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THE CONDUCT OF JUST AND LIMITED WAR. By *William V. O'Brien*. New York: Praeger Publishers. 1981. Pp. vii, 495. \$39.95.

In an age of increasing world tension and sporadic outbreaks of international violence, William V. O'Brien's *The Conduct of Just and Limited War* is a timely reappraisal of war. O'Brien fills a void in just-war literature, summarizing modern just-war and limited-war theories and applying them to analyses of the Korean and Vietnam wars.¹ Additionally, O'Brien suggests ways in which theory can be transformed into policy initiatives to shape the dimensions of future wars.

O'Brien opens his inquiry by suggesting that any realistic analysis of war must conclude that "recourse to armed coercion is a perennial feature of the human condition" (p. 2).² He views war as the continuation of politics by other means and seeks to find ways to limit and contain it (p. 3).³ He then moves beyond the abundant literature on the subject⁴ and brings together the separate theories of just war and limited war to show their complementary nature.

O'Brien asserts that "the single, underlying requirement for the conduct of just war is that such war must be limited" (p. 38). These interrelated

1. Modern just-war theoreticians have focused primarily on World War II and the atomic bomb.

2. By logical extension, O'Brien says, any approach that would simply "wish away" war is irrelevant. P.2.

3. The only alternative view, O'Brien suggests, is to view war as inherently uncontrollable and subject only to total victory or defeat.

4. For further analysis of the just-war theory, see generally S. BAILEY, PROHIBITIONS AND RESTRAINTS IN WAR (1972); R. BAINTON, CHRISTIAN ATTITUDES TOWARD WAR AND PEACE (1960); J. DOUGHERTY & R. PFALTZGRAFF, JR., CONTENDING THEORIES OF INTERNATIONAL RELATIONS 150-54, 167-71 (1971); J. EPPSTEIN, THE CATHOLIC TRADITION OF THE LAW OF NATIONS (1935); J. JOHNSON, IDEOLOGY, REASON AND THE LIMITATION OF WAR (1975); J. JOHNSON, JUST WAR TRADITION AND THE RESTRAINT OF WAR: A MORAL AND HISTORICAL INQUIRY (1981); H. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE (3d ed. 1960); J. MURRAY, MORALITY AND MODERN WAR (1959); W. O'BRIEN, NUCLEAR WAR, DETERRENCE AND MORALITY (1967); R. POTTER, THE MORAL LOGIC OF WAR (n.d.); P. RAMSEY, WAR AND CHRISTIAN CONSCIENCE: HOW SHALL MODERN WAR BE CONDUCTED JUSTLY? (1961); P. RAMSEY, THE JUST WAR: FORCE AND POLITICAL RESPONSIBILITY (1968); Walters, *Historical Application of the Just War Theory: Four Case Studies in Normative Ethics* in LOVE AND SOCIETY: ESSAYS IN THE ETHICS OF PAUL RAMSEY (J. Johnson & D. Smith eds. 1974); Childress, *Just-War Criteria*, in WAR OR PEACE: THE SEARCH FOR NEW ANSWERS 40 (T. Shannon ed. 1980); Hartigan, *Noncombatant Immunity: Reflections on its Origins and Present Status*, 29 REV. OF POL. 204 (1967); Hehir, *The Just-War Ethic and Catholic Theology: Dynamics of Change and Continuity*, in WAR OR PEACE: THE SEARCH FOR NEW ANSWERS 15 (T. Shannon ed. 1980). For further analysis of the limited-war doctrine, see generally B. BRODIE, STRATEGY IN THE MISSILE AGE (1959); S. DEITCHMAN, LIMITED WAR AND AMERICAN DEFENSE POLICY (1964); H. KISSINGER, NUCLEAR WEAPONS AND FOREIGN POLICY (1957); R. MCCLINTOCK, THE MEANING OF LIMITED WAR (1967); R. OSGOOD, LIMITED WAR (1957); R. OSGOOD, LIMITED WAR REVISITED (1979); R. OSGOOD & R. TUCKER, FORCE, ORDER, AND JUSTICE (1967); Garnett, *Limited "Conventional" War in the Nuclear Age*, in RESTRAINTS ON WAR: STUDIES IN THE LIMITATION OF ARMED CONFLICT (M. Howard ed. 1979).

concepts, he says, can provide both bases for analysis of past wars, and goals for future wars (p. 71).

The analysis begins by tracing the roots of just-war doctrine from its origins in the work of St. Thomas Aquinas and natural law⁵ to twentieth-century philosophers and positive law.⁶ It is here that just-war doctrine has its primary roots (pp. 4-5). O'Brien acknowledges a third source, Christian theology, but contends that the church's just-war doctrine is primarily natural law, albeit natural law of a special kind (p. 15).⁷

Having identified the roots of just-war theory, O'Brien divides his analysis into two parts: permissible recourse to war, and just conduct in war. In this accomplishment O'Brien's book is particularly useful.

The first inquiry, whether a nation has permissible recourse to war, depends upon three elements. Recourse to war is permissible when an authority competent to wage war on behalf of the entire nation exists within it,

5. For analysis of the influence of the theology on war, see generally AQUINAS: SELECTED POLITICAL WRITINGS (A. D'Entreves ed. 1948); R. BAINTON, *supra* note 4; J. BENNETT, FOREIGN POLICY IN CHRISTIAN PERSPECTIVE (1966); C. COOPER, THE LOST CRUSADE (1970); E. DE Vattel, THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW APPLIED TO THE CONDUCT AND TO THE AFFAIRS OF NATIONS AND OF SOVEREIGNS (1916); J. EPPSTEIN, *supra* note 4; L. McREAVY, PEACE AND WAR IN CATHOLIC DOCTRINE (1963); PATTERN FOR PEACE: CATHOLIC STATEMENTS ON INTERNATIONAL ORDER (H. Flannery ed. 1962); R. NIEBUHR, CHRISTIANITY AND POWER POLITICS (1940); H. ROMMEN, THE NATURAL LAW: A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY (1947); J. TOOKE, THE JUST WAR IN AQUINAS AND GROTIUS (1965); L. WALTERS, FIVE CLASSIC JUST WAR THEORIES: A STUDY IN THE THOUGHT OF THOMAS AQUINAS, VITORIA, SUAREZ, GENTILI, AND GROTIUS (1971) (unpublished dissertation Yale University).

6. See, e.g., Charter of the Organization of American States, T.I.A.S. No. 2361 (1948); European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222 (1955); Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31 (1950); Geneva Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, T.I.A.S. No. 8062; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 57, T.I.A.S. No. 3365, 75 U.N.T.S. 287 (1950); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 (1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *adopted by the Conference* June 8, 1977, UN Doc. A/32/144, 16 I.L.M. 1391 (1977); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *adopted by the Conference* June 8, 1977, UN Doc. A/32/144 (1977), 16 I.L.M. 1442 (1977); Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, T.I.A.S. No. 8061, 94 L.N.T.S. 65 (1929); Hague Convention IV Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539; Treaty for the Renunciation of War, Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796, 94 L.N.T.S. 57 (1929).

7. The teachings of Christ, O'Brien suggests, are primarily addressed to conduct of the individual. They are, therefore, not directly applicable to war between nations. P. 15. Further, O'Brien says that theological thought is difficult to separate from the other elements of the theories of St. Thomas and the Scholastics. P. 15. He concludes that Scholastic just-war thought should be viewed as natural law "elevated" by "the perspectives of Christians benefiting from Christ's teaching[s]." As support, he cites theological acceptance of Scholastic teachings on just war. P. 15.

when the nation has "just cause,"⁸ and when the nation possesses "right intentions"⁹ (pp. 16-36). Of the three requirements for permissible recourse to war, "just cause" is the most difficult to define because it involves substantive evaluation of a nation's claim of right. In general, O'Brien says, a cause is just if a country's fundamental values or way of life are endangered (p. 21).¹⁰

The second requirement of just war, just conduct in war, requires using only military force *proportionate to political objectives* and avoiding intentional attacks on noncombatants and nonmilitary targets (pp. 38-55). Although one or more of these specific elements may be more important than the others, they form a comprehensive whole (pp. 35-36).

O'Brien then moves beyond familiar policies of military necessity and minimum destruction¹¹ and applies his criteria to contemporary examples. After illustrating the concepts of the just-war model through case analysis of World War II, and the Korean and Vietnam wars, he concludes that all three wars properly met just-war criteria (p. 331).

In light of the political limits of O'Brien's case analysis, one wonders whether his American viewpoint partially distorts his vision. Analysis of the wars is objective and detailed; but, the conclusions do not always logically follow. For example, O'Brien notes that "[g]iven the dispute over the U.S. compliance with [permissible recourse to war] conditions, satisfactory compliance with the [just conduct] requirements becomes essential if the United States is to be judged to have engaged in a just war in Vietnam" (p. 98) and concludes that the just conduct record is "sufficiently good to qualify for just-war status if the [permissible recourse to war] conditions are adequately met" (p. 125). With this somewhat circular reasoning, O'Brien concludes that the Vietnam war was a just war (p. 331). Another inconsistency in the case analysis is O'Brien's treatment of World War II. He claims in theory that, "[t]he single, underlying requirement for the conduct of just war is that such a war must be limited" (p. 38), but finds in practice "that the total-war efforts against Germany and Japan met the just war conditions sufficiently to qualify these wars as just." (p. 87). This is consistent provided political objectives measure the parameters of permissible violence, but one may then well wonder how such a standard really constrains the military conduct of powers totally dedicated to the purposes of their warmaking.

In addition to analyzing conventional war in terms of just-war doctrine, O'Brien also undertakes the ambitious goal of making sense of the threat of nuclear war. In perhaps the most controversial of his theories, O'Brien sug-

8. The means of pursuing this just cause must be proportionate to the right asserted, p.16. See note 10 *infra*.

9. Right intention means simply that the motivation for war is limited to the vindication of the right that is the basis of the just cause, pp. 33-34.

10. Readers interested in assessing the merits of particular claims of "just cause" may be disappointed in O'Brien's treatment of it. For the most part, just-cause examples in his book are of attempts on the part of the U.S. to preserve democratic values in the face of fascist or communist encroachment, such as World War II, p. 72, and the Korean and Vietnam Wars, pp. 87, 91.

11. See, e.g., M. McDUGAL & F. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION 520-31 (1961).

gests that under certain conditions, a limited exchange of nuclear weapons can meet just-war criteria (p. 129). O'Brien, a self-professed realist, grapples with moral inconsistencies and notes that the nuclear deterrent provides a source of stability and peace in the world, but is itself beyond any possible justification (p. 341). Realizing that the deterrent may one day fail, O'Brien examines limited nuclear attack as an option which may potentially limit the havoc wreaked on humanity.

O'Brien also examines the limited-war concept itself. The value of the limited-war concept is its utility in formulating a goal of proportionality between good and evil resulting from the war (p. 225). O'Brien successfully blends the various theories into unified guidelines on limited war.¹² His admittedly inexhaustive guidelines suggest such measures as maintaining political control over military means, limiting objectives and applying means proportionate to the objectives, imposing voluntary rules of conduct, developing flexible responses, and avoiding escalation (pp. 222-23). Focusing on the need to develop flexible responses, O'Brien says that the United States has an immediate moral duty to develop a range of alternative responses which enable it to counter aggression ranging from minor conventional skirmishes to all-out nuclear war (pp. 354-56). In concluding this prescriptive section, the author adds that the restrictions of just and limited war must be self-imposed, regardless of the behavior of others (pp. 330-31).

The Conduct of Just and Limited War raises many uncomfortable issues. It addresses the collective and individual consciences of society and its members and urges questions that must be asked about war. O'Brien's book reinforces the view that war, an inevitable political resort, can and must be dealt with in moral terms if the destructive capability of modern warfare is to be controlled. Through thoughtful implementation of limited-war guidelines, nations may be less likely to conduct unjust wars (p. 348).¹³ What the author cannot entirely dispel is the dreadful risk that formalizing the logic which justifies the use of modern weapons may reinforce the demands for war — never considered dispassionately and deliberately, even by the best of leaders — with an impressive but superficial analytic rigor. One ventures the guess that very few people have died in wars believed to be unjust by those responsible for them.

12. The principal works on the subject are those of Osgood, Kissinger, Brodie, Halperin, and Deitchman, *supra* note 4.

13. The book is copiously documented and includes an extensive bibliography.