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# Obeying Orders: Atrocity, Military Discipline & the Law of War

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Luddite, self-assurance that tomorrow will look just like today.

JAN VAN TOL  
*Captain, U.S. Navy*



Osiel, Mark J. *Obeying Orders: Atrocity, Military Discipline & the Law of War*. New Brunswick, N.J.: Transaction, 1999. 398pp. \$39.95

It is a fundamental belief of thoughtful military personnel that what they do, even in the heat of battle, remains a moral enterprise. This important and careful volume critically assesses an important legal pillar of that belief: that moral soldiers are to obey only *lawful orders*. It is often said that soldiers are expected to disobey unlawful orders, especially those ordering atrocities or violations of the laws of war. Since Nuremberg, it is held that “superior orders” do not constitute a defense against charges of war crimes. Osiel makes it abundantly clear that these nostrums are far from certain or legally reliable as presently understood.

Mark J. Osiel is a professor of law at the University of Iowa and the author of *Mass Atrocity: Collective Memory and the Law* (Transaction, 1999). He knows whereof he speaks: he has interviewed extensively the perpetrators and the victims of Argentina’s “dirty war,” and his grasp of the relevant literature (legal, philosophical, and military) on the subject of obedience is capacious.

With care and precision, the author challenges the present standard, which requires soldiers to disobey orders that are “manifestly” illegal. This standard, he argues, is fraught with unclarity and is far too permissive of illegal acts in war.

The book is much more than a dry legal treatise about a point of law. Osiel writes with real passion and breadth. He includes important chapters on the psychology of small military units and the requisites for their cohesion and combat effectiveness. He is careful throughout to acknowledge the limitations of law as a constraint on combat behavior. He argues with zeal for the legal and practical possibility of doing better than the present legal standard in encouraging moral responsibility in officers and soldiers. In the end, Osiel transcends the genre of legal analysis entirely, grounding his ethical appeal in the very nature and basis of the military profession itself. He is Aristotelian when he closely links moral conduct in war with the virtues that define excellence in the profession of arms itself.

In addition, Osiel is helpful in a practical sense. He suggests how best to use Judge Advocate General advisers on military staffs, and he offers concrete examples of subordinates who, faced with unclear orders (deliberate or otherwise), managed by means of requests for clarification to avoid committing war crimes.

Osiel dissects the various ways in which atrocities are committed: “(1) by stimulating violent passions among the troops (‘from below’); (2) through organized, directed campaigns of terror (‘from above’); (3) by tacit connivance between higher and lower echelons, each with its own motives; and (4) by brutalization of subordinates to foster their aggressiveness in combat.” Since the causes are diverse, each type will require its own unique approach to control it; but Osiel’s overall point is profound: “The evidence examined here suggests that effective prohibitions against atrocity depend much less on the foreseeability to soldiers of criminal prosecution after the fact

than on the way soldiers are organized before and during combat.” In other words, *post-facto* law enforcement is only one tool, and not a powerful one at that, in the struggle to prevent atrocities and war crimes.

It is this breadth of treatment that lifts Osiel’s discussion far above stereotypical legal analysis and makes it a truly significant contribution to the literature of military professionalism and military ethics. *Obeying Orders* connects the moral argument deeply to the professional commitments of soldiering. Members of the military profession should be encouraged to exercise their ethical judgment over as wide a scope as possible within the functional requirements of military effectiveness and efficiency.

It would be a shame and a mistake if only military and civilian lawyers chose to read this profound meditation on the moral foundations of soldiering itself. Informed by military practicality, and respectful of the possibilities of deepening and widening the highest senses of military professionalism, *Obeying Orders* is the first book on professional ethics that a seasoned officer ought to read.

MARTIN L. COOK  
*Professor of Ethics*  
*U.S. Army War College*



Smith, George W. *The Siege at Hue*. Boulder, Colo.: Lynne Rienner, 1999. 195pp. \$49.95

George W. Smith has provided an excellent historical summary of the battle of Hue, based on his personal experience as an information officer assigned to the 1st Division of the Army of the Republic of (South) Vietnam (ARVN), and on after-action reports, articles, and

interviews. The book highlights the complexities and dynamics of conducting military operations in urban terrain, particularly in a combat environment.

Hue had been the imperial capital of Vietnam, and it was the country’s cultural and intellectual center. It was South Vietnam’s third-largest city, strategically located in the country’s narrowest part, near the coast. One of the few cities where until 1968 there had been no U.S. combat presence, it was virtually undefended and consequently a lucrative target for the North Vietnamese army and the Viet Cong.

The battle of Hue was the largest single engagement of the Vietnam War. It lasted from 31 January to 25 February 1968 and (not counting civilian deaths) claimed 5,713 casualties on both sides. Smith describes the battle as a classic joint and combined operation. The city was divided into two areas of responsibility, with the South Vietnamese army assigned the mission of retaking the northern portion and the U.S. Marines that of regaining control south of the Perfume River.

The urban conditions in Hue were comparable to those of Dodge City in the American “Old West.” Some buildings had wooden fronts, porches, and sidewalks; the streets were narrow, and buildings were densely concentrated. In the middle of Hue, however, was a virtually impregnable fortress known as the Citadel, with towers, ramparts, moats, concrete walls, and bunkers. The walls were twenty-six feet high and in some sections forty feet thick. The moat was ninety feet wide at many points and up to twelve feet deep. The Imperial Palace, another enclave within Hue, was surrounded by a twenty-foot wall.