A Historical Perspective on Selective Conscientious Objection

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DURING the past six years the question of selective conscientious objection (SCO) has been addressed by a National Advisory Commission on Selective Service, by the Supreme Court, and by numerous legal scholars, political philosophers, and religious ethicists. For the most part, the contemporary debate concerning SCO has been carried on without explicit reference to discussions of SCO by the classic just-war theorists.[1] The few documents which cite the just-war tradition have arrived at apparently contradictory conclusions.

[1] The following are among the most important recent analyses of the SCO question (documents are listed in chronological order by year and in alphabetical order within each year): *In Pursuit of Equity: Who Serves When Not All Serve?* Report of the National Advisory Commission on Selective Service (Washington, D.C.: U.S. Government Printing Office, 1967), esp. pp. 48-51; James Finn, ed., *A Conflict of Loyalties: The Case for Selective Conscientious Objection* (New York: Pegasus, 1968); Edward LeRoy Long, Jr., *War and Conscience in America* (Philadelphia: Westminster Press, 1968), pp. 106-120; William V. O'Brien, "Selective Conscientious Objection and International Law," *Georgetown Law Journal* 56 (June, 1968), 1080-1131; Ralph Potter, "Conscientious Objection to Particular Wars," in *Religion and the Public Order*, No. 4, edited by Donald A. Giannella (Ithaca, N.Y.: Cornell University Press, 1968), pp. 44-99; Paul Ramsey, "Selective Conscientious Objection," in *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1970), pp. 91-137; Michael Walzer, "Conscientious Objection," in *Obligation: Essays on Disobedience, War and Citizenship* (Cambridge, Mass.: Harvard University Press, 1970), pp. 120-145; Kent Greenawalt, "All or Nothing at All: The Defeat of Selective Conscientious Objection," in *The Supreme Court Review: 1971*, edited by Philip B. Kurland (Chicago: University of Chicago Press, 1971), pp. 31-94; John A. Rohr, *Prophets Without Honor: Public Policy and the Selective Conscientious Objector*, Studies in Christian Ethics (Nashville: Abingdon Press, 1971); U.S. Supreme Court, *Gillette v. United States* and *Negre v. Larsen et al., U.S.* [*Supreme Court*] *Reports* 401 (October Term, 1970), 437-475 (case decided March 8, 1971); David Malament, "Selective Conscientious Objection and the *Gillette* Decision," *Philosophy and Public Affairs*, I (Summer, 1972), 362-386. For further bibliography see Rohr, *Prophets*, pp. 185-188. While many of the documents listed above refer to the just-war tradition in general terms, discussion of the theorists' views on the specific issue of SCO occurs only in the writings of Long, Rohr, and Malament, and in Justice Douglas's dissent from the majority decision in *Negre v. Larsen*.

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Perhaps the most striking instance of divergence in interpreting the tradition occurred in 1971. John Rohr, in his important study entitled *Prophets Without Honor,* advanced the thesis that, according to the Catholic just-war tradition, conscientious objection to a particular war is seldom a moral obligation.[2] On the other hand, Supreme Court Justice William O. Douglas appealed to the tradition in support of a somewhat different view. Basing his position on a brief prepared by John Noonan and colleagues,[3] Justice Douglas dissented from the majority opinion in the SCO-case *Negre v. Larsen,* arguing that, according to Vitoria and other authorities, "a Catholic has a moral duty not to participate in unjust wars."[4]

The aim of this essay is to survey in systematic fashion the views of the classic just-war theorists concerning SCO. Such an overview will serve to supplement present-oriented discussions of SCO by providing a historical perspective. It may also help to explain seeming contradictions in the interpretation of the just-war tradition.

The essay itself is divided into three parts, which correspond to three major questions discussed by the classic just-war theorists themselves:

1. What is the citizen's presumptive duty, to obey a summons to participate in warfare or to abstain from participation?
2. Under what circumstances, if any, is SCO morally justified?
3. Should governments make legal provision for conscientious objectors to particular wars?

Two clarifications are in order before we examine the first of these three questions. The theorists chosen for inclusion in the survey have been selected on the basis of two criteria: (1) they are regarded by historians of international law and the just-war tradition as the most representative, creative, and influential just-war theorists; and (2) their writings explicitly discuss the question of SCO. On the basis of the first criterion, the large number of theorists in the western tradition can be limited to approximately eight: Cicero, Augustine, Gratian, Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius.[5] The second criterion excludes Cicero and suggests major concentration on the writings of Vitoria, Suárez, and Grotius, who analyzed the SCO issue most extensively and systematically.

[2] Rohr, *Prophets,* pp. 109-123.

[3] Richard Harrington; Leigh Athearn; Stuart J. Land; and John T. Noonan, Jr., *Negre v. Larsen: Reply Brief on Behalf of Petitioner* (Supreme Court, October Term, 1970, No. 325).

[4] *Gillette v. United States, U.S. [Supreme Court] Reports 401* (October Term, 1970) 470-471.

[5] For evidence on this point see Robert Regout, *La doctrine de la guerre juste . . .* (Paris: A. Pedone, 1934), pp. 79-93, 152-185, 194-230, and 274-278; Joachim von Elbe, "The Evolution of the Just War in International Law," *American Journal of International Law* 33 (1939), 667-669, 674-680; and Arthur Nussbaum, *A Concise History of the Law of Nations,* revised edition (New York: Macmillan, 1953), pp. 10-16, 79-114.

The second preliminary clarification concerns the precise purpose of the essay. In intention at least, the present study concentrates on historical rather than normative ethics. It seeks to examine and compare the views and arguments of several ancient experts, all of whom understood themselves to be within the just-war tradition. A historical gulf separates us from even the most recent of these theorists, Hugo Grotius, who died in 1645. If one recalls that the musket and improved cannons were the ultimate weapons in Grotius' day, that most seventeenth-century soldiers were either professionals or mercenaries, and that the prevalent pre-modern form of government was monarchical, one begins to sense the depth of that gulf.[6] This historical distance does not render the views of the classic theorists either invalid or irrelevant. It does suggest, however, that any effort to apply their thought concerning SCO to twentieth-century ethical decision-making must take into account a rather significant hermeneutical problem.

The Citizen's Presumptive Duty

The first question asked by most just-war theorists was *whether* resort to war is ever morally justified. Phrased in the most general terms, their answer was: The prince is permitted to resort to war only as a last resort, after all non-military means of settling a dispute have been tried and have failed. In other words, the prince's *prima facie* duty was to abstain from war.[7]

One might expect the theorists to have argued, analogously, that the presumptive duty of the subject or common citizen was to avoid military action. Generally speaking, however, they did not so argue. In the opinion of most just-war theorists, the prince's decision to wage war carried sufficient moral weight to reverse the presumption. Thus the majority view was that if the prince called to arms, the subject's *prima facie* duty was to obey and participate in warfare. In short, the burden of proof lay with the selective objector.[8]

[6] For an attempt to reconstruct the historical setting of sixteenth- and seventeenth-century just-war thought see LeRoy Brandt Walters, Jr., "Five Classic Just-War Theories: A Study in the Thought of Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius" (Ph.D. dissertation, Yale University, 1971) pp. 205-213, 219-269.

[7] Thomas Aquinas, *Summa theologiae* (ST), II-II, 40, 1, objections and answer; Francisco de Vitoria, *De jure belli* (DJB), prolog, 1, and 60; Francisco Suárez, "*De bello*" (DB), I, 1; IV, 1, 5, and 7 (the disputation "On War" is part of the treatise on charity in the work entitled *The Three Theological Virtues*); Alberico Gentili, *De jure belli* (DJB), I, 5 (pp. 27-30); I, 13 (p. 58); I, 17 (p. 79); and Hugo Grotius, *De jure belli ac pacis* (JBP), I, 2, 1-9; II, 24, 8-10. Unless otherwise noted, all citations from the writings of Vitoria, Suárez, Gentili, and Grotius refer to the Classics of International Law (CIL) translations of their works. The CIL volume on Suárez bears the title *Selections from Three Works*.

[8] See, for example, Vitoria, DJB, 25, 31; Suárez, DB, VI, 8-9. The late John Courtney Murray reasserted this majority view in his essay "War and Conscience," in *A Conflict of Loyalties*, pp. 26-27; see also Paul Ramsey, "Can a Pacifist Tell a Just War?" *Just War*, pp. 274-275.

The theoretical foundations for the majority position were laid by Augustine and Thomas Aquinas. In his work *Contra Faustum* Augustine had written:

> A just man, even if he fights under a sacreligious king, can lawfully fight when the king commands it—as serving the order of peace—if it is certain that what he is commanded to do is not opposed to the precept of God or if it is not certain whether or not it is opposed to the divine precept. Thus the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent.[9]

This quotation from Augustine found its way into the canon law in the twelfth century and exerted a significant influence on the subsequent just-war tradition.[10]

Although Thomas Aquinas did not explicitly discuss the question of conscientious objection to warfare, he did turn critical attention to an analogous life-and-death issue, namely, the dilemma of an executioner who is ordered by a judge to kill an innocent man.

> He that carries out the sentence of the judge who has condemned an innocent man, if the sentence contains an inexcusable error, he should not obey, else there would be an excuse for the executions of the martyrs: if however it contains no manifest injustice, he does not sin by carrying out the sentence, because he has no right to discuss the judgment of his superior; nor is it he who slays the innocent man, but the judge whose minister he is.[11]

Thomas's example was also cited frequently by later just-war theorists.[12]

Two sixteenth-century Spanish moral theologians, Vitoria and Suárez, most clearly articulated the majority position on the citizen's presumptive duty. In the first place, they argued that the subject had no moral obligation to investigate the cause of a war; rather, he could participate in good conscience provided that the war was not clearly unjust.[13] Vitoria, in fact, distinguished various degrees in the responsibility-to-know. He clearly asserted the duty of the prince, senators, petty rulers, and members of the royal council to examine carefully the alleged grounds for going to war. With typical candor Vitoria explained why ordinary subjects did not share in the same responsibility:

[9] *Contra Faustum*, 22, 75; cited by Gratian in the *Decretum*, Pt. II, C. 23, qu. 1, c. 4 (Friedberg edition, I, col. 893; author's translation).

[10] Frederick Hooker Russell, "The Medieval Theories of the Just War according to the Romanists and Canonists of the Twelfth and Thirteenth Centuries" (Ph.D. dissertation, Johns Hopkins University, 1969), pp. 211, 277, and 340, n. 61; Vitoria, DJB, 31; Suárez, VI, 8; Gentili, DJB, I, 25 (p. 125); and Grotius, JBP, II, 26, 4, 3.

[11] ST, II-II, 64, 6, ad 3 (Dominican Fathers' translation).

[12] See, for example, Vitoria, DJB, 22 and 31; Suárez, DB, VI, 8; and Grotius, JBP, II, 26, 4, 9.

[13] Vitoria, DJB, 22 and 25; Suárez, DB, VI, 8. Gentili added: "It is not for subjects to inquire too curiously which side took up arms with the better right" (DJB, I, 25 [p. 126; CIL translation]).

> Other lesser folk who have no place or audience in the prince's council or in the public council are under no obligation to examine the causes of war but may serve in it in reliance on their betters. This is proved, first, by the fact that it is impossible and inexpedient to give reasons for all acts of state to every member of the commonalty. Also by the fact that men of the lower orders, even if they perceived the injustice of a war, could not stop it, and their voice would not be heeded. Therefore, any examination by them of the causes of a war would be futile. Also by the fact that for men of this sort it is enough proof of the justice of war (unless the contrary be quite certain) that it is being waged after public counsel and by public authority. Therefore no further examination on their part is needed.[14]

The majority position on the citizen's presumptive duty was also apparent when Vitoria and Suárez discussed the problem of doubtful cases. Both theorists agreed that as long as the justice of a war was in doubt, the subject was morally obligated to participate.[15] The primary justification for this position was a lesser-of-two-evils, consequentialist argument. If the citizen obeyed his prince in a doubtful cause, Vitoria and Suárez noted, he merely fought with an uncertain conscience. If, on the other hand, the soldier refused to fight merely because of doubts concerning the justice of a war, he exposed his nation to disaster. As Vitoria put it, "The State would fall into grave peril and the door would be opened to wrongdoing."[16] Suárez added that if subjects disobeyed in doubtful situations, "It would be impossible for princes to defend their rights, and this would be a serious and general misfortune."[17]

There was, however, a minority strain in the just-war tradition which, if it did not reverse the citizen's presumptive duty, at least severely qualified it. The most systematic spokesman for this minority view was the Dutch theorist, Hugo Grotius. In full awareness that he was challenging traditional assumptions, Grotius attacked three pillars of the majority position.

First, Grotius at least implied that potential participants in actions which involve the taking of human life should investigate the situation before taking part in such actions. Alluding to an analogous case which had often been cited to support the opposite view, Grotius commented:

> . . . It is probable that even the executioner, who is going to put a condemned man to death, should know the merits of the case, either through assisting at the inquiry and the trial or from a confession of the crime, in such a degree that it is sufficiently clear to him that the criminal deserves death.[18]

[14] Vitoria, DJB, 25 (CIL translation).

[15] Vitoria, DJB, 31; Suárez, DB, VI, 8 Suárez did stipulate, however, that if the arguments against the justice of a war significantly outweighed the arguments in its favor, the subject was bound to investigate the matter further (DB, VI, 9).

[16] DJB, 31 (CIL translation).

[17] DB, VI, 9 (CIL translation).

[18] JBP, II, 26, 4, 9 (CIL translation); see n. 11 above.

Grotius also differed with his distinguished predecessors on the question of secrecy in wartime. As noted, above, Vitoria and Suárez had argued that expediency often prevented a prince from making public the reasons for his war-policies. Grotius' retort bordered on cynicism:

> Although this may be true of persuasive causes, it is not true of justifiable causes, which ought to be clear and open and, further, should be such as may and ought to be openly set forth.[19]

To this response Grotius appended a polite pragmatic warning: the prince who cannot clearly explain the cause of a war may discover that his skeptical soldiers lack enthusiasm for the war-effort.[20]

Finally, in perhaps his boldest departure from tradition, Grotius launched a frontal assault on the majority view concerning doubtful cases. He began by resurrecting the opinion of Adrian, a Dutch theologian, who had stipulated that in cases of doubt the subject should abstain from war. Without unequivocally adopting Adrian's position, Grotius indicated strong sympathy for it.[21] But Grotius went a step further: He stood the traditional lesser-of-two-evils argument on its head. As we have noted, Vitoria and Suárez had argued that in doubtful cases it was morally safer to fight than to risk betraying one's country. Grotius described the moral dilemma differently and came to the opposite conclusion:

> *Disobedience* in things of this kind, by its very nature, is a lesser evil than *manslaughter*, especially than the slaughter of many innocent men.[22]

In summary, according to the majority view in the classic just-war tradition, the citizen's presumptive duty was to obey his prince's call to arms. The primary reason for this presumption against SCO was the theorists' concern for the preservation of the state as a viable agent of justice. Grotius, on the other hand, was the chief spokesman for a minority view which, if it did not reverse the presumption in favor of obedience, at least seemed to provide an expanded theoretical basis for SCO.

The Justification of Selective Conscientious Objection

A presumption against SCO is precisely not an absolute prohibition of SCO. Implicit in the term "presumption" is the possibility that other considerations will override the presumption. Thus, it is not surprising that several of the major just-war theorists discussed the *Grenzfall*, the situation in which the *prima facie* duty to follow one's prince to war was transcended or reversed.

[19] JBP, II, 26, 4, 5 (CIL translation).

[20] JBP, II, 26, 4, 6-7.

[21] JBP, II, 26, 4, 4-8. Adrian, who late in life became Pope Hadrian VI, had expressed his view in a work entitled *Quaestiones quodlibeticae*, II; both Vitoria (DJB, 30-31) and Suárez (DB, VI, 9) had explicitly rejected Adrian's argument.

[22] JBP, II, 26, 4, 5 (CIL translation; italics added).

Generally speaking, the architects of the just-war tradition adopted the standard natural-law position on the question of disobedience to political authority. One of the major theorists, Thomas Aquinas, gave classic expression to the natural-law view in his treatise on law, as well as in numerous other passages of the *Summa theologiae*. Although Thomas did not explicitly relate his analysis of disobedience to the issue of military service, he set clear ethical limits on the citizen's general obligation to obey temporal rulers.

> Man is bound to obey secular princes insofar as this is required by the order of justice. Wherefore if [the prince] . . . commands what is unjust, his subjects are not bound to obey him, except perhaps accidentally, in order to avoid scandal.[23]

The later theorists applied this general doctrine of justifiable civil disobedience to the specific problem of participation in war. Without exception they regarded SCO as a possible response to the call to military service. In the case of Suárez and Gentili the SCO-option was described in rather perfunctory fashion. Suárez noted that if the justice of a war was "extremely doubtful," the subject was morally obligated to investigate the situation before participating. In addition, Suárez implied that SCO was justified if the injustice of a war was "clear," "evident," or "manifest."[24] Gentili, an English contemporary of Suárez, observed that no soldier could be held legally accountable for fighting in an unjust war. Apparently not entirely satisfied with this juridical solution, Gentili went on to acknowledge that a subject could offend in the internal forum of conscience by participating in a war which he knew to be unjust.[25]

It was left to Vitoria and Grotius, however, to provide a more thoroughgoing analysis of the grounds for SCO. Both theorists clearly regarded selective objection as a moral obligation in certain circumstances. In the writings of both, subjective as well as objective factors were taken into account.

The objective prerequisite for SCO was a clearly-unjust war. Grotius was content to state this condition in a single sentence:

> If those under the rule of another [i.e., subjects] are ordered to take the field, as often occurs, they should altogether refrain from so doing if it is clear to them that the cause of the war is unjust.[26]

Vitoria, on the other hand, explained the objective grounds for SCO in somewhat greater detail. His most comprehensive statement concerning SCO was formulated in the following terms:

> If the injustice of a war is clear to a subject, he ought not to serve in it, even on the command of his prince. This is clear, for no one can authorize the killing of an innocent person. But in the case before us the enemy are innocent. There-

[23] ST, II-II, 105, 6, ad 3 (Dominican Fathers' translation).
[24] DB, VI, 8-9.
[25] DJB, I, 25 (p. 126).
[26] JBP, II, 26, 3, 1 (CIL translation).

> fore they may not be killed. Again, a prince sins when he commences a war in such a case. But "not only are they who commit such things worthy of death, but they, too, who consent to the doing thereof" (Romans 1:32). Therefore soldiers are not excused when they fight in bad faith. Again, it is not lawful to kill innocent fellow-citizens at the prince's command. Therefore not foreigners either.[27]

In elaborating his position on SCO Vitoria sought to clarify the meaning of "clear injustice" and to emphasize the citizen's responsibility-to-know.

> . . . The proofs and tokens of the injustice of war may be such that ignorance would be no excuse even to the subjects who serve in it. This is clear because such ignorance [on the part of subjects] might be deliberate and adopted with evil intent toward the enemy.[28]

A passage in Vitoria's commentary on the *Summa theologiae* of Thomas Aquinas helped to dramatize the definition of deliberate ignorance:

> If the ignorance is crass and, so to speak, wilful, it does not serve as an excuse. Accordingly, I hold that if there are indications that a war is not just, — [if, for example,] I am in doubt, but close my eyes, saying, "What do I know of the matter?" because I feel affection for my king — then I will not be acquitted of sin.[29]

To clinch his point that the citizen had a responsibility to recognize and avoid obvious moral evil, Vitoria cited three historical precedents which would undoubtedly have made a deep impression upon his Spanish audience. If subjects were not responsible for participating in the injustice of their leaders, he declared, then

> [Moslem][30] unbelievers would be excused when they follow their leaders to war against Christians. . . . Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be excused. In addition, the Jewish mob would be excused, which was led by the elders to shout "Away with Him, crucify Him."[31]

[27] DJB, 22 (CIL translation; slightly revised on the basis of comparison with the Latin original.)

[28] DJB, 26.

[29] *Commentary* on the *Summa theologiae* of Thomas Aquinas, II-II, 40, 8; translated by Gwladys L. Williams in James Brown Scott, *The Spanish Origins of International Law*, Vol. I: *Francisco de Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934), p. cxix (translation slightly revised on the basis of comparison with the Latin original).

[30] Vitoria's general position was that Indian subjects often fought because of invincible ignorance; he did not usually extend such tolerance to Moslem soldiers. Compare the relatively mild prescription§ of the *De Indis* with the rather harsh measures countenanced in DJB, 26, 48, and 60.

[31] DJB, 26 (slightly revised on the basis of comparison with the Latin original). Gentili cited an additional example of a clearly-unjust war; in his opinion, "The [Latin American] Indians were not blameless in fighting for a king who made war unjustly' (DJB, I, 25 [p. 126]). Note also Thomas Aquinas' view that the executioners of the martyrs were morally responsible for their actions (see n. 11 above).

The subjective prerequisite for SCO was a citizen's conviction that a war was unjust. According to Vitoria, such a belief was sufficient to justify SCO, regardless of whether the war was in fact just or unjust. In his words,

> . . . Subjects whose conscience is against the justice of war may not engage in it, whether they be right or wrong. This is clear, for "whatever is not of faith is sin" (Romans 14:23).[32]

Writing about seventy-five years after the death of Vitoria, Hugo Grotius reiterated and endorsed Vitoria's view.[33]

In summary, several of the major just-war theorists discussed the circumstances in which SCO was morally justified. There was general agreement among the theorists that no citizen was obliged to participate in a war that was clearly unjust. Vitoria and Grotius added two refinements to this general consensus. They asserted unequivocally that the subject had a moral duty *not* to take part in a clearly unjust war. Second, according to Vitoria and Grotius, a citizen's sincere conviction that a particular war was unjust obligated him to abstain from military participation.

Legal Provision for Selective Conscientious Objectors

When we look to the classic just-war tradition for statements concerning SCO and the law, we find that the major theorists wrote comparatively little on the issue. A partial explanation for this relative silence is that the just-war theorists concentrated primary attention on the spheres of morality and international law rather than on the provisions of domestic or intranational law. In the case of the later theorists, the silence can also be traced in part to military recruitment practices of their times. Virtually all soldiers in armies of the sixteenth and seventeenth centuries were volunteers, who fought either as professionals in national standing armies or as mercenaries ready to offer their services to the highest bidder.[34] In a context where voluntary participation in military service predominated, the problem of legal provision for SCO was understandably somewhat less acute.

Of the theorists discussed in this essay, only Hugo Grotius explicitly considered how the state should deal with the question of selective conscientious objection. He recommended that administrative procedures be established to insure that no citizen—whether pacifist or selective objector—would be compelled to participate in war against his conscience. Concretely, he proposed that a special tax should be levied on selective objectors.

[32] DJB, 23.

[33] JBP, II, 26, 3, 5.

[34] Lynn Montross, *War Through the Ages* (New York: Harper & Row, 1944), pp. 204-205, 266-267; cf. Walters, "Five Classic Just-War Theories," pp. 207-209.

> . . . If the minds of subjects cannot be satisfied by the explanation of the cause of a war, it will by all means be the duty of a good magistrate to impose upon them extraordinary taxes rather than military service, particularly where there will be no lack of others who will serve.[35]

At no point did Grotius clearly state the warrant for this policy-recommendation. One can perhaps surmise that the logic of his just-war position impelled him to seek institutional arrangements which would make possible the kind of discriminating ethical judgments which he advocated. In addition, however, one finds evidence that Grotius had been sensitized to the problem of SCO by the experience of contemporary Christian conscientious objectors and by pacifistic emphases within traditional Christian ethical thought. In the passage immediately following his discussion of official provision for SCO, Grotius wrote:

> . . . Even if there can be no doubt respecting the cause of war, still it does not seem at all right that Christians should be compelled to serve against their will; the reason is that to refrain from military service, even when it is permissible to serve, is the mark of somewhat greater holiness, which was long demanded from ecclesiastics and penitents, and recommended in many ways to all other persons.[36]

To summarize, the question of legal provision for SCO was largely ignored by the classic just-war tradition. Grotius, however, recommended the establishment of administrative machinery to accommodate the moral convictions of the selective objector.

In conclusion, we return to two points raised in the introduction to this essay. The apparent disagreement between John Rohr and Justice Douglas seems, in light of the foregoing historical survey, to be readily understandable. Rohr is certainly correct in arguing that, according to the Catholic just-war tradition, SCO is seldom a moral obligation. As we noted in the first part of this essay, the major Catholic theorists accepted the citizen's presumptive duty to go to war and treated conscientious objection to military service as a *Grenzfall*, or limiting-case. However, Rohr fails to accord due emphasis to Vitoria's clear statement that in certain circumstances SCO becomes a moral duty.[37] Justice Douglas, on the other hand, accurately reflects the viewpoint of Vitoria when he asserts that "a Catholic has a moral duty not to participate in unjust wars."

[35] JBP, II, 26, 5, 1 (CIL translation; punctuation slightly revised); cf. JBP, II, 26, 5, title.

[36] JBP, II, 26, 5, 2 (CIL translation). For a discussion of Grotius' relationship to contemporary Dutch pacifists see Walters, "Five Classic Just-War Theories," pp. 253-255, 283-284.

[37] My criticism is not that Rohr's interpretation of the Catholic just-war tradition is incorrect, but rather that it is one-sided. To illustrate, on p. 112 of *Prophets Without Honor* Rohr quotes Vitoria's "third proposition" concerning SCO (DJB, 25). However, he does not cite Vitoria's "first proposition" and "fourth proposition" (DJB, 22 and 26), both of which clearly assert that SCO can become a moral obligation (see nn. 27 and 28 above).

As the second part of this essay has demonstrated, Vitoria unequivocally asserted the citizen's obligation to avoid any collaboration in military injustice. Two other facets of Vitoria's thought remain unmentioned in the dissent of Justice Douglas, however—Vitoria's emphasis on the citizen's presumptive duty to obey and his insistence on subjective or objective certainty concerning the injustice of a war.

The divergent conclusions of Rohr and Justice Douglas serve as an additional reminder of the complexities involved in any effort to interpret or update the just-war tradition. This hermeneutical problem has at least three dimensions. First, within a single theorist—for example, Vitoria—differing tendencies and emphases appear which the would-be interpreter must hold in tension. In the second place, on certain issues there is a lack of consensus within the tradition. Such internal contradictions virtually compel the modern interpreter to choose one view—perhaps the majority view—and to reject others. Finally, the contemporary interpreter must seek to apply an ancient tradition to a situation characterized by post-monarchical forms of government, military conscription in wartime, and highly-sophisticated weapons of destruction. In short, it is difficult, but possible, to reconstruct what the major just-war theorists said about SCO within their varied historical contexts. What their views mean for our own attempt to think through an ethic of war and peace is much less clear.[38]

[38] I wish to thank Professors Charles E. Curran and James F. Childress for their helpful comments on an earlier version of this article.