War Manifestos

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This Article is the first to examine "war manifestos," documents that set out the legal reasons sovereigns provided for going to war from the late fifteenth through the mid-twentieth centuries. We have assembled the world's largest collection of war manifestos—over 350—in languages as diverse as Classical Chinese, German, French, Latin, Serbo-Croatian, and Dutch. Prior Anglophone scholarship has almost entirely missed war manifestos. This gap in the literature has produced a correspondingly large gap in our understanding of the role of war during the period in which manifestos were commonly used. Examining these previously ignored manifestos reveals that states exercised the right to wage war in ways that would be inconceivable today. In short, the right to intervene militarily could be asserted in any situation in which a legal right had been violated and all peaceful channels had been explored and exhausted. This Article begins by describing war manifestos. It then explores their history and evolution over the course of five centuries, explains the purposes they served for sovereigns, shows the many "just causes" they cited for

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war, and, finally, considers the lessons they hold for modern legal dilemmas. The discovery of war manifestos as a set of legal documents not only offers lawyers and legal scholars a new window into the international legal universe of the past, but it also casts new light on several long-standing legal debates.

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INTRODUCTION

The UN Charter provides that states are prohibited from the "threat or use of force" against other sovereign states.[1] There are only three exceptions: (1) member states may defend themselves or others from "armed attack";[2] (2) states may use force if the UN Security Council issues a resolution permitting it (a resolution that any of the five permanent members may veto);[3] and (3) states may use force inside another state with its free consent.[4] All other uses of military force, or threats thereof, are illegal.[5]

But this has not always been true.

For centuries, states lawfully waged war for many reasons that today would appear absurd. States fought wars to collect debts, to recover tort damages, to protect trading rights, and to enforce treaty obligations, among other reasons. Indeed, for centuries, states could wage war not only in self-defense, but also in response to a violation of any right whatsoever: if a state had a

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1 UN Charter Art 1.

2 UN Charter Art 51.

3 See UN Charter Arts 27, 42.

4 See *Responsibility of States for Internationally Wrongful Acts*, UN General Assembly, 53d Sess (Jan 28, 2002), UN Doc A/Res/56/83 5 ("Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.").

5 To be sure, some disagree about when these conditions authorize force. For example, there is substantial disagreement about the scope of the self-defense exception. See Daniel Bethlehem, *Self-Defense against an Imminent or Actual Armed Attack by Nonstate Actors*, 106 Am J Intl L 770 (2012) (offering an account of the scope of a state's right of self-defense against an imminent or actual armed attack by nonstate actors); Elizabeth Wilmshurst and Michael Wood, *Self-Defense against Nonstate Actors: Reflections on the "Bethlehem Principles"*, 107 Am J Intl L 390 (2013) (critiquing Bethlehem's argument). Moreover, there is substantial disagreement over whether there is an exception to the Charter for humanitarian intervention. See Oona A. Hathaway, et al, *Consent-Based Humanitarian Intervention: Giving Sovereign Responsibility Back to the Sovereign*, 46 Cornell Intl L J 499, 519–38 (2013) (summarizing diverse scholarly views on humanitarian intervention). Despite these disagreements, there is a strong consensus on one important point: the right to war—the *jus ad bellum*—is tightly constrained.

cause of action, but there was no court that had jurisdiction over the case, a state could go to war as a last resort.

The right of states to wage war as a last resort was put succinctly by Hugo Grotius: "Where judicial settlement fails, war begins."[6] States are legally permitted to go to war, Grotius maintained, because, in the absence of a court with the power to give them relief, they have no other option. Indeed, he explained that the *casus belli*—the justified causes of war—are nothing more than garden-variety causes of action: "It is evident that the sources from which wars arise are as numerous as those from which lawsuits spring."[7]

This Article shows that the nearly unlimited right to wage war to right wrongs was not merely set out in international law treatises, but states also acted on it. (And, indeed, the practice predated the treatises.) We lay out our evidence for this surprising claim by examining "war manifestos," documents that set out the legal reasons sovereigns provided for going to war. For the purposes of this Article, we have assembled the world's largest collection of war manifestos—over 350—in languages as diverse as Classical Chinese, German, French, Latin, Serbo-Croatian, and Dutch. The earliest manifesto in the collection dates to 1492 and the most recent to 1945.[8] These manifestos offer a fascinating

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[6] Hugo Grotius, *On the Law of War and Peace: Three Books* 2.1.2.1 at 171 (Clarendon Press 1925) (Francis W. Kelsey, trans). For other classical discussions of when war is just, see Hugo Grotius, *Commentary on the Law of Prize and Booty* 31–85 (Clarendon Press 1950) (Gwladys L. Williams, trans); Henry Wheaton, *Elements of International Law: With a Sketch of the History of the Science* 4.1.1–9 at 209–18 (Carey, Lea & Blanchard 1836); Georg Friedrich von Martens, *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe* 8.2.3 at 273–74 (Thomas Bradford 1795) (William Cobbett, trans); Emmerich de Vattel, *The Law of Nations; or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* 3.3.26 at 302 (P.H. Nicklin & T. Johnson 1758) (Joseph Chitty, trans); Samuel von Pufendorf, *On the Law of Nature and Nations: Eight Books* 8.6.3 at 226 (Lichfield 1703) (Basil Kennett, trans). In this respect, classical international lawyers were simply following the just war tradition. See Thomas Aquinas, *Summa Theologiae*, II.40.1 at 926–27 (Studii Generalis 1941); Augustine, *Quaestionum in Heptateuchum Libri Septem* 6.10; Cicero, *De re Publica, de Legibus* 3.35 at 213–14 (Putnam 1928) (Clinton Walker Keyes, trans); Francisci de Victoria, *De Indis et de Iure Belli Relectiones* 410–23 (Carnegie Institute 1917) (Ernest Nys, ed); R.P. Francisco Suarez, 12 *Opera Omina* Tractatus III, Disputatio XIII 4.1; Isadore of Seville, *Etymologiarum* XVIII.1.

[7] Grotius, *Law of War and Peace* 2.1.2.1 at 171 (cited in note 6). The common element of causes of action and causes of war is a possible or actual wrong: "Actions, furthermore, lie either for wrongs not yet committed, or for wrongs already done." Id. See also id 2.1.2.2 at 172.

[8] The collection begins at 1492 because this document represents the oldest manifesto we located. It ends, however, at 1945 because the 1928 Kellogg-Briand Pact, reaffirmed after the end of World War II, reconstructed the legal architecture by which states

window into the legal practice of warfare. They show that states exercised the right to wage war in a way that would be inconceivable today. The right to intervene militarily could be asserted in any situation in which a legal right had been violated and all peaceful channels had been explored and exhausted.

Prior legal scholarship has almost entirely missed war manifestos. Indeed, Anglophone scholarship as a whole has largely ignored them.[9] The only two significant studies of war manifestos are by German historians and are available only in German.[10] There are a variety of reasons for the limited scholarship on manifestos, despite their importance. First and foremost, war manifestos have not been issued for more than seven decades. Once common, they are now forgotten. Second, in part because they are so old, manifestos are often very difficult to locate. They are spread across rare book libraries throughout the world. Only recently have a number of them been digitized and made available online. Even then, only a small number can be found in this way. Third, the manifestos are in many different languages, and the oldest can be difficult to read, even for native speakers of the corresponding modern languages. It took four years to assemble the collection of manifestos on which this Article relies, and it required the collective expertise of more than twenty research assistants with

could go to war. After 1945, states could not wage "just war" simply by articulating reasons via manifesto. See Kellogg-Briand Pact, 46 Stat 2343, TIAS No 796 (1928) (providing that parties "renounce" war as a solution for any "disputes or conflicts of whatever nature or whatever origin they may be"). Therefore, though some documents can be located after 1945 that meet our four criteria for manifestos, they are few and far between, and they do not serve the same legal function as they would have when unilateral wars were permitted. We do, however, still see vestiges of war manifestos in the modern era. For more, see Part II.D.

[9] A notable exception is James Q. Whitman, *The Verdict of Battle: The Law of Victory and the Making of Modern War* 125–31 (Harvard 2012), from which we first learned about the existence of war manifestos. See also Randall Lesaffer, *Defensive Warfare, Prevention and Hegemony. The Justifications for the Franco-Spanish War of 1635 (Part I)*, 8 J Hist Intl L 91, 95 (2006) (discussing a French manifesto justifying the 1635 war with Spain); Pärtel Piirimäe, *Just War in Theory and Practice: The Legitimation of Swedish Intervention in the Thirty Years War*, 45 Hist J 499 (2002) (discussing a Swedish manifesto justifying intervention in the Thirty Years War).

[10] See generally Anuschka Tischer, *Offizielle Kriegsbegründungen in der Frühen Neuzeit: Herrscherkommunikation in Europa zwischen Souveränität und Korporativem Selbstverständnis* (LIT 2012). Professor Anuschka Tischer drew upon Konrad Repgen, *Kriegslegitimationen in Alteuropa: Entwurf einer Historischen Typologie* 5–27 (Stiftung Historisches Kolleg 1985). In addition, see generally Bernd Klesmann, *Bellum Solemne: Formen und Funktionen Europäischer Kriegserklärungen des 17. Jahrhunderts* (Philipp von Zabern 2007).

extraordinarily varied language skills and expertise in reading older language forms to code and interpret the manifestos.

This gap in the literature has produced a correspondingly large gap in our understanding of the role of war during the period in which manifestos were commonly used. War manifestos, after all, were used by sovereigns to justify their resort to arms. As King Gustavus Adolphus of Sweden began his manifesto defending his entry into the Thirty Years War in 1631, "When we come to consider the business of war, the first question to be proposed is, whether it be just or no."[11] Sovereigns were always anxious to explain their decisions to wage war and to show that their actions were not examples of mass murder but the exercise of a valid legal right.

By examining these war manifestos, we are able to track the kinds of reasons that were commonly accepted for going to war. But war manifestos are interesting not only because of their content, but also for their *form*. As we will see, war manifestos resembled complaints in lawsuits. Just as a plaintiff sets out his causes of action in a document served to a defendant, a war manifesto sets out the causes of war so that the enemy can know the legal justification of the battles to follow. And just as the defendant responds with an answer to the complaint served, sovereigns routinely issued what we call "counter-manifestos"—detailed rebuttals of a manifesto's claims with additional causes of action often tacked on.

Manifestos and counter-manifestos appear like legal documents in litigation because, as our colleague Professor James Whitman has recently argued, *war was understood to be a form of litigation*, albeit one in which members of both sides were slaughtered.[12] States went to war because they had no court in which they could state their claims and seek relief. They sought to enforce their own rights because they had no other choice.

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[11] See Peter H. Wilson, *The Thirty Years War: A Sourcebook* 122, 129 (Palgrave MacMillan 2010):

> And who is he that will not judge that His Majesty has been really forced against his will to undertake this just war and obliged thereto by constraint and urgent necessity, after having tried all the ways of right justice and met with all sorts of obstructions and hindrances instead of the good and wholesome remedies he proposed?

See also Piirimäe, 45 Hist J at 517–18 (cited in note 9) (arguing that Adolphus's document was not a war manifesto because Adolphus did not characterize the Swedish invasion of Pomerania as a war).

[12] See Whitman, *Verdict of Battle* at 18 (cited in note 9).

It is important to note that the manifesto practice described here is a largely, though not exclusively, European practice. The theoretical and legal framework on which this practice rested was developed by European thinkers.[13] As this Article documents, war was the core enforcement mechanism of this legal order. The highly legalized practice of warmaking was shaped by Europe and shaped it in turn. Europe then spread these ideas to the rest of the world, usually by force.[14] Before Western international law arrived in Asia and Africa, the formalized practice of war manifestos did not exist. (Sovereigns often did give reasons for waging war, though, and many reasons were the same as those developed in the European practice. Sovereigns do not exist in a vacuum—they cannot wage war alone.)[15]

This Article begins in Part I by explaining what, precisely, a war manifesto is. Because these documents have been almost entirely lost to history, it is necessary to describe their key features. A manifesto, as we define it here, must (1) be public, (2) be issued by a sovereign, (3) be against another sovereign, and (4) has as its function to justify war. These features help us determine not only what qualifies as a war manifesto, but also what does not. Private letters, documents issued by nonsovereigns, speeches to the public,[16] declarations of war that contain no justifications—all such documents are excluded (even if, as is sometimes the case, they contain the word "manifesto"). War manifestos are, in short, legal

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[13] For instance, Grotius, still today known as the "father of international law," was Dutch; Balthazar Ayala, Flemish; Emmerich de Vattel, Swiss; Samuel von Pufendorf, German; Alberico Gentili, Italian; Francisco de Vitoria, Spanish.

[14] See Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* 131–57 (Simon & Schuster 2017) (describing the forceful spread of Western international law into Asia).

[15] Consider the *clarigatio*, the Roman practice of demanding restitution before engaging in battle. The ancient practice required a priest to approach the border of any territory Rome intended to attack wearing a wool veil, and announce the Roman grievance in the presence of three men of military age from the other side:

> When the envoy has arrived at the frontiers of the people from whom satisfaction is sought, he covers his head with a bonnet—the covering is of wool—and says: "Hear, Jupiter; hear, ye boundaries of"—naming whatever nation they belong to;—"let righteousness hear! I am the public herald of the Roman People; I come duly and religiously commissioned; let my words be credited," Then he recites his demands.

Livy, *Ab Urbe Condita* 1.32.6 (Loeb Classical Library 1919) (B.O. Foster, trans). The senate could authorize war if these demands were ignored. See Alan Watson, *International Law in Archaic Rome* 20–26 (Johns Hopkins 1993).

[16] A number of the manifestos in our collection were originally delivered as speeches to parliamentary bodies but were later published.

documents that serve a specific role in the relations between equal sovereign states in the definition and resolution of disputes (whether through settlement or war).

Part II then describes the history of war manifestos—their origins in the medieval papal and imperial courts, giving way in the sixteenth century to an exchange of manifestos between independent and equal sovereigns, and finally the expansion and democratization of manifesto practice as new technologies allowed the written word to reach a larger, more literate population. This history offers a novel vantage point for viewing the emergence and evolution of the sovereign state. Today, many take modern state sovereignty for granted. But what we sometimes think of as a natural or inevitable phenomenon is an invention of the last five centuries. War manifestos allow us to see how independent and equal sovereign states interacted with one another at moments of friction—when war loomed. This historical narrative—which extends from the fifteenth to the twentieth century—not only offers insight into the evolution of states and the role of war and war manifestos in their relations with one another, but, in the process, also helps us better understand features of our own legal system, which retains some vestiges of these historical practices.

Part III turns to examining the purposes of manifestos. Why did sovereigns expend so much energy on manifestos? Why did they bother offering reasons for war to the opposing sovereign and to the public at large? One reason is that the law required them to do so. But there were other reasons as well. A manifesto could help sovereigns avoid war, by allowing settlement of disputes before states actually resorted to arms. But even if the manifesto was not successful in avoiding war, it served important purposes. To begin with, it allowed the sovereign to assuage his own conscience and, indeed, save his soul. At a time when every ruler in Europe professed to believe in God, each ruler understood himself to be bound to launch only "just wars" and then only as a last resort, lest he incur God's judgment. In addition, manifestos, by making the sovereign's reasons for war public, helped sovereigns rally the domestic support and support from allies that were essential to winning a war.

For the purposes described in Part III to be achieved, however, the reasons given in manifestos had to be those that were considered legitimate—or "just." Part IV thus turns to an examination of the reasons that were considered "just." Our team of research assistants read all the manifestos in the collection and

catalogued (or "coded") the reasons sovereigns gave in them for going to war. In Part IV, we describe the most commonly offered reasons for war. What we found is surprising: reasons that today would be considered absurd justifications for war were, for hundreds of years, considered entirely legitimate. These included protecting the balance of power, remedying tortious wrongs, collecting debts, protecting trade interests, protecting diplomatic relations, humanitarian intervention, religious claims, enforcing treaty obligations, enforcing the laws of war, declarations of independence, and other causes.

Finally, in Part V, we turn to the implications of these discoveries. In addition to the insights into the emergence and evolution of the modern sovereign state and state system described in Part II, there are two central lessons to learn from war manifestos. First, the creation of a new database of legal documents opens up an entirely new body of materials on which lawyers and scholars may draw. War manifestos give scholars *direct* access to the international legal arguments sovereigns made to one another, and therefore to the kinds of legal claims they considered valid. That, in turn, casts an entirely new light on several old debates, including the intended aims of the Founders in writing the US Constitution's Supremacy Clause and the long-debated Alien Tort Statute[17] passed by the First Congress. Second, recent years have seen wide-ranging debates over whether the limited set of permissible reasons for war in the UN Charter should be expanded. Some argue that there should be a humanitarian intervention exception; others that Syria's violation of the ban on chemical weapons authorizes the use of force to enforce the law.[18] What we learn from examining war manifesto practice is that war used to be considered legitimate for a wide range of "just" causes. That changed with the prohibition on war and, later, the adoption of the UN Charter, which prohibits states from making unilateral decisions to unleash destructive force for reasons they regard as "just." Calls to open the door to a wider use of war to address legal wrongs threaten to return us to a world in which war is

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[17] Judiciary Act of 1789 § 9, 1 Stat 73, 76–77, 28 USC § 1350.

[18] See Hathaway, et al, 46 Cornell Intl L J at 519–38 (cited in note 5) (describing scholarly literature on humanitarian intervention, some of which argues for a humanitarian intervention exception); Harold Koh, *Not Illegal: But Now the Hard Part Begins* (Just Security, Apr 7, 2017), archived at http://perma.cc/S434-4EDE (arguing that US strikes against the Syrian airfield that had launched chemical weapons was not illegal aggression in violation of Article 2(4) of the UN Charter).

ubiquitous and rights are decided by force—the very world that our predecessors struggled long and hard to escape.

This brings us to the central importance of understanding war manifestos: they give us a glimpse into a world that, though it may appear alien to us now, laid the foundations of our own. It is easy today, more than seven decades after the inauguration of the UN Charter, to assume that the current world order is inevitable. History teaches us that it is not. At a moment when the modern international legal order is at risk—in the wake of the first successful conquest in Europe since World War II and a retreat from global leadership by the United States—it is worth remembering how different the world once looked.[19]

I. WHAT IS A WAR MANIFESTO?

A war manifesto, as that term is used in this Article, is a very specific type of document, one that serves a defined role in the relations between equal sovereign states in the resolution of disputes (whether through settlement or war). It therefore does not apply to any and all historical documents relating to war. Instead, we apply a strict test meant to focus on documents that served this specific legal function. A manifesto must be (1) public, (2) issued by a sovereign, (3) against another sovereign, and (4) have as its function to justify war. In assembling the dataset on which this Article is based, we applied this four-part test. This led us to exclude a number of documents that were titled "manifesto" but did not meet these characteristics (and to include a number of documents that were not labeled "manifestos" but nonetheless met the criteria). Documents that met all but one of the four characteristics were classified as "quasi-manifestos."[20] Manifestos written in response to another, earlier manifesto were classified as "counter-manifestos."

Public. Manifestos were meant to be public—not necessarily immediately but in the near term. As described at length in Part III, manifestos served a persuasive function that made publicity essential. The majority of manifestos in the collection were published contemporaneously in small pamphlets by local

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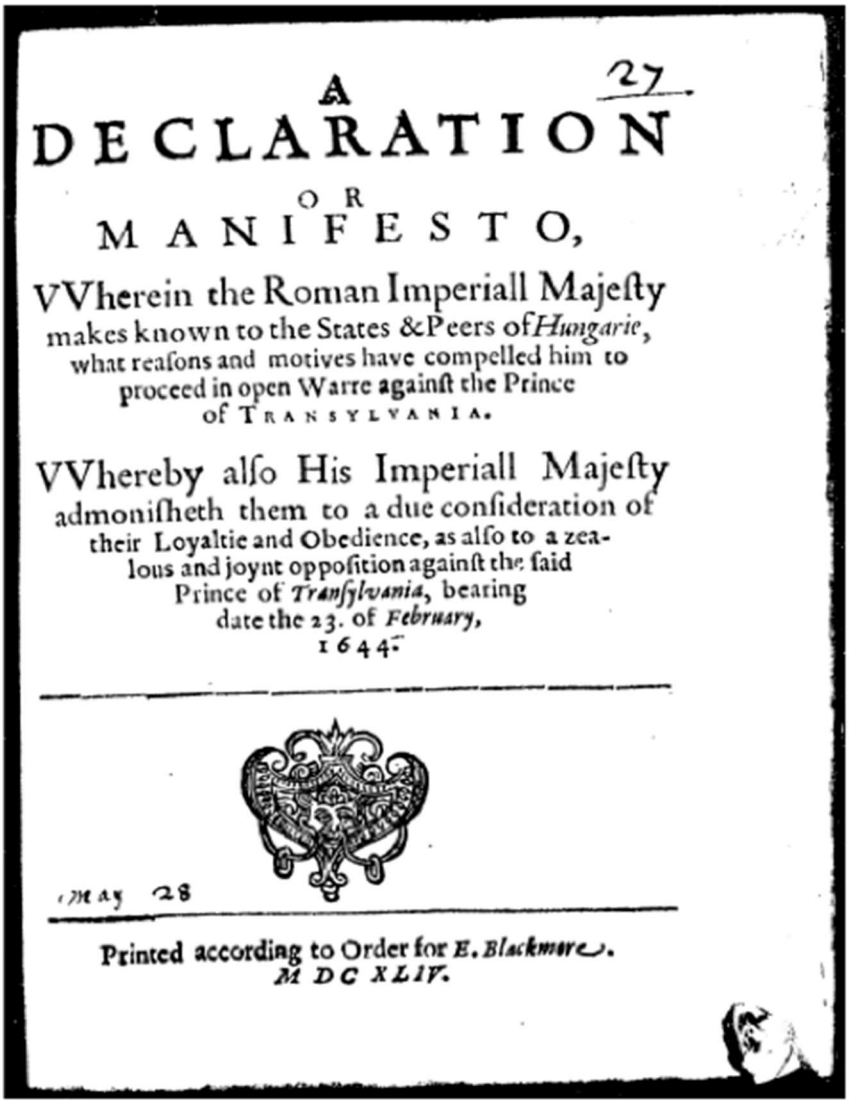
[19] See Hathaway and Shapiro, *The Internationalists*, at 309–35 (cited in note 14) (describing the Russian seizure of Crimea in 2014 and showing how unusual such a conquest is in the modern era).

[20] We excluded seventy-eight documents from Tischer, *Offizielle Kriegsbegründungen in der Frühen Neuzeit* (cited in note 10), because they did not meet all four criteria. Of these, we determined that eighteen were quasi-manifestos.

printing houses. Later, they migrated to newspapers. Though some are the length of a book, most are brief—only six or seven pages. Typically the language is simple and accessible to the public. The first page generally contains the title, which is often colorful and lengthy. An example appears below:

FIGURE 1: 1644 WAR MANIFESTO[21]



A DECLARATION OR MANIFESTO,

VVherein the Roman Imperiall Majesty makes known to the States & Peers of *Hungarie*, what reasons and motives have compelled him to proceed in open Warre against the Prince of TRANSYLVANIA.

VVhereby also His Imperiall Majesty admonisheth them to a due consideration of their Loyaltie and Obedience, as also to a zealous and joynt opposition against the said Prince of *Transylvania*, bearing date the 23. of *February*, 1644.

Printed according to Order for *E. Blackmore*. *M DC XLIV.*

[21] *A Declaration or Manifesto, Wherein the Roman Imperial Majesty Makes Known to the States & Peers of Hungarie, What Reasons and Motives Have Compelled Him to*

The story told by a manifesto is meant to be compelling to the public. Indeed, some of the greatest writers of the time were commissioned to write manifestos on behalf of their sovereigns. It is almost always clear that the sovereign intends the manifesto to be read by the citizenry. The documents sometimes even explicitly address the public, arguing that the justness of the cause requires civilians to support the war effort.

Issued by a sovereign. A manifesto is classified as a manifesto only if it is issued by a sovereign. It is often obvious at a glance that a document is, indeed, an official document of a sovereign. Manifestos frequently have a royal crest on the front cover, and most begin with a lengthy introduction of the issuing sovereign, often including his many titles (for example, "Ferdinand the third by the grace of God Elected Roman Emperour of Germanie, Hungary, Bohemia, Dalmatia, Croatia and Sclavonia, King, Arch-Duke of Austria, Duke of Burgundie, Slyria, Karndten and Craine, Marquis of Moravia, Count of Tyroll and Gortz, &c").[22]

Against another sovereign. A manifesto must be directed at another sovereign. Not infrequently, a document has the form of a manifesto in most respects but is not directed at another sovereign—for example, it may be directed at an organized armed group or rebellion. That document would be classified in our database as a quasi-manifesto. In a true manifesto, after the opening identifying the issuing authority, the manifesto usually then turns to the sovereign target. Often this begins with a recounting of the course of relations between the two states (with these

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Proceed in Open Warre against the Prince of Transylvania (Feb 23, 1644), archived at http://perma.cc/Q679-X6QR.

[22] Id at 1. Sovereigns did not actually write the manifestos; they were written on a sovereign's behalf. For example, Baron Stackelberg wrote a manifesto against Poland in 1772 on behalf of Catherine the Great of Russia, setting forth Catherine's views on the First Partition of Poland. *Declaration in the Name of Tsar Catherine II on the Establishment of the First Polish Division*, in Gazette d'Utrecht (1772), archived at http://perma.cc/C6WM-NF2F. See also Estienne Guillaume Du Bellay, ed, *To the Reichsstaende directed writing to defend the position of Franz I of France* (1537), in *Exemplaria Literarum Quibus et Christianissimus Galliarum Rex Fraciscus* (Rob. Stephani 1537), archived at http://perma.cc/W887-DSQD (letter manifesto on the Italian War of 1536–1538, written on behalf of Francis I, likely by an ambassador in his official capacity). On occasion, rebel groups would issue documents that look much like manifestos, perhaps in part as a bid to establish sovereignty by engaging in sovereign practices. See, for example, *Manifesto of the Congress of the Confederate States of America Relative to the Existing War with the United States* (June 14, 1864), in *The Statutes at Large of the Confederate States of America, Passed at the First Session of the Second Congress; 1864* 286–88 (R.M. Smith 1864) (James M. Matthews, ed), archived at http://perma.cc/4ANZ-2VEM.

relations often framed as having been positive before the change of events giving rise to the manifesto).

We limit our definition of manifestos to documents issued by a sovereign against another sovereign not only for practical reasons—private documents justifying war are legion, and analyzing them would be intractable—but for conceptual reasons as well. Our study focuses on a limited subset of wars, namely those between sovereigns, which international lawyers used to call "public wars" and now call "international armed conflicts." Because we focus on wars between sovereigns, we concentrate on the justifications offered on behalf of those sovereigns in their conflicts with one another. Reprising our lawsuit analogy, we study legal claims made by sovereigns against other sovereigns because they are the "parties" to the dispute.[23]

Have as its function to justify war. A manifesto's purpose is to document the reasons that justify the war—the "just causes." The law at the time manifestos were common required sovereigns to have a just cause for war; the central legal function of the manifesto was to satisfy this legal condition and, moreover, to make clear to all observers that the legal obligation had been satisfied (hence the first criterion—the document must be public). Most manifestos do not give only one reason for war; they generally give several, and the explanations can stretch on for pages. The sovereign issuing the manifesto generally explains that he has attempted to negotiate with the other side or remedy the situation through diplomatic means. Because those efforts have not yielded the desired results, the sovereign concludes, he has no choice but to go to war. (Here, the issuing sovereign is following the dictates of international law—war was permitted, but only as a last resort.)

According to our definition, a document is a manifesto only if its function is to set out the reasons justifying war. Other documents set out these reasons, though doing so was not their function. For example, declarations of war often mentioned the legal causes of war. Indeed, many declarations were published in the

[23] A follow-on project to ours could examine quasi-manifestos issued by or against nonsovereign entities to see if they are different in any systematic ways from those issued by sovereigns. We therefore include them in the public war manifesto database. See Oona A. Hathaway, et al, *War Manifestos Database* (2017), online at http://documents.law.yale.edu/manifestos (visited Feb 19, 2018) (Perma archive unavailable).

same pamphlets as the manifestos.[24] But the function of a declaration of war was to declare war, not to justify it. These documents are generally much shorter than manifestos, usually a few paragraphs in length, and if they contain the purported just causes of war, they are usually stated in a conclusory fashion rather than established with supporting facts and arguments.

These four criteria define the documents that qualify as war manifestos. But even though all manifestos from 1492 to 1945 met these four criteria, manifestos were not static over the course of the centuries during which they were commonly used. They emerged out of the practice of a theoretically unified medieval order, became a mechanism for independent and formally equal sovereigns to express their claims to one another, and increasingly became a tool for the sovereign to communicate with his own population. To see how the practice emerged and changed, we turn next to the history of war manifestos.

II. HISTORY OF MANIFESTOS

To understand the role of manifestos in shaping state behavior over the course of centuries, we start by tracing the history of their use. The practice of using war manifestos did not emerge out of thin air. Instead, war manifestos arose from an earlier practice: during the medieval period, European rulers appeared before their feudal superiors or the pope to address wrongs done to them by their fellow rulers in a practice that is intriguingly reminiscent of modern-day pleadings before a court.[25] After the collapse of papal authority and feudal allegiances, the practice of persuasion through written submissions of wrongs done to the petitioner continued, but the community of sovereigns, not a single superior, was now the primary audience. The evolution of manifestos over the course of centuries reflects technological innovations in mass communication, as well as emerging changes in the relationship

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[24] See generally, for example, *The King of France's Declaration of War against Spain, Dated January 9, N.S., with a Manifesto, Containing the Reasons; and a Postscript of an Intercepted Letter from Cardinal Alberoni to the Prince de Cellamare* (A. Bell 1719) (containing a declaration of war, accompanied by a manifesto giving the reasons for the war), archived at http://perma.cc/79JJ-QLKY. The version of the manifesto that was coded as part of the database is in the original French, *Manifeste sur les Sujets de Rupture entre la France et l'Espagne* (Vaultier 1719), http://perma.cc/E3K5-U4G2. The French version, however, was not accompanied by the declaration.

[25] Manifestos mirror modern-day pleadings in a number of ways, including some of their pathologies: for example, they might make unsubstantiated factual claims or engage in artful pleading, over pleading, forum pleading, and notice pleading.

between the sovereign leader and the governed. As absolute monarchy gave way in many places to democracy, war manifestos reflected the shifting center of power. The history of war manifestos, then, tells not only the history of war but also the history of the international legal order and, indeed, the history of the emergence and evolution of the modern sovereign state itself.

A. Pre-manifesto Practice: Hierarchy and the Papal Court

During the medieval period, states as we know them today had not yet taken shape. The European world constituted an elaborate and highly ordered hierarchical system within which every participant, whether prince or peasant, had an assigned role.[26] From the medieval point of view, the different nations of Christendom constituted a single entity, the *respublica Christiana*,[27] and so all conflicts between Christian princes were internal affairs that had to be resolved according to a system that recognized the mutual dependence and common allegiance of the participants.

This conception of Europe as a unified body led to the practice whereby disputants, before going to war, placed their dispute before their common superior. Local barons went before their common king, or minor kings within the Holy Roman Empire might present their cases before the emperor.[28] This process of appeal gave the parties a chance to have their cases reviewed by a neutral third party, who could verify that the proposed war was legal and founded on reasonable grounds, and who, most importantly, could attempt to resolve the disagreement peaceably.

This system made sense for rulers who acknowledged a common feudal superior, but created difficulties when conflicts arose between those great rulers who did not acknowledge a temporal superior, including the kings of France and England, who considered themselves to be "emperors in their own realms."[29] The medieval world order, however, recognized a higher authority to whom

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[26] See Barbara Stollberg-Rilinger, *The Emperor's Old Clothes: Constitutional History and the Symbolic Language of the Holy Roman Empire* 80 (Berghahn 2015) (Thomas Dunlap, trans) ("[The emperor and the pope] infused the entire order hierarchically from top to bottom.").

[27] See J. Neville Figgis, *Respublica Christiana*, 5 Transactions of the Royal Hist Soc 63, 70–71 (1911).

[28] For a description of the procedure in medieval France, see, 12 *Ordonnances des Rois de France de la Troisième Race* 414 (De L'Imprimerie Royale 1777), online at http://gallica.bnf.fr/ark:/12148/bpt6k108682r/f453.image (visited Feb 16, 2018) (Perma archive unavailable).

[29] See Figgis, 5 Transactions of the Royal Hist Soc at 73 (cited in note 27).

such rulers could appeal: the pope. After all, "[i]f a king made war on the Emperor, or the Emperor on a king not subject to him, no one except the Pope could be referred to as the common lord of both."[30] In such situations, rulers had recourse to the papal court: "'The individual princes and kings have their particular domains; Peter is above all. . . .' The pope is Lord and Master of all things, . . . judge over rulers and lord of the whole world."[31]

This accountability to the pope did not prevent medieval rulers from going to war, but it shaped the way they did so in highly important ways.[32] First, sovereigns were required to present their arguments for war in a legal context, outlining their reasons in a manner suitable for the papal court and its sophisticated lawyers. Second, this process shaped the reasons themselves, encouraging rulers to conform their arguments to the norms contained in canon law, so as to secure papal approbation or at least avoid papal censure. Finally, the process forced rulers to go through a series of legal procedures before they could resolve their disputes on

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[30] Bede Jarrett, *Social Theories of the Middle Ages* 191 (Newman 1942) (quoting Antoninus of Florence).

[31] Johannes Haller, *Lord of the World*, in James M. Powell, ed, *Innocent III: Vicar of Christ or Lord of the World?* 47–48 (DC Heath 1963). Here, of course, it must be noted that the degree to which medieval popes actually exercised the power that they claimed remains a matter of dispute among scholars. See generally, for example, Walter Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power* (Methuen 1955), and other works by the same author for a strong interpretation of papal authority in the Middle Ages. For a more limited view of the papal role as arbiter of the international order, see Wilhelm G. Grewe, 3 *The Epochs of International Law* 93–94 (Walter de Gruyter 2000) (Michael Byers, trans). In many ways the modern debate is only a continuation of the medieval debate between advocates of papal power, often called in the literature *hierocrats*, who at their most extreme argued that the pope had universal, direct, and unlimited jurisdiction over the entire globe and every person who inhabited it, and the advocates of imperial power, sometimes called *dualists*. It is important to remember, however, that even the so-called dualists recognized the spiritual supremacy of the pope, as well as his right to intervene in temporal affairs under certain carefully circumscribed conditions. For a discussion of the distinction between hierocrats and dualists, as well as the limitations inherent in imposing this modern analytical framework on the complex world of medieval European politics, see Joseph Canning, *A History of Medieval Political Thought: 300–1450* 93–95 (Routledge 1996).

[32] Professor Tischer asserts that, even in medieval times, papal legitimation was little more than a fig leaf. See Tischer, *Offizielle Kriegsbegründungen* at 52 (cited in note 10), discussing Christoph Kampmann, *Arbiter und Friedensstiftung: Die Auseinandersetzung um den Politischen Schiedsrichter im Europa der Frühen Neuzeit* 21, 31–36 (Ferdinand Schöningh 2001). This is a matter of scholarly dispute. See note 31. For reasons explained here, the justification process is important regardless of whether it was effective at preventing armed conflicts.

the battlefield, helping to ensure that war really was the last resort and not entered into precipitously.[33]

The Hundred Years' War offers an example of how the process worked: before declaring war against Philip VI, Edward III notified the pope that he intended to claim the French crown for himself. Edward's right to the crown was highly dubious because it came through his mother, and under the Salic law women could not inherit. The pope attempted to dissuade Edward from making such a rash claim, but when Edward would not yield, he commanded Edward and Philip to send their envoys to Avignon to present their cases before him.[34] In Avignon, Edward's ambassadors presented the brief for his "case in equity" before the pope, stating the reasons by which Edward believed that he was justified in claiming the French crown and the sort of relief he sought.[35] The pope heard the complaint and attempted, unsuccessfully, to bring the two kings to settle their dispute.[36] As was often the case, the pope served as a kind of referee, ensuring that all parties followed the rules of the game and penalizing those parties who failed to comply.[37] However, he could not prevent them from going to war or compel them to accept his proposed solution to their dispute. This appeals process, consequently, is best understood not as an alternative to war but rather as a final procedural step in the process of attempting to resolve conflicts prior

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[33] For example, in 1340, at the dawn of the Hundred Years' War, Edward III of England began his letter of defiance to Philip VI of France,

> Philip of Valois, we have long laboured with you by embassages and all other reasonable ways, to the end that you should restore unto us our rightful inheritance of France . . . and forsomuch as we well perceive that you intend to persevere in the same injurious usurpation, without returning any satisfactory answer to our just demand, we have entered the land of Flanders.

The Letter of the King of England to Philip de Valois, the French King, Going to the Siege of Tournay (July 27, 1340), in John Foxe, 2 *The Acts and Monuments, 1516–1587*, 677 (Religious Tract Society 1887). Edward thus demonstrated that he had complied with the legal requirement to exhaust every possible alternative for resolving the dispute.

[34] From 1309 to 1377 the papacy was headquartered in the French city of Avignon rather than in Rome.

[35] See *Libellus de Eduardi Causae Aequitatae Papae*, in 25 *Cesare Baronio, Annales Ecclesiastici* 202–03 (Silvestri 1872).

[36] Id at 204.

[37] See, for example, Georges Daumet, *Benoit XII (1334–1342): Lettres Closes, Patentes et Curiales se Rapportant à la France* XXXVII–XLIII (E. de Boccard 1920). Daumet gives a fascinating account of a time when the pope disciplined the king of France and forced him to back down over an incident involving a breach of the customary rights of ambassadors.

to war. Rulers might manage to resolve their disputes peaceably at this stage, but there was no guarantee that they would do so.

The reasons developed by rulers for presentation to the pope were not delivered only in the curial setting. Rulers would go to great lengths to make them public as well. Medieval rulers depended on the support of their populations just as do modern governments—perhaps more so, given the relative weakness of central rulers in the feudal context—and their vassals would not go to war without any explanation. Furthermore, rulers hoped to minimize opposition and so attempted to persuade at least some portion of the enemy's subjects that their cause was just. Therefore, rulers issued explanations of their actions to their own subjects and to those of their opponents, explaining why they had to go to war.

The Hundred Years' War is again illustrative. Before formally declaring war on Philip, Edward drew up an explanatory letter addressed to the "Nobles and Commons of France." In this letter, Edward explained that Philip had refused all his overtures of peace, and that, therefore, he was "forced of necessity" to go to war, both for "the recovery of [his subjects'] rights" and for the "safeguard and profit" of his French subjects.[38] He guaranteed the safety and protection of those French subjects who were loyal to him, and "forasmuch as the premises cannot easily be intimated to all and singular persons, [he] provided the same to be fixed upon church doors, and other public places, whereby the manifest notice thereof may come to all men."[39] Therefore, even before the printing press had made mass distribution of war manifestos convenient, rulers took pains to ensure that the populace had access to their reasons for war.

The medieval era thus set the stage for later war manifesto practice and helps us better understand its legal character. Declarations of war—which in the medieval period took the form of so-called "letters of defiance"—inaugurated wars and gave rulers an opportunity to state their reasons for war to their enemies. Rulers also offered public explanations of their conduct in letters addressed to the general population and posted in public places. The medieval appeals to feudal superiors and the pope gave the affair the tenor of a formal judicial proceeding, with kings carefully outlining their legal reasons for taking up arms. That

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[38] Id.

[39] Id at 674–75.

formalistic legal process mirroring a courtroom trial would continue even after papal authority declined in the sixteenth century, as technological and political developments facilitated the merger of these complaints with letters of defiance and public explanations to create the war manifesto.

B. Early Modern European Manifestos: The Rise of the Sovereign State

The religious revolution and nationalistic upheaval of the early sixteenth century marked the transition from the medieval era to the modern age. Many of the key features of manifesto practice crystallized during that period.

The beginning of the sixteenth century was a time of transition in the international order. The late medieval period brought the genesis of the modern state. Increasing centralization of power in the hands of national sovereigns resulted in the gradual demise of private wars, as these sovereigns required their nobles to bring disputes before the royal courts rather than settling them by force of arms.[40] Outside the Holy Roman Empire, legal wars took place only between those rulers who acknowledged no common temporal superior, effectively leaving the pope as the only figure who could serve as an arbiter of international law.[41] During the sixteenth century, however, Protestant rejection of the pope and his authority,[42] together with the consequent fracturing of

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[40] This process was incredibly protracted. In France, for instance, Charles VI prohibited the waging of private wars in 1413, but nobles continued to engage in such conflicts until the late seventeenth century, when Louis XI finally succeeded in putting an end to the practice. See William Robertson, *The History of the Reign of the Emperor Charles V* 535–36 (Harper & Brothers 1836); Whitman, *Verdict of Battle* at 144 (cited in note 9).

[41] By the end of the medieval period, papal pretensions to supreme authority over the international system had grown so exalted that, in 1493, Pope Alexander VI could claim to divide the non-Christian world between Spain and Portugal. See Pope Alexander VI, *Inter Caetera* (1493).

[42] In the early sixteenth century, imperial theorists began to revive the centuries-old debate over the relative supremacy of the pope and the emperor. As had earlier medieval imperialists—such as, notably, Dante Alighieri—they advocated imperial supremacy in temporal affairs and the restriction, though not the abolition, of papal rights in that regard. See, for example, Lupold of Bebenburg, *Tractatus de Juribus Regni et Imperii Romanorum* (Adriani Wyngaerden 1664), archived at http://perma.cc/P43A-MKYA. Although the Protestant Reformation began as an attack on abuses connected with the selling of indulgences, it quickly expanded into a more general assault on both the temporal and spiritual authority of the papacy and on the role of the medieval church in society. A seminal figure in the Reformation, Martin Luther, argued for the subordination of the Church to the temporal authorities. His argument extended to the role of the pope in international law. "They say," he wrote, "[the Pope] is the ruler of the world. This is false; for Christ, whose vice-gerent and vicar he claims to be, said to Pilate: 'My kingdom is not of this

Christendom into warring camps, effectively abolished the medieval system and unleashed the chaos and devastation that would lead to the establishment of the Westphalian international order in the seventeenth century.

The transformation in the nature of sovereign authority in Europe can be seen in the emergence of war manifestos. The very first manifesto in our collection, issued by Maximilian in 1492, illustrates the emerging practice.[43] Maximilian was furious because Charles had invaded Brittany and demanded that Anne, the Duchess of Brittany, marry him. Anne, however, was already married to Maximilian. Under compulsion, she renounced her marriage and married Charles. Maximillian went to war over the act of wife stealing, but not before issuing a manifesto against Charles that reflected his rage, asserting that the French king "surpasses the name of the fornicator and of the rapist and of the adulterer."[44]

Of course, the transition was not immediate. Many rulers continued to act as they had before, issuing letters of defiance and appealing to the pope.[45] They continued, as well, to speak as

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world.'" Martin Luther, *To the Christian Nobility of the German Nation Respecting the Reformation of the Christian Estate*, in Henry Wace and Carl Adolf Buchheim, eds, *First Principles of the Reformation* 32 (John Murray 1883). Though the Protestants differed significantly among themselves on questions of theology, ecclesiastical polity, and liturgical practice, they nonetheless agreed in asserting the independence of Christian princes vis-à-vis the supreme pontiff.

[43] On its face, the document is not issued by the sovereign but is instead addressed to the sovereign by his loyal subjects, raising questions about whether it is properly classified as a manifesto. Context clues in the document and in historical research indicate that Maximilian was, in fact, the author of the manifesto. Historical evidence indicates that Maximilian was an innovative user of the printing press for political purposes. Using the printing press to create a document filled with glowing praise of the sovereign—but not explicitly written by the sovereign—is consonant with other political choices Maximilian made. Tischer, likewise, believes that Maximilian was the author of this document (and similarly labels it a manifesto). See Tischer, *Offizielle Kriegsbegründungen* (cited in note 10).

[44] *Contra Falsas Francorum Litteras 1491 Datas, Pro Defensione Honoris Serenissimi Romanorum Regis, Semper Augusti* (1492).

[45] See, for example, *Manifeste du Duc de Savoye* (1613), online at http://cdm15999.contentdm.oclc.org/cdm/ref/collection/FrenchPolPa/id/32086 (visited Feb 16, 2018) (Perma archive unavailable); *La Response du Roy de France, Faicte a Nostre S. Pere, Sur le Propos Tenu par Lempereur a Sa Sainctete* (May 11, 1536), in *Recueil d'aucunes lectres et Escriptures* (1536), archived at http://perma.cc/4X8Y-ZWUV; *La replique faicte par Lempereur sur la dicte response, du Roy de France* (May 19, 1536), in *Recueil d'aucunes lectres et Escriptures* (1536), archived at http://perma.cc/4X8Y-ZWUV. This latter manifesto—a very late example of an appeal to the pope—is exaggerated in its rhetoric, and was seen by its contemporaries as faintly ridiculous, indicating that its approach already did not reflect the norms of the period in which it was written. Even so, it appears that Catholic sovereigns continued the practice of issuing separate manifestos to the pope for some time.

though they were part of a common order, citing, for example, the defense of Christendom as a justification for war.[46] But there were important shifts.

Protestants, who refused to recognize the authority of the pope, did not present their cases before him.[47] They nonetheless still felt a need to present their legal basis for going to war. Some of them initially appealed to the Holy Roman emperor instead of the pope.[48] By the end of the century, however, sovereigns customarily appealed to the Christian community as a whole. For example, in 1587, Henry III of Navarre (later Henry IV of France) issued his manifesto against the Catholic faction in France—and the pope, whom he labeled the Antichrist and the "firstborn of Satan"—in the form of an address to the emperor, all kings and republics, the nobility and people of France, and all Christians everywhere.[49] He rejected the authority of the pope, whom he accused of meddling in the internal affairs of Christian realms, but he called for submitting the disputes roiling Christendom to a "free and legitimate Council."[50]

The last such example in our collection was issued by Louis XIV of France in 1704, but it seems at that stage to have been more of a courtesy and a formality, with no further expectations than the pope's neutrality in the temporal realm and his fatherly intercession in the spiritual. See *Lettre du Roy au Pape contenant les Motifs de la Guerre de Savoye* (Jan 14, 1704), archived at http://perma.cc/GE5Q-Q3KL.

[46] Tischer emphasizes that from the collapse of the papal authority through the French Revolution (the period of her study), justifications for war were motivated by European sovereigns' shared understanding that they were a part of a common Christian order in which rulers needed to justify their wars to one another. Tischer, *Offizielle Kriegsbegründungen* at 58, 219 (cited in note 10).

[47] The Holy Roman Empire had its own procedures for such declarations, which the German princes continued to follow.

[48] See, for example, *Declaration du Faict de la Guerre de France* (1563), online at http://polona.pl/item/declaration-dv-faict-de-la-gverre-de-france-que-les-ambassadeurs-de-monseigneur-le,NzkxNDY4Nw/0/#info:metadata (visited Feb 16, 2018) (Perma archive unavailable).

[49] *Declaratio Causarum, Quibus Serenissimus Rex Navarrae, Primus Regii Francorum Sanguinis Princeps, Eiusdemque Regni Heres &c. Externum Militem Conscribere Coactus Est* 4 (1587), archived at http://perma.cc/T65S-WZSW.

[50] Id at 5. Henry's manifesto demonstrates a shift in the conception of how Christendom ought to be governed. Because the papacy itself was the point of contention, and an ecumenical council that would be acceptable to all sides remained but a dream, in the interim it fell to the collection of Christian sovereigns to cooperate in order to preserve the peace and good order of Christendom. In fact, Henry apparently held onto this idea even after his 1593 conversion to Roman Catholicism and ascension to the throne of France. In 1633, the Duke of Sully published a "Grand Design" for the unification of Europe that he said had originated with his master, Henry, though the duke himself is thought to have been instrumental in its development. The Grand Design envisioned Europe as a federation of nation-states, overseen by a council representing all the sovereigns. The pope himself would occupy first place and preside over the council. Both Elizabeth I of England and

The transformation in the nature of the state is thus inscribed in early war manifestos. Sovereigns, who once appealed to their common superior, and, failing that, to the pope, increasingly addressed their justifications for war instead to their fellow Christian rulers. The war manifestos of early modern Europe borrowed many elements of the medieval practice but adapted it to the changed conditions of the era. By the end of the sixteenth century, then, we see the regular issuance of war manifestos in their fully developed form, as appeals not for the intervention of a particular emperor or pope, but as appeals to all—independent and formally equal—Christian sovereigns. In later centuries, this practice developed further into appeals to all nations of the world and all of humanity.

We thus witness the birth of so-called "Westphalian" sovereignty in the transition from letters of defiance, coupled with appeals to higher authority, to war manifestos. Nations increasingly refused to acknowledge any superior save God and the law of nations, which had its origin not in the edicts of a single supreme lawgiver, nor even necessarily in divine law, but in the collective customs and practices of the sovereigns themselves. Indeed, war manifestos received formal legal sanction at Westphalia in 1648. The Treaty of Westphalia declared, in part, that those who would go to war must make "a lawful Cognizance of the Cause" and pursue "the ordinary Course of Justice." In particular, it stipulated that each party was obliged to maintain the peace against anyone who would violate it, and that even if such violation were to occur, "the Offended shall before all things exhort the Offender not to come to any Hostility, submitting the Cause to a friendly Composition, or the ordinary Proceedings of Justice."[51] It continued:

> [Only] if for the space of three years the Difference cannot be terminated by any of those means, all and every one of those concern'd in this Transaction shall be oblig'd to join the injur'd Party, and assist him with Counsel and Force to repel the Injury, being first advertis'd by the injur'd that gentle Means and Justice prevail'd nothing.[52]

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the pope apparently gave some support to the idea, but the principals died before it could be brought into effect. See generally Maximilien de Béthune duc de Sully, *Grand Design of Henry IV* (Sweet & Maxwell 1921) (David Ogg, ed).

[51] Treaty of Westphalia Art 123 (1648).

[52] Treaty of Westphalia Art 124 (1648).

Beneath the formal language was a key point: states were obliged to state their claims, and they could go to war to obtain justice if those claims were not satisfied. The war manifesto—and the independent, legally equal, sovereign state—had come into its own.

C. The Modern Manifesto: Expansion and Democratization

The demise of papal authority led sovereigns to shift their focus from persuading the pope to a new audience: their fellow sovereigns and, increasingly, their populations. War manifestos during this period tell a story of growing access to the printed word and, with it, expanded efforts by sovereigns to reach and persuade their populations as a whole.

Even during the medieval period, sovereigns publicized their grievances beyond the papal court. The reasons for war were spread by heralds, who would deliver handwritten manifestos, read them aloud, and affix them to a public place. At a time when few were literate and means of spreading the written word was limited, this was the most effective means of communicating to the population at large.[53] The technology for reaching the public began to improve in the fifteenth century. The printing press, invented in 1440 by Johannes Gutenberg, allowed the low-cost reproduction of the printed word and ushered in a democratization of access to sovereigns' war manifestos. As that technology spread in the late fifteenth and early sixteenth centuries, manifestos were disseminated more broadly.

The printing press's revolutionary impact is well documented.[54] Some twenty million books were printed during the fifteenth century.[55] The printing press facilitated book dissemination, spurring dramatic increases in readership and literacy rates across Europe.[56] While some 77 percent of books printed before

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[53] Literacy rates in Europe at the time were below 20 percent. See Max Roser and Esteban Ortiz-Ospina, *Literacy* (Our World in Data, 2018), archived at http://perma.cc/EWM9-NGNQ.

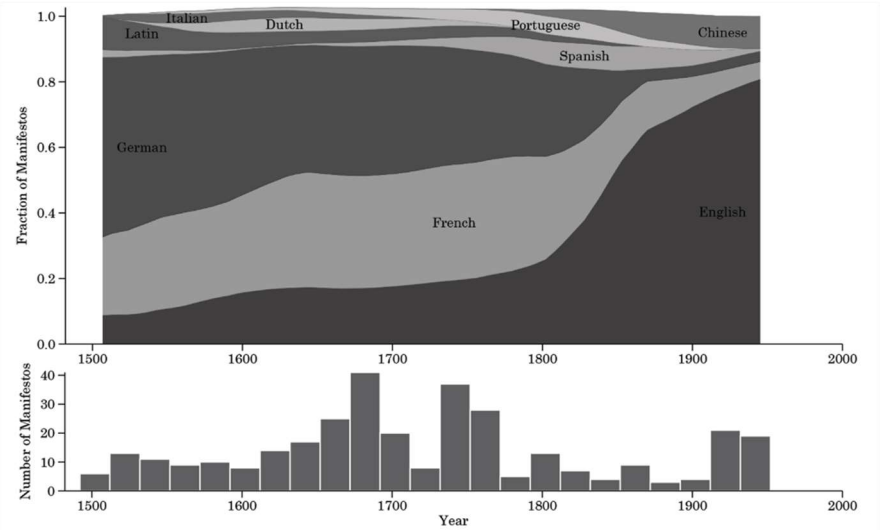
[54] See generally, for example, Lucien Febvre and Henri-Jean Martin, *The Coming of the Book: The Impact of Printing, 1450–1800* (Verso 2010) (David Gerard, trans). See also Elizabeth C. Hanson, *The Information Revolution and World Politics* 14–17 (Rowman & Littlefield 2008); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* 38–39 (Verso 1983); Tischer, *Offizielle Kriegsbegründungen* at 33, 108 (cited in note 10).

[55] See Febvre and Martin, *Coming of the Book* at 248 (cited in note 54). There were 377 catalogued private libraries in the late fifteenth and sixteenth centuries. See id at 263.

[56] See, for example, Tatiana Schlossberg, *The State of Publishing: Literacy Rates* (McSweeney's, Feb 7, 2011), archived at http://perma.cc/JT7S-PFUY (noting that, while only

1500 were still in Latin, this percentage dropped as the printing of Italian, German, French, and Flemish texts became increasingly common.[57] The advent of printing spread access to the written word beyond a narrow elite, helping to end the dominance of Latin as the universal language, fueling the Reformation, and further fragmenting papal power as new ties formed along linguistic lines.[58] The spread of vernacular works led eventually to the establishment of official local languages, a seminal development in the emergence of the modern nation-state.[59] As Figure 2 shows, the rise of vernacular languages can be observed directly in war manifestos issued by the sovereigns of Europe. The shifting prominence of languages may also reflect a shifting locus of conflict in Europe. German, for instance, dominates in the early modern period, following the German Reformation. English is more common in the nineteenth and twentieth centuries.

FIGURE 2: MANIFESTOS BY LANGUAGE



Manifestos are sometimes written in more than one language. Here, the number of languages have not been normalized. That is, if a manifesto is written in two languages, then each counts as one. The total may therefore be larger than one. Label placement roughly indicates when a particular language was most prevalent.

A brief note about all of the figures and numbers reported in this Article is warranted. We must be cautious about drawing strong inferences from the collection of manifestos. The figures

30 percent of European adults were literate in 1440, the invention of the printing press and further emphasis on education led to 62 percent literacy rates in England by 1800).

57 See Febvre and Martin, *Coming of the Book* at 249, 320–23 (cited in note 54).

58 See Anderson, *Imagined Communities* at 42–43 (cited in note 54).

59 See id at 42–46.

we offer demonstrate the frequency with which our collection of manifestos reflects the relevant characteristic assessed. In reading these figures, it is important to bear in mind that while we do have the most extensive set of manifestos available, the set is not complete. Many manifestos have been lost or are inaccessible.[60] Hence changes in the collection do not necessarily reflect changes in the full set of manifestos issued by sovereigns. Moreover, manifestos reveal only the reasons that sovereigns gave for war—and therefore what reasons they regarded as legal and legitimate reasons for waging war—not necessarily their true motivations. While there is much to learn from the collection, the data should be considered in context.

The production and dissemination of manifestos took place through a period of massive transformation in the production and dissemination of the printed word. While books and pamphlets were the exclusive products of the printing press in the late fifteenth and sixteenth centuries (hence manifestos appeared largely in these forms during this period), newspapers arrived on the scene at the turn of the seventeenth century, leading to yet another watershed moment in the evolution of manifesto practice. Prior to the advent of the newspaper, current events were primarily spread through word of mouth, as printed books predominantly contained religious works or classical and contemporary literature.[61] During the late 1500s and early 1600s, heavy regulations on printing were promulgated in England.[62] Such regulation may have in fact spurred the explosion of newspapers, as printers strove to cram as many tidbits of information into one (approved) document as possible. Literacy and readership rates continued to grow with the advent of the newspaper, which targeted a larger and more diverse audience with issues of local interest, compared to the limited pool of religious officials or wealthy scholars that consumed books.[63]

The manifestos database includes twenty-seven manifestos found in newspapers between 1684 and 1941, roughly 8.1 percent

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[60] For more on how we located war manifestos, see Appendix.

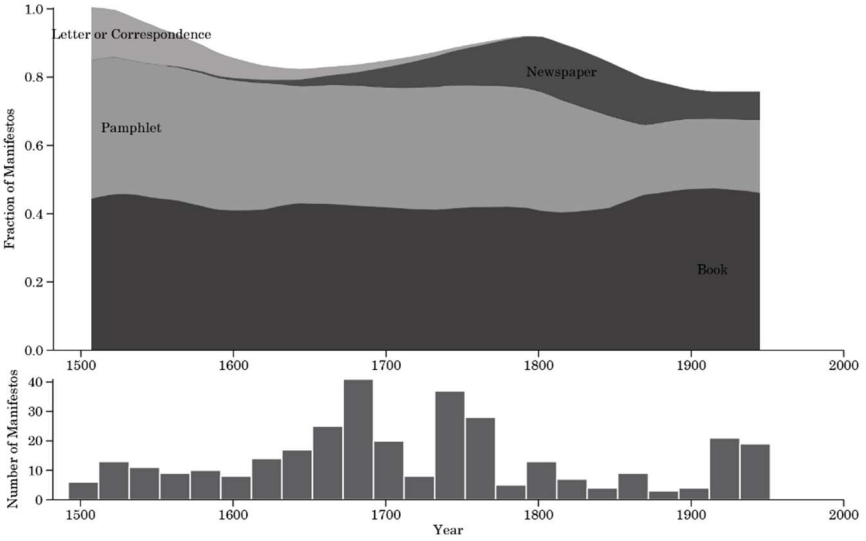
[61] See Febvre and Martin, *Coming of the Book* at 249 (cited in note 54).

[62] See Henry Richard Fox Bourne, 1 *English Newspapers: Chapters in the History of Journalism* 28–29 (Chatto & Windus 1887) (describing the Licensing Act of 1662, which—renewing similar restrictions in place between 1585 and 1637—limited the number of master printers to twenty and assigned the licensing of political writings to the secretary of state and the licensing of legal writings to the lord chancellor and judges only).

[63] See Laurie Thomas Lee, *History and Development of Mass Communications* 3–6, in 1 *Journalism and Mass Communication* (2009) (Rashmi Luthra, ed).

of the total collection.[64] Publication of manifestos in newspapers allowed sovereigns to see widespread, almost instantaneous, dissemination of their manifestos in order to rally public support for war. As Figure 3 shows, as newspapers proliferated, pamphlets became less common. After the first newspaper-published manifesto we identified, published in 1684,[65] the practice of publishing manifestos in newspapers grew rapidly, peaking around the turn of the nineteenth century. Books may be overrepresented in Figure 3 because war manifestos were collected and reprinted in books and survive today primarily in that form. It is not always clear in those collections of reprinted materials where the manifesto first appeared. Likely they initially appeared in more immediate forms—whether newspapers or pamphlets.

FIGURE 3: MANIFESTOS IN NEWSPAPERS



Manifestos are generally only published in one format.
The total is sometimes less than one because some original publication sources cannot be determined.
Label placement roughly indicates when a particular publication source was most prevalent.

In the collection, the majority of manifestos published in newspapers were printed in British papers, though this may be a byproduct of the robustness of modern British collections and the ease of access to such collections for Anglophone researchers.

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64 See Appendix for details on methodology. The count of newspapers includes manifestos that we found in limited newspaper collections, but not those initially printed in newspapers and then reprinted in books, where we later located them. Thus, this may undercount the number of manifestos first printed in newspapers.

65 See *Lettre en Forme de Manifeste, Touchant l'Affaire de Gironne* Mercure Galant 18–52 (Aug 1684),

These manifestos had extraordinary reach. They were not simply printed in the national press; they also appeared in regional and city-based publications. And they concerned not only conflicts involving Great Britain, but also conflicts throughout Europe.[66]

Newspaper-printed manifestos also sometimes were accompanied by commentary from the editors or printers, a practice that increased over time. For example, commentary surrounding the American War of Independence was robust, with many British editors (not surprisingly) expressing support for Great Britain.[67] Commentaries even included reactions to the style and substance of the manifestos.[68]

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[66] See, for example, Lacrosse, Lescallier, and Coster, *Manifesto Addressed to All the States, Friends or Allies of the French Republic, to All Governors and Commanders in Chief of the Sea and Land Forces in the West Indies, to the Captains and Commanders of the Different Ships of War Belonging to the States, Stationed for the Protection of Their Respective Colonies, or Navigating in These Seas*, The Derby Mercury (1802), archived at http://perma.cc/3B2P-2LJ7 (issued by France to its allies to establish the government of Guadaloupe and its dependencies, in reference to the Haitian Revolution); *Manifesto of the States General of the United Provinces, in Answer in the Following Proclamation of Gen. Dumourier*, The Scots Magazine 172 (Apr 1, 1793); *Manifesto and Declaration of His Prussian Majesty to the City of Dantzick* (1793), archived at http://perma.cc/C82A-JHQE; *Manifesto of the Government of Bruxelles in Answer to the Declaration of War on the Part of France* 1 (1792), archived at http://perma.cc/ZWP9-U6HW; *Manifesto of Her Imperial and Royal Apostolic Majesty the Empress of Germany and Queen of Hungary and Bohemia, and Declaration to All the Respective Princes and States of the Roman Empire, Concerning the Illegal and Hostile Enterprises of His Majesty the King of Prussia, in Opposition to Her Natural and Legitimate Rights to the Succession of Lower Bavaria*, The Scots Magazine 517 (Oct 1, 1778), archived at http://perma.cc/2BFQ-4644. A few manifestos were reprinted in multiple newspapers, indicating some cross-pollination between various outlets. See, for example, M. Condorcett, *Manifesto, to All States and Nations, Decreed by the French National Assembly, and Presented to the King*, Chester Chronicle 4 (Jan 13, 1792), also printed in 23 The Norfolk Chronicle 2 (Jan 14, 1792); *A Manifesto, Displaying the Motives and Conduct of His Most Christian Majesty towards England*, The Scots Magazine 345 (July 5, 1779), also printed in 10 The Norfolk Chronicle 4 (July 31, 1779), archived at http://perma.cc/GT3A-QHU6; *Manifesto*, 25 The Leeds Intelligencer 4 (Dec 29, 1778), also printed in 59 Northampton Mercury 4 (Dec 28, 1778); Earl of Carlisle, Sir Henry Clinton, and William Eden, *A Manifesto and Proclamation, to the Members of the Congress, the Members of the General Assemblies, and All Others, Free Inhabitants of the Colonies*, The Scots Magazine 607 (Nov 1, 1778), archived at http://perma.cc/JSL5-G8QL, also printed in The Reading Mercury and Oxford Gazette 4 (Dec 7, 1778).

[67] See, for example, *Manifesto*, 25 The Leeds Intelligencer at 4 (Dec 29, 1778) (cited in note 66):

> It is not true, that the measures of Great Britain towards her colonies have been tyrannical, or, if they will, be tyrannous. It is, on the contrary, well known, that no Colonies were ever planted on so fair a ground of public generosity and freedom, and that, consequently, no Colonies ever advanced with so rapid a progress in population and wealth.

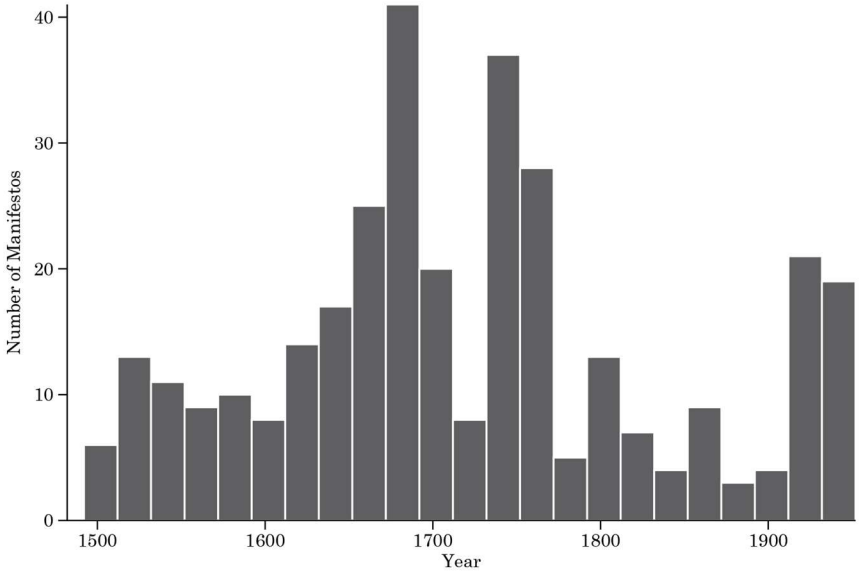
[68] See, for example, *Manifesto of the Government of Bruxelles, in Answer to the Declaration of War on the Part of France* at 1 (cited in note 66):

This democratization of access to—and commentary on—war manifestos was reflected in the manifestos themselves. The language used in manifestos over this period became more practical, pointed, and matter-of-fact. The elaborate, theoretical orations that were popular before the advent of the printing press and newspapers gave way to language that would appeal to the ordinary public, which was now the target audience.

D. The Slow Decline of Manifestos

The frequency of the publication of manifestos peaked at the turn of the eighteenth century, as Figure 4 demonstrates. After 1775, it appears, states issued far fewer manifestos, until the two world wars in the twentieth century.[69]

FIGURE 4: MANIFESTO PUBLICATION FREQUENCY



Histogram of the number of manifestos by year.
Each bar represents twenty years of data, beginning in 1492.

It is with great satisfaction we are enabled to present this Proclamation to our Readers: It is not more valuable for being a matter of very important knowledge, than that it is one of the most eloquent declarations, and contains the soundest reasoning we ever read. Every line of it is full of energy;—it cuts to the very root the new doctrine of the Parisian Fanatics, and tends to discourage the same attempts of our Reformers at home.

There are several likely reasons for this decline. In the nineteenth century, Europe was less torn by wars than in centuries past.[70] This decline in conflict likely led to a corresponding decline in war manifestos. Conflict shifted from the heart of Europe to the periphery (especially the Balkans), where records were less well preserved or where they have been maintained in collections inaccessible to us. Moreover, the new imperial period of colonial expansion by European powers directed conflicts away from Europe and toward areas regarded by many as *terra nullius*—land without proper sovereign authorities against whom war manifestos must be issued.[71] Notably, however, this does not explain the absence of manifestos during the Napoleonic period. Professor Anuschka Tischer hypothesizes that manifestos waned during this moment not because conflict between sovereigns declined or because of changes in the location of conflict, but

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[69] Compare, for example, *Declaration Veritable des Caules & Occalions de la Pressente Guerre de Parme* (1511), archived at http://perma.cc/CC9S-SR6F, with Lacrosse, Lescallier, and Coster, *Manifesto Addressed to All the States* (cited in note 66). While both manifestos were written by French noblemen, they exhibit a remarkable difference in tone based in large part on the intended audience. The 1510 speech by Lodovico Eliano was addressed directly to Maximilian, Holy Roman Emperor, at a meeting of German princes in relation to the War of the League of Cambrai. As such, it is marked with flourishes, long sentences, and sophisticated language, and continues for twenty pages. In contrast, Captain General Lacrosse's 1802 manifesto on the Haitian Revolution, which was published on one page of an English newspaper, opened with the statement that it is "Addressed to all the States, Friends or Allies of the French Republic" and ends with an exhortation that privateers near the island of Guadaloupe "will be looked upon as pirates, and treated accordingly with all the severity pointed out by Law." Envisioning a broader audience, Captain Lacrosse's language is far more brief, pointed, and practical than that of his sixteenth-century counterpart.

[70] See Perry Anderson, *The New Old World* 519 (Verso 2009). Some have theorized that a rise in democracy and corresponding decline in religiosity across the continent may have reduced the number of conflicts, and hence the number of manifestos, in the nineteenth and twentieth centuries. See, for example, Stathis N. Kalyvas, *The Rise of Christian Democracy in Europe* 258–61 (Cornell 1996). This would not explain the dearth of Napoleonic manifestos. Indeed, the collection includes no manifestos from the European powers from 1802 to 1815, a time that was ravaged by war. Tischer hypothesizes that manifestos fell out of favor because of the French Revolution, which changed the nature of sovereign communication in Europe. See Tischer, *Offizielle Kriegsbegründungen* (cited in note 10).

[71] The manifestos that were issued were less likely to be reprinted in full. Instead, they were embedded within news stories, not as stand-alone documents. Embedded discussions or citations of portions of manifestos were not included in our collection—only stand-alone documents are included. As a result, there is a possibility that the collection's decline in numbers after the late 1700s is artificial. To check the representativeness of the collection, we consulted all previous manifesto collections. See generally Tischer, *Offizielle Kriegsbegründungen* (cited in note 10); Repgen, *Kriegslegitimationen in Alteuropa* (cited in note 10); Klesmann, *Bellum Solemne* (cited in note 10). These confirmed a more limited number of manifestos after the late 1700s.

instead because the shared sense of community among Christian European sovereigns collapsed as a result of the French Revolution, leading to the breakdown of what was essentially a cooperative communicative practice.[72]

It is possible, as well, that modernization facilitated more rapid and informal modes of communication, relegating the manifesto to a stoic and staid formality that sovereigns may have begun to consider inessential to conflict resolution. We see the culmination of this development during the First World War, when some countries, though they issued compilations of their diplomatic correspondence, did not always issue formal statements of their reasons for war.[73]

At the same time, much of what appears to be decline may instead simply represent transformation. The nineteenth century witnessed a dramatic change in the relationship between the leadership and the populations of modern states. Manifestos, recall, were originally documents addressed by a sovereign *to other sovereigns*. The population was largely a bystander to that exchange. As the modern state emerged, populations were increasingly the primary audience for messages issued by state leadership.

We see some of the changing practice, for example, in war messages issued by presidents of the United States. These messages, though called by another name to avoid the monarchical and Old World overtones of that word, still fulfilled the function of manifestos. They explained the reasons for war to the public in an effort to rally support and persuade the public that war was justified.

In 1846, President James Polk gave a speech outlining the legal reasons for war in order to convince the country that the war with Mexico was justified.[74] He knew that sizable domestic factions, especially the antislavery contingent, would attack his administration for engaging in what they deemed to be a mere war of conquest. To rebut his critics, Polk had to show that there were good legal justifications for war. His message to Congress did this, arguing that Mexico's failure to pay its debts to the

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[72] See Tischer, *Offizielle Kriegsbegründungen* at 23 (cited in note 10).

[73] Some countries did issue manifestos, either separately or in connection with their published compilations of diplomatic correspondence, and we have included these in our collection.

[74] See James K. Polk, *By the President of the United States of America: A Proclamation* (May 13, 1846), archived at http://perma.cc/447A-GHJW.

United States provided a just cause for war. This war message signals a shift in the purpose of war manifestos. Whereas before the primary purpose of issuing manifestos was to satisfy the sovereign's obligations before God and his fellow sovereigns, with the need to rally popular support serving as only a secondary goal, popular support now became *the* crucial factor. The traditional elements of manifestos remained, of course, but they became vestigial over the nineteenth and early twentieth centuries. By the time of the world wars, manifestos tended to portray the conflict not simply as enforcement of a legal right or even as the punishment of criminal behavior, but as a fight for the survival of civilization itself. Such a transformation, though doubtless effective in securing popular support, further undermined the sense of the community of sovereigns that Tischer rightly recognizes as underpinning prior manifesto practice and the international order it represented. The decline of manifestos, then, signals a shift in the relationship between those who govern and those who are governed. Increasingly, the final judge of a sovereign's actions was his citizenry.

One intriguing, related feature of nineteenth-century manifestos, which continues in the twentieth century, is a gradual shift in emphasis away from a strictly defined set of legitimate justifications for war to broader appeals to general principles of morality. In some respects this appears to reflect the spread of Enlightenment ideals, which tended to value reason and natural law more highly than the decrees of sovereigns. Thus we see in American manifestos—both in the nineteenth and in the twentieth centuries—the invocation of the ideal of spreading liberty, a cause of war that did not satisfy the classical requirements for *casus belli*.[75] However, such arguments, though invalid for the purposes of international law, could potentially prove very effective in

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[75] Then, as now, other sovereigns sometimes regarded such rhetoric as nothing but a cloak for simple aggression. For example, at the onset of the Mexican-American War, the interim Mexican president observed:

> In exchange for their domination, the North Americans offer liberty and democracy, peace and abundance. Yes, the peace and abundance that they have brought to the indigenous tribes, requiring them to live as nomads; the democracy that people of color enjoy in the United States, where they are deprived of every civil and political right and excluded from all public activities, even religious services.

Manifiesto del Exmo. Sr. Presidente Interino de la República Mexicana 16 (July 26, 1846), archived at http://perma.cc/T3LW-RWZN.

drumming up support for controversial military adventures.[76] As the line between legal document and propaganda continued to blur, it is perhaps understandable that the legal document would cease to carry as much weight as it once had.

War manifestos came to an end for yet another reason: the prohibition on war in the 1928 Kellogg-Briand Pact, reaffirmed after World War II in the 1945 UN Charter, brought about the end of legal warfare for all but a very limited set of reasons. As noted at the outset, the UN Charter permits states to wage war for only a few reasons. A state that intends to use force must either justify it as a legitimate act of self-defense (for which it is required to file an Article 51 letter with the United Nations), persuade the Security Council to authorize the use of force in a resolution passed pursuant to Chapter VII of the Charter, or win the consent of the host state.[77] After this transition, it was no longer sufficient to point to "just causes," such as unpaid debts or broken treaty promises.

With the history of manifestos practice complete, we turn in the next Part to the purposes of manifestos. Why did sovereigns bother with this cumbersome process?

III. THE PURPOSES OF MANIFESTOS

The practice of manifesto writing in the postmedieval period may seem mysterious. Why did sovereigns expend so much energy on these manifestos when most of them were absolute monarchs?[78] Writing manifestos required expertise and skill, and disseminating them was labor intensive, particularly before the advent of the newspaper. There were no international organizations that could veto sovereigns' resort to force, no voting public to cast them out of office. The requirement of offering public

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[76] See, for example, Woodrow Wilson, *Address of the President*, 65th Cong, 2d Sess (Apr 2, 1917), archived at http://perma.cc/DU4Z-N464.

[77] See notes 1–5 and accompanying text.

[78] The great legal authorities of the time noted that issuing war manifestos was common practice. See, for example, Vattel, *Law of Nations*, 3.4.64 at 318–19 (cited in note 6); James Kent, 1 *Commentaries on American Law*, 48–71 (Little, Brown 13th ed 1884) (Charles M. Barnes, ed); Jean-Jacques Burlamaqui, 2 *The Principles of Natural and Politic Law*, 4.4.24 at 363–64 (Bumstead 4th ed 1792) (Thomas Nugent, trans). Professor Tischer argues that manifestos are best understood as part of a larger communicative process among European sovereigns that took place against the backdrop of a shared set of Christian values. Tischer, *Offizielle Kriegsbegründungen* at 89–95 (cited in note 10). We focus on the legal and political functions of manifestos, which often overlap with this communicative function but are not limited to it.

justifications for their wars, moreover, constrained their capacity to launch wars. Yes, they could certainly make bad arguments—and they sometimes did—but making those arguments public subjected them to possible disapprobation. What's more, the laws of war rewarded victorious sovereigns regardless of whether they had just causes. When the United States conquered California during the Mexican-American War, its claim to California did not depend on whether President Polk was actually legally justified in invading Mexico. Victory in war brought victory at law. Might made legal right. So why did sovereigns go through the trouble of commissioning elaborate war manifestos?

One reason is clear: it was the law. According to the laws of war, sovereigns were under a legal obligation. Emmerich de Vattel claimed that the publication of manifestos was required by customary international law. Although natural law mandated only that sovereigns declare war, he maintained that "custom has introduced certain formalities in the business," one of them being that "manifestos are issued."[79] Despite the authority of Vattel, some sovereigns denied that they were obliged to publish manifestos. In his manifesto for the War of the Quadruple Alliance, Louis XV began by asserting that "Kings are not Accountable for their Proceedings to any but God himself."[80] Nevertheless, he went on to explain, "[T]is for their glory, and the Tranquility of their people, which can't be separated, that the Motives of their Resolutions should be known, they ought to act publickly in the Face of the World, and to manifest the Justice of what they have consulted in private."[81]

The laws of war, however, were not the only reason that sovereigns issued war manifestos. Manifestos served a multitude of overlapping legal, personal, practical, and political purposes that made them indispensable.

A. Encouraging Settlement

Manifestos served an important practical purpose. Put simply, a manifesto could help *avoid* war. A manifesto made the grievances of a state manifest. This set the stage for waging legitimate war, of course. But it also gave the opposing state an

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[79] Vattel, *Law of Nations* 3.4.55, 64 at 316 (cited in note 6). See also id at 318–19.

[80] *King of France's Declaration of War* at 9 (A. Bell 1719) (cited in note 24), archived at http://perma.cc/79JJ-QLKY.

[81] Id at 10.

opportunity to head off the conflict. Like a modern complaint, war manifestos gave states a formal avenue to outline grievances by which they were authorized to use force against a neighboring state. And when the reasons were strong, a target state might choose to negotiate—or even capitulate—rather than go to war.

The use of manifestos as precursors to settlement can be seen in exchanges of manifestos and what we term counter-manifestos. Counter-manifestos are responsive manifestos, addressed to states that had issued manifestos against the responding state. These documents were used by states to respond directly to the claims made by an issuing state in the original manifesto, marshaling reasons and facts to head off or influence a potential conflict.

Counter-manifestos are a logical outgrowth of a just cause requirement in the law of nations. When sovereigns publicly articulated their just cause for the use of force in advance of going to war, sovereign states against whom war was to be waged were given the opportunity to read—and thus an opportunity to dispute—the rationale given by a sovereign state against them. Targeted states frequently took advantage of this opportunity, undermining either the logic or facts presented in the original manifesto, asserting a different telling of the same story, or even acknowledging the manifesto as accurate but offering peaceful resolution of the conflict. The counter-manifestos, therefore, served as a means by which states could justify their own war, attempt a settlement, or motivate an issuing state to instead pursue lasting peace.

The practice of exchanging manifestos and counter-manifestos demonstrates yet again that manifestos were not mere pieces of paper. They were understood as meaningful documents. Like a complaint in a lawsuit, the manifesto outlined the claims that one sovereign had against another. And like a complaint, the claims had to be framed in terms of what the law allowed. A sovereign may have wanted a piece of land because it was valuable (just as a person filing a lawsuit wants the money award), but the sovereign had to give good reasons—"just reasons"—for which the law permitted a state to go to war before launching a war to take it ("I want it" was not a legally cognizable claim).[82] And like an answer in a lawsuit, counter-manifestos sought to counter those claims—

[82] For more on the reasons that sovereigns gave—reasons that were "just causes" for war—see Part IV.

offer reasons why the facts did not support them or, in some cases, offer counterclaims against the original complainant. These exchanges sometimes led to war, but they also sometimes led to peace—just as lawsuits sometimes settle out of court without going to trial.

Our research identified three kinds of counter-manifestos: those leading to war, those leading to settlement, and those leading to lasting peace. In the first form, the issuing state articulates its just cause of war, and the responding state counters with its own just cause of war. The manifestos and counter-manifestos serve to amplify the conflict. But the second form of manifestos and counter-manifestos leads to something entirely different: acquiescence. In this form, the responding state makes one of three defensive choices: it makes a tacit admission of liability, it defensively cedes to the demands of the issuing state, or it offers to issue a nuisance payment to alleviate any aggression. Regardless of the choice, in each situation the responding state pursues an almost judicial settlement in order to preserve peace. Finally, in the third, and least common, form, states issue manifestos and counter-manifestos that ultimately address their disagreements and resolve the original dispute.

1. Manifesto and counter-manifesto lead to war.

The majority of the counter-manifestos surveyed represented a point-counterpoint response by a responding state, in which the sovereign attacked each argument raised in the original manifesto. After refuting all of the affirmative arguments raised by the issuing state, the responding state would then offer its own just cause for attacking the state that issued the original manifesto. With the two sides unable to agree, war ensued.

For example, in 1673, England and the Netherlands exchanged a series of manifestos and counter-manifestos pertaining to the Third Anglo-Dutch War. The original manifesto was from the States General of the Netherlands, enumerating grievances against England. The Dutch reasons for going to war included self-defense, balance of power considerations, and protection of trade interests.[83] But the king of England was not silent. He issued a counter-manifesto of his own, with a point-by-point

[83] See *A Letter Sent by the States-General of the United Provinces to the King of Great Britain* (Oct 25, 1673), archived at http://perma.cc/L2LF-SDBZ.

refutation of the arguments made in the Dutch manifesto. As the manifesto explained:

> [Y]et for the Vindication of Our Honour, as well as for the undeceiving that part of the World which may be abused by it, *We would not suffer it to remain without a distinct Reply* from point to point as they lie in your Paper (which We send you by the same hand that brought Us yours).[84]

Unable to come to agreement, and having laid out their argument for their fellow sovereigns and populations to read and judge, the two sovereigns went to war instead.

2. Manifesto and counter-manifesto lead to settlement.

Some manifestos and their counter-manifestos led sovereigns to peace, rather than conflict. Responding states sometimes used counter-manifestos to neutralize the logic of the issuing state, leaving it without a just cause of war. Other times, sovereigns appeared to weigh the costs of publicly issuing an apology or paying a settlement against the cost of going to war, finding humiliation a less costly burden to bear.

a) The Caroline *incident*. One example of manifestos and counter-manifestos leading to settlement can be found in the letters surrounding the famous "*Caroline* incident"—the 1837 destruction of the privately owned US steamboat by British forces in the midst of a Canadian insurrection. The correspondence between the American and British officials is taught in nearly every international law course, for it offers the first known legal standard of self-defense in the law of armed conflict. What few realize is that the incident also serves as an example of how the exchange of manifestos and counter-manifestos could, and did, de-escalate conflicts.

The *Caroline* incident was sparked by a poorly organized rebel force in Canada.[85] On December 29, 1837, the *Caroline*, a

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[84] *His Majesties Answer to the Letter Sent from the States General of the United Provinces of the Low Countreys, by Their Trumpeter* (1673), archived at http://perma.cc/DZ4B-DG4Q (describing the dispute between England and the Netherlands in relation to the Third Anglo-Dutch War) (emphasis added).

[85] For historical material surrounding the *Caroline* Incident, see Martin A. Rogoff and Edward Collings Jr, *The* Caroline *Incident and the Development of International Law*, 16 Brooklyn J Intl L 493, 494–95 (1990); Albert B. Corey, *The Crisis of 1830–1842 in Canadian-American Relations* 61–69 (Yale 1941); R.Y. Jennings, *The* Caroline *and McLeod Cases*, 32 Am J Intl L 82, 82–92 (1938). It is worth noting that there is some question of the extent to which the letters related here were intended for public consumption (one of

privately owned US steamboat, conveyed men and supplies to the rebel forces. When the *Caroline* docked in port in New York State, Andrew Drew, the commander of the Upper Canadian militia, sent the Royal Navy to destroy it under cover of night. Drew and his men seized the ship, towed it into the Niagara, and burned it. Two people—Amos Durfee and an unnamed cabin boy—were said to have been killed in the skirmish (though later accounts question whether any deaths, in fact, occurred). On May 22, 1838, US Secretary of State John Forsyth wrote a public letter to Henry Fox, the British minister in Washington. Though not labeled a manifesto, it had all the characteristics of one: it was public, was issued by a sovereign, was issued to a sovereign, and offered reasons justifying war. In it, Forsyth made a "demand for reparation" to the British government.[86] A second letter from the Americans called the "whole proceeding . . . a manifest act of hostile and daring aggression upon [the United States'] right and sovereignty, utterly inconsistent with all the principles of national law, and wholly irreconcilable with the friendly and peaceful relations of the two countries."[87]

On December 13, 1840, Fox responded with a counterclaim, demanding the release of Alexander McLeod, a deputy sheriff that had been, he said, wrongly imprisoned over the incident.[88] The counterclaim was later backed by a threat: after a New York grand jury indicted McLeod on seventeen counts, the British foreign secretary, Lord Palmerston, told the US minister to London, "[I]f McLeod is executed, there must be war," and the minister quickly passed this message along to the president.[89]

On April 24, 1841, the new US Secretary of State, Daniel Webster, wrote to Fox, proposing a rubric for judging acts of self-

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the four criteria for a manifesto). It appears that the letters were, indeed, published nearly contemporaneously and that the authors understood that what they wrote would be made public. We determined, therefore, that the exchange did meet the definition.

[86] Letter from Mr. Forsyth to Mr. Fox (Dec 31, 1840), in John Lansing Wendell, ed, 25 *Reports of Cases Argued and Determined in the Supreme Court of Judicature and in the Court for the Correction of Errors of the State of New-York* 503 (Wendell 2d ed 1850).

[87] Letter from Mr. Stevenson to Lord Palmerston (May 22, 1838), in John Lansing Wendell, ed, 25 *Reports of Cases Argued and Determined in the Supreme Court* at 489–95 (cited in note 86).

[88] Arthur T. Downey, *The Creole Affair: The Slave Rebellion That Led the U.S. and Great Britain to the Brink of War* 58–59 (Rowman & Littlefield 2014).

[89] Letter from Lord Palmerston to Henry Fox (Feb 9, 1841), in Evelyn Ashley, ed, 1 *The Life and Correspondence of Henry John Temple, Viscount Palmerston* 408 (Richard Bentley & Son 1879).

defense in the future.[90] Additionally, a presidential message stated that no "atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent power, has yet been made."[91] Lord Ashburton, now representing Britain in the matter, issued a conciliatory counter-manifesto a few months later, with a "mission to endeavor to settle, the unfortunate case of the *Caroline*, with its attendant consequences."[92] He wrote: "[I]t must be admitted that there was in the hurried execution of this necessary service a violation of territory."[93] Ashburton was apologetic, using language of amends-making:

> [W]hat is perhaps most to be regretted is that some explanation and apology for this occurrence was not immediately made: this with a frank explanation of the necessity of the case might and probably would have prevented much of the exasperation and of the subsequent complaints and recriminations to which it gave rise.[94]

Webster's final letter, on August 6, 1842, declared the dispute settled. Webster was pleased that Ashburton had accepted the rubric proposed by the Americans in self-defense. He concluded that "the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your Lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two Governments."[95]

b) The Nootka crisis. The Nootka Crisis began when British ships were captured by Spanish ships in Nootka Sound, located near Vancouver Island, Canada. After the seizure, the king went before Parliament to explain that he had "directed his minister at Madrid to . . . claim such full and adequate satisfaction as the nature of the case evidently requires."[96]

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[90] Letter from Daniel Webster to Henry Fox (Apr 24, 1841) (Avalon Project, 2008), archived at http://perma.cc/7VEH-BPPG.

[91] *Presidential Message of December 7, 1841* (Avalon Project, 2008), archived at http://perma.cc/7VEH-BPPG.

[92] Letter from Lord Ashburton to Daniel Webster (July 28, 1842) (Avalon Project, 2008), archived at http://perma.cc/7VEH-BPPG.

[93] Id.

[94] Id.

[95] Letter from Daniel Webster to Lord Ashburton (Aug 6, 1842) (Avalon Project, 2008), archived at http://perma.cc/7VEH-BPPG.

[96] The manifesto itself is not in the collection, and we have been unable to locate it. But it is echoed in the King's speech. See *Message from King George III*, in Alexander

The Court of Spain responded with conciliatory language.[97] Great Britain accepted the Spanish overtures of de-escalation: "The Court of London is animated with the most sincere desire of terminating the difference that at present subsists between it and the court of Madrid."[98] However, Great Britain insisted on reparations: "[A]s a preliminary condition, upon a prompt and suitable reparation for those acts of violence," including "the restitution of the vessels, a full indemnification for the losses sustained by the parties injured, and, finally, satisfaction to the sovereign for the insult offered to his flag."[99] The Spanish monarch agreed, and the matter was resolved.[100] War had been averted.

3. Manifesto and counter-manifesto lead to peace treaty.

The exchange of manifesto and counter-manifesto sometimes led to peace treaties. The exchanged declarations, then, turn from sovereigns alleging reasons to go to war into sovereigns articulating reasons to remain in peace. Here, manifestos and counter-

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Begg, *History of British Columbia from Its Earliest Discovery to the Present Time* 40–41 (William Briggs 1894), archived at http://perma.cc/TQ6W-RLRG:

> His Majesty has now directed his minister at Madrid to make a fresh representation on this subject, and to claim such full and adequate satisfaction as the nature of the case evidently requires. And under these circumstances his Majesty, having also received information that considerable armaments are carrying on in the ports of Spain, has judged it indispensably necessary to give orders for making such preparations as may put it in his Majesty's power to act with vigor and effect in support of the honor of his crown and the interests of his people.

[97] See *Memorial of the Court of Spain, Delivered June 13th, 1790, to Mr. Fitzherbert, the British Ambassador at Madrid*, in *History of British Columbia* at 42–46 (cited in note 96):

> By Article 8th of the Treaty of Utrecht . . . Spain and England profess to establish it as a fundamental principle of agreement, that the navigation and commerce of the West Indies, under the dominion of Spain, shall remain in the precise situation in which they stood in the reign of his Catholic Majesty Charles II.
>
> . . .
>
> [T]hese seas had been, for some years past, more frequented than formerly.
>
> . . .
>
> If this pretension is found to trespass upon the ancient boundaries laid down in the reign of King Charles II, and guaranteed by England in the Treaty of Utrecht, as Spain believes, it appears that that court will have good reason for disputing and opposing this claim.

[98] *Mr. Fitzherbert Replied as Follows*, in *History of British Columbia* at 46–47 (cited in note 96).

[99] Id.

[100] See *Copy of the Convention between his Britannic Majesty and the King of Spain. Signed at the Escurial, the 28th of October, 1790*, in 28 *The Parliamentary Register; Or History of the Proceedings and Debates of the House of Commons* 36–38 (J. Debrett 1791), archived at http://perma.cc/S7XH-AVPK.

manifestos function as two sides of the same coin: the first, a sovereign state's public rationale for going to war, and the second, a sovereign state's rationale for protecting against it.

Take the Eden Agreement: a treaty, signed by France and England, resolving a dispute raised in a missing French communication made to the Court of London on September 16, 1787 (according to a later letter that references the first manifesto).[101] While the original manifesto is missing, we know that it sparked "warlike preparations" within England, likely over conflicts regarding cotton and wool manufacturers. Following the original French manifesto, England offered peace on October 27, 1787, stating:

> If the Court of Versailles is disposed to explain itself upon this subject, and upon the conduct to be adopted towards the republic, . . . all warlike preparations, should be discontinued on each side, and [ ] the navies of the two nations should be again placed upon the footing of the peace establishment.[102]

The French, in turn, issued its Counter Declaration (a counter-manifesto) on the same day:

> The Intention of His majesty not being, and never having been, to interfere by Force in the Affairs of the republic of the United Provinces, . . . His majesty makes no difficulty to declare, That he will not give any Effect to the Declaration above mentioned; and that he retains no hostile View towards any Quarter, relative to what has passed in Holland. . . . [T]he armaments, and in general all Warlike Preparations, shall be discontinued on each Side.[103]

The parties, which appear to have been in the same place (Versailles) and mirroring each other's language, then issued a joint declaration noting the legal significance of their exchange of letters:

> In consequence of the Declaration, and Counter-Declaration, exchanged this Day, the undersigned, in the Name of their respective Sovereigns, agree, That the Armaments, and in

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[101] See *Declaration and Counter Declaration Exchanged at Versailles, between the Ministers of His Britannic Majesty and the Most Christian King, Oct. 27, 1787*, in *The New Annual Register, or General Repository of History, Politics, and Literature, for the Year 1787* 70–71 (Robinson 1788), archived at http://perma.cc/QQ6W-HSM2.

[102] Id.

[103] Id at 71.

> general all Warlike Preparations, shall be discontinued on each Side; and that the Navies of the Two Nations shall be again placed upon the Footing of the Peace Establishment.[104]

The exchange of manifesto and counter-manifesto thus led not only to the resolution of the dispute at hand, but also to a peace treaty that was meant to last.

B. Assuaging the Sovereign's Conscience

Even when manifestos failed to avoid war, they served many important purposes. The first was a personal benefit for the sovereign. War consists of the mass killing of human beings and the extensive taking of their territory and property. These are not morally neutral acts—they are the most serious harms humans can inflict on one another. Not to justify one's action is to risk being seen as a moral monster, someone who does not care about the sanctity of human life and the integrity of territorial boundaries and personal property.

Being seen as morally monstrous had costs. Perhaps most obviously, sovereigns cared about their image and their place in history. They wanted to be thought of and remembered as wise, courageous, just, righteous, virtuous—in short, great. To be regarded as the slaughterer of innocent people and thief of land and property did not further that objective. It represented the sovereign as cruel, craven, unjust, vicious—in short, evil.

But for sovereigns during most of the period in which war manifestos were common, the need for a persuasive war manifesto was even more urgent: the sovereign's own soul was on the line. The exercise of state violence is a troubling fact in any age, but in the early modern era, the burden of moral responsibility for such exercise rested almost entirely on the shoulders of the sovereign monarch. Others could excuse themselves as having simply acted in obedience to the monarch or having offered the best advice they could, but the final decision—and therefore the final responsibility—rested with the ruler. All-powerful on earth he might be, but even he had to give an account for his actions before God. Consequently, every ruler had to observe the law scrupulously, lest he incur the wrath of God. As King James I of England put it, "[Y]et doth God never leave Kings unpunished

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[104] *Translation of the Joint-Declaration, Signed at Versailles the 27th October 1787, by the Duke of Dorset, Mr. Eden, and the Count de Montmorin*, in 43 *Journals of the House of Commons* 12 (1803), archived at http://perma.cc/66Y6-CNZV.

when they transgress these limits. . . . The higher we are placed, the greater shall our fall be."[105]

Particularly in Catholic countries, this appearance before the divine tribunal did not await the Day of Judgment but took the concrete form of the monarch's regular unburdening of his conscience before his confessor.[106] Actions of state formed a critical part of these audiences, and confessors were expected to serve as a check on their royal penitents' worst tendencies.[107] In the political theory of the day, the monarch possessed both a private and a public persona, and the public conscience of the king, owing to the weightier matters that pressed upon it, labored under a correspondingly heavy moral burden. As Cardinal Richelieu, himself no fanatic, wrote, "Many [rulers] could save themselves as private persons, but are damned by their conduct as public persons. One of the Greatest Kings in our neighbourhood recognized this Truth on his deathbed, and he cried that he did not fear [his own private sin] but that of the King."[108]

Royal confessors therefore acquired an important and privileged role in royal courts. They enjoyed greater access to the sovereign than perhaps any other of his counselors and also enjoyed a greater freedom of speech. In return, they owed the sovereign their loyalty and, of course, a duty of absolute confidentiality. In the seventeenth century, kings often consulted their confessors to help them to avoid sinning in the exercise of their duties.[109] Moral theologians drew up manuals to assist confessors in their task of guiding the royal conscience. These manuals paid careful attention to the particular acts of state that might lead monarchs into sin. The waging of an unjust war held particular prominence in some of these manuals, and the moral theologians considered it a mortal sin.[110]

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[105] James I of England, *A Speech to the Lord and Commons of the Parliament at White-Hall, on Wednesday the 21 March 1609*, in *King James VI and I: Political Writings* 179, 183–84 (Cambridge 1994) (Johann P. Somerville, ed) (spelling modernized).

[106] For an in-depth discussion of the practice and evolution of royal confession in the early modern period, see generally Nicole Reinhardt, *Voices of Conscience: Royal Confessors and Political Counsel in Seventeenth-Century Spain and France* (Oxford 2016).

[107] Indeed, Louis XIV's confessor was popularly blamed for many of his tyrannical actions, including his propensity for waging unjust wars. See id at 331–32.

[108] Id at 319, quoting Cardinal Richelieu, *Testament Politique de Richelieu* 373 (Société de l'Histoire de France 1995) (Françoise Hildesheimer, ed).

[109] See Reinhardt, *Voices of Conscience* at 197 (cited in note 106).

[110] See id at 89. In Roman Catholic moral theology, a mortal sin is a sin so egregious that it disrupts the relationship between the sinner and God and deprives the sinner of

Apart from the eternal consequences, the moral burden of kingship could have further temporal effects in those realms, such as France and England, where the monarch exercised, by virtue of his anointing and coronation, a sacred, almost divine function within his kingdom.[111] In such countries, royal legitimacy derived in large part from the king's role as mediator between God and his people, an office that depended on the monarch's own moral purity. Important royal functions—such as the bestowal of the royal touch, believed to convey divine healing—required the king to be in a state of grace and to have participated in the sacraments.[112] When the king failed to maintain the state of grace, as when Louis XV was deprived of the sacraments for many years due to his open and notorious debauchery, it compromised his ability to fulfill his royal duties and undermined his legitimacy.[113]

Protestant rulers did not generally have the same obligation to give a regular account of their actions before a clergyman, but they held the same moral responsibility and, in some cases, exercised the same sacral functions as their Catholic counterparts. Without the advice of a confessor to guide them, they depended all the more on other ways of maintaining and demonstrating their clear conscience before God. Manifestos, by enumerating the various requirements of a just war and signaling the sovereign's fulfillment of each condition, gave both Protestant and Catholic sovereigns the opportunity to walk through their reasoning and assure themselves that they were, in fact, acting in good conscience and from sound motives. As James I put it:

> [J]ust kings will ever be willing to declare what they will do, if they will not incur the curse of God. I will not be content that my power be disputed upon: but I shall ever be willing to make the reason appear of all my doings, and rule my actions according to my Laws.[114]

Accordingly, kings did not issue war manifestos only to justify themselves before their subjects or their fellow sovereigns, but also to justify themselves before God.

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grace. If one who has committed a mortal sin dies unshriven, he incurs the penalty of eternal punishment in hell.

[111] See generally Ronald G. Asch, *Sacral Kingship between Disenchantment & Reenchantment: The French and English Monarchies 1587–1688* (Berghahn 2014).

[112] See Reinhardt, *Voices of Conscience* at 371–72 (cited in note 106).

[113] See id at 372.

[114] James I, *Political Writings* at 184 (spelling modernized) (cited in note 105).

C. Rallying Domestic Support

Beyond assuaging the sovereign's conscience, war manifestos served several other important purposes for the war that followed. Sovereigns needed to make arguments that were sufficiently compelling to raise and support an army. Citizens who read the manifestos were asked to sacrifice life and limb in support of their sovereign's war. But if that war was not just, the reasons poorly articulated, or the logic not understandable, sovereigns risked losing the manpower and tax revenue necessary to fuel it—and thus risked losing their war, too.

Rulers were concerned about their legitimacy, in other words, because even absolute monarchs require the acquiescence and support of their populations in order to successfully wage war. Sovereigns do not merely threaten their subjects to motivate them to obey. They claim legitimacy: the right to rule. Because they claim the right to rule, they also claim the right to punish violations of legal obligations. Sovereigns who lose their legitimacy, therefore, lose their right to rule and, potentially, their ability to motivate their subjects to obey.

The manifestos indicate that sovereigns were conscious of their civilian audience in their drafting. Sovereigns used manifestos to rally domestic support in two common ways: (1) through persuading the population of the just nature of the cause, and (2) through expressing empathy concerning the costs that citizens would bear through involvement in the conflict.

In the French Wars of Religion, Henry III of France issued a manifesto that exemplifies the first technique. He explicitly addresses his citizen audience and offers an explanation for issuing the manifesto: he describes having "put ourselves in the fields and returned to our army, to explain in person" the reasons for going to war.[115] Almost like a fireside chat, the manifesto thus serves as a means to personally and more informally address subjects on an individualized basis. Henry says that he hopes these personal accountings will "by our presence [ ] excite our good and joyous subjects to join us in assisting and accompanying us in such a holy and necessary occasion, as the one that presents itself."[116] He also makes the reason for these appeals to the population explicit by

[115] *Déclaration du Roy, par Laquelle Il Défend de Lever Gens de Guerre sans Son Adveu, Authorité, Mande a Tous Des Subjects Catholicques de L'aller Trouver en Son Armee* (1577), archived at http://perma.cc/RAH3-QAYT.

[116] Id.

"command[ing] all his Catholic subjects to come meet him in his army."[117]

The second means of rallying domestic support—empathizing with the hardships experienced by the population—can be seen in the manifesto of Louis XVIII and Ferdinand VII, the kings of France and Spain, respectively. In their manifesto, Louis and Ferdinand express empathy with their subjects, conveying a sense of their understanding of the costs that their war efforts would exact on their citizens. "I am certain," the monarchs wrote, "that my subjects are confident that a King who has founded his happiness on that of his people cannot undertake the war without real pain."[118] Through acknowledging the costs that citizens would bear, the sovereigns make an argument for their own good judgment. Because they are emotionally affected by burdens on their citizens, whatever costs their citizens bear, the sovereigns will bear as well. The argument implies that the sovereign has factored in the cost of civilian burdens in his decision to go to war and has nevertheless determined that going to war is just and necessary.

D. Gaining Support from Allies

Sovereigns needed support not only from their own populations; they also often hoped for assistance from other states (or, at the very least, hoped to discourage others from joining the fight on the other side).

All manifestos that were made public were intended to be read by other sovereign states. But some even directly addressed them, arguing that the other state should form an alliance with the manifesto-issuing state. In the War of the Portuguese Succession, for instance, Dom Antonio issued a manifesto against the King of Castile. The manifesto makes explicit that his only enemy was Castile, and his only goal was to reclaim territory he believed had been wrongly taken from the Kingdom of Portugal. Antonio invited foreign kingdoms to join him in his crusade against the King of Castile, welcoming any alliances to that end:

> "It is for this reason . . . that we have caused this to be published where we have power, and have ordered a copy to be sent to the foreign kingdoms and maritime republics, to hear

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[117] Id.

[118] *Déclaration du Roi de France, Addresée au Peuple Français, Suivie du Manifeste de Ferdinand VII, Roi d'Espagne, Publié à l'Occasion de la Guerre contre Buonaparte* (June 22, 1815), archived at http://perma.cc/L8QH-SER8.

> what was said above, and to entreat them, rather, to aid us, and to favor us in our right over the King of Castile, the usurper of our kingdoms, and the enemy of all Christendom.[119]

Persuading third parties was particularly important because classical international law released allies from the duty to aid belligerents who fought for unjust causes.[120] The *casus foederis* always depended on the *casus belli*. Manifestos aimed to make it difficult for allies to wriggle out of their legal obligations.

Some manifestos instead pressed third parties to remain out of the conflict. In the Hessian War of 1528, the Bishop of Würzburg issued a manifesto explaining the armament and war effort against the imperial estates of the Holy Roman Empire. Though the manifesto begins by addressing the bishop's own domestic audience, roughly twenty pages into the document, the manifesto explicitly calls on other nobles within the Holy Roman Empire *not* to engage in the war effort: "[W]e direct our kindest and most cordial plea to each and every one of you," the bishop pleads, "not to provide—yourselves or through your folks—any help, support or encouragement for them or any of their folks in their aggression against us and our estates."[121]

* * *

As this Part has shown, manifestos served myriad purposes: averting war through settlement, assuaging the sovereign's own conscience, rallying domestic support, and obtaining support from allies.[122] But in order to effectively serve those purposes, the manifestos had to be convincing. And to be convincing, they had to offer reasons that the many audiences for the manifestos would find

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[119] *Sommaire Déclaration des Justes Causes Et Raison Qui Ont Meu & Meuvent le Treshault & Trespuissant Prince Dom Anthoine Roy de Portugal, des Algarbes, & C. de Faire, & de Continuer la Guerre, Tant par Mer que par Terre, au Roy de Castille, & a tous Ceux Qui Luy Donnent & Donneront Faueur, & Ayde en Quelque Manière que Ce Soit* 7 (1582), archived at http://perma.cc/E3SF-HALC.

[120] See, for example, Grotius, *Law of War and Peace* 2.25.4 at 581 (cited in note 6) ("[S]uch agreements cannot be stretched to include wars for which no just cause exists."). See also Vattel, *Law of Nations* 2.12.168 at 197 (cited in note 6) ("The justice of the cause is another ground of preference between two allies. We ought even to refuse assistance to the one whose cause is unjust, whether he be at war with one of our allies, or with another state.").

[121] See *Anfenglicher Handel* (1528), archived at http://perma.cc/6V9J-23ZJ.

[122] James Whitman argues that eighteenth-century manifestos served the purpose of turning warriors into litigators and thus contributed to civilizing war. See Whitman, *Verdict of Battle* at 128–39 (cited in note 9).

legitimate—or "just." We thus turn in the next Part to an examination of those reasons—what were just causes for war?

IV. JUST CAUSES OF WAR

We examined the collection of manifestos with the help of an outstanding multilingual team of research assistants. Each manifesto was read carefully by a research assistant in the language in which it was written—languages that included Classical Chinese, Dutch, English, French, German, Italian, Latin, Ottoman Turkish, Portuguese, and Spanish. As each team member read each manifesto, he or she recorded the reasons it gave for going to war (referred to as "coding" the manifesto). This process often involved multiple rounds of coding over the course of three years because the coding scheme evolved as we learned what reasons were commonly offered. The team also met together on a weekly basis to discuss new and interesting discoveries (such as, early on, the practice of exchanging manifestos and counter-manifestos) and to jointly determine how best to resolve any ambiguities (for example, over whether a particular claim was, indeed, a balance of power claim).

What we discovered in the course of this process is, to our eyes, shocking. A twenty-first-century leader could not justify his decision to go to war on the basis of the excessive prices charged to his entourage during a state visit to Riga, as did Peter the Great in 1700.[123] Similarly, twenty-first-century leaders cannot declare war on their neighbors for permitting the publication of libelous material concerning their persons, though Frederick III of Denmark did just that in 1657.[124] These offenses would be entirely illegitimate reasons for war today, but they, and others like them, were considered just causes for hundreds of years. Here we show how different the world once looked by describing the causes that were most prominently and consistently offered by sovereigns in the manifestos collection. The justifications found in our collection of 1,374 just war claims made in 332 manifestos and counter-manifestos (that is, excluding quasi-manifestos) included, in order of frequency in which they appeared: self-defense (240 claims, or 17.5 percent of just war claims in the manifestos in our collection); violation of treaty obligations (n=170, 12.4

[123] See *Declaration de Guerre*, in 2 *Memoires du Regne de Pierre le Grand, Empereur de Russie* 388–90 (Wetsteins & Smith 1729), archived at http://perma.cc/D57R-3HGZ.

[124] See *Jus Feciale Armatae Daniae* 5 (1657), archived at http://perma.cc/32LB-6ZJA.

percent); tortious wrongs (n=150, 10.9 percent); protecting the balance of power (n=108, 7.9 percent); enforcement of inheritance rights (n=93, 6.8 percent); religious claims (n=91, 6.6 percent); protection of trade interests (n=70, 5.1 percent); humanitarian protection (n=63, 4.6 percent); protection of diplomatic relations (n=53, 3.9 percent); and debt collection (n=17, 1.2 percent). Other causes accounted for a total of 171 just war claims, some 12.4 percent of the entire collection of claims in the manifestos. In addition, a number of manifestos included declarations of independence (n=7, 0.5 percent) or included references to the laws of war, law of nations, or customary international law (n=141, 10.3 percent).

We discuss each cause in turn, offering examples to give texture to the categories. For readers interested in reading more, the database, including all of the data as well as links to many original manifestos, is available in our *War Manifestos Database*.[125]

A. Self-Defense

States often argued that another state's use of force on their territory (including an attack on a port, a skirmish at the border, or a full-scale invasion) justified the resort to war against the offending state. (Notably, this just cause for war is the only one commonly given in manifestos that remains valid today, though its scope differs.) Of the just war claims made in the manifestos in our collection, 240 were self-defense claims, constituting 17.5 percent of all claims and 72.3 percent of all manifestos. Of the 240 manifestos containing self-defense claims, 135 (56.2 percent of self-defense manifestos, or 40.6 percent of all manifestos) identified this reason as the manifesto's primary justification. Self-defense was by far the most popular category of just war claims. Over the course of the period studied, it steadily grew in popularity.[126]

For example, in 1596, during the Anglo-Spanish War, the Earl of Essex issued a manifesto on behalf of Queen Elizabeth I, primarily claiming self-defense and warning the King of Spain that it would be the solemn duty of the English army to increase its numbers in order to ward off Spanish invasion from all sides.[127] Similarly, the governors of the Austrian Netherlands issued a manifesto against France in 1792, claiming that the French Revolution and the

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[125] Hathaway, et al, *War Manifestos Database* (cited in note 23).

[126] See Figures 4, 5, and 6 for graphical representations of the change in frequency of just war claims over time.

[127] See *Déclaration des Causes Qui Ont Meu la Royne d'Angleterre, À Déclarer la Guerre au Roy d'Espagne* (1596), archived at http://perma.cc/N3YQ-8CFT.

instability it had unleashed threatened their provinces' safety.[128] Consequently, Marie Christine of Austria-Hungary and Bohemia and Albert-Casimir, Prince Royal of Poland and Lithuania, who had become governors of the Austrian Netherlands in 1780, vowed to "carefully attend to the defence of those provinces."[129]

B. Violation of a Treaty Obligation

The violation of a treaty obligation was a just cause for war. Of the just war claims made in the manifestos in our collection, 170 were treaty violation claims, constituting 12.4 percent of all claims and contained in 51.2 percent of all manifestos. Of the 170 manifestos containing treaty claims, 40 (23.5 percent, or 12.0 percent of all manifestos) identified this reason as the manifesto's primary justification. As shown in Figure 5, violations of a treaty obligation as a justification for war rises to roughly 60 percent of all treaties in the middle of the eighteenth century before gradually falling back off.

Manifestos containing reference to violations of treaty obligations tended to have particularly condemnatory language. In 1657, the king of Denmark issued a scathing manifesto announcing war against Sweden and its king, Charles Gustavus. The king of Denmark presented the Swedish sovereign's violations of the second treaty of Brömsebro as one of his primary justifications for going to war. "We are heartily sorry that these firm beginnings of Peace at *Bremsebroa* [sic], by which the publike quiet of the North was so strengthened," the king of Denmark remarked, "being so farre remov'd from their sight and minds should be so shaken, and that our Royall Authority should be so immodestly contemn'd and neglected."[130]

In the Fourth Anglo-Dutch War, Great Britain issued a manifesto against the States General of the Netherlands. George III alleged that the Netherlands had breached the Perpetual Defensive Alliance between Great Britain and the Netherlands, signed at Westminster on March 3, 1678. "In direct and open Violation of Treaty," George explained, the Netherlands had "suffered an American Pirate to remain several Weeks in one of their Ports; and even permitted a Part of his Crew to mount Guard in a Fort

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[128] *Manifesto of the Government of Bruxelles, in Answer to the Declaration of War on the Part of France* at 1 (cited in note 66).

[129] Id.

[130] *Jus Feciale Armatae Daniae* at 3 (cited in note 124).

in the Texel."[131] George quoted directly from the treaty: "There shall be a firm, inviolable and universal Peace, and sincere Friendship."[132] But now, George declared, they "not only avow the whole Transaction, but glory in it, and expressly say, even to the States General, that what they did 'was what their indispensable Duty required.'"[133] George vowed, "There is an End of the Faith of all Treaties with them, if Amsterdam may usurp the Sovereign Power, may violate those Treaties with Impunity, by pledging the States to Engagements directly contrary."[134] George added,

> An Infraction of the Law of Nations, by the meanest Member of any Country, gives the injured State a Right to demand Satisfaction and Punishment:–How much more so, when the Injury complained of is a flagrant Violation of Public Faith, committed by leading and predominant Members in the State?[135]

C. Tortious Wrongs: Injuries to Property or Life

Manifestos frequently pointed to tortious wrongs—injuries to property or life, including injuries to the issuing sovereign and to its citizens. (Tortious wrongs thus differ from humanitarian justifications, which focus instead on harms to the property or life of *others*.) Of the just war claims made in the manifestos in our collection, 150 were tort claims, constituting 10.9 percent of all claims and 45.2 percent of all manifestos. Of the 150 manifestos containing tort claims, 21 (14.0 percent, or 6.3 percent of all manifestos) identified this reason as the manifesto's primary justification. Tortious wrongs were common reasons for war through the mid-1800s, at which point they fell off precipitously.[136]

To take one example, in 1652, the States General of the Netherlands issued a manifesto against England in the course of the First Anglo-Dutch War, outlining in great detail the "torts which had been done" by English "brigadeers" against Dutch traders on the high seas:

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[131] *Manifesto, George R* (Dec 21, 1780), archived at http://perma.cc/SEV7-NFQ3.

[132] Id.

[133] Id, quoting Treaty of Defensive Alliance between Great Britain and The Netherlands (1678).

[134] *Manifesto, George R* (cited in note 131).

[135] Id.

[136] See Figure 5.

> They have rushed from all parts of the vessels our good subjects, even the Government Officers, as though they were pirates; they have exercised their brigadeering against all others, throwing themselves upon our ships in the sea, as on those of their enemies; they have attacked [our ships]; they have taken them; they have brought them in; they have pillaged their loads and the merchandise they carried, ill-treated our pilots and crew, without even our ambassadors ever having given them the authority to give orders, much less to make our good subjects subject to what had been perpetrated against them by violence, and to repair the torts which had been done to them by theirs.[137]

There is even a reference to a tort in the manifesto's title,[138] emphasizing that the numerous British infringements on Dutch life and property constituted one of the primary justifications for going to war.

Tort claims could cover a wide range of actions, including insults to the sovereign's honor, slander, and even kidnapping, whether of the sovereign himself or his relations. This required us to make fine distinctions. There is a real difference between a general appeal to uphold the nation's honor as a way of rallying support for a war and a sovereign who chooses to go to war because another insulted him by refusing to greet him with the customary forms befitting his imperial dignity. The latter is a tort claim; the former is rhetoric.

D. Protecting the Balance of Power

Protecting the balance of power was another reason for war frequently offered in manifestos. States argued that concentration of power among threatening alliances, the specter of a universal monarchy, or aggressive actions by other states upset the delicate balance of power among states in Europe. Of the just war claims made in the manifestos in our collection, 108 were balance

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[137] *Manifeste ou Declaration, des Hauts & Puissants Seigneurs les Estats Generaux des Provinces Unies des Pays-Bas, Contenant Une Vraye Relation de la Sincerité des Intentions Qu'ils Ont Cües, & des Justes Procedures, Qu'ils Ont Tenues, en Ce Qui S'est Passé au Traitté entre Eux & les Ambassadeurs Extraordinaires & Deputez de Eux Qui Gouvernent à Present l'Angleterre, Tant Icy a la Haye, Que depuis a Londres. Comme Aussi Des Injustes & Violentes Procedures de Ceux Dudit Gouvernement, Qui Ont Contraint lesdits Seigneurs Estats a Garantir par la Voye de Retorsion leur Estat & Leur Sujets des Torts & des Outrages Qu'il Exercent* 12 (1652), archived at http://perma.cc/8K4Q-C7XB.

[138] See generally id.

of power claims, constituting 7.9 percent of all claims and 32.5 percent of all manifestos. Of the 108 manifestos containing balance of power claims, 27 (25.0 percent, or 8.1 percent of all manifestos) identified this reason as the manifesto's primary justification. As shown in Figure 5, protecting the balance of power gained in popularity as a justification for war from the early 1600s to the late 1700s, then fell off.

The Nine Years' War (1688–1697) tested the precarious balance of power in Europe. In 1689, King Louis XIV of France, threatened by a budding alliance between the Spanish, Austrians, British, and Dutch, vowed to "waste no time in preventing [the Spanish king's] evil designs" to "join with his enemies," a prospect that would disrupt the delicate balance that had been laboriously attained just ten years prior in the Franco-Dutch War.[139] Louis thus "resolved to declare War against [Spain] by Sea as well as by Land."[140]

Balance of power was also raised in a manifesto issued in the course of the Second Partition of Poland. Frederick William II of Prussia issued a manifesto to the City of Danzig (modern-day Gdańsk) in 1793, justifying Prussian occupation of Poland in order "to keep it within its proper bounds, and to take care of the safety and tranquility of the neighbouring provinces of Prussia."[141]

Defensive counter-manifestos, aiming to downplay the claimed threats to European tranquility in the original manifesto as exaggerated and overblown, frequently offered rebuttals to balance of power claims. For instance, the Hapsburgs issued a counter-manifesto against France in defense of their ally Spain during the Franco-Spanish War.[142] The 1635 counter-manifesto ridiculed French attempts to raise the specter of universal monarchy to justify war against Spain: "What has been sung so often in all the libels of France, that which is repeated several times in its Manifesto, is that the design of the Spaniard is to subject the Empire

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[139] See *Ordonnance du Roy de France Portant Declaration de Guerre par Mer et par Terre, contre Les Espagnols; Qui Revoque les Passeports, Sauvegardes, & Saufconduits; Fait Deffence D'avoir Aucun Commerce, & Enjoint à Ses Sujets de Courresus aux Espagnols* (1689), online at http://reader.digitale-sammlungen.de/resolve/display/bsb11063887.html (visited Apr 27, 2018) (Perma archive unavailable).

[140] Id.

[141] *Manifesto and Declaration of his Prussian Majesty to the City of Dantzick* (1793), archived at http://perma.cc/C82A-JHQE.

[142] See generally *Manifeste pour la Iustice des Armes de la Tres Auguste Maison D'Austriche: Ensemble la Response à Celuy Qui a Este Publie Sous le Nom du Roy de France* (1635), archived at http://perma.cc/TQM3-7R3F.

to the House of Austria in the form of a perpetual Monarchy."[143] The Hapsburgs later called the purported "threat" of universal monarchy by the Spanish as "the ordinary scarecrow that is made to frighten children and weak minds."[144]

E. Enforcement of Inheritance Rights

Manifestos often referenced the enforcement of inheritance laws, succession rules, and other hereditary rights to justify war. Of the just war claims in the manifestos in our collection, ninety-three were coded as citing the enforcement of inheritance law, succession rules, and other hereditary rights as a reason for going to war, constituting 6.8 percent of all claims and 28.0 percent of all manifestos. Of the ninety-three manifestos containing inheritance claims, forty-two (45.2 percent, or 12.7 percent of all manifestos) identified this reason as the manifesto's primary justification.

Most typically, this category of manifestos contained competing claims of two potential successors to a throne. In 1582, for example, Dom Antonio issued a manifesto against the King of Castile in the War of the Portuguese Succession over the right to the Portuguese throne.[145] A significant number of manifestos also contained retaliatory claims for violations of succession procedure (including election laws). For instance, a manifesto issued during the 1703–1711 revolt against Hapsburg rule on behalf of Francis II Rákóczi asserted that the Hapsburgs had interfered with Hungary's traditional rights and privileges, including that of electing their own king.[146] Some manifestos even asserted the hereditary claims of others (usually family members or allies) as a justification for going to war. During the Italian War of 1536–1538, Charles V, King of Spain and Holy Roman Emperor, asserted his and his son's hereditary rights against King Francis I of France.[147]

As Figure 5 demonstrates, the enforcement of inheritance rights as a just war claim was more frequently observed in earlier

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[143] Id at 37.

[144] Id at 30.

[145] See generally *Sommaire Déclaration* (cited in note 119).

[146] See *Manifeste des Mecontents de Hongrie, Contenat les Raisons Qu'ils Prétendent Avoir de S'être Soulevez, & de Prendre les Armes contre l'Empereur pour Maintenir leur Loix & Liberty* (1705), archived at http://perma.cc/JY2W-7V5C.

[147] See *La replique faicte par Lempereur sur la dicte response, du Roy de France* (cited in note 45).

manifestos and sharply declined at the turn of the nineteenth century.

F. Religious Claims

Two separate forms of religious claims were commonly made in manifestos. First, there were claims surrounding the protection of religious liberty. States argued that people should have the freedom to practice their own religion. Second, manifestos cited defending the one true church or religion as a reason for war. Counting the claims together, of the just war claims made in the manifestos in our collection, ninety-one were religious claims, constituting 6.6 percent of all claims and contained in 27.4 percent of all manifestos. Of the ninety-one manifestos containing religious claims, seventeen (18.7 percent, or 5.1 percent of all manifestos) identified this reason as the manifesto's primary justification. Religious justifications for war were common early in the period studied but fell in popularity steadily throughout.[148]

The first type of religious claim can be found in the 1702 manifesto issued by the Netherlands against the kings of France and Spain. The Netherlands argued that it had an obligation to "protect[ ] our subjects and [ ] preserve[ ] their Religion and Liberty."[149] Therefore, the manifesto says, the Netherlands will "take up Arms against the said Kings of France and Spain."[150]

The second type of religious claim is present in a 1587 Declaration by French sovereign Henry III. In his "Declaration of the King, by which he forbids the levying of men of arms without his approval and authority, and commands all his Catholic subjects to come to find him in his army," Henry calls on the support of his Catholic subjects in defense of the one true church, saying his manifesto is addressed

> to the benefit of those who have opposed themselves by arms against the execution of our last Edict, which we have made in order to reunite all our subjects to the Catholic, Apostolic and Roman religion, against whom we have thought to employ even our own person, so as to cause God to be served.[151]

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[148] See Figure 5.

[149] *A Manifesto: Containing the Reasons Which Have Induced the Lords States General of the United Netherlands, to Declare War against the Kings of France and Spain* 13 (May 8, 1702) (A. Baldwin 1702), archived at http://perma.cc/TS2S-VWB9.

[150] Id at 13–14.

[151] *Declaration du Roy* at 5–6 (cited in note 115).

As with tort claims, religious claims sometimes forced us to make fine distinctions. Manifesto practice, as with the exercise of sovereignty generally during the period under study (and throughout human history), was intimately bound up with religious faith and observance. Kings claimed to rule by the grace of God, and they naturally invoked God's protection when they took up arms. These more general religious references were as plentiful and pro forma in war manifestos as they are in contemporary presidential addresses, but they do not qualify as causes for war.

G. Protection of Trade Interests

States considered protection of trade interests a just cause of going to war. Arguments in favor of protection of trade interests ranged from retribution for other states' disruption of trade channels to their interference with a sovereign's commerce. Of the just war claims made in the manifestos in our collection, seventy were trade claims, constituting 5.1 percent of all claims and 21.1 percent of all manifestos. Of the seventy manifestos containing trade claims, fourteen (20.0 percent, or 4.2 percent of all manifestos) identified this reason as the manifesto's primary justification. The justification grew in popularity through the mid-1600s before gradually falling off, as shown in Figure 5.

Throughout history, violations of trade interests on the open seas have invariably served as justification for war. In 1523, the Hanseatic State of Lübeck primarily justified the Swedish War of Succession against Denmark's King Christian with evidence of Danish harassment of Lübeckian ships and threats to the Hanseatic city's commercial interests.[152] A century later, during the Torstenson War, Queen Christina of Sweden likewise based her just war claim against Denmark on the Danish confiscation of Swedish ships and attacks against traders.[153] Trade interests inflamed British passions during the Nine Years' War, as evidenced by William III's 1689 manifesto against France.[154] By allowing private Frenchmen to seize English ships and charging exorbitant import taxes on British goods, France was said to have as its ulterior design the "annihilation of commerce, and consequently, Ruin of Navigation, whence depends a great part of the

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[152] See *Wie die von Luebeck* (1523), archived at http://perma.cc/PZY8-A6ZF.

[153] *Wiederlegung und Wolgegründete Antwort Auff Das Danische Manifest* (1644), archived at http://perma.cc/9MU7-S39R.

[154] See *Declaration de Guerre de sa Majeste Britanique contre le Roy des François* (May 17, 1689), archived at http://perma.cc/N543-XM59.

prosperity and happiness of [the British] nation"—an act that "is so manifest, there is no need to repeat" all the specific instances of France's trade-violating conduct.[155] Yet Britain, too, would in turn face its share of trade claims by France. During the American Revolution, France issued a manifesto detailing England's myriad trade violations,[156] ranging from "crowding the seas with privateers" to "disturbing of his Majesty's subjects in their trade and navigation, under the most absurd pretences" and "the assuming of a tyrannic empire over the seas."[157]

H. Humanitarian Protection

Today we think of humanitarian intervention as a modern invention.[158] But during the period when manifestos were issued, humanitarian protection was frequently cited as a reason for war. In making these claims, states argued that harms to the property or life of others—including citizens of other states or a religious minority in another state—justified military intervention. Humanitarian interventions were often made in retribution for atrocities committed against Christians. Of the just war claims made in the manifestos in our collection, sixty-three made claims of humanitarian intervention, constituting 4.6 percent of all claims and contained in 19.0 percent of all manifestos. Of the sixty-three manifestos containing humanitarian claims, twelve (19.0 percent, or 3.6 percent of all manifestos) identified this reason as the manifesto's primary justification. This justification for war remained fairly steady at inclusion in just under 20 percent of manifestos throughout the period studied, as Figure 5 shows.

An early humanitarian intervention claim appears in the 1585 declaration from the Queen of England to her citizens. Issued during the Anglo-Spanish war, the manifesto stated that the queen was going to war to protect citizens in the Low Countries from the hostilities of Spain. (The English queen had been supporting the Dutch Protestants, who were seeking independence from Catholic Spain. Her motives were not entirely selfless, of

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155 See id at 2.

156 See *A Manifesto, Displaying the Motives and Conduct of His Most Christian Majesty towards England* (cited in note 66).

157 Id.

158 For recent dissents, see Fabian Klose, ed, *The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present* 1–30 (Cambridge 2016); Brendan Simms and D.J.B. Trim, eds, *Humanitarian Intervention: A History* 1–24 (Cambridge 2011); Gary J. Bass, *Freedom's Battle: The Origins of Humanitarian Intervention* 5–9 (Knopf 2008).

course. She feared that Spanish reconquest could affect the balance of power, and she cited this reason along with several other just causes.) The queen first explained that, though sovereigns are "not bounde to yeeld account or render the reasons of their actions to any others but to God their only Soveraigne Lord," she felt "specially mooved, for divers reasons hereafter briefly remembred, to publish not onely to our owne naturall loving Subjectes, but also to all others our neighbours, specially to such Princes and States as are our Confederates, or have for their Subjectes cause of commerce with our Countreis and people."[159] The people of the Low Countries, she argued, merited England's assistance because of the "long warres and persecutions of strange Nations there, lamentablie afflicted, and in present danger to bee brought into a perpetuall servitude."[160]

I. Protection of Diplomatic Relations

States argued that they had the right to go to war in order to protect their diplomatic relations. This meant going to war both on the basis of retribution for interference with a sovereign's diplomatic interactions with other states, as well as retribution for harm to a sovereign's diplomatic personnel or property. Of the just war claims made in the manifestos in our collection, fifty-three were diplomatic relation claims, constituting 3.9 percent of all claims and 16.0 percent of all manifestos. Of the fifty-three manifestos containing diplomatic claims, three manifestos (5.7 percent, or 0.9 percent of all manifestos) identified this reason as the manifesto's primary justification. Figure 5 shows that protection of diplomatic relations was a commonly cited cause of war in the early modern period, but it gradually declined as a cited justification throughout the period studied.

In 1741, for instance, Sweden's Frederick I issued a manifesto against Czar Ivan VI of Russia during the Russo-Swedish War, alleging that the murder of Malcom Stewart, a Swedish ambassador, was one of the primary justifications for going to war.[161] Protection of diplomatic relations took on a slightly different flavor during World War II, when the failure of a nation to abide by

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[159] *A Declaration of the Causes Moving the Queene of England to Give Aide to the Defence of the People Afflicted and Oppressed in the Lowe Countries* 1 (Barker 1585), archived at http://perma.cc/P7KV-UHR8.

[160] Id at 2.

[161] See generally *Jhro Königlichen Majestat in Schweden Publication den Krieg wider den Czaarn in Rukland* (July 24, 1741), archived at http://perma.cc/Q7V7-KVLM.

diplomatic protocol was proffered not to justify war, but rather to persuade that nation's subjects to withdraw support for their government. In a quasi-manifesto broadcast to the German people, British Prime Minister Neville Chamberlain chastised German withdrawal of an offer of peace to Poland merely two hours after first extending it.[162] Earlier, he noted, a Polish representative was asked to sign an agreement with the Nazi government without having even read it.[163] Given these and other methods, Chamberlain clearly and forcefully laid out Germany's violation of diplomatic protocol at the end of his broadcast: "This is not negotiation. This is a dictate. To such methods no self-respecting and powerful State could assent."[164]

J. Collection of Debts

Manifestos sometimes referenced unpaid debts as a reason for going to war. Sovereigns implied that the war would either be retributive (punishing the debtor state) or restorative (serving as a means of collecting debt through plunder). Of the just war claims made in our collection, seventeen were debt claims, constituting 1.2 percent of all claims and 5.1 percent of all manifestos. Of the seventeen manifestos containing debt claims, none identified this reason as the primary justification. No more than 10 percent of manifestos contained this justification in a given period.[165]

In 1528, for example, an English emissary named Clarenciao issued a manifesto on behalf of Henry VIII against the Holy Roman Empire with regard to the Hapsburg-Valois Wars.[166] Among various other claims, Clarenciao points to an unpaid loan issued by King Henry VIII to Emperor Charles V.[167] Similarly, the Siege of Stralsund (1711–1715) was caused, in part, by Russia and Poland's need to collect an outstanding debt of £800,000 as compensation

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[162] See Neville Chamberlain, *Broadcast by the British Prime Minister to the German People* (Sept 3, 1939), in *The Outbreak of War: 22nd August–3rd September 1939* 20–21 (Ministry of Information 1939), archived at http://perma.cc/XP8U-MNAU.

[163] See id at 21.

[164] Id.

[165] See Figure 5.

[166] See *Abclag Beder Konigen von Frankreichen une Engeland* (Stockel 1528), archived at http://perma.cc/XU2Z-7MD7.

[167] See id at 6–7. It was not only lender nations that invoked collection of debts as a just war claim. In a quasi-manifesto dated 1739, Spain explained its reasons for refusing to pay a £95,000 indemnification for the Spanish capture of English traders. See *His Catholick Majesty's Manifesto, Justifying His Conduct in Relation to the Late Convention with His Reasons for Not Paying the Ninety-Five Thousand Pounds* (Amey 1739), archived at http://perma.cc/UA2K-LTY9.

for Sweden's century-long occupation of Stettin (modern-day Szczecin, Poland).[168]

K. Declaration of Independence

Our coding uncovered support for an independence movement as another just cause of war in traditional manifestos, as well as several direct declarations of independence issued by factions seeking independence.[169] The documents in this latter group are, by nature, generally *quasi-manifestos*, rather than full-fledged manifestos, because they usually are not issued by a sovereign.[170] Many of the quasi-manifestos that fell into this category nevertheless exemplified the manifesto-like practice of justifying their resort to war to an intended audience of both the sovereign from whom independence is sought as well as a wider public audience. In total, the manifesto collection includes seven manifestos citing independence as a just war claim, as well as seventeen quasi-manifestos with direct declaration of independence claims (out of a total number of fifty-three quasi-manifestos). The seven independence claims in manifestos represent 0.5 percent of all claims and 2.1 percent of all manifestos.[171] Two manifestos listed it as a primary justification for war, constituting 11.8 percent of manifestos citing declaration of independence and 0.6 percent of all manifestos.

One familiar example, of course, is the American Declaration of Independence. That declaration exhorts that "a decent respect to the opinions of mankind requires that [people seeking independence] should declare the causes which impel them to the separation."[172] France's manifesto upon joining the colonists' war effort also cites independence as a just war claim.[173] Elsewhere, declarations of independence were also made in quasi-manifestos issued by the Brabantine people against Hapsburg Emperor Joseph II

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[168] See *Motifs Qui Ont Engagé Sa Majesté le Roi de Prusse* 1, 8 (1715), archived at http://perma.cc/R7A6-JJRB.

[169] Coders were instructed to code declarations of independence as manifestos if the independence movement was successful and as quasi-manifestos if they were not.

[170] Some declarations of independence were issued by sovereigns who had, for one reason or another, come under the dominance of or whose territory had been occupied by another sovereign.

[171] The number of manifestos in this category was too small to generate a figure like those for the other categories.

[172] US Declaration of Independence ¶ 1 (1776).

[173] See *A Manifesto, Displaying the Motives and Conduct of His Most Christian Majesty towards England* (cited in note 66).

during the 1789 Brabantine Revolution,[174] as well as by Irish rebels against England during the 1803 Irish Rebellion.[175]

The practice of declaring independence in a document professing to be a manifesto is indicative of the importance placed on manifestos as sovereign legal instruments. Only sovereigns had the right to wage war, and manifestos were the means by which they asserted and exercised that right. When a rebel group attempted to issue a manifesto, it was making a claim that it, too, was a legitimate sovereign actor and thereby elevated its quest for independence from mere banditry to the dignity of war. One intriguing example of this practice was the "manifesto" issued by the Confederate Congress in 1864 during the US Civil War.[176] This quasi-manifesto looks remarkably like the manifestos that were common a century earlier—in fact, it is the last document in the collection to assert hereditary claims as a basis for war—and even calls itself a "manifesto," a term that Americans had until then largely avoided because of its monarchical overtones. One might almost say that the Confederate manifesto was a little too perfect, as though, like any parvenu, the Confederacy wanted so desperately to fit in that it tried too hard and overshot the mark.

L. References to Laws of War, Law of Nations, or Customary International Law

In war manifestos, sovereigns frequently referred to the laws of war, the law of nations, or customary international law. Of the 332 manifestos from our collection, 141 referenced these laws, constituting 42.5 percent of all manifestos. The number of manifestos expressly citing the laws of war, the law of nations, or customary international law remained high throughout the period studied—at roughly 40 percent of all manifestos issued. (Because the law of nations was not, strictly speaking, a separate cause of war, but rather the overarching legal framework within which all such causes had to be articulated, we have not coded reference to the law of nations as a distinct just cause, and consequently it does not appear in Figure 5.)

At times, however, sovereigns did point to violations of such laws as a justification for war. For instance, the 1739 War of

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[174] See *Manifeste du Peuple Brabançon* (1789), archived at http://perma.cc/U45T-XL53.

[175] See *Manifesto of the Irish Rebels: The Provisional Government to the People of Ireland* (1803), archived at http://perma.cc/WRS5-DPM7.

[176] See *Manifesto of the Congress of the Confederate States of America Relative to the Existing War with the United States* at 286–88 (cited in note 22).

Jenkins' Ear between England and Spain was brought about by trade skirmishes between the two sovereigns on the open seas. In 1739, England's George II issued a declaration of war against Spain's Phillip V, citing the Spaniards' "many unjust Seizures . . . for several Years" as "contrary to the Treaties" between the two nations, as well as "to the Law of Nations."[177] George II specifically cites the "Liberty of Navigation" on an equal basis with a well-known tenet of the Law of Nations.[178] Clearly, the law of nations was intended to bolster King George's justifications and place England squarely on the side of lawfulness and justice, with any wrongdoing that violated international custom to fall solely on Spain's shoulders. Elsewhere, reference was also made to the "laws of war": upon Prussia's invasion of Austria during the First Silesian War, Frederick the Great of Prussia cites "the principles of necessary defense, permitted by the laws of every people" (that is, *ius gentium*) to justify his attack.[179]

In other cases, references were made to the law of nations to support other claims, or even sometimes as a passing reference. For example, the prince regent of Portugal, in explaining why he did not fully comply with Napoleon's demands, appealed to international law to justify his decision:

> The Court of Portugal . . . could not believe that the Court of the Tuileries would seriously make such proposals, which would compromise its honor and its dignity. . . . It tried to moderate the pretensions of the French Government by acceding to the closure of the ports but refusing the two other articles, which were contrary to the principles of Public Law and to the Treaties that existed between the two Nations.[180]

Similarly, George III of Great Britain commanded his courts to apply international law:

> [T]he several Courts of Admiralty within his Majesty's Dominions [shall] take Cognizance of, and judicially proceed upon all and all Manner of Captures, Seizures, Prizes, and

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[177] See *His Majesty's Declaration of War against the King of Spain* (1739), in The London Gazette (Oct 20–23, 1739), archived at http://perma.cc/2WB2-AHHU.

[178] See id.

[179] See *Patent, Wegen Des Ein-Marches Sr. Königl. Maiestät in Preussen Trouppen in das Hertzogthumb Schlesien* (Nov 10, 1740), in *Preussische Staatsschriften* 67, 70 (Von Alexander Duncker 1877), online at http://books.google.com/books?id=HUguAAAAMAAJ&printsec=frontcover#v=onepage&q&f=false (visited Feb 18, 2018) (Perma archive unavailable).

[180] See *Manifeste, ou Exposé Raisonné, et Justificatif de la Conduite de la Cour de Portugal à l'Egard de la France* (1808), archived at http://perma.cc/RZ6G-9TT8.

> Reprisals of all Ships and Goods that are or shall be taken, and [shall] hear and determine the same; and, according to the Course of Admiralty, and the Laws of Nations, [shall] adjudge and condemn all such Ships, Vessels and Goods, as shall belong to the States General of the United Provinces.[181]

M. Other Reasons

Though these categories capture many of the reasons for going to war, the list above is not exhaustive. Manifestos sometimes contained other just causes for going to war. These include obeying a papal command,[182] negotiating in bad faith,[183] and, because there is nothing new under the sun, interfering in the electoral process of another sovereign state.[184]

N. Just Causes over Time

Table 1 and Figures 5,[185] 6, and 7 show the just causes for war in parallel to allow for better comparisons across categories. Viewing the just causes in absolute and comparative terms over time allows us to see how the reasons given by sovereigns compare both at any given moment and across time. A few aspects are particularly notable. First, self-defense is the most common reason given for war, and it grows as a justification over time. That is notable given that self-defense remains a permissible justification for states to unilaterally resort to force. But we should be careful about drawing the wrong lesson from history; as discussed in more detail in Part V.C, self-defense as a legal justification for

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[181] *The King's Most Excellent Majesty in Council* (Dec 20, 1780), archived at http://perma.cc/SEV7-NFQ3.

[182] See, for example, *Eyn Rede der gesandten Botschaffer der Vendiger an Maximilianum Gethane zu Memmingen* (Dec 1, 1508), archived at http://perma.cc/Q8JZ-EL3K.

[183] See, for example, *Manifest von Ferdinand von Spanien* (1636), in 3 *Les Papiers de Richeliu, Section Politique Extérieure Correspondance et Papiers d'État* 2–4 (Pedonde 1999) (Anja Victorine Hartmann, ed).

[184] See, for example, *Les Armes du Roy Justifiées contre l'Apologie de la Cour de Vienne* (1734), archived at http://perma.cc/P354-47QC.

[185] The lines in Figure 5 represent a point estimate generated using a local polynomial smoother, and the shaded area is the 95 percent confidence interval. Some might object that confidence intervals are not appropriate in cases in which one is working with a complete set. As noted earlier, while we do have the most extensive set of manifestos available, the set is not complete. Many manifestos have been lost or are inaccessible. We thus treat our collection as a sample of war manifestos. Hence, confidence intervals are appropriate and, indeed, important to signal the uncertainty inherent in the numbers presented. (The line generated with the local polynomial smoother can be seen as an intrasample prediction of war justifications.)

war in the war manifesto period was very broad. Modern resorts to self-defense, by contrast, are more narrowly cabined. Article 51 of the UN Charter permits states to resort to force in self-defense in the face of an "armed attack"[186]—a much narrower range of circumstances than those that would have served as justification for war in the pre-Charter era.

Second, several reasons that were common early on became much less so over time. These include protection of inheritance rights, religious claims, and interference with trade relations. These changes comport with historical trends: as absolute monarchy declined, so too did battles over inheritance rights to the crown. With the rise of religious heterogeneity, religious justifications likely had less appeal to populations and fellow sovereigns alike.[187] The decline in conflicts generated by trade relations may be due, at least in part, to the 1856 Paris Declaration Respecting Maritime Law, which was signed by most of the major powers and which abolished privateering, provided that neutral flags covered the enemy's goods, provided that neutral goods were not liable to capture under the enemy's flag, and regulated blockades.[188] Perhaps too the decline of the East India Company and the close of the Opium Wars had some effect.

Third, aside from self-defense, common reasons given for waging war are reasons that today would be considered beyond the pale: treaty violations, tortious wrongs, and (early on) the enforcement of inheritance rights. In other words, many of the most common reasons for going to war during the period during which manifestos were issued—the late fifteenth century through the early twentieth century—would be considered absurd today. War was a tool used for a range of purposes utterly unfamiliar to modern eyes.

The next Part explores a few of the lessons to be learned from the insights war manifestos offer us.

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[186] UN Charter Art 51. As noted above, the precise scope of this modern exception is a matter of some debate. See note 5.

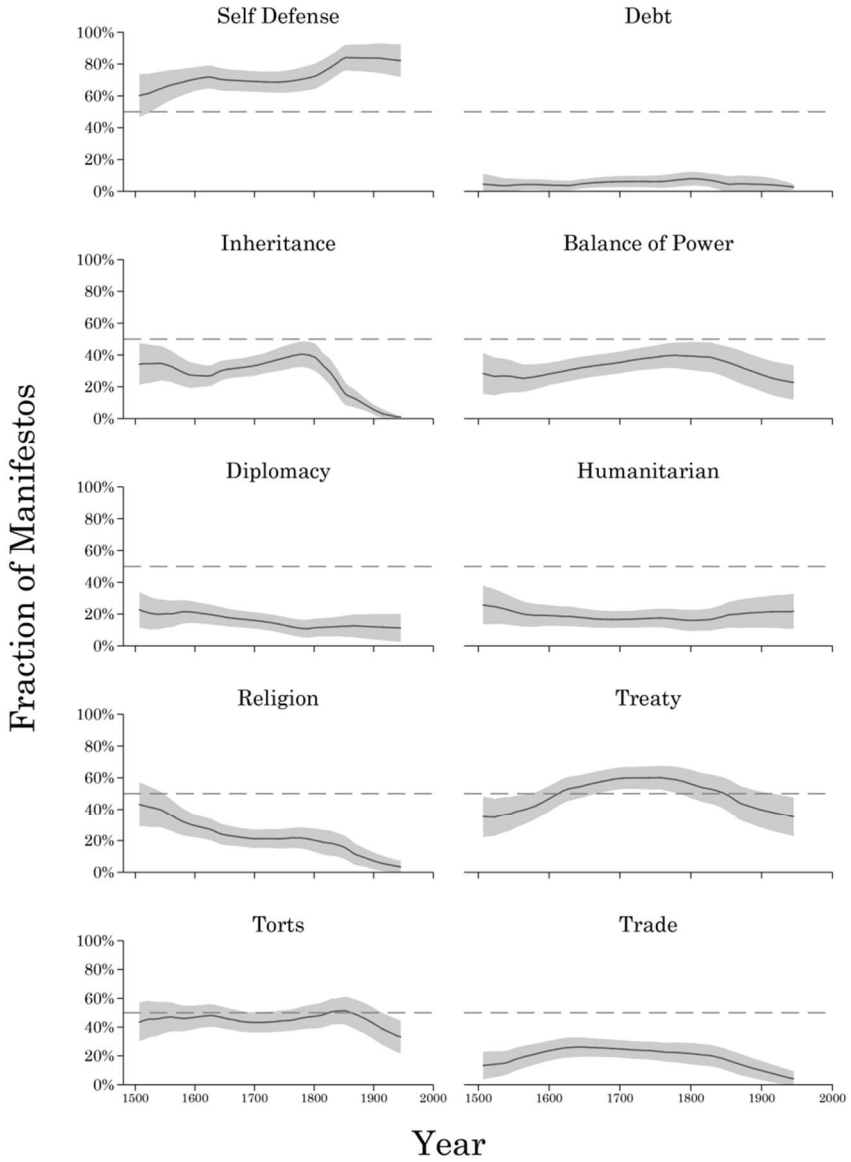
[187] See Part II.B.

[188] See *Paris Declaration Respecting Maritime Law* (Apr 16, 1856), archived at http://perma.cc/MV38-XZGA. The Hague Convention of 1907 further expanded some of these protections and may have made conflicts at sea even less likely.

TABLE 1: JUST CAUSES REFERENCED IN MANIFESTOS

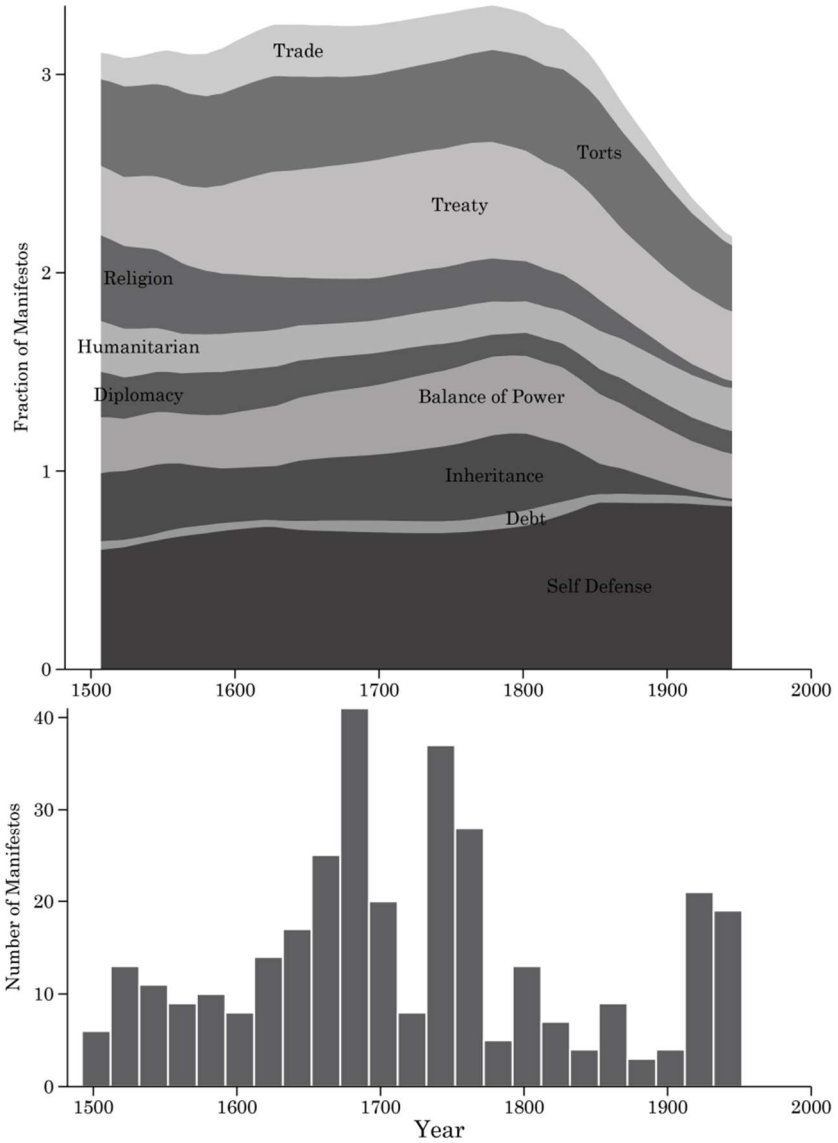
Just Cause of War	Percent of All Claims Made in Manifestos (Out of 1374)	Percent of Manifestos and Counter-Manifestos Including the Claim (Out of 332)	Percent of Manifestos in Which Claim Was the Primary Justification for War (Out of 332)	Percent of Quasi-Manifestos Including the Claim (Out of 53)
Self-Defense	17.5%	72.3%	40.7%	56.6%
Violation of Treaty Obligations	12.4%	51.2%	12.0%	28.3%
Tortious Wrongs	10.9%	45.2%	6.3%	39.6%
Protecting the Balance of Power	7.9%	32.5%	8.1%	32.1%
Enforcement of Inheritance Rights	6.8%	28.0%	12.7%	43.4%
Religious Claims	6.6%	27.4%	5.1%	43.4%
Protection of Trade Interests	5.1%	21.1%	4.2%	11.3%
Humanitarian Protection	4.6%	19.0%	3.6%	17.0%
Protection of Diplomatic Relations	3.9%	16.0%	0.6%	9.4%
Debt Collection	1.2%	5.1%	0%	1.9%
Declaration of Independence	0.5%	2.1%	0.6%	32.1%
References to Law of War, Law of Nations, or Customary International Law		42.5%		35.8%

FIGURE 5: JUST CAUSES REFERENCED IN MANIFESTOS OVER TIME



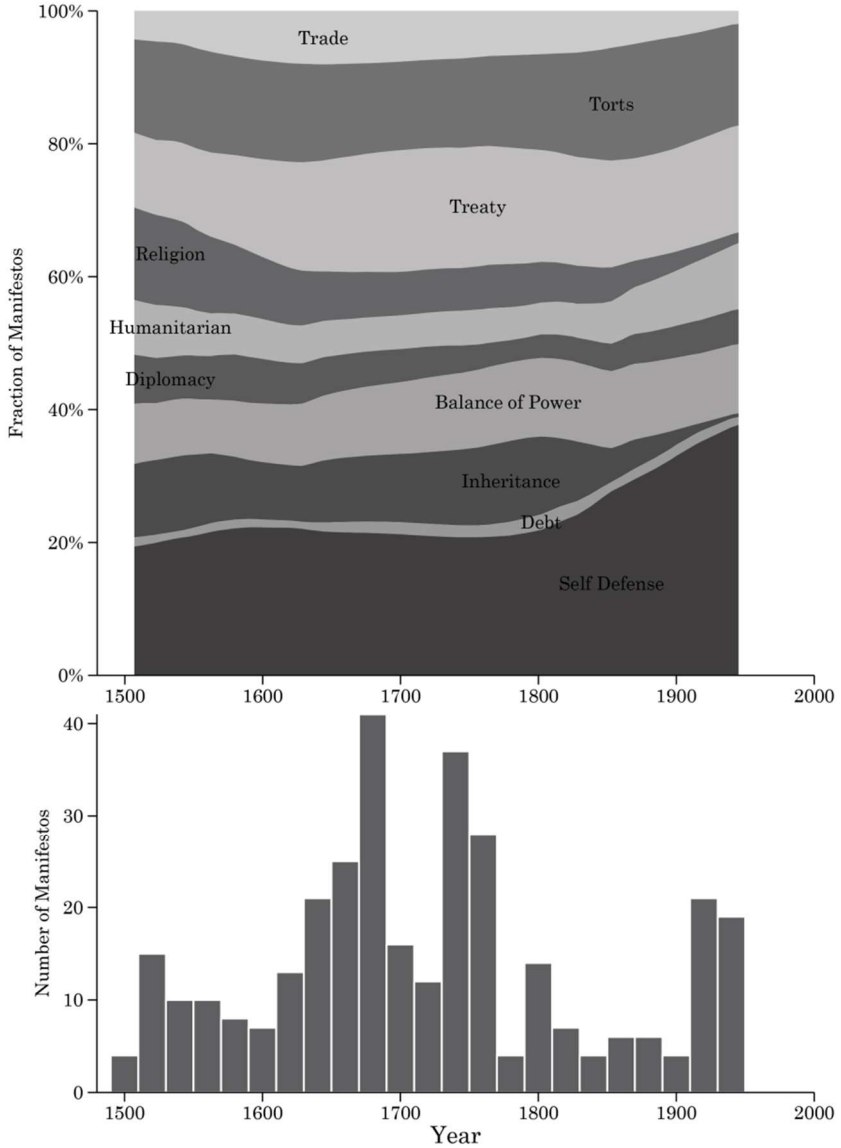
Dotted line represents occurrence in half of manifestos in a certain year.
Gray area represents 95 percent confidence intervals.

FIGURE 6: ABSOLUTE OCCURRENCE OF JUST CAUSES IN MANIFESTOS OVER TIME



Manifestos often contain more than one claim. Here, the number of claims have not been normalized. That is, if a manifesto contains two claims, then each counts as one. The total may therefore be larger than one. Label placement roughly indicates when a particular claim was most prevalent.

FIGURE 7: RELATIVE OCCURRENCE OF JUST CAUSES IN MANIFESTOS



Manifestos often contain more than one claim.
Here, the number of claims has been normalized to one.
That is, if a manifesto contains two claims, then each counts as one-half.
Label placement roughly indicates when a particular claim was most prevalent.

V. WHAT WAR MANIFESTOS TEACH US ABOUT MODERN LEGAL DEBATES

The very existence of war manifestos as part of a highly formalized and structured system of communication by sovereigns in the lead-up to, and conduct of, war is a valuable discovery in and of itself. Understanding the history of manifestos, the purposes for which they were deployed, and the causes that sovereigns believed were just helps us to better map the legal and political world of the fifteenth to early-twentieth centuries. As already noted, manifestos offer a new lens with which to view the emergence of the independent sovereign state in Europe. We see in that evolution evidence that the sovereign state we take for granted today was consciously constructed in the period following the Reformation. We can also see how customary international law norms evolved over the course of five centuries. Understanding this history helps us better understand our own international legal system, which is the result of this evolution. And it helps us better understand the vestiges of that system that we still see around us.

But lawyers might ask why all this history matters. War manifestos, after all, are no longer issued. What can they teach us about the issues we wrestle with today? The answer is that war manifestos offer insights that help us better understand *current* legal debates.

The discovery of war manifestos as a set of legal documents not previously explored offers lawyers and legal scholars something rare: a new window into the legal universe of the period from the late fifteenth through the early twentieth century. Previously, scholars frequently relied on treatise authors like Vattel to understand the legal universe within which, for example, the Framers of the US Constitution existed. But war manifestos give scholars *direct* access to the arguments sovereigns made to one another and, therefore, to the kinds of legal claims considered valid at the time. That, in turn, casts entirely new light on several long-standing debates. Here we explore three:[189] first, the intended aims of the Founders in writing the US Constitution's Supremacy and Treaty Clauses; second, the long-debated Alien Tort Statute

[189] The first two of these topics are relevant to the United States, as they concern the interpretation of the US Constitution and a US statute, respectively. (Although we are unable to explore them here, there are likely similar implications for doctrinal questions in other countries as well.) The third topic has much broader relevance, as it concerns the international rules for use of force.

passed by the First Congress; and third, whether to allow war to be used for purposes beyond those narrow purposes allowed under the UN Charter.

A. The Supremacy Clause of the US Constitution

International law, the manifesto database makes clear, was once enforced with war. Nearly half of war manifestos cited treaty violations as just causes for war. In addition, 42.5 percent of war manifestos cited the laws of war, the law of nations, or customary international law. For the international legal scholar, this is a revelation. Today, there is much hand-wringing about whether international law is really law if it is not enforced in the way many assume law must be enforced—that is, by the ultimate threat of force. Numerous studies, including some by two of the authors of this Article, seek to understand why states comply with international law, given that it has no police or other mechanism for forcing states to abide by the law.[190] During the manifestos era, by contrast, there was no mystery as to why states abided by international law. They did so at least in part because failure to do so gave other states a just cause for war.

Understanding that violating international law was a just cause for war—and that states actually waged war for this reason—casts new light on the Supremacy Clause of the U.S. Constitution.[191] The Supremacy Clause provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every

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[190] See generally Oona A. Hathaway and Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 Yale L J 252 (2011); Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U Chi L Rev 469 (2005); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 Yale L J 1935 (2002).

[191] For more on the history of the Treaty and Supremacy Clauses, see generally Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 Harv L Rev 599 (2008); Oona A. Hathaway, *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States*, 117 Yale L J 1236 (2008); Tara Helfman, *The Law of Nations in* The Federalist Papers, 23 J Legal Hist 107 (2002); David Golove, *Treaty-Making and the Nation: The Historical Foundations of the Nationalist Conception of the Treaty Power*, 98 Mich L Rev 1075 (2000). See also Martin S. Flaherty, *History Right?: Historical Scholarship, Original Understanding, and Treaties as "Supreme Law of the Land"*, 99 Colum L Rev 2095, 2095–99 (1999); Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 Am J Intl L 695, 697–700 (1995).

> State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[192]

Treaties are thus granted status as "supreme law of the land." Federal courts and judges of every state are bound to enforce them, even in the face of contrary state constitutional law.

But how "supreme" is international law, in fact? In *Bond v United States*,[193] the question presented to the US Supreme Court was whether Congress had the power under the Constitution to enact a criminal law provision necessary to give effect to the Chemical Weapons Convention,[194] to which the Senate had given its advice and consent and which the President had ratified.[195] Petitioner argued that the Constitution did not give Congress power to enact the law to give effect to the treaty because the law interfered with traditional state authority.[196] The Court ultimately did not decide the question on which it granted certiorari, deciding instead that the statute at hand did not, in fact, regulate petitioner's conduct.[197] The issue could, therefore, be presented to the Court again.

Little discussed at the time of the argument before the Court—and what this study of manifestos reveals—is one important reason the Founders drafted the Supremacy Clause as they did. At the time of the Constitution's drafting, violating a treaty was a just cause for war and was routinely cited by states in war manifestos. Understanding this phenomenon helps us see

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[192] US Const Art VI, cl 2. It is possible that one could make a related argument about the Treaty Clause, which provides that a treaty may be made only with the advice and consent of two-thirds of senators, and even then, the president is permitted, but not required, to ratify it. See US Const Art II, § 2, cl 2. This makes it more difficult to create a treaty than to pass legislation. See Hathaway, 117 Yale L J at 1243–74 (cited in note 191). Some have wondered why the Founders made it so much more difficult to make a treaty than to pass ordinary legislation. War manifestos may offer a partial clue: entering a treaty that the country was not prepared to follow could lead to war. But as earlier scholarship has documented, there were many other reasons the clause took the shape it did. See generally, for example, Golove, 98 Mich L Rev 1075 (cited in note 191). See also Hathaway, 117 Yale L J at 1274–1306 (cited in note 191).

[193] 134 S Ct 2077 (2014).

[194] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Senate Treaty Doc 130-21, 103d Cong, 1st Sess 278 (1993).

[195] See *Bond*, 134 S Ct at 2083–85.

[196] See Brief for Petitioner, *Bond v United States*, No 12-158, *20–23 (US filed May 8, 2013) (available on Westlaw at 2013 WL 1963862).

[197] See *Bond*, 134 S Ct at 2090 (finding the conduct not subject to the Chemical Weapons Convention because "the chemicals in this case are not of the sort that an ordinary person would associate with instruments of chemical warfare").

that the Framers sought to avoid flinging the fledgling United States into war by crafting a constitution that granted the federal government power to enforce treaty obligations even in the face of inconsistent state law. It also gives new weight to James Madison's argument at the Virginia State Convention on the Constitution that "the supremacy of a treaty" was necessary because otherwise "as far as [state laws] contravene its operation, it cannot be of any effect," which "would bring on the Union the just charge of national perfidy, and involve us in war."[198]

Although, as Professor David Golove has noted, there is a "paucity of material directly addressing the scope of the treaty power" in the Constitutional Convention,[199] an analysis of historical materials reveals that the risk of war posed by treaty violations was widely acknowledged by the Framers and employed in arguments for a stronger national government. In the opening speech of the Constitutional Convention, Governor Edmund Randolph set the stage by identifying the major "defects of the confederation."[200] Chief among these defects was that the Articles of Confederation "d[id] not provide against foreign invasion. If a State act[ed] against a foreign power contrary to the laws of nations or violate[d] a treaty, [the Confederation could not] punish that State, or compel its obedience to the treaty. . . . It therefore [could not] prevent a war."[201]

Records from the debates and the drafts of the clause reveal that the early version of the Supremacy Clause was specifically designed to prevent treaty violations by the states—violations that could give a just cause for war.[202] The Virginia Plan initially granted the national legislature the power to "negative all . . . laws passed by the several States contravening, in the opinion of the national legislature, the articles of Union; or any treaties subsisting under the authority of the Union."[203] In sharp contrast to the limited authority granted by the Articles of Confederation, this sweeping power provided a way for the national government directly and immediately to enforce state compliance with

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[198] Jonathan Elliot, ed, 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 515 (Lippincott 2d ed 1891).

[199] Golove, 98 Mich L Rev at 1134 (cited in note 191).

[200] 1 *The Records of the Federal Convention of 1787* 18 (Yale 1911) (Max Farrand, ed).

[201] Id at 24–25.

[202] See id at 21, 47, 162, 225. See also id at 54 (noting that the motion to add the words "or any treaties subsisting under the authority of the Union" to the clause was passed by unanimous vote "with[ou]t . . . debate or dissent").

[203] Id at 225.

treaties concluded by the United States. Charles Pinckney argued on June 8, 1787 that "the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it w[ould] be impossible to defend the national prerogatives."[204] Pinckney reminded the delegation that, under the Articles of Confederation, "foreign treaties [had not] escaped repeated violations."[205] On the same day, Madison argued that "an indefinite power to negative legislative acts of the States [w]as absolutely necessary to a perfect system" because "[e]xperience had evinced a constant tendency in the States to . . . violate national Treaties."[206] The New Jersey Plan, a competing draft to the Virginia Plan, also made treaties "supreme law of the respective States,"[207] but it relied on state judiciaries, not the national legislature, to strike down violations of federal laws and treaties.[208] James Madison raised concerns that under this alternative plan, the national government could not prevent states from concluding their own independent treaties, raising the specter of entangling the nation in war.[209] Madison reminded the delegation that under the Articles, "in several instances, the States have entered into treaties [and] *wars with them*."[210]

Debates at the state conventions were even more explicit about the concern that the federal government required a reliable and effective power to negotiate and enforce treaties to avoid war. At the Virginia convention, delegate William Grayson argued for the need to centralize the treaty power in the hands of federal authorities: "If I recall rightly, by the law of nations, if a negotiator makes a treaty, in consequence of a power received from a sovereign authority, non-compliance with his stipulations is a just cause of war."[211] As noted previously, at the same convention,

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[204] 1 *Records of the Federal Convention* at 164 (cited in note 200).

[205] Id.

[206] Id.

[207] Id at 245.

[208] 1 *Records of the Federal Convention* at 245 (cited in note 200):

> [A]ll Acts of the U. States in Cong[ress] made by virtue & in pursuance of the powers hereby & by the articles of confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the Individual States to the contrary notwithstanding.

[209] See id at 316.

[210] Id (emphasis added).

[211] Elliot, ed, 3 *Debates in the Several State Conventions* at 342 (cited in note 198).

Madison, too, made the connection between the Supremacy Clause and war explicit.[212] And during the New York ratifying convention, Robert Livingston argued that the federal judiciary should be charged with "the construction of treaties and other great national objects" because, "without this, it would be in the power of any state to commit the honor of the Union, defeat their most beneficial treaties, and involve them in a war."[213]

Publications advocating for the Constitution reflected similar concerns. Alexander Hamilton invoked Vattel and Grotius, both of whom endorsed a right to war for violations of the law of nations, in a letter criticizing New York for violating the Treaty of Peace with Britain:[214] by breaching the treaty with Britain, New York had brought "infinite injury" to the nation and opened the door to reciprocal noncompliance by Britain—including the refusal to "surrender our immensely valuable posts on the frontier, and to yield to us a vast tract of western territory."[215] Although the United States would have the right to "renew the war to compel a compliance," those who had assisted the United States would be unlikely to support such a war, given the United States' own failure to comply with the treaty.[216]

In Federalist 3 and 4, John Jay explicitly referenced the threat of war inherent in treaty violations as a key argument to convince the nation to ratify the Constitution: "The *just* causes of war, for the most part, arise either from violation of treaties or from direct violence. America has already formed treaties with no less than six foreign nations, and all of them, except Prussia, are maritime, and therefore able to annoy and injure us."[217] As a result, Jay stated:

> It is of high importance to the peace of America that she observe the laws of nations towards all these powers, and to me it appears evident that this will be more perfectly and punctually done by one national government than it could be

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[212] Id at 515.

[213] Elliot, ed, 2 *Debates in the Several State Conventions* at 215 (cited in note 198).

[214] See *A Letter from Phocion to the Considerate Citizens of New York* (Jan 27, 1784), in 3 *The Papers of Alexander Hamilton, 1782–1786* 483 n 1, 491–92 (Columbia 1962) (Harold C. Syrett, ed), citing Vattel, *Law of Nations* § 4.4.47 at 511 (cited in note 6) and Grotius, *Law of War and Peace* § 3.19.14 at 800 (cited in note 6).

[215] *Letter from Phocion* at 489–90 (cited in note 214).

[216] Id at 492.

[217] Federalist 3 (Jay), in *The Federalist* 13, 14 (Wesleyan 1961) (Jacob E. Cooke, ed).

> either by thirteen separate States or by three or four distinct confederacies.[218]

Jay not only recognized that "designed or accidental violations of treaties and the laws of nations afford *just* causes of war"; he also relied on this fact as an argument for adopting the Constitution, with its Supremacy Clause.[219] Federalist 22, written by Hamilton, raises this same concern about the risk of war caused by state treaty violations as part of an argument for national unity under the new Constitution: "The treaties of the United States, under the present Constitution, are liable to the infractions of thirteen different legislatures."[220] As a result, Hamilton argued, "The faith, the reputation, the *peace* of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed."[221]

At the time the Constitution was written, not only was treaty violation a just cause for war—as evidenced by war manifestos and treatises of the time—but the Framers were aware that it was. They framed the Supremacy Clause as they did in no small part to ensure that the US government would have the power to enforce the treaty obligations of the United States even in the face of recalcitrant state governments, thus avoiding giving treaty partners a just cause for war. There are, of course, many views on the proper place of historical evidence in constitutional interpretation. Indeed, some might argue that originalism is ill-suited for the Supremacy Clause, insofar as the Constitution was drafted for a very different international order than the one we currently inhabit. But to the extent that understanding the original meaning and intent of the text of the Supremacy Clause are important to resolving the issue presented to (but not resolved by) the Court in *Bond*, understanding this underappreciated context is essential.

B. The Alien Tort Claims Act

The discovery of war manifestos also offers a new perspective on another long-standing debate—this time over the meaning of

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[218] Id at 14–15.

[219] Id at 16. Jay reiterates this point in Federalist 4, stating that "the safety of the people of America against dangers from *foreign* force depends . . . on their forbearing to give *just* causes of war to other nations." Federalist 4 (Jay), in *The Federalist* 18, 18 (Wesleyan 1961) (Jacob E. Cooke, ed).

[220] Federalist 22 (Hamilton), in *The Federalist* 135, 144 (Wesleyan 1961) (Jacob E. Cooke, ed).

[221] Id (emphasis added).

the Alien Tort Claims Act[222] (ATCA) (also referred to as the "Alien Tort Statute"). Passed as part of the Judiciary Act of 1789, the statute provides, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[223] Since the statute's rediscovery in *Filartiga v Pena-Irala*,[224] lawyers have been struggling to make sense of this vague statute. Clearly it grants jurisdiction to federal courts over torts committed against aliens, but under what circumstances? And exactly why did the First Congress create this odd statute?

In *Sosa v Alvarez-Machain*,[225] the Court struggled to understand the purpose of the statute. It noted, for example, that "[t]he sparse contemporaneous cases and legal materials referring to the [ATCA] tend to confirm both inferences, that some, but few, torts in violation of the law of nations were understood to be within the common law."[226] The Court determined that the statute was primarily jurisdictional but that it "furnish[ed] jurisdiction for a relatively modest set of actions alleging violations of the law of nations" as long as they "rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized."[227] This decision limited the scope of liability under the ATCA to well-established violations of customary international law.

In *Kiobel v Royal Dutch Petroleum*,[228] the Supreme Court initially granted certiorari in order to address the question whether

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[222] Judiciary Act of 1789 § 9, 1 Stat at 76–77, 28 USC § 1350.

[223] Judiciary Act of 1789 § 9, 1 Stat at 76–77. The text has been slightly modified over the years. The original text read: "[The district courts] shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States." Judiciary Act of 1789, § 9, 1 Stat 73.

[224] 630 F2d 876 (2d Cir 1980).

[225] 542 US 692 (2004).

[226] Id at 720.

[227] Id at 720, 725. See also id at 732.

[228] 569 US 108 (2013). For an earlier treatment of aliens' tort claims, see *Mostyn v Fabrigas*, 98 Eng Rep 1021, 1030 (KB 1774) ("[A]ll actions of a transitory nature that arise abroad may be laid as happening in an English county."); *Dennick v Railroad Co*, 103 US 11, 17–18 (1880):

> Wherever, by either the common law or the statute law of a State, a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties.

corporations could be held liable under the Act.[229] After oral argument, however, the Court ordered reargument on a new question: "Whether and under what circumstances the [ATCA] allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States."[230] In arguing that the ATCA did allow extraterritorial application, petitioners relied heavily on the transitory torts doctrine, a common-law doctrine that allowed courts to assume jurisdiction over torts arising abroad.[231] The Court found that doctrine inapplicable, however.[232] It did acknowledge that offenses against ambassadors violated the law of nations and "if not adequately redressed could rise to an issue of war."[233] Therefore, "[t]he [ATCA] ensured that the United States could provide a forum for adjudicating such incidents."[234] But the Court then concluded that "[n]othing about this historical context suggests that Congress also intended federal common law under the [ATCA] to provide a cause of action for conduct occurring in the territory of another sovereign."[235]

The evidence from manifestos offers insight into each of these open issues. To begin with, it reveals why the First Congress might have passed such a statute. The frequency with which sovereigns referenced violations of the law of nations, as well as tortious interference, in their war manifestos offers an answer: they were concerned about furnishing a just cause of war. In the manifestos database, 141 manifestos out of 332—or 42.5 percent—cited violations of the law of nations as a cause of war, and 150 manifestos out of 332—or 45.2 percent—raised tortious interference. Violations of the law of nations were not mere lapses of "morality," as some today might argue, but instead were just causes for war.

It is one thing for violations of the law of nations to be a just cause of war. But the idea that torts could—and frequently did—lead to war is illuminating. No one today would consider the infliction of a civil injury for which money damages are the appropriate compensation to be a legitimate ground for war. That it

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229 See *Kiobel*, 569 US at 114.

230 Id.

231 Petitioners' Supplemental Reply Brief, *Kiobel v Royal Dutch Petroleum*, No 10-1491, *9–10 (US filed Aug 31, 2012) (available on Westlaw at 2012 WL 3864274).

232 *Kiobel*, 569 US at 119.

233 Id at 123, citing *Sosa*, 542 US at 715.

234 Id at 124.

235 Id.

was commonly cited as a cause of war offers a possible explanation for the otherwise mysterious ATCA: the Founders were seeking to, once again, avoid giving foreign sovereigns a just cause for war. By giving jurisdiction over these cases to the federal courts, the First Congress sought to ensure that any tortious injuries would be remedied in court—not through war. At the time, a number of state jurisdictions excluded aliens from eligibility to file suit over torts in state court, leaving them without recourse to a court of law and with an unresolved grievance that could lead to war.

Although the ATCA's historical origins are "murky,"[236] there is supporting evidence suggesting that the Framers were concerned that tortious wrongs against a citizen could lead to war. Vattel's treatise, *The Law of Nations*, which was widely read and frequently cited at the time of the Founding, stated that unrecompensed wrongs by citizens of one state against another could be a just cause of war: "If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation, than if he injured them himself."[237] Vattel

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[236] William S. Dodge, *The Historical Origins of the Alien Tort Statute: A Response to the "Originalists"*, 19 Hastings Intl & Comp L Rev 221, 222 (1996). For additional historical work on the ATCA, see generally Anthony J. Bellia Jr and Bradford R. Clark, *Two Myths about the Alien Tort Statute*, 89 Notre Dame L Rev 1609 (2014); Anthony J. Bellia Jr and Bradford R. Clark, *The Alien Tort Statute and the Law of Nations*, 78 U Chi L Rev 445 (2011); Thomas H. Lee, *The Safe-Conduct Theory of the Alien Tort Statute*, 106 Colum L Rev 830 (2006); Curtis A. Bradley, *The Alien Tort Statute and Article III*, 42 Va J Intl L 587 (2002); Joseph Modeste Sweeney, *A Tort Only in Violation of the Law of Nations*, 18 Hastings Intl & Comp L Rev 445 (1995); Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am J Intl L 461 (1989); William R. Casto, *The Federal Courts' Protective Jurisdiction over Torts Committed in Violation of the Law of Nations*, 18 Conn L Rev 467 (1986); Anthony D'Amato, *The Alien Tort Statute and the Founding of the Constitution*, 82 Am J Intl L 62 (1988); John M. Rogers, *The Alien Tort Statute and How Individuals "Violate" International Law*, 21 Vand J Transnatl L 47 (1988).

[237] Vattel, *Law of Nations* 2.6.72 at 161 (cited in note 6). Blackstone, too, explained that "offences against the law of nations . . . are principally incident to whole states or nations: in which case recourse can only be had to war." But nations could be held responsible for the actions of their citizens:

> [W]here the individuals of any state violate this general law, it is then the interest as well as the duty of the government under which they live, to animadvert upon them with a becoming severity, that the peace of the world may be maintained. For in vain would nations in their collective capacity observe these universal rules, if private subjects were at liberty to break them at their own discretion, and involve the two states in a war. It is therefore incumbent upon the nation injured, first to demand satisfaction and justice to be done on the offender, by the state to which he belongs; and, if that be refused or neglected, the sovereign then avows himself an accomplice or abettor of his subject's crime, and draws upon his community the calamities of foreign war.

endorsed a right to war for precisely such reasons: "Let us then say in general, that the foundation, or cause of every just war is injury, either already done, or threatened."[238]

In a grand jury charge delivered to the Circuit Court of the District of Virginia, John Jay references Vattel's *Law of Nations* and describes the international consequences of a state failing to address injuries against aliens, whether committed by the state or a private citizen:

> If a Sovereign, who might keep his Subjects within the Rules of Justice and Peace, suffers them to injure a foreign Nation, either in its Body or its Members, he does no less Injury to that Nation, than if he injured them himself. In short, the Safety of the State, and that of human Society, requires this attention from every sovereign.[239]

In Federalist 80, Hamilton expresses a similar concern:

> As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned.[240]

He continued, "This is not less essential to the preservation of the public faith, than to the security of the public tranquillity."[241] An "unredressed" wrong on a foreign national, after all, was "an aggression upon his sovereign."[242] At the North Carolina ratifying convention, William Davie also worried about unrecompensed harm leading to war:

> It has been laid down by all writers that the denial of justice is one of the just causes of war. If these controversies were left to the decision of particular states, it would be in their power, at any time, to involve the continent in a war, usually the greatest of all national calamities.[243]

William Blackstone, 4 *Commentaries on the Laws of England* 45 (Oxford 2016).

[238] See Vattel, *Law of Nations* 3.3.26 at 302 (cited in note 6).

[239] *John Jay's Charge to the Grand Jury of the Circuit Court for the District of Virginia* (May 22, 1793), in Maeva Marcus, ed, 2 *The Documentary History of the Supreme Court of the United States, 1789–1800* 380, 385–86 (Columbia 1998).

[240] Federalist 80 (Hamilton), in *The Federalist* 534, 536 (Wesleyan 1961) (Jacob E. Cooke, ed).

[241] Id.

[242] Id.

[243] Elliot, ed, 4 *Debates in the Several State Conventions* at 159 (cited in note 198).

Less than a decade before the enactment of the ATCA by the First Congress under the new Constitution, a committee of the Second Continental Congress, operating under the Articles of Confederation, recommended that states enact laws to punish infractions of the laws of nations, reporting: "That the scheme of criminal justice in the several states does not sufficiently comprehend offenses against the law of nations."[244] And:

> [A]s instances may occur, in which, for the avoidance of war, it may be expedient to repair out of the public treasury injuries committed by individuals, and the property of the innocent be exposed to reprisal, the author of those injuries should compensate the damage out of his private fortune.[245]

In response, the Second Continental Congress resolved in 1781 that states should address the problem by providing "expeditious, exemplary, and adequate punishment" for various harms to foreign states, including "offenses against the law of nations" and by "authoriz[ing] suits to be instituted for damages by the party injured."[246] This did not suffice to address the problem, however. Just three years later, the 1784 Marbois Affair, in which French citizen Charles Julian de Longchamps assaulted French Consul General François Barbé-Marbois on the streets of Philadelphia, highlighted the United States' continuing impotence to address torts against aliens.[247]

A post-ATCA case likewise reaffirms the understanding at the time that an unrecompensed wrong against a private citizen

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[244] Gaillard Hunt, ed, 21 *Journals of the Continental Congress, 1774–1789* 1136 (GPO 1912).

[245] Id.

[246] Id at 1136–37.

[247] See generally Alfred Rosenthal, *The Marbois-Longchamps Affair*, 63 Pa Magazine Hist & Biography 294 (1939). In a letter to Madison after the incident, Thomas Jefferson wrote that Congress would have the "will but not the power to interpose" and, because of the federal government's impotence to interfere, prophesized that the affair would "probably go next to France & bring on serious consequences." Letter from Thomas Jefferson to James Madison (May 25, 1784), in Robert A. Rutland and William M.E. Rachal, eds, 8 *The Papers of James Madison* 43 (Chicago 1973). See also Letter from James Monroe to James Madison (Nov 15, 1784), in 8 *The Papers of James Madison* 140–42 (discussing the powerlessness of the federal government to address situations like the Marbois affair); Letter from James Madison to James Monroe (Nov 27, 1784), in 8 *The Papers of James Madison* at 156–58 (same); Letter from James Madison to James Monroe (Dec 4, 1784), in 8 *The Papers of James Madison* at 175–76 (same). Notably, the war manifestos collection suggests that there were two potential just causes involved in this particular incident—tortious interference *and* interference in diplomatic relations.

could lead to war. In *Henfield's Case*,[248] an American citizen was criminally prosecuted for assisting the capture of a British merchant ship by a French privateer. The court, once again citing Vattel, held that, when a citizen commits a wrong against a citizen of another country, "his nation should oblige him to repair the damage, if reparation can be made, or should punish him according to the measure of his offence."[249] If it fails to do so, "it renders itself in some measure an accomplice in the guilt, and becomes responsible for the injury. . . . To what does this responsibility lead? To reprisal certainly . . . ; and if so, probably to war."[250]

The backdrop provided by war manifestos, together with contemporaneous expressions of concern that unrecompensed tortious wrongs against aliens could lead to war, may help to explain why there was so little debate over the ATCA at the time it was enacted. The members of the First Congress would have understood that providing recourse in US courts for aliens who had been harmed was essential to protecting national security. European states eager for an excuse to launch a just war against the newly independent United States could have seized on any significant number of torts as an excuse for war—and a legally valid one at that.

This treatment of torts suggests, too, an answer to the question left open by the Supreme Court after *Kiobel*: Does the ATCA apply to so-called foreign squared cases—that is, cases of torts committed against aliens within the United States or outside the United States by a US resident? The evidence from war manifestos suggests a clear answer: yes. Many of the tort claims made by sovereigns during the manifesto era related to encounters that took place on the high seas or otherwise outside the reach of ordinary courts. Indeed, it is precisely because the disputes could not be solved by courts that they had to be resolved by war.

C. The Permitted Reasons for War Are Limited

Today we frequently take for granted that there are limited reasons that states are permitted to go to war. But war manifestos reveal that this was not always true. In fact, it has only been true for less than a century. Before it was outlawed by the Kellogg-Briand Pact in 1928, war was considered a legitimate means of

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[248] 11 F Cases 1099 (CC D Pa 1793).

[249] Id at 1108.

[250] Id, citing Vattel, *Law of Nations* 2.6.76 at 251 (cited in note 6).

resolving a wide range of disputes among sovereigns. Manifestos offer stark evidence that sovereigns not only went to war for a range of reasons that today would be considered impermissible, but also that they publicized those reasons to their fellow sovereigns and to their populations *precisely because* they were considered valid justifications. Understanding manifestos and the role of war in sovereign relations for five centuries changes our understanding of war's role in the world order and, indeed, of the world order itself. War was not a violation of the law; it was the law.

That is, of course, no longer true today. As two of us have argued,[251] that changed largely thanks to the decision to outlaw war in 1928, a decision reinforced and reaffirmed in the UN Charter. As noted at the opening of this Article, today the only permitted reasons for war are (1) UN Security Council authorized interventions, (2) self-defense, and (3) consent of the host state.

Viewing the array of "just causes" for war given in war manifestos offers a vision of an alternative universe in which war could be used for a much wider range of purposes than those permitted today. War served as an all-purpose tool for states—one they could pull out when they judged that the causes were sufficient to justify it.

Consider humanitarian intervention. Some think of humanitarian intervention as a recent invention—an outgrowth of the human rights revolution of the post–World War II era. But the history of manifestos suggests the opposite: humanitarian intervention is very old indeed. Of the 1,381 just war claims made in 332 manifestos from our collection, 64 made claims of humanitarian intervention, constituting 4.6 percent of all claims and contained in 19.3 percent of all manifestos. Put differently, an average of 19.3 percent of all wars covered by the war manifestos in the study were waged, at least in part, for humanitarian reasons. After learning this, it is difficult to think of humanitarian intervention as a modern invention.

In 1528, for example, Conrad von Bibra, Duke in Franconia and eventual Prince-Bishop of Würzburg, issued a manifesto against the Duke John of Saxony, Prince Elector (of the Holy Roman Empire), and Philip, Landgrave of Hesse, in which he claimed a just cause to intervene in defense of the oppressed Protestant population—arguably an excuse for launching one of many

[251] See generally Hathaway and Shapiro, *The Internationalists* (cited in note 14).

internecine battles that plagued Germany in this period.[252] Humanitarian reasons were also cited by sovereigns in situations that led to colonial or semicolonial relationships. John Milton, the great epic poet, wrote a manifesto for Oliver Cromwell justifying the invasion of the Spanish possessions in the Caribbean in part on the basis of the brutality of the conquistadors. Warships should be employed, he argued, "in avenging the blood of the English, as well as that of the poor Indians, which in those places has been so unjustly, so cruelly, and so often shed by the hands of the Spaniards."[253]

Another pointed example of a humanitarian intervention argument comes from US President William McKinley in an 1898 Declaration of War during the Spanish-American War. McKinley argued that "the forcible intervention of the United States as a neutral to stop the war" was "justifiable on rational grounds."[254] Those grounds included "the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate"; it also included giving Cuban citizens the "protection and indemnity for life and property which no government there can or will afford."[255] "It is no answer," he claimed, "to say this is all in another country, belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door."[256] This intervention touched off decades of interventions in Cuba, the effects of which continue to be seen today in the "lease" of the land on which the infamous Guantanamo Bay prison now lies. A few years later, President Theodore Roosevelt defended the invasion of Cuba on the grounds that "there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it."[257]

These humanitarian interventions were legally appropriate at the time, if morally questionable. Sovereigns saw wrongs that

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[252] See *Anfenglicher Handel* (cited in note 121).

[253] John Milton, *A Manifesto of the Lord Protector of the Commonwealth of England, Scotland, Ireland*, in Rufus Wilmot Griswold, ed, 2 *The Prose Works of John Milton* 465 (Herman Hooker 1845).

[254] William McKinley, *Declaration of War* (1898), in James D. Richardson, ed, 10 *Messages and Papers of the Presidents* 139–50 (1899), archived at http://perma.cc/6EL9-GEVE.

[255] Id.

[256] Id.

[257] Theodore Roosevelt, *Fourth Annual Message* (Dec 6, 1904) (American Presidency Project), archived at http://perma.cc/G6BP-Q7Y8.

they wished to set right and saw no peaceful means for doing so. Hence, they went to war.

Viewed from the present, however, this history of humanitarian intervention ought to give us pause. In a world in which states were permitted to unilaterally declare their just causes for war, unilateral humanitarian intervention is permissible. But in a world in which many of the reasons for which states once justifiably went to war are no longer permitted reasons for war, the unilateral resort to war to right wrongs is a contravention of these constraints. It hearkens back to an era when war was an instrument of justice to which states always had unilateral recourse. If a state can choose on its own to go to war for this historic purpose, why not to collect debts or to redress a tortious injury or to remedy a treaty violation?

CONCLUSION

This Article has aimed to unearth a previously unexplored set of legal documents: war manifestos. War manifestos offer a tool for observing and understanding the emergence of the modern nation-state in the late fifteenth century and the five centuries of state practice that followed. They allow us a rare opportunity to gaze directly into a world long lost. The discovery of war manifestos gives scholars and lawyers a new set of materials for exploring the very foundations of our international legal order. From war manifestos, we learn how different the world once looked. States once viewed force as an appropriate tool for resolving a wide range of disputes. But they also used manifestos to avoid war—and, in the process, developed a shared understanding of norms that guided their conduct.

The implications described here are, we hope, just the beginning. We invite our readers to examine the manifestos themselves, to find in them the deep foundations of the international legal order. This new set of documents will allow us to develop a better understanding of the world as it once was and, in the process, gain new perspective on legal dilemmas we face today.

APPENDIX: METHODOLOGY

The collection of manifestos on which this Article is based was collected and coded over the course of three years. The collection contains a total of 573 documents: 264 manifestos, 68 counter-manifestos, and 53 quasi-manifestos, 129 documents that were coded and determined not to be manifestos, 27 documents that we

identified but could not locate, and 31 duplicates in other languages. Here we explain the process used to generate this database.

The *War Manifestos Database*, hosted by Yale Law School's library at http://documents.law.yale.edu/manifestos, includes a list of all of the manifestos used in this article, along with links to nearly all of the manifestos themselves. We encourage readers to help us continue to grow the collection; information on how to do so is available on the website.

A. Assembling the Collection

The manifestos in the collection were collected in several ways:

1. Historical collections.

We searched Morris Yale Law Library Catalog; Orbis Yale University Catalog; WorldCat, which searches a database of 72,000 libraries in 170 countries; Karlsruhe Virtueller Katalog, which searches a collection of research libraries in Germany, Austria, and Switzerland; Copac National Academic & Specialist Library Catalogue, which searches libraries within the UK; national library databases, including Bibliothèque Nationale de France and National Library Service of Italy; Early English Books Online; Eighteenth Century Collections Online; and the Hathi Trust Digital Catalog Record of British and foreign state papers. This research process amassed several hundred documents.

2. Drawing on prior research.

We began with the most comprehensive study of manifestos to date, *Offizielle Kriegsbegründungen in der Frühen Neuzeit*, by Professor Tischer. It covered the period from 1492 to 1800 and contained an appendix listing roughly 300 documents. We searched for these titles in library databases and online. We were able to locate all but 27. We found that 110 of the documents in that study did not meet our definition of a manifesto; of these 110, 46 met our definition of quasi-manifestos.

3. Newspaper collections.

We searched a variety of sources to find manifestos published in newspapers, including Yale University Library, *European History: Newspapers*, Yale University Library, online at http://guides.library.yale.edu/c.php?g=296299&p=1974321 (including links to

twentieth- and twenty-first-century newspapers on microfilm at Yale University Library, Orbis online database, digitized French newspapers on Gallica, and Wikisource Zeitschriften with German-language serials); Yale University Library, *Early Modern British History: Newspapers, Periodicals, and Diaries*, online at http://guides.library.yale.edu/c.php?g=295930&p=1973048 (including links to seventeenth- and eighteenth-century Burney Collection newspapers, nineteenth-century British Library newspapers, British Periodicals I and II from the UMI microfilm collection, ProQuest Periodicals Archive Online, Waterloo Directory of English Newspapers and Periodicals (1800–1900), Historical Newspapers Online's index to The Times (London), Eighteenth Century Collections Online, Early English Books Online, Times of London (1785–1985), Georgian and early Victorian regional newspapers (1750's–1870's), British Printed Images to 1700, and British and Irish Women's Letters and Diaries 1500–1950 (Alexander Street Press)); Gallica Bibliothèque Nationale de France (http://gallica.bnf.fr); seventeenth- to eighteenth-century Burney Collection Newspapers (http://find.galegroup.com/bncn). We used the following key terms: "manifesto" (English, Italian, Spanish); "manifeste" (French); "manifest" (English, German); "kriegsbegründungen" (German); "reasons for war"; and "declaration of war."

4. Working from conflicts.

We also identified a number of manifestos based on individual conflicts listed in the Correlates of War Database. As part of another data project, we examined every instance in the Correlates of War Territorial Change Database in which territory was transferred during a military conflict.[258] During the course of our research, we examined historical documents surrounding these conflicts. We aimed to identify any manifesto or counter-manifesto that may have been exchanged. This process identified forty-seven potential war manifestos. In addition, if the collection included a counter-manifesto from a conflict but the collection did not appear to include the original manifesto, we again searched through the documents relating to that conflict to try to identify the original manifesto.

[258] For more on this data project and the sources used to create it, see Oona A. Hathaway and Scott J. Shapiro, *Conquest and State Size Database* (2017), online at http://www.theinternationalistsbook.com/data.html (visited Apr 29, 2018) (Perma archive unavailable).

Despite these efforts, the collection certainly does not contain all war manifestos. First, many—perhaps most—manifestos have not survived to the present. Second, manifestos that have been digitized are more accessible and are therefore overrepresented in the collection. Third, documents that used the term "manifesto" were also more easily located and thus are likely overrepresented. Nonetheless, our collection represents the single largest collection of war manifestos ever amassed. Representing nearly 400 manifestos and quasi-manifestos (as well as over 100 more documents deemed not to be manifestos or quasi-manifestos), the collection represents over four years of effort by a team of over thirty scholars, researchers, and librarians.

B. Coding

Researchers working under our supervision read and coded each manifesto. Each researcher was trained in an hour-long orientation session that outlined the method of coding, the definitions of each code, and examples of each code. Although there was not a systematized intercoder reliability analysis, given the time-consuming nature of the coding process (and the very specialized language skills required to read some of the manifestos), we undertook a variety of efforts to ensure reliability and consistency. In particular, through most of the research period, there were team meetings between coders and the authors to discuss work, raise questions, and ensure consistent understanding of the coding process. The authors frequently checked in with coders and, when language skills made it possible, spot-checked the work. In addition, at the conclusion of the coding process, nearly every manifesto was individually reviewed for consistency and accuracy. (In many cases, coders were asked to annotate manifestos with brief translations, which made it possible to check coding of most manifestos in languages the authors do not themselves read.) This process ensures that false positives are unlikely—if a reason was listed in the spreadsheet, it is unlikely that this coding was incorrect, as it was annotated and almost always described and discussed in group meetings. More likely are false negatives—it is possible that coders will have missed justifications offered in the manifestos. An effort was made to minimize these errors through re-reading and spot-checking the manifestos, but that was not possible for every manifesto.

Coders were asked to read each manifesto and determine the particular reasons that the issuing sovereign gave to justify the

proposed war. The spreadsheet included twelve reasons that have been given over time to justify war: enforcement of inheritance laws, succession rules, and other hereditary rights; self-defense and repelling aggression; balance of power concerns; tortious wrongs, injuries to property or life; collection of debts; protection of trade interests; protection of diplomatic relations; humanitarian considerations; religious claims, including defense of the one true church and religious freedom; violation of treaty obligations; references to "laws of war;" and other reasons. See Part IV for a complete definition, and examples, of each.