed to be negotiated with intentions guided by the cardinal and Christian virtues. Limitations like the ‘prince’s portion’ and legal punishments for thieving soldiers practically ensured just goals were being pursued. The idea of ‘true peace’ was also present throughout these texts. The authors did not simply want the fighting to stop, they wanted relationships restored, and souls returned to God’s instructions. These texts balanced the need for justice and mercy and provided a framework by which an imperfect reconciliation was possible.

Beyond the context of this present article, Legnano and Bouvet’s work requires additional academic attention. They continued to influence writers into the fifteenth century and beyond. Most notably, large sections of Christine de Pizan’s *Fais d’armes et de chevalerie* was sourced from Bouvet (and therefore Legnano as well).¹²¹ This in turn was made popular through early printed editions by Antoine Vérard and William Caxton.¹²² Study of these authors’ influence on the work of Gentili, Grotius, and Kant would greatly add to scholarship surrounding *jus post bellum* as a whole. Further studies would also add to the history of early-modern warfare, providing greater context of past legal and moral perspectives. Finally, these authors’ intellectual theories should be compared to the actual practices demonstrated at the end of warfare, especially during the periods of their authorship. Just as warfare is a universal experience, so too is the ending of war and more needs to be understood about the legal, moral, and practical norms which have long been established throughout history.

¹²¹Charity Cannon Willard, ‘Introduction’, in Christine de Pizan, *The Book of Deeds of Arms and of Chivalry*, trans. Sumner Willard, (University Park, PA: Pennsylvania State University Press, 1999), pp. 4-6.

¹²²*Ibid.*, p. 1.