

The Morality of the Bloodstained Spear:
Declaring the Just War

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Abstract: Nations rarely declare war. For many international law scholars and just war theorists, the declaration of war is a moribund tradition that serves no important moral purpose. When declarations of war are defended, the argument is situated in the war powers debate about executive authority. In contrast, I argue that declaring war—making conditional and reasoned moral demands—continues to be an important requirement for just wars. States should declare war because states should make explicit (formal) moral demands before fighting. First, declaring war is procedurally important because it ensures that a state makes a formal moral case. Similar to arguments about the judicial system, the targets of war, even just wars, have a right to confront their accusers and dispute their moral claims. While not a panacea, requiring states to declare war is a significant improvement on the ad hoc politics of wartime justification that plagues modern discussions of war. Second, declarations of war, as ultimatums, are the only reasonable interpretation of the traditional ‘last resort’ requirements in just war theory. Finally, declarations of war are important to set consistency tests between states’ actions during war and their stated purposes at the outset.

I.

Most discussions of the Melian dialogue give too little credit to the Athenian generals. The facts are reasonably well known. The Athenians want Melos to side with Athens against Sparta. Melos refuses but promises to remain neutral in the coming conflict. The Athenian generals say no; if Athens allows Melos to remain neutral, it will encourage sedition and revolt among other cities under Athenian domination. Modern just war theory takes these discussions as emblematic of an unjust cause for war. Melos, in asserting its right to remain neutral, was innocent and the Athenians had no recourse to a just claim for intervention. However, the Athenian generals do something right. They provide a reasoned and conditional statement of their intention for war. They explain why war is necessary and provide Melos with an opportunity to meet their demands. They meet an old and often forgotten requirement for public reasoning about war: war should be declared, conditional, and reasoned. Declarations are not sufficient to ensure justice in war. In cases such as the Athenian assault on Melos, if the cause is not just, no declaration can make it so. But, the declaration itself is morally important and too often overlooked.

Nations rarely declare war. Since the end of the Second World War, the United States has not declared war, despite military interventions in Iraq, Afghanistan, Korea, Vietnam, Grenada, Libya, Panama, and elsewhere. This is not a new trend. The United States did not formally declare war in the Quasi-War (1798), in pursuing operations against Tripoli (1802) or Algeria (1815), or in the wars against Native Americans throughout the 18th and 19th centuries.¹ This trend is also not unique to the United States. Sir John Frederick Maurice's classic study on declarations of war between 1700 and 1870 found that only ten of 117 wars were declared by

¹ On the history of American declarations of war, see Ernest Klun (ed.). 2002. *Declarations of War*. New York: Novinka Books; and Francis Wormuth and Edwin Brown Firmage. 1986. *To Chain the Dog of War: The War Power of Congress in History and Law*. Dallas: Southern Methodist University.

European powers or the United States, leading Alexander Hamilton to note that “the ceremony of a formal denunciation of war has of late fallen into disuse” by the European powers.² And, years before Hamilton’s birth, when Grotius was making the case for declarations of war in *De Jure Belli et Pacis*, he was resisting a current of undeclared wars such as the Spanish-Dutch war, Sweden’s undeclared entry into the Thirty Years War, and Spain’s 1588 attempted invasion of England.³

Declarations were once of incredible importance for moral reasoning about war. In *De Officiis*, Cicero writes, “no war is just, unless it is entered upon after an official demand for satisfaction has been submitted or warning has been given and a formal declaration made.”⁴ The Roman practice involved an elaborate ceremony in which the *collegium fetialium* (priests) sent an envoy to make demands against enemies. After their return, if the issue was not settled by discussion in 33 days, the *fetiales* and the Senate would agree on the course of war. Afterward, a formal declaration was issued, mythologically, by throwing a bloodstained spear into enemy territory.⁵

Declarations are no longer considered important for morality in war. Michael Walzer’s influential *Just and Unjust Wars*, for example, pays declarations of war little to no attention, and when the declaration requirement is mentioned in other texts, it is generally glossed over.⁶ Those who do discuss declarations usually do so with reference to is the competent authority to decide upon war. In the Just War tradition, Grotius ties the importance of declarations of war to the

² Maurice, Sir John Frederick. *Hostilities without War: An historical abstract of the cases in which hostilities have occurred between civilized powers prior to declaration or warning, from 1700 to 1870* (London: Her Majesty’s Stationary Office, 1883), 4. *The Federalist Papers*. (New York: Bantham Books, 1982) (No. 25, Alexander Hamilton) 123.

³ Michael Ramsey. 2002. “Textualism and War Powers.” *The University of Chicago Law Review*. 69: 2, 1574-5.

⁴ Cicero. *De Officiis*. Translated by Walter Miller. Cambridge: Harvard University Press, 1913), 39.

⁵ Watson; Arthur Nussbaum. 1943. “Just War: A Legal Concept?” *Michigan Law Review*. 42: 3, 454-5.

⁶ For an exception, see Paul Christopher. *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*. Englewood Cliffs: Prentice Hall, 1994), 91-93.

importance of sovereign authority; those that engage in violence without the sanction of a legitimate authority are like “pyrats and robbers.”⁷ Recent treatments of the declaration of war provision concur. One consistent feature of discussions of declarations of war, from Brian Orend’s Kantian inspired defense of just war theory to religious conceptions, is that declarations are not defended as morally important in their own right, but through their connection to the idea of legitimate authority.⁸ This is especially true in the U.S. legal context, where the notion of legitimate authority is intimately tied to the War Powers debate.⁹

This paper, in contrast, argues that a public and formal declaration of war is a necessary condition for a war to be just. The arguments for justice advanced here are separate from the arguments often deployed in defense of declaration of wars. I do not argue that declarations are important for a functioning democracy (although I agree with the sentiment), nor do I argue that a requirement that states declare war may make war less likely by forcing executives to expend political capital to force a declaration through reluctant legislatures. Rather, in any reasonable interpretation of just war theory, an undeclared war is often simply unjust.

The purpose of the just war tradition, if traditions have purposes, is to develop a vocabulary that enables moral discrimination between defensible and indefensible acts of war. The claim I make here is slightly different from these traditional arguments, although I later show its connection to them. It is not enough to fight a morally defensible war; *we have an*

⁷ Grotius

⁸ Brian Orend. 1999. “Kant’s Just War Theory.” *Journal of the History of Philosophy*. 37: 2, 346-7; Brian Orend. 2000. “Michael Walzer on Resorting to Force.” *Canadian Journal of Political Science*. 33: 3, 533; and United States Catholic Conference. “The Challenge of Peace: God’s Promise and Our Response: The Pastoral Letter on War and Peace,” in *Just War Theory*, ed. Jean Bethke Elshtain (New York: New York University Press, 1992), 98. See also Laurie Calhoun, “Legitimate Authority and ‘Just War’ in the Modern World,” *Peace and Change* 20 1(2002): 39-41.

⁹ The literature on the interpretation of the Declare War clause is vast; for a representative sample see Charles Lofgren. 1972. “War-Making under the Constitution: The Original Understanding.” *The Yale Law Journal*. 81: 4. 672-702; William Treanor. 1997. “Fame, the Founding, and the Power to Declare War.” *Cornell Law Review*. 82, xxx; John Yoo. 1996. “The Continuation of Politics by Other Means: The Original Understanding of War Powers.” *California Law Review*, 84, xxx. For an exception, see Hallett, Brian. 1998. *The Lost Art of Declaring War*. Urbana: University of Chicago Press.

obligation to morally defend the wars we fight in an appropriate way. Declarations of war, I argue in the next section, are important instruments to make a moral defense and to separate moral argumentation from political and legal reasoning.

There are two reasons for the obligation to defend one's actions. The first argument, advanced in sections three and four, is procedural. The refusal to declare a war properly is akin to making oneself a judge in one's own case: a traditional procedural injustice. The second argument, in section five, is substantial. Many criteria for the moral defensibility of a war (last resort, proportional, legitimate authority, the rules of war, the justness of the settlement) are conditioned by the reasons that a state goes to war. Here I concentrate on last resort as an example of a *jus ad bellum* consideration and civilian casualties (double effect) as an example of a *jus in bello* issue.

II.

Centuries of changing legal practice have left the form and function of “declarations of war” ambiguous.¹⁰ The following argument not only makes the moral case for declarations of war, but posits that only specific forms of declarations meet our moral burdens. My intent is to develop a theory of declarations of war that preserves the aspects of moral reasoning inherent in deciding on war, separating moral reasons from legal and political reasoning. The moral reasoning captured in a declaration of war explains a state's moral justifications (just cause) for fighting while providing avenues to avoid conflict (a moral requirement for justly fighting a war). Normally, by way of contrast, declarations of war, or more often informal cases for war, include political and legal reasoning. The U.S. intervention in Iraq in 2003, for example, was justified through legal reasoning (violations of U.N. Security Council resolutions), political

¹⁰ Stephen Neff (2005). *War and the Law of Nations: A General History*. Cambridge: Cambridge University Press, 104-111.

reasoning (U.S. strategic interest in democracy), and moral reasoning (self-defense and the protection of human rights). I show below that the conflation of legal, political, and moral reasoning creates a host of problems for retrospective judgments about the moral case for interventions. Here, I sketch how declarations make a moral case for fighting, not a legal or political case.

A just declaration of war is a *public, reasoned, and conditional statement of intent to engage in war for just cause*: a statement of the grievances that one state has with another, providing avenues for redress of those grievances, and explaining that otherwise war will result. A declaration of war is public if it is announced to the target state, its public, and the public within the declaring community. This clause will become important in sections three and four. By conditional, I mean that the declaration must explain the cause of the war and provide avenues through which the offending state can redress those grievances, along with a reasonable time period for doing so.¹¹ Conditionality will be important in the argument concerning last resorts.

By reasoned, I mean that the statement of intent must provide the target state with reasons in the declaration. Reasons are the moral wrongs committed by the target state that justify war, along with a moral defense of war that weighs these grievances against the crime of war. If these reasons are just cause for war, then the declaration is justly reasoned. This concept of “reasoned” is slightly different from Brien Hallett’s requirement that declarations be “fully reasoned.”¹² Hallett argues that declarations of war are only fully reasoned if they establish cause, competence, weight of justice, right intentions, proportionality, and that war was a last resort. By Hallett’s definition, requiring that declarations only reference the moral grievance (just

¹¹ Grotius, III, 1, 6.

¹² Hallett *Lost Art*.

cause) means that declarations are not “fully reasoned”; therefore, I refer to Hallett’s more inclusive requirement as “fully reasoned” and my more limited version as “reasoned.”

Ideally, a declaration is part of a two-step process leading to war. First, the declaring nation issues an imperative conditional declaration that threatens war unless its just demands are met. The second step is a clear statement that the period for voluntary redress of grievances has expired and war has begun: this is a descriptive declaration that clarifies the transition from a conditional declaration to a state of war.¹³ During the Iraq War, for example, this standard would be met if the United States issued an Authorization for the Use of Force (AUMF) that only included a description of the moral grievances the United States had with Iraq’s conduct and a set of measures that Iraq might take to redress these grievances to avoid war. If the time period expires and Iraq has not met its demands, then Congress could issue a formal declaration of war. In practice, neither of these steps were taken. The AUMF includes demands that barely pass muster as reasonable, let alone reasonable moral demands (ties to al-Qaeda and so on) and the United States did not declare war.

One might object that a formal written statement of the conditions for war is unnecessary because states now make oral cases for war that include conditional demands. In Iraq and Afghanistan, for example, the Bush administration made a public case for war that included conditional demands: inspections, renouncing of terrorism, evicting al-Qaeda fighters (especially bin Laden), and protecting human rights. Michael Walzer points out that this is not unique to the Bush administration; George H.W. Bush, and more recently, Barak Obama, have also used the rhetoric of “just war.” Walzer described the readiness with which we justify our wars as a

¹³ This definition is similar to that produced by the Second Hague Conference: “The contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or an ultimatum with conditional declaration of war.” (In Clyde Eagleton. 1938. “The Form and Function of the Declaration of War.” *American Journal of International Law*. 32: 1, 19-35).

triumph for the just war ethic.¹⁴ Why is writing down a declaration as part of a legal document morally important if states so frequently justify their wars through oral argument?

Written declarations preserve a record of the moral case, serving as a basis for reasoning about moral claims. At present, war is justified in an *ad hoc* manner. War is a tremendously consequential decision, and political elites tend to justify war to their public and the international community with reasons just, unjust and, in some cases, just plain stupid. James Madison, for example, justified the War of 1812 through just causes (impressments of U.S. sailors), unjust causes (the conquest of Canada, political gain), and idiotic assertions (Indian conspiracies).¹⁵

Mixed motives for war are unavoidable. After executives make the decision that war is necessary, they will always craft the most promising public case. Sometimes, this process of public justification is not blameworthy. If one felt that an unpopular intervention in Congo was necessary to end a ethnic cleansing, mass rape, and large-scale violence, then we might not fault an executive for selling the intervention to a reluctant public by citing a non-moral case (security, diamonds, and so on). This devious non-moral case only becomes problematic in instances where it becomes so intermingled with the moral case for war that the non-moral case either is either the “true” reason for intervention or taken to be the true reason by the negotiators during pre-war diplomacy.¹⁶ Both of these problems occurred during the War of 1812. Madison was not animated purely by impressments to fight the British, but also to gain territory in Canada and to win a political struggle in the United States. Moreover, during the bungling diplomacy (by both sides of the dispute), non-moral concerns were cited as insurmountable roadblocks to avoiding war, preventing war as a last resort over moral issues.

¹⁴ Michael Walzer (2004). *Arguing about War*. New Haven: Yale University Press, 10-12.

¹⁵ George Herring (2008). *From Colony to Superpower: U.S. Foreign Relations since 1776*. Oxford: Oxford University Press, 123-5; and J.C.A. Stagg (1983). *Mr. Madison's War*. Princeton: Princeton University Press, 5-11.

¹⁶ The non-moral case, if instrumentally used for moral purposes, may fail a test of democratic reason within the state, but create no issues for justice between states.

Declarations of war, in contrast, provide a vehicle for separating the moral case for war from the legal and political case by isolating moral grievances. By stipulating the moral harm caused by a target state, declarations serve a valuable purpose by highlighting moral reasoning, making it public, and ensuring that moral cause is remembered throughout the course of the conflict. Moreover, declarations serve this purpose while allowing executives to continue to sell wars as they always have: through the assertion of mixed motives. If another formal and written route meets the requirements of being a public, reasoned, and conditional statement of intent (e.g., Authorization for the Use of Military Force), then it is effectively a declaration of war. The phrase “declare” is not significant in the argument that follows.

III.

Declarations of war are intended to address the hazards of morality in an anarchic system, in which there is no fair and impartial justice system to address the moral demands that communities make on one another. At present, there are two approaches to resolving the problems of morality in anarchy. On the one hand, there is a ‘judicial’ model of judgment in war, where the legitimate authority to decide whether a war is justified resides in some form of international organization. On the other hand, critics of the judicial model, who find impartial international justice unrealistic, use just war theory to create moral guidelines that communities should take into account when making decisions on war and peace. I refer to this as the state-centric model because it leaves moral judgments to individual communities.

The argument for is intended to steer a middle course between these positions. First, a theory of just declarations works toward a solution to the problem of fairness and impartiality concerning war, without violating the tenets of a ‘realist’ theory of international relations. Before developing this middle ground, I briefly discuss the state-centric and judicial models to

demonstrate the need for a middle ground somewhere between *realpolitik* and world government.

The state-centric theory of judgment in just war stems from the origins of international law in Rome. In Roman (and contemporary) civil law, a breach of contract enables civil suit by the injured party through the legal system. Similarly, in relations between states, violations of rights empower the injured to seek compensation. The difference between civil and international justice lies not in the cause of dispute, but in the process of adjudication. Domestically, an independent third party (a judge) makes a judgment; in international politics, every party acts “both as judge and party in its own cause.”¹⁷ The lack of a higher power to serve as a neutral arbiter over and above Latin cities means that is no judge, save Jupiter, to evaluate the justice of claims.¹⁸ These state-centric images of moral judgment relate to contemporary theories of realism in international politics. In the absence of a world state, there is no higher authority is capable of rendering decisions considered legitimate and binding by all parties, especially when a state’s security is at stake. States, therefore, remain the judge, jury, and executioner in their own cases.

There are moral and practical reasons to emphasize state-centric theories of moral judgment rather than international organizations or courts. Morally, there may be reasons that every state why be permitted to make decisions related to self-defense. If political leaders are obliged protect their community, then they cannot rightly renounce control over the decision of

¹⁷ Frederick H. Russell. 1975. *The Just War in the Middle Ages*. Cambridge: Cambridge University Press, 5.

¹⁸ The doctrine that the state, or the prince, is a judge in its own case spans the history of international law. Francisco de Vitoria, a founder of international law and influential figure in the Salamanca School, explains, “a prince who wages a just war acts the part of the judge in the contention which is the cause of war.” This is because the judicial model is impossible: “if a private individual when he has no other redress is permitted to seize what he is owed from his debtor, then a prince may do so too.” 304-5. On Grotius’ view, see James Turner Johnson. 1984. “Historical Tradition and Moral Judgment: The Case of Just War Tradition.” *Journal of Religion*. 64: 3, 308.

what to do in the face of existential threats. I do not pursue this line of argument because the practical concerns are overwhelming.

Practically, there are reasons to suspect that any alternative to the state-centric model (e.g., world government) is unlikely and that states' responsibility to make judgments in their own cases will be an enduring feature of international politics. Hans Morgenthau's realist critique of international law and organizations suggests three reasons why decisions about justice in war resist being handed over to independent entities. First, without an international police force capable of overwhelming states, strong states will always resist international demands.¹⁹ Second, it is unclear how to develop an independent panel of arbiters that would have binding jurisdiction in the world of states. The specifics of international law and the composition of international judiciaries privilege powerful states (i.e., western states with advanced economies). Furthermore, judicial rules rarely leave international judges fully independent of the nations that appoint them.²⁰ Finally, for these reasons, few important issues (pertaining to security) have been handed over to independent arbitration.²¹

These three features of the realist position—the state system precludes an effective international law enforcement power, it is hard to make such a power impartial, and states do not transfer war-making powers—create three principles that any realistic approach to the institutionalization of public reason must be compatible with. Institutionalization of a norm that states should declare war does not violate any of these principles. A state that declares war does

¹⁹ Morgenthau 508-512.

²⁰ *Ibid.*, 453. 447. The claim of partiality is supported by Erik Voeten's research on the European Court of Human Rights. International judges, on balance, are impartial, but are very partial when security issues are at stake. Erik Voeten. 2008. "The Impartiality of International Judges: Evidence from the European Court of Human Rights." *American Political Science Review*. 102: 4, 427-8.

²¹ Morgenthau, *Politics* 452.

not transfer sovereignty, rely on an international law enforcement power, and does not presuppose an impartial decision-making body.²²

Many critics of the state-centric vision of just war note that if the realist worldview were true—states retain the right to be judge, jury, and executioner in their own cases—then traditional just war theory is impossible and therefore a court model is unavoidable.²³ One traditional element of just war theory is that a legitimate authority must declare war. Whereas the realist view may describe power politics before 1945, there has been a steady shift toward the creation of new centers of legitimate authority in international organizations, such as the United Nations, the International Court of Justice, and regional security alliances. The result is that states have conceded the right to determine justice in their own cases. Different authors in this tradition cite different legitimate authorities: for example, the Security Council in the case of Iraq, and the North Atlantic Treaty Organization (NATO) in the case of Kosovo.²⁴ While neither organization is perfectly impartial, they are ‘legitimate’ repositories of the sovereign right to make war. Others go further, pointing to institutional reform or the creation of new institutions that are more democratic and more likely to make legitimate decisions.²⁵

Underlying these concerns about legitimate authority, I suspect, is the concern that one cannot be party, judge, jury, and executioner in one’s own case. Realism denies the possibility of

²² I return to the question of enforcement in the final section.

²³ E.g. Calhoun

²⁴ See, for example, Chris Dolan. 2005. *In War We Trust: The Bush Doctrine and the Pursuit of Just War*. Burlington: Ashgate, 86-101; Dale T. Snauwaert. 2004. “The Bush Doctrine and Just War Theory.” *OJPCR: The Online Journal of Peace and Conflict Resolution* 6:1, 131; Emily Schroeder. “The Kosovo Crisis: Imperative versus International Law.” *Fletcher Forum of World Affairs*. 28: 185-186; and Harry van der Linden. 2007. “Just War Theory and U.S. Military Hegemony.” In *Rethinking the Just War Tradition*, eds. Michael Brough, John Lango and Harry van der Linden. Albany: SUNY Press, 68. For an overview of this argument, see John Coverdale. 2004. “An Introduction to the Just War Tradition.” *Pace International Law Review*. 16: 248-255.

²⁵ See, for example, Allen Buchanan and Robert Keohane (2004). “The Preventive Use of Force: A Cosmopolitan Proposal.” *Ethics & International Affairs* 18:1, pp. 1-22; and Ian Holliday (2002). “When is a cause just?” *Review of International Studies* 28. 557-575.

justice because it encourages states to make self-interested decisions regarding war and peace, relying on the language of justice to camouflage dark intentions. Without an independent agency to render impartial decisions, there is no fairness; and, without fairness, there is no justice. Without the expectation for impartiality, an international society capable of employing the language of justice as a brake on naked power politics is impossible. If this suspicion is right, then legitimate authority is important insofar as it connects to fair and impartial judgments about decisions related to war and peace.

This concern for fairness in reference to ‘legitimate authority’ is a significant advance in just war thinking. Traditionally, the requirement of legitimate authority sought to guarantee that sovereigns made decisions on matters of war, not to ensure that decisions on war and peace were fair. In the medieval tradition, this implied that just wars should be divinely sanctioned; for later secular theories, it meant that non-state actors (rebels) could not legitimately declare war.²⁶ Changing the ‘legitimate authority’ provision to apply to an international organization has significant consequences for its status in just war theory. The creation of legitimate authorities that are of this world and transnational marks the shift toward the use of a ‘court model’ for the evaluation of *jus ad bellum* claims. No longer is legitimacy premised on divinity or sovereignty, but on fairness and equality.

The problem with the judicial model, unfortunately, is that, for the moment at least, it is not realistic. Any reasonable model that attempts to transfer the states’ *decision-making* regarding war and peace violates the tenets of realism. Realism belies the possibility of an international court. States will retain their sovereignty over security decisions. Even if states were willing to submit, it is unlikely that independent third parties could be found; questions of war and peace invoke the interests of so many parties that neutral judges are rare. This problem

²⁶ Augustine, Grotius, Aquinas, Vitoria.

is compounded by an embarrassment of institutions. Different states, knowing that different institutions may rule differently, may claim different fora as legitimate contenders to hear grievances. Even if states cede the right *de jure* to an international institution made up of third parties, it is unlikely that the institution would have sufficient force to enforce its solutions.

IV.

The challenge for just war theory, if it wants to assert the importance of impartiality, is to do so without relying on institutional solutions that require decision-making by independent third parties. How do we develop a fair and impartial system of justice in international politics without fair and independent courts, like in the domestic realm? The argument of this section is two-fold. First, we can distinguish between a strong and a weak interpretation of the principle of impartiality. The strong interpretation, which is conventional, maintains that justice requires impartial (independent) decision-making. The weak interpretation, advanced here, instead posits that justice, in international politics, implies that states are not permitted to reserve the right of *moral* judgment (as opposed to legal judgment) in their own case. Second, the weak norm that states should declare war meets the demands of a weak interpretation of justice as fairness.

The sense of justice developed in this section is procedural. A traditional injustice is taking the right to judge in one's own case: *nemo debet esse iudex in propria causa*. This moral and democratic principle is a cornerstone of society. Letting an individual judge her own case gives that person the power to make arbitrary and self-interested decisions. While I do not develop the argument, the intuition of fairness that guides our theories of judgments within

societies is historically at the heart of international law.²⁷ It is also an important principle in most reasonable arguments about the moral and political justification of decisions.²⁸

Advocates of the judicial model often advance the importance of justice as impartiality in its strongest form. The strong interpretation holds that actors should never make enforceable decisions in disputes where their rights or well-being is concerned. Within the state, this intuitive interpretation finds solid footing; judges and legislators are supposed to recuse themselves if their own interests are at stake because judgments should be rendered by disinterested third parties. In international politics, this strong interpretation finds traction in the claims discussed in the previous section; an international body is necessary to ensure that the behavior of strong states is not arbitrary and capricious. If the strong interpretation were the only reasonable interpretation of the principle of justice, then just war theory is in trouble for the reasons discussed earlier. A strong interpretation of justice requires strong norms capable of overriding state interests.

In contrast, a weak interpretation of justice posits that communities should not claim the sole right to make a *moral* decision on a dispute where its rights are at issue. There are multiple audiences who have a right to make moral judgments of a state's foreign policy: its public, the target state and its public, and the rest of the international community (including third party states, IOs, and other transnational actors). A state cannot right refuse to enable these audiences to render a judgment on the moral defensibility of a war. There, it is obligated to make a moral case that is public: sincere, inspectable, and not subject to change based on political or legal

²⁷ Bin Cheng (2006). *General principles of law as applied by international courts and tribunals*. Cambridge: Cambridge University Press, 279-289; and Thomas Franck. (1995). *Fairness in International Law and Institutions*. New York: Oxford University Press.

²⁸ Here I do not review the literature related to this principle, frankly, because I believe that few moral or political doctrines would deny it. Some version is present in liberalism and republicanism, and deliberative and representational theories of democracy.

circumstance. This is weak because, unlike the strong interpretation, it does not require that these moral judgments determine the course of policy. However, it does require states to publicly explain their reasons for war; to make a formal case.

Declaring war by giving the moral reasons meets this weak interpretation. A reasoned and conditional statement of intent makes a case to the target, its public and the international community. It provides a written record of a state's reasons for fighting and enshrines a clear moral case for *causus belli*. The refusal to declare war, by contrast, is a refusal to grant others the right to sit as judges over a state's decision. This refusal is akin to the barring the accused from confront their accusers in a courtroom, removing the right of self-defense through argument. Cicero made a similar argument: "there are two ways of settling a dispute; first, by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion."²⁹

There are two paradigmatic cases where this refusal smoral problems. First, in the War of 1812, the Madison government did not make a clear threat to the British; the U.S. decision to initiate a war was a surprise. The British government had made important concessions on the two clear causes of war—they limited the impressments of American sailors and rescinded the hated Orders in Council trade restrictions—but news had yet to reach Washington. It also surprised the American public; few knew of the gravity of the situation. When news of concessions on legitimate American grievances finally reached Washington, Madison did not end the war; the confused case for war, which cited unreasonable concerns alongside reasonable trade and naval concerns, left Madison free to soldier on.³⁰ Madison's refusal to make the case for war clear to

²⁹ Cicero, *De Officiis* 37.

³⁰ Donald Hickey. 1989. *The War of 1812: A Forgotten Conflict*. Urbana: University of Illinois Press, 42-3.

the British government—both moral grievances and their seriousness—is a refusal to explain to the British government that it is on trial and a refusal to enable compensation.³¹

The decision by the United States to attack Iraq is very close like that of 1812. The United States issued an Authorization to Use Military Force that includes three pages of demands: weapons of mass destruction, defiance of international law, repression of its population, the attempted assassination of George H.W. Bush, harboring terrorism, and, to finish, a demand for regime change. This list of demands is not as absurd as first seems; the overall case is that the Hussein regime is mobilizing resources and has a manifest intent to injure the United States. If both of the claims are right, then the United States has a legitimate case for a preemptive military strike.³² If either is wrong, then the war is, at best, questionably legal.

Like the War of 1812, the United States did not limit itself to establishing legitimate moral grievances that were redressable. The Hussein regime, as a result, did not believe that making concessions on weapons inspections would be sufficient to stop the U.S.-led invasion. The Iraq Study Group reports that in 2002 and early 2003, Hussein thought that an attack was inevitable.³³ He was right; Tony Blair recently claimed that even if Iraq had no WMD, he would have supported the invasion of Iraq because of widespread hostile intent.³⁴ Blair's admission confirms many judgments of U.S. policymakers: demands for WMD made publicly were only one of the grievances cited against the Hussein regime and war would occur if other conditions, especially regime change, were not met.³⁵ The result of this free-for-all process was a situation in

³¹ The text of the declaration is one of the shortest in American history. It simply declares war; it does not outline a set of grievances. Counterfactually, one wonders whether, if the declaration stipulated the just moral grievances, and then news arrived that the British had already made those concessions, whether war would have been averted.

³² See Walzer 1977 on this criteria.

³³ Cite here

³⁴ John Burns and Alan Cowell. "Citing 9/11, Blair Defends Legacy at Iraq Inquiry." *New York Times* 1/29/2010, A4.

³⁵ Woodward et al.

which the moral demands that the United States made on Iraq resembled a shell game. The international community could not judge the moral grievances that the United States held regarding Iraq because the reasons were shifty, informal, and undeclared.

Neither Madison nor Blair or Bush, on the argument of this paper, are morally liable due to violations of international law as is commonly held; they are morally liable because they did not make the case for war in a reasonable manner that accords with the weak interpretation of justice. Why should we criticize them for their refusal to sincerely explain the case for war to the international community through a justly reasoned declaration rather than for not obeying the judgment of the international community?

There are several reasons that their failure to make a case is problematic. First, as discussed in the previous section, resort to the strong interpretation is implausible; neither the laws of neutrality in 1812 nor the UN Security Council are impartial. Second, the tradition of international law—states declaring war for example—points toward the weak interpretation as a conventional moral principle in international politics. It is customary to declare war, to make a moral case, and there is a moral intuition that underwrites this requirement. Third, adherence to a weak interpretation, I will argue in section the final section of this paper, does enable a break on power politics, even if it is less reliable than advocates of the judicial model would prefer.

These three arguments I mention, although I do not develop them here in order to focus on three more important claims. Declarations of war are important for morally defensible wars in the same way that certain appropriate legal rights are necessary for morally defensible legal judgments, in order to show moral respect for a community, and in order to create a fuller sense of international justice.

The weak interpretation captures many of our moral intuitions about fairness in a legal context. The claim that states should openly make reasoned and conditional declarations—that states should share their moral reasoning—is akin to the right to confront one’s accuser and to hear the evidence. This argument has two parts: the defendant’s right to appear, and, the right to confront the accuser and hear evidence. It is unfair to try a person without their knowledge. Trying a person *in absentia*, without informing the person that the trial is ongoing, quickly leads to arbitrary judgments. Similarly, not declaring war, like in the War of 1812 or the Russo-Japanese War, can leave the target unaware that war is being contemplated and a trial is ongoing by decision-making powers of the declaring state. Declarations make the existence of the trial apparent, preventing *in absentia* rulings. Furthermore, declarations of war, by making an explicit moral case for war, enables the target or the international community to dispute those claims (or make concessions). The failure to declare war means that there is no explicit legal case; in cases like the Iraq War, this lack of a case creates shifting justifications for the conflict, leaving the declaring administration the only agent capable of knowing the “true reasons” for the intervention, removing other communities’ right to judge evidence.

More importantly, the weak interpretation enables communities to respect the moral worth of others. Respecting other communities’ moral worth means affording them opportunities to make moral judgments concerning one’s actions. A person who engages in a morally justifiable act of self-defense, for example, shows moral respect for her community by explaining why the act was necessary and showing the conventions under which it was justified. Similarly, a state that claims to have cause for war shows moral respect for other communities by explaining why the war is morally necessary and the moral conventions through which it is justified. Refusing to state one’s case, doing so dishonestly, or creating a shifty case designed to

ensure that war occurs, removes the rights of others to render their own judgments, replacing others' rights to moral judgment with one's own.

In both the 1812 and 2003, this lack of moral respect is a sociological fact. The Madison administration and its Republican party despised the British, declaring the war a Second War of Independence. Its dislike of the British clearly implies a lack of respect for British judgments. In 2003, the Bush administration's confused case for war also witnesses this same sociological trend. The Bush administration did not respect the judgment of the France or Russia and preferred to camouflage the case for war in a case about WMD and legalisms.

The weak interpretation also addresses many of the practical concerns of justice. When individuals judge their own cases, even when they sincerely do their best, they are likely to obtain partial judgments. One reason Aristotle gives for a mixed society is that different groups (the many, few, or one) are likely each to advance different claims regarding just distributions that reflect their political and economic positions. Allowing one group to judge runs the risk of replacing a full sense of justice (all claims considered) with a partial interpretation (one group's claims dominate). Judgments concerning justice are fullest when they take into account the perspectives of different individuals within a society.³⁶

Aristotle's worry that groups will advance partial claims concerning justice seems appropriate to describing concerns over justice in the international system. Left to its own devices, any single community is likely to have a partial understanding of justice in its own case. Issues of war and peace are not without emotion, and motivated and unmotivated biases often lead communities to make mistakes in their moral reasoning. The weak interpretation partially addresses this concern. Requiring states to make a moral case for war provides a mechanism for others to challenge the moral case. Refusing to make oneself sole judge means being willing to

³⁶ Aristotle. *Politics*, 1280a9-1281a9.

have one's claims challenged. Insofar as discussion, argument, and public opinion provide potential checks on partial portrayals of justice, it reduces the risks of partial justice.³⁷

These three reasons explain, part of our skepticism of the Madison and Bush administrations' conduct. Both administrations acted as if they were the exclusive judge of the rightness of their claims; they never gave their targets open and public trials on the sincere causes for war. Neither showed moral respect for their target or the international community by publicly making an open case. Therefore, the judgment in both cases seemed self-serving and partial. The Bush administration and the Congress are not morally liable for violating international law. No member of the Security Council was impartial; France and Russia, who led the opposition to Security Council authorization, had substantial stakes in the outcome of the debate. And, if only Russia (and not France) stood in the way of action in Iraq, I doubt the illegality of the intervention would have been as important of an issue for most commentators on the war. Instead, they were wrong not to make a publicly reasoned and sincere formal case.

V.

The second reason why declarations of war support just war theory is substantive. The declaration of war requirement is necessary for states to clear moral hurdles in relation to other criteria established in the just war tradition. In fact, I suspect that every element of the just war tradition, if modernized to account for the importance of public reason for making moral claims, is tied to the importance of the type of moral case a state makes and the way in which it is made. Here I consider two connections: between declaring war and last resorts, and between the content of a declaration and target selection.

Last Resort

³⁷ The final section addresses the efficacy of this process.

Most people, I suspect, believe that war should be treated as a last resort. Most discussions of the last resort standard are about how we know when a last resort has been reached.³⁸ Did the Bush administration's diplomatic efforts after Iraq invaded Kuwait, for example, suffice for Bush to claim that war was a last resort? How do we square the requirement that we try every possible diplomatic effort with slowly gathering threats and the potentially infinite number of possible resolutions, overtures, and slow pressures?

I argue that a declaration of war is a last resort, and an important one in many cases. This argument hinges on a claim about the reason for the last resort standard. The only real effort at clarifying the reason for the last resort clause, of which I am aware, is an argument Michael Walzer makes in passing: sending soldiers into harm's way incurs so many costs that "political leaders must cross this threshold only with great reluctance and trepidation. This is the truth contained in the 'last resort' maxim."³⁹ Knowing that war will likely result in the deaths of innocents, it is blameworthy not to attempt to avoid it. Pursuing war, except as a last resort, means that agents do not recognize its moral costs; they do not shake when they sign the order to begin shooting.

Walzer's argument captures an important moral intuition—one should recognize the moral costs of war—but inaccurately links it to claims about last resorts. If a political leader crosses the threshold to war without exhausting all peaceful and diplomatic means, then they can still do so with "great reluctance and trepidation" in full view of the moral consequences. John F. Kennedy, for example, may have ordered the bombing of Cuba in 1962 while shaking at the

³⁸ For example, Neta Crawford (2003) "Just War Theory and the U.S. Counterterrorism War." *Perspectives on Politics* (1: 1), 15; and John Lango (2005). "Preventive Wars, Just War Principles, and the United Nations." *The Journal of Ethics* (9: ½), 260-3.

³⁹ Walzer, *Arguing about War*, 88. See also Shaun Casey (2005). "Iraq, the Just War Ethic, and Preemptive War." In *War and Border Crossings*, eds. Peter French and Jason Short. (Roman & Littlefield), 28.

moral consequences of his decision (meeting the reason for Walzer's standard), but he would still be criticized for not attempting a quarantine. "Last resort" needs a firmer foundation.

A better reason for ensuring wars are only fought as last resorts relates to the moral blame for a war. This argument rests on three claims.

1. War is rarely a proportional reaction to an injury a state receives.

If war is a proportional response, it is not morally problematic; if all wars were for the survival of the nation, such as the French or Soviet resistance to the Nazis, their justifiability is an easy issue. The last resort stipulation is relevant only when the moral harm committed by a target is smaller than the moral crime of war. The U.S. intervention into Afghanistan, for example, inflicts significant moral harm (high civilian death toll and so on) in response to a comparably smaller moral harm (9/11).

2. Refusing to address wrongs committed by one's community is an additional moral offense.

A state that inflicts a moral wrong on when it is demanded. The Taliban regime, for example, was wrong to harbor terrorist groups another community is liable not only for the wrong committed but also for not making restitution prior to 9/11 (assuming knowledge of their activities). The attacks on the World Trade Center and Pentagon clearly created a moral grievance between the United States and Taliban. When the United States demanded that al-Qaeda fighters be handed over for prosecution, the Taliban committed a second moral harm against the United States by refusing. This is more than adding insult to injury. Refusing to address legitimate moral grievances is a refusal to show respect to the moral worth of other communities and creates an environment in which the only recourse states have to reach restitution is violence.

3. States that refuse to address legitimate grievances under the threat of war share responsibility for the outbreak of war.

In certain cases, the moral harm caused by refusing to negotiate partly shifts moral responsibility for a war to the target and away from the declarer. The Taliban's refusal to produce bin Laden and evict al-Qaeda fighters, after diplomatic overtures from the United States, shifts some of the moral blame for the war to the Taliban. The threat of war and its moral case were crystal clear. The Taliban, clearly responsible for a moral harm (by harboring al-Qaeda) and accepting the possibility of war (by not addressing legitimate grievances), are partly to blame for the war itself. This partly (and only partly) shifts the balance of blame, making war a proportional response to both the original grievance and the refusal to take moral claims seriously.

Claims of last resort are claims that war has been threatened, peace tried, and all efforts have failed. Declaring war is necessary for war to be the type of last resort that shifts moral blame. To shift blame, a community must make the case that it has been wronged, suggest remedies, threaten war, and wait an appropriate period of time. These are the elements, of course, of a declaration of war. The declaration creates a choice between addressing grievances or pursuing war. If a state does not declare war—does not suggest remedies, does not wait for a period of time, or does not make the threat clear—then the target is not responsible because the target does not have the choice of avoiding war.

One might object to this treatment of last resorts for two reasons. First, a public declaration should not always be treated as a last resort because, in certain cases, secret diplomacy may settle problems more effectively. Once a state begins to publicly make a case for war, emotions run high, politicians become committed, and the war machinery is set in motion. I agree with the premise of this objection but not its conclusion. If secret diplomacy has a chance

of working, it can be pursued before the declaration of war is made or in tandem with it. Public diplomacy can always follow secret negotiations.

More importantly, one could object that a “declaration” is unimportant to the last resort stipulation: communities can make their case through either informal means or international organizations. Why does a state need to declare its moral case for war?

Informal cases for war are often (probably always) confused. The Bush administration, for example, at different times and in different places, cited weapons of mass destruction, human rights, democracy, terrorism, violations of international law and so on as moral crimes committed by Hussein’s regime. Which of these was the *cause* of the war? What could Iraq specifically do in the days leading up to the war to avoid it? The resolution authorizing the use of force cites all of these reasons, suggesting that each was an insurmountable demand. The Iraq War is paradigmatic of the confused process of reason-giving in questionably just wars. When William McKinley sent his message to Congress asking for authorization in the Spanish-American War, “like most presidents going to war, he threw in everything but the kitchen sink in a statement of grievances.”⁴⁰ This informal case for war did not elevate certain demands as moral cause for war (e.g., the independence of Cuba or an end to Spanish human rights abuses). This created a situation in which Spanish concessions on moral demands would not prevent a war, stopping war from being a last resort.

Confusing informal cases cannot effectively function as last resorts. Informal cases, often by design, make war more likely because executives tend to justify a conflict through any and all means, closing roads to peace. Declarations, in contrast, should, by design, make war less likely, placing the onus on target states to address legitimate claims or accept responsibility for war.

⁴⁰ Robert Beisner (1975). *From the Old Diplomacy to the New: 1865-1900*. (Arlington Heights: Harlan Davidson), 128.

Jus in Bello

The connection between declarations of war and *jus in bello* is significantly different than the last resort argument. The last resort argument shows that declarations are a valuable tool for outlining moral grievances and justifying war if those grievances are ignored. The argument for *jus in bello* is different. Here the declaration is a necessary tool for testing the consistency between arguments for war and arguments about how war is to be conducted.

The decision to go to war is a weighty one. To justify the waging of war is to claim that a moral grievance is important enough to justify the sacrifice of the lives of soldiers and innocent. Intervening for humanitarian reasons, for example, implies that a community has decided that the humanitarian situation is particularly dire—so dire that the lives of innocents and soldiers likely to die during the fighting are worth less (somehow) than those afflicted by the humanitarian catastrophe. The argument for consistency advanced here claims that a state that declares war for such a purpose cannot change the moral weights it assigns in the justification for war for self-interested reasons during its conduct. In particular, a state that intervenes to protect some group—because it has decided that the group’s protection is worth more than keeping its soldiers safe—must craft rules of engagement that incur greater risks for its soldiers if those risks better protect the innocent group.

In developing this argument, I set it against Michael Walzer’s claim that “sliding scales” for the use of violence should be resisted. Walzer claims that the war convention—the rights of individuals during war—is the same for all soldiers and innocents, whether they are fighting for a just cause or not. Civilians and soldiers fighting for Hitler’s regime have the same rights and responsibilities as soldiers fighting with the Free French soldiers. There is no “sliding scale,”

where the more just one's cause, the more injustice one can do to accomplish it.⁴¹ Walzer proposes maintaining the war convention unless there is a 'supreme emergency' that justifies resorting to acts barred by the convention.

The problem with Walzer's argument against a sliding scale is illustrated by the intervention in Kosovo. In 1999, NATO began bombing operations in Kosovo. The stated objectives of the bombing operations included "the unconditional and safe return of all refugees and displaced persons and unhindered access to them by humanitarian aid organizations."⁴² While the Kosovo operations did not involve a formal declaration of war, the objectives included a set of reasoned and conditional demands for the bombing to cease: "Responsibility for the present crisis lies with President Milosevic. He has the power to bring a halt to NATO's military action by accepting and implementing irrevocably the legitimate demands of the international community."

The NATO bombing campaign killed at least 500 civilians. Here I want to consider a special incident. On the morning of April 14, NATO forces noticed a string of buildings burning near Djakovica. An F-16 pilot saw several vehicles near the freshest fire and thought they were moving toward another house, probably with the intention of burning it to drive away Kosovar Albanians. The pilot struck the lead vehicle, destroyed it, and relayed the coordinates to NATO. For the rest of the morning and early afternoon, NATO planes dropped bombs along the road. The F-16 pilot who was first on the scene was flying at 15,000 feet and decided that the vehicles were military after only a visual inspection. At that height and flying at that speed, it was impossible to distinguish refugees' trucks from military and paramilitary vehicles. Had the rules

⁴¹ Walzer 1977, 228-232.

⁴² North Atlantic Council. 1999. "Press Release: Statement Issued at the Extraordinary Ministerial Meeting of the North Atlantic Council held at NATO Headquarters, Brussels, on 12th April 1999."

of engagement required the pilot to fly lower or rely on more robust means of inspecting targets, the pilot might have realized that he bombed part of a refugee column.⁴³ In the end, 73 civilians were killed and more than 100 were wounded.⁴⁴ In the early afternoon, NATO, realizing its mistake, stopped the bombings.

Many discussions of the morality of NATO's bombing campaign center on the protection of civilians. The morality of the bombing of the Djakovica convoy, in the extant literature, turns on the question of whether NATO took precautions to minimize civilian casualties.⁴⁵ On balance, many international lawyer suggest that NATO met its obligations. The Review Committee of the International Criminal Tribunal for the Former Yugoslavia found NATO never intentionally targeted civilians and there is no rule against flying high enough to avoid anti-aircraft defenses. Therefore, NATO met its obligation to avoid civilian casualties. The same standard of risk, that one should not intentionally target civilians, applies not only to Serbians, but also to the refugees that the deployment of force is intended to protect: there is no sliding scale. Accepting Walzer's argument against a sliding scale leaves us with no grounds to criticize NATO forces for flying high.

Does a declaration, once issued, creates sets of responsibilities more onerous than those conventionally assumed during combat? Does the balance of military versus civilian risk changes as the result of certain motivations for intervention? In most cases, the intuition behind Walzer's argument is convincing. A civilian is a civilian is a civilian. Claiming that that a Serbian innocent is different than a Kosovar Albanian is unconvincing. Yet, the example of Kosovo leads on to

⁴³ <http://www.icty.org/sid/10052#IVB2>

⁴⁴ Human Rights Watch. 2000. *Civilian Deaths in the NATO Air Campaign*. 12: 1. (http://www.hrw.org/legacy/reports/2000/nato/Natbm200-01.htm#P328_90536).

⁴⁵ W.J. Fenrick. 2001. "Targeting and Proportionality during the NATO Bombing Campaign against Yugoslavia." *European Journal of International Law*. 12: 3, 500-1.

worry that this seemingly consistent position quickly becomes inconsistent. If the reason for war is the protection of a group, in this case refugees, then the scale must slide up to ensure that the rules of engagement respect the lives of that protected group. Against Walzer, the argument for declarations suggests a sliding scale where certain moral arguments create moral responsibilities.⁴⁶ Declarations outline sets of moral rights the declaring state lays claim to in making the case for war. The ways in which the state employs violence—the rules of engagement it authorizes for its soldiers, its choice of targets, and its willingness to take risks to protect the innocent—are conditioned by these moral reasons.

This obligation is important for consistency in moral reasoning. Declaring war for humanitarian goals implies:

1. The target has engaged in a violation of the rights of innocents by harming a certain class of people (the protected class).
2. War is justified to assist the protected class; this means one is justified in risking the lives of innocents in the target community, as well as one's own soldiers, to protect the lives of the protected class.

The argument that soldiers should not be put at risk implies:

3. The lives of soldiers from the declaring state are more valuable than the lives of innocents in the protected class.

These three claims are problematic because arguments two and three are contradictory. The third argument presumes that the relative ranking of groups is Soldiers > Protected Class > Innocents. Therefore, the rules of engagement and the plan of battle need not risk the lives of soldiers for the protection of innocents (the Doctrine of Double Effect). But, the moral reasoning supporting the argument for intervention in a declaration, argument two, presumes that the Protected Class > Soldiers. If argument three is correct, the war is not just because the crime of war outweighs

⁴⁶ One might think of this as an 'inverse sliding scale' because declarations add responsibilities, they do not detract from them.

violations of human rights. If two is correct, the war is justified but extra protections must be afforded to the protected class. Therefore, in the act of declaring war to protect a certain group one assumes a duty with respect to a set of category distinctions between individuals. This requires extraordinary efforts: flying low during bombing raids, putting troops on the ground rather than relying on airpower, and so on.

Rather than positing a sliding scale that can be tipped in supreme emergencies, a more consistent claim convention is that supreme emergencies alter the rules of war in both directions: supreme emergencies of self-defense enable violations of the rules of war, but interventions designed to stop supreme humanitarian emergencies require states to take risks to protect innocents. When NATO decides to use force to protect refugees, it decides that the rights of refugees outweigh the perils of war. This mirrors argument two: NATO claims that the rights of a protected group are more important, in a specific case, than the lives of soldiers or other innocents whose lives may be lost by war. Therefore, argument three—that one can protect one's own soldiers before aiding the protected group—is a contradiction. As a result, NATO's practice of protecting its pilots by having them fly at 15,000 feet, knowing this places refugees in danger, fails the test of public reason established by NATO's demands.

One might object again that are extraneous to this argument. This is partly right; states incur this moral burden whether or not they declare war. But, when states decide to go to war, slippery reasons lead to slippery moral conduct. Declaration, by making it clear to states that they undertake certain moral responsibilities by intervening for certain types of reasons, provide elements of moral clarity and enable criticism of the war's conduct. States should be obligated to give the public reasons for their actions; their consistency with those stated purposes to be tested during war's prosecution.

VI.

So far, I have argued, states that do not declare war are morally criticizable. In concluding, I want to briefly discuss questions of efficacy, although the bulk of this argument I intend to develop in future work. There are four practical arguments against the claim that declarations are important to moral reasoning about war. The first is the least persuasive: declarations of war are an old and moribund ritual, antiquated and old-fashioned. Ian Holliday makes this argument. Noting the irregularity with which wars are declared, he writes that “we would not want to make a just war verdict hang on such a rare political practice.”⁴⁷ This argument is deeply wrong. If declaring war is morally important, than we can and should criticize states for so often ignoring them. Further, when moral wrongs become commonplace, it is more important than every to remind political elites that their actions have important implications.

Second, one might object that even if states do declare war, they might still lie and misrepresent their case. Of course, there is nothing particular to declarations of war that would make misrepresentations of one’s case more likely; we are pretty good at lying now. In addition, focusing the debate over whether war is justified means the case for war is separated from the ambiguities of international law (in which the wars in Iraq and Kosovo were mired). This hopefully might lead to a greater degree of precision in moral argumentation. This precision may make misrepresentations more noticeable.

Alternatively, one might argue that requiring states to declare war is not enough. Rather than simply requiring states to make a case, we should institutionalize rules of war so that states will pay a price if the cases they make are repugnant. These arguments, of course, do not exclude the importance of declarations. In fact, requiring that states explain their moral case is perfectly

⁴⁷ Holliday, “When is a cause just?” 565.

compatible with any reasonable institutional solution to the problem of war. Some mechanism to ensure that states make moral cases is probably an important condition for any of these schemes to work.

There are two more important arguments against the claim that declarations are insufficient. First, the international system, in roughly its present form, has been around for a long time and is unlikely to fundamentally change anytime soon. A world state may be inevitable, but likely not in our lifetimes.⁴⁸ Declarations of war are a tool that might actually be appropriated by states, especially if the public and the international community demands them. Half-formed cosmopolitan proposals, while interesting thought exercises, may deflect attention from practical measures that can be reached here and now. Declarations may be only first steps, but they are important ones.

Finally, moral arguments do make a difference, even if that difference is too often small. Moral arguments mattered during slavery, decolonization, and have altered citizenship policies in Israel, the Ukraine and elsewhere.⁴⁹ The real risk is not the making of disingenuous arguments; the real danger is that states stop making moral cases altogether. Especially in a world in which law and not morality is becoming the language of grievance in international politics, the moral footprints on decisions regarding war are increasingly difficult to find. States have an obligation to argue; to require that states declare war is to require them to make moral demands on one another.

⁴⁸ See Alexander Wendt (2003). "Why a World State is Inevitable." *European Journal of International Relations*. 9:4, 491-542.

⁴⁹ The literature on argument, persuasion, and international politics is large and growing. See, for example, Jeffrey Checkel (2001). "Why Comply? Social Learning and European Identity Change." *International Organization*.55:3, 553-588; and Neta Crawford (2002). *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*. Cambridge: Cambridge University Press; and Jackson and Krebs