

Renegotiation of the Just War Tradition and the Right to War in the Twenty-First Century, Cian O'Driscoll (New York: Palgrave Macmillan, 2008), 244 pp., \$85 cloth.

This book is more limited in scope than its title suggests. To indicate its scope more specifically, Cian O'Driscoll might have added such a subtitle as: "The Iraq War as an Anticipatory War, a Punitive War, and a Humanitarian War." Published in April 2008 and completed presumably no later than 2007, the book focuses on the moral justifications proffered by President George W. Bush and Prime Minister Tony Blair for the 2003 invasion of Iraq. Three of the book's six chapters are devoted respectively to their "three primary justifications for this invasion" (p. 18)—namely, that it was an anticipatory war (chap. 2), a punitive war (chap. 3), and a humanitarian war (chap. 4). The first chapter summarizes the historical context, and the fifth and sixth chapters explore the import of these moral justifications for just war theorizing. In particular, in accordance with the book's focus, the sixth chapter—"The Right to War after Iraq"—studies the moral debate within the just war community about the 2003 invasion. Central to the book is the question of whether that invasion had a just cause, whereas other *jus ad bellum* questions—for example, about proportionality and last resort—are peripheral.

O'Driscoll's book is most valuable as a study of pertinent literature. Speeches by Bush and Blair, and the 2002 document *The National Security Strategy of The United States of America*, are examined extensively. Writings by Jean Bethke Elshtain, James Turner Johnson, and Michael Walzer are

emphasized, but numerous other contemporary writings are also considered. In addition, there are discussions of classical just war theorists, including Aquinas, Augustine, Grotius, Vattel, and Vitoria. The main text is preponderantly devoted to the study of these writings. Quotations abound.

Consider, for instance, the book's treatment of anticipatory war. The first half of the second chapter, although primarily concerned with Walzer's view about that subject in *Just and Unjust Wars*, also surveys the views of Thucydides, Cicero, Gentili, Bacon, Hobbes, Pufendorf, Grotius, and Vattel. The second half of the chapter recounts the views of Bush and Blair. At the end of the chapter, O'Driscoll cogently concludes that "in many ways, Bush and Blair's thoughts regarding when a threat justifies the right to [anticipatory] defense are quite close to Walzer's position of sufficient threat" (p. 49). Subsequently, a main section in the sixth chapter surveys responses to Bush and Blair's views about anticipatory war by a variety of contemporary just war theorists. Indeed, the 2003 invasion of Iraq occasioned a vigorous moral debate about the subject of anticipatory war, and O'Driscoll's purpose is to study that debate. However, he does not himself engage in substantial analysis of or argument about the justice or injustice of anticipatory war. In general, he "is not concerned to pronounce upon the justice (or lack thereof) of the invasion of Iraq" (p. 6).

Concentrating on pertinent literature, O'Driscoll is often successful in clarifying

the terms of the moral debate in the just war community about the 2003 invasion. Most significantly, he examines the question of whether there should be a moral presumption against war. To illustrate affirmative answers to this question, he quotes from the highly influential 1983 pastoral letter of the National Conference of Catholic Bishops: “a ‘presumption against war’ must stand at the ‘beginning of just war thinking’ today” (p. 75). To illustrate negative answers to the question, he discusses at length the notable just war historian James Turner Johnson’s contention that instead there should be a “presumption against injustice” (p. 77). Most likely, he concludes, “these two competing discourses will continue to exist side-by-side, as two different approaches to the idea of the just war” (p. 147).

What is lacking, however, is an investigation of the concepts of moral presumption and burden of proof. Let me sketch one way that such an investigation might proceed. Drawing upon the ethical theory of W. D. Ross, the concept of presumption would be understood in terms of the notion of the *prima facie*. Accordingly, the moral presumption against war would be construed as one of the *prima facie* duties of nonmaleficence—namely, the *prima facie* duty not to resort to the destructiveness of war. And the moral presumption against injustice would be construed as one of the *prima facie* duties of beneficence—namely, the *prima facie* duty to prevent grievous injustices. Therefore, instead of being in irreconcilable competition, these two moral presumptions would be reconcilable in particular circumstances by means of a process

of moral weighing or balancing. Even in particular circumstances where the moral presumption against injustice has greater weight, there would still be the burden of proving that the moral presumption against war may be overridden.

On the basis of his study of the moral debate about the 2003 invasion of Iraq, O’Driscoll concludes that “the [just war] tradition may be fairly depicted as moving toward a broader [more permissive] *jus ad bellum* than was typical throughout the latter half of the twentieth century” (pp. 162–63). Concomitantly, there is a “tendency towards a denial of the *jus in bello*” (p. 88). However, it is dubious whether the future course of the just war tradition can be projected meaningfully on such a limited basis. The book does not discuss the comparable case of Afghanistan. It does not discuss the occupation of Iraq and the consequent counterinsurgency operations. That occupation and those counterinsurgency operations have also occasioned moral debate within the just war community, as have the occupation of and counterinsurgency operations in Afghanistan. Arguably, in this moral debate we can discern a countertendency toward an affirmation of the *jus in bello* principle of noncombatant immunity, and a less permissive view about the right to war.

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