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Beyond the Democratic Peace:

Solving the War Puzzle

JOHN NORTON MOORE*

TABLE OF CONTENTS

I.	The Democratic Peace.....	341
II.	More Pieces of the Puzzle.....	354
II.	Democracy and Deterrence.....	389
III.	Testing the Hypothesis.....	395
IV.	Building on Other Approaches.....	404
V.	Toward Incentive Theory.....	409
VI.	Terrorism and the Events of September 11.....	418
VII.	Consequences for Foreign Policy.....	420
VIII.	A Future with Fewer Wars.....	428

I. THE DEMOCRATIC PEACE

On the eve of World War I, Norman Angell wrote in a popular bestseller that the high level of interaction among nations made war a “great illusion.” Since war would not benefit the people of England or Germany, war would no longer occur.¹ Angell’s thesis, embraced by

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1. NORMAN ANGELL, THE GREAT ILLUSION: A STUDY OF THE RELATION OF MILITARY

even the Chairman of Britain's War Committee, died with the guns of August. It has taken almost a century for any other theory of war avoidance to gain the intellectual following enjoyed by Angell's *The Great Illusion*. Today, despite continuing protestations of skeptics, the "democratic peace" has achieved broad support across the political spectrum.² In its more cautious form, the "democratic peace" posits that major war will occur only rarely, if at all, between well-established democratic nations. But obviously, since major war has been occurring at a lousy rate between democratic and nondemocratic nations, the "democratic peace," despite its impressive acceptance, is not an adequate theory for war avoidance.³ Equally, however, since the "democratic peace" seems to be one of the most robust correlations with war avoidance found to date, approaches that ignore it would seem themselves to be seriously incomplete. Is there a more complete approach that offers better guidance for war avoidance yet that incorporates the insights of the "democratic peace?" The answer seems to be a cautious yes. Further, the more complete approach may offer better guidance for virtually all major foreign policy goals and thus

POWER TO NATIONAL ADVANTAGE (1914). *The Great Illusion* sold over a million copies in at least seventeen languages and was published again in 1933. Paradoxically, on the eve of World War I, while the British were reading *The Great Illusion* theorizing that war between Britain and Germany could not occur, the Germans were reading a bellicose book by a member of the German General Staff, which urged: "[T]he efforts directed towards the abolition of war must not only be termed foolish, but absolutely immoral, and must be stigmatized as unworthy of the human race." FRIEDRICH VON BERNHARDI, GERMANY AND THE NEXT WAR 27 (Allen H. Powles trans., 1912). For another of the "dark side" writers extolling the virtues and inevitability of war, see Chapter 3, *On the Violent Destruction of the Human Species*, in JOSEPH DE MAISTRE, CONSIDERATIONS ON FRANCE (Richard A. Lebrun ed. & trans., Cambridge U. Press 1994) (1797). "[M]ankind may be considered as a tree which an invisible hand is continually pruning and which often profits from the operation." *Id.* at 28. As with law generally, the objective must be to control the illegal use of force.

2. See, e.g., BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD (1993); James Lee Ray, *Democracy and International Conflict: An Evaluation of the Democratic Peace Proposition* (1994) (manuscript on file with author); RUDOLPH J. RUMMEL, POWER KILLS: DEMOCRACY AS A METHOD OF NONVIOLENCE 25-49 (1997). Professor Rummel reminds us that Quincy Wright, the author of the influential *A Study of War* (which set the stage for an interdisciplinary attack on the problem of war) and a former President of the American Society of International Law, also believed that: "[A]bsolutist states...under autocratic leadership are likely to be most belligerent, while constitutional states...under democratic leadership are likely to be most peaceful." *Id.* at 21. A useful collection of essays discussing the pros and cons of the democratic peace may be found in DEBATING THE DEMOCRATIC PEACE (Michael E. Brown, et al. eds., 1996).

3. For an excellent survey and bibliography of current approaches to war/peace theory, see Jack S. Levy, *War and Peace*, Chapter 18, in HANDBOOK OF INTERNATIONAL RELATIONS 350-68 (Walter Carlsnaes, et al. eds., 2002). See also Jack S. Levy, *The Causes of War and the Conditions of Peace*, 1 ANN. REV. POL. SCI. 139 (1998).

serve as a more effective foreign policy paradigm.

The “democratic peace” has achieved broad contemporary support because it reflects an impressive reality about war. Major international war, that is, interstate war with over one thousand casualties, occurs at an extraordinarily low rate, if at all, among well-established democracies. This insight, postulated by Immanuel Kant over 200 years ago,⁴ seems powerfully supported by recent scholarship, particularly the work of Professors Rudy Rummel and Bruce Russett.⁵ According to Rummel, of 353 pairings of nations fighting in major international wars between 1816 and 1991, zero occurred between two democracies.⁶ Perhaps a better way to perceive this data is that 100 percent of such wars in this period involved one or more nondemocracies.⁷ And in *Grasping the Democratic Peace* published in 1993, Professor Russett, a former chairman of the Political Science Department at Yale, lends powerful support to the basic proposition, including a careful refutation of the most common counterarguments.⁸ While a few scholars still

4. Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, reprinted in KANT'S POLITICAL WRITINGS (Hansreiss ed., 1970). Kant wrote *Perpetual Peace* in 1795.

5. See RUMMEL and RUSSETT, *supra* note 2.

6. See RUMMEL, *supra* note 2, at 13. Rummel's numbers are for *pairings* of nations fighting in major international wars and, thus, are much higher than the actual number of such wars in this period.

7. The astute reader will note that there are two critical definitions in relation to the “democratic peace” proposition. The first is the meaning of “democracy” and the second is the meaning of “war.” While scholars supporting the “democratic peace” have somewhat different approaches to what branches of a government must be freely elected, or what percentage of the population must be able to vote, for a government to qualify as democratic, the consistency of their findings merely illustrates the robustness of the proposition. As to the definition of “war,” the convention of 1000 casualties, borrowed from the Small and Singer *Correlates of War* project, see *infra* note 94, has become the standard. At least one scholar, however, relying on historical case studies rather than the *Correlates of War* data has concluded that a close corollary to the democratic peace holds throughout human history with even a 200 casualty cut-off. See SPENCER WEART, *PEACE AMONG DEMOCRATIC AND OLIGARCHIC REPUBLICS* (1994); SPENCER R. WEART, *NEVER AT WAR: WHY DEMOCRACIES WILL NOT FIGHT ONE ANOTHER* (1998). “Well-established democracies have never made war on one another.... Well-established oligarchic republics have scarcely ever made war on one another.” *Id.* at 13-14; Spencer Weart, *Why They Don't Fight*, U.S. INST. PEACE IN BRIEF 1-2 (Nov. 1993). See also the conclusion of Ted Robert Gurr that democracy is a factor in the decline of ethnic conflict over the last decade. According to Gurr, democracy encourages ethnic minorities to “give up armed action and pursue their objectives by democratic means.” *Ethnic Conflict in Decline*, 7 *PEACE WATCH* 6 (2000).

8. See RUSSETT, *supra* note 2. See also John R. Oneal & Bruce Russett, *The Kantian Peace: The Pacific Benefits of Democracy, Interdependence, and International Organizations, 1885-1992*, 52 *WORLD POL.* 1 (1999). In his latest empirical analysis of war, *Triangulating Peace*, which also shows the significance of economically important levels of trade and interdependence as measured by joint membership in international organizations, Russett concludes: “There is less than one chance in a thousand that the close association between...democracy and peace would have occurred by chance. Kant and the other classical liberals were right.” BRUCE RUSSETT &

challenge the statistical reality of this seminal proposition,⁹ argue that it is principally a product of a unifying Soviet threat during the Cold War,¹⁰ question whether it holds during prolonged transitions to democracy,¹¹ or question whether it would necessarily hold in a world of all democracies,¹² most now accept that the democratic peace is one

JOHN ONEAL, TRIANGULATING PEACE: DEMOCRACY, INTERDEPENDENCE, AND INTERNATIONAL ORGANIZATIONS 146 (2001). Russett is currently the Dean Acheson Professor of International Relations and Political Science at Yale and Editor of the *Journal of Conflict Resolution*. I believe that his empirical work, some of which was funded by the United States Institute of Peace, is among the most important in understanding war.

9. See, e.g., David E. Spiro, *The Insignificance of the Liberal Peace*, 19 INT'L SEC. 50 (1994). For Bruce Russett's response to David Spiro, see Bruce Russett et al., *Correspondence: The Democratic Peace*, 19 INT'L SEC. 164 (1995). For a recent challenge to the "democratic peace," see Thomas Schwartz & Kiron K. Skinner, *The Myth of the Democratic Peace*, 46 ORBIS 159 (2002). The authors challenge the democratic peace on multiple grounds, including the definition of "democracy," the appropriate "war" or fighting measurement, the effect of the cold war and NATO on the statistics, and a critique of theoretical arguments conventionally said to be underpinning the proposition.

10. See JOANNE GOWA, *BALLOTS AND BULLETS: THE ELUSIVE DEMOCRATIC PEACE* (1999). Professor Gowa concludes: "[V]iolent disputes do not occur at a consistently lower rate between democracies than between other states." *Id.* at 66. She further concludes, however, "After 1945, democratic states are less likely than are their nondemocratic counterparts to engage each other in either war or MIDs [militarized international disputes] short of war." *Id.* at 67. As to the reasons for her conclusions she notes: "If the data are aggregated across the entire 1816-1980 period, the dominance of Cold War observations will obscure any variation that might exist between these periods." *Id.* at 112. It has been pointed out that in order to justify her conclusion Professor Gowa has changed the central question from "Do democracies ever fight one another?" to "Do democracies ever fight one another in 'non-general' wars?" She uses this shift to eliminate World War I and World War II, with 59.1% of all the warring dyads. See John M. Owen, review of *Ballots and Bullets* (draft shared with the author). See also Henry S. Farber & Joanne Gowa, *Politics and Peace*, 20 INT'L SEC. 123 (1995).

11. See Edward D. Mansfield & Jack Snyder, *Democratization and War*, 74 FOREIGN AFF. 79 (1995); Edward D. Mansfield & Jack Snyder, *Democratic Transitions, Institutional Strength, and War*, 56 INT'L ORG. 297 (2002). By Mansfield and Snyder's own scoring, however, these "transition" nations are not yet coherent democracies. Indeed, they use the terms "mixed" or "anocratic" to refer to these regimes. *Id.* at 305. Further, they indicate that "there is only scattered evidence that transitions culminating in a coherent democracy influence war" *Id.* at 318. For Erich Weede's response to the initial Mansfield and Snyder argument, see Erich Weede, *Correspondence: Democratization and the Danger of War*, 20 INT'L SEC. 180 (1996). In responding to Mansfield and Snyder's initial *Foreign Affairs* article, Reinhold Wolf points out that "[n]one of the nine Central and Eastern European countries which, according to the Freedom House ratings, have become 'free' between 1988 and 1993...became embroiled in interstate war.... By contrast, of those eight states that experienced slower or no democratization at all, seven have resorted to arms since 1989, resulting in five wars and two lesser interstate conflicts." Reinhold Wolf, *Correspondence: Democratization and the Danger of War*, 20 INT'L SEC. 176, 177-78 (1996).

12. See JOHN M. OWEN IV, *LIBERAL PEACE, LIBERAL WAR* 234 (1997). Professor Owen writes: "What if all the world were to comprise liberal democracies? According to the argument of this book, we would not then have perpetual peace." *Id.* at 234. Owen accepts, however, the importance of "liberalism" and concludes that the United States should "encourage (but not enforce) liberalization around the world. Liberal states tend to believe that they have common

of the most important correlations found to date about the nature of war. The significance of this finding is powerfully supported by studies of the relationship between the type or “structure” of government and other widely shared goals, including human rights, economic development, environmental protection, famine avoidance, control of terrorism, corruption avoidance, and even ending mass refugee flows. On each of these major human goals, government structures rooted in democracy, the rule of law, and human freedom perform impressively better than totalitarian and authoritarian models rooted in Hegelian statist mystique.

Most dramatically, we now know that nondemocratic regimes, in the century just completed, have slaughtered their populations at a rate that may be as much as four times greater than that of all combatant war deaths. In his classic work, *Death by Government*,¹³ published in 1994, R. J. Rummel has estimated this total twentieth century “democide” at over 169 million. Further, this death by government breaks down powerfully across a spectrum of government structures ranging from totalitarianism through authoritarianism to electoral and liberal democracy. The “megamurderers,” with over a million victims, are all totalitarian governments. The “kilokillers,” with tens of thousands dead, are found among authoritarian governments. And though the

interests, and they are therefore unusually likely to maintain cooperative relations.” *Id.* at 228. Owen’s emphasis on the importance of what Professors Lasswell and McDougal called “subjectivities” or “perspectives” is an important emphasis.

Another contemporary approach accepting the importance of domestic regime type on state behavior (in contrast to many neorealists), but also insisting on the importance of other domestic and international level factors (as would, in part, the neorealists), is that of Professor Miriam Fendius Elman and associates growing out of a 1995 initiative at the Harvard Center for Science and International Affairs. See *PATHS TO PEACE: IS DEMOCRACY THE ANSWER?* 474 (Miriam Fendius Elman ed., 1997) [hereinafter *PATHS TO PEACE*]:

This book straddles the line. Unlike neorealists, we argue that domestic politics in general, and the democratic process in particular, crucially affect war and peace decision making, though not always in ways that are consistent with the democratic peace theory. We agree that the chief value of the democratic peace thesis is that it has helped to legitimize the study of domestic variables—that is, institutions and norms—to explain states’ behavior. Contrary to democratic peace proponents, however, we argue that under certain conditions liberal peace can break down, especially when external threats are severe. Furthermore, our chapters collectively support a number of propositions that are inconsistent with the democratic peace theory: regime structure is frequently not the most important domestic political variable to influence war and peace decisions; the norms and institutions of democracy may not always prevent wars and ensure stable peace between democracies; the democratic process often generates aggressive foreign policies; and nondemocratic norms and institutions do not invariably increase the likelihood of war....[W]e try to identify the conditions under which...[the democratic peace theory] will apply best.

Id. at 474.

13. RUDOLPH J. RUMMEL, *DEATH BY GOVERNMENT* 15 (1994).

democracies account for less than one percent of this carnage, no government is perfect. As James Madison brilliantly understood, all government must be checked by law, and liberty requires constant vigilance. Lest these huge numbers cause the mind to go numb, the *Diary of Anne Frank*¹⁴ captures for us their personal horror and, sadly, *Zlata's Diary: A Child's Life in Sarajevo*,¹⁵ from the 1990s siege of Sarajevo reminds us that the slaughter did not end with the Holocaust.

The most powerful correlations with economic growth seem to be the degree of democracy and levels of economic freedom. Thus, a recent survey by Freedom House¹⁶ finds that countries with the highest levels of democratic freedom, with only seventeen percent of the world population, produce eighty-one percent of the world economic product. In contrast, the countries with the lowest levels of freedom, with thirty-six percent of the population, produce only five percent of the world product. The twenty-four percent of the world population living in "free" and "partly free" nations produce eighty-six percent of the world economic product, and the sixty-six percent of the world population living in "mostly not free" and "not free" nations produce thirteen percent of the world product.¹⁷ Similarly, the 1997 Annual Report by Gwartney and Lawson on *Economic Freedom of the World*¹⁸ shows a strong correlation between levels of economic freedom and growth of real and per capita GDP. Ranking five quintiles of countries by their levels of economic freedom, Gwartney and Lawson report that the freest quintile grew at a rate of 2.9% while the second through fifth quintiles grew at 1.8%, 1.1%, 0.1%, and -1.9% respectively. And these same quintiles, from most free to least free, had per capita GDPs in 1995 of U.S. \$14,829, \$12,369, \$6,385, \$3,057, and for the bottom quintile merely \$2,541. Further, as they show in their 2000 Annual Report, these levels of economic freedom are positively correlated with quality of life measures, including life expectancy, cereal yields, and even degree of income inequality. Using World Bank indicators from 1999, they show that the cereal yield in the countries with the top quintile of economic freedom is almost three times that in the lowest. The life expectancy is 75.86 years in the freest quintile and 55.18 in the lowest. And even the degree of income inequality is more than two times greater in the *lowest*

14. ANNE FRANK, *THE DIARY OF A YOUNG GIRL* (Bantam 1993) (1952).

15. ZLATA FILIPOVIC, *ZLATA'S DIARY: A CHILD'S LIFE IN SARAJEVO* (1994).

16. See *WORLD SURVEY OF ECONOMIC FREEDOM, 1995-1996* 9 (Richard E. Messick ed., 1996), and subsequent follow-up surveys.

17. *Id.* at 9.

18. See JAMES D. GWARTNEY et al., *ECONOMIC FREEDOM OF THE WORLD* (1997).

quintile than the highest, although overall market-oriented economies have only slightly more equal distributions than non-market economies.¹⁹ The thrust of this data, showing a strong correlation between levels of economic freedom and both economic development and well-being, parallels findings from the Heritage Foundation²⁰ and academic work, including that of G. W. Scully in *Constitutional Environments and Economic Growth* published in 1992.²¹ It is also consistent with the work of J. Bradford DeLong and Andrei Shleifer who show that absolutist governments were “associated with low economic growth, as measured by city growth, during the eight hundred years prior to the industrial revolution.”²² And on an even broader canvas, it is consistent with the work of Douglass C. North who won the Nobel Prize in economics in 1993 for showing the correlation between economic growth and the effect of institutions, including property rights, throughout Western history.²³ Further, economic freedom and political freedom, both correlated strongly with economic growth, also

19. JAMES GWARTNEY & ROBERT LAWSON, *ECONOMIC FREEDOM OF THE WORLD: 2000 ANNUAL REPORT* 17 (2000). See also Niclas Berggren, *Economic Freedom and Equality: Friends or Foes?* 100 PUB. CHOICE 203 (1999). “[E]mpirical results reveal that there is a positive relationship between changes in economic freedom and equality: the more a country increased its economic freedom between 1975 and 1985, the higher the level of equality in 1985. Most important in this regard is trade liberalization and financial deregulation.” *Id.* at abstract. (Niclas Berggren is with the Department of Economics of the Stockholm School of Economics.)

20. See BRYAN T. JOHNSON & THOMAS P. SHEEHY, *THE INDEX OF ECONOMIC FREEDOM* (1995), and subsequent annual reports.

21. See GERALD W. SCULLY, *CONSTITUTIONAL ENVIRONMENTS AND ECONOMIC GROWTH* (1992). The work of Mancur Olson, a former Distinguished Fellow at the U.S. Institute of Peace, also shows the importance of the relationship between economic growth and the rights structure. See, e.g., Christopher Clague et al., *Contract-Intensive Money: Contract Enforcement, Property Rights, and Economic Performance* (Working Paper No. 151, Feb. 1995). The World Bank has also increasingly understood the importance of governance and the rights structure in its work to promote development. See, e.g., International Bank for Reconstruction and Development (World Bank), *World Development Report 1996: From Plan to Market* (1996). See also David R. Henderson, *Economic “Miracles,”* 71 CONTEMP. ISSUES SERIES (Center for the Study of American Business 1995).

22. J. Bradford DeLong & Andrei Shleifer, *Princes and Merchants: City Growth Before the Industrial Revolution*, 36 J.L. & ECON. 671, 700 (1993). See also ANDREI SHLEIFER & ROBERT W. VISHNY, *THE GRABBING HAND: GOVERNMENT PATHOLOGIES AND THEIR CURES* (1998). “[T]he presence of an absolutist prince reduces the growth of population in cities of more than 30,000 by nearly 180,000 people per century....” *Id.* at 35.

23. See DOUGLASS C. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE, AND ECONOMIC PERFORMANCE* (1990). See also Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 (2) (Pt. 1) J. LEGAL STUD. 503 (2001). In a statistical analysis of the comparative effects of common and civil law on economic growth, Mahoney notes that “the strong association between secure property and contract rights and growth is causal....” *Id.* at 523.

correlate with each other.²⁴ This link between democracy and economic development has been embraced by (among others) the leaders of the Conference on Security and Cooperation in Europe in their 1991 "Charter of Paris for a New Europe." They state: "The free will of the individual, exercised in democracy and protected by the rule of law, forms the necessary basis for successful economic and social development."²⁵ The Berlin Wall, now no more, between a then-failed economy in East Germany and a prosperous West Germany, remains an even more poignant statement of this reality.²⁶

Recent academic work, as well as the most rudimentary comparison of environmental conditions between democratic and former Communist nations, such as between East and West Germany or between France and the former Soviet Union, also evince a correlation

24. See Bryan T. Johnson, *Comparing Economic Freedom and Political Freedom*, Chapter 3, in 1999 INDEX OF ECONOMIC FREEDOM 29 (The Heritage Foundation 1999). Johnson writes: "This analysis shows that the relationship between economic freedom and civil liberties is statistically significant at the 99 percent level....[T]hose countries that are more economically free also are more politically free and have higher levels of civil liberties than those countries with less economic freedom. The message here is simple: Economic freedom and political freedom go hand in hand." *Id.* at 33-34.

There is also "strong evidence that democracies are more commercially cooperative than less democratic regimes." See Edward D. Mansfield et al., *Why Democracies Cooperate More: Electoral Control and International Trade Agreements*, 56 INT'L ORG. 477 (2002), at *Abstract*.

25. See the Charter of Paris for a New Europe 30 ILM 193, 195 (1991) (agreed to by the heads of state of all European Countries except Albania, as well as Canada and the United States).

26. In turn, economic growth and development support democracy. See RUSSETT & ONEAL, *supra* note 8, at 72-73. The proposition "that high levels of economic development facilitate democracy is generally accepted.... It is less clear whether democracy causes growth." *Id.* at 72. For a skeptical appraisal as to whether democracy causes growth, see ADAM PRZEWORSKI ET AL., *DEMOCRACY AND DEVELOPMENT* 142-86 (2000). According to the authors, "with regard to the growth of total economies, political regimes are not what matters." *Id.* at 271. The authors do concede, however, that "per capita incomes grow faster in democracies....[because] democracies have lower rates of population growth." *Id.* The authors further concede that "lives under dictatorships are grim and short." *Id.* And they conclude:

Because in dictatorships the policies depend on the will, and sometimes whim, of a dictator, they exhibit high variance of economic performance.... In the end, per capita incomes grow slower and people live shorter lives in dictatorships. Thus...regimes do make some difference, not only for political liberty but also for material well-being.

Id. at 272. For a cautious embrace of a positive view of the relationship between democracy and growth, along the way candidly rejecting that author's own previous view to the contrary as "old thinking," see Jagdish Bhagwati, *The New Thinking on Development*, J. DEMOCRACY, Oct. 1995, at 50. (Jagdish Bhagwati is University Professor and professor of economics and political science at Columbia University). As a brief observation on this debate, I believe that too much of the "old thinking" conventional wisdom was rooted in deductive theory rather than inductive reality. When there is an inconsistency between the map and the terrain, the terrain governs. Moreover, the terrain differs from the old thinking theoretical maps in no small part because of the pervasive effect of differing incentives between democratic and statist forms of governance for both citizens and government officials.

between environmental protection and democratic governmental structures.²⁷ Even the environmental failures of democratic and nondemocratic nations show the contrast—as in a comparison of the Three Mile Island and Chernobyl disasters. The former, a reactor in the United States built by private industry with a containment vessel, produced no fatalities when plant mismanagement produced a meltdown. In contrast, Chernobyl, a reactor in the former Soviet Union built by the government without a containment vessel, produced fatalities in the thousands, including about three thousand among those taking part in the clean up. Professor Feshbach's 1992 book *Ecocide in the USSR*²⁸ illustrates well the massive environmental failure of the former Soviet Union.

The work of Harvard Professor Amartya Kumar Sen, a 1998 Nobel Laureate, shows the powerful correlation between government structures and famine—a condition that previously had been regarded as primarily a product of natural causes such as drought or floods. He shows that there is hardly any case in which a famine has occurred in an independent democracy with a free press. Indeed, according to Professor Sen, “[f]amines are...so easy to prevent, that it is amazing that they actually take place.”²⁹ In contrast, the history of colonialism and nondemocratic states is replete with famines—the most recent in North Korea³⁰ and Somalia.

As one rough indicator of the correlation between government structures and terrorism, the seven nations on a recent State Department

27. See, e.g., Nils Petter Gleditsch & Bjorn Otto Sverdrup, *Democracy and the Environment*, in HUMAN SECURITY AND THE ENVIRONMENT 45-70 (Edward Page & Michael Redclift eds., 2002); see also Rodger A. Payne, *Freedom and the Environment*, J. DEMOCRACY, July 1995, at 41.

28. MURRAY FESHBACH & ALFRED FRIENDLY, JR., *ECOCIDE IN THE USSR: HEALTH AND NATURE UNDER SIEGE* (1992).

29. Amartya Sen, *Famine as Alienation* 25 (1995) (manuscript on file with author); see also AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* (1981) (cited by the Royal Swedish Academy of Sciences in its decision to award the 1998 Nobel Prize in economics to Professor Sen); see also Frances D'Souza, *Democracy as a Cure for Famine*, 31 J. PEACE RES. 369, 373 (1994). (“[T]he only solution to famine, whether in time of peace or war, is indeed democracy.”).

30. Approximately 2.5 million deaths resulted from the North Korean famine. See ANDREW S. NATSIOS, *THE GREAT NORTH KOREAN FAMINE* 215 (2001). “[T]he chief culprit, argues Natsios, was the country's political system.” Richard H. Solomon, *Foreword* to NATSIOS, *supra*. North Korea has one of the most repressive political systems in the world today. In 1958, Kim Il Sung ordered the population categorized into three groups by degree of loyalty to the regime. These groups were the trusted class, a “wavering” class (more than fifty-five percent of the population), and a hostile class (about twenty percent of the population). Only the trusted class is even allowed to live within Pyongyang and the hostile class is severely discriminated against. *Id.* at 208.

list of sponsors of terrorism—including Cuba, Iran, Iraq, Sudan, and North Korea—are all either totalitarian or autocratic, at least in their foreign policy apparatus.³¹ And with respect to corruption, although corruption is a more pervasive phenomenon and occurs in all systems, a recent correlation running the Transparency International Corruption Perceptions Index against levels of economic freedom shows a strong positive skew toward increased corruption as societies become less free. Indeed, of the twenty-five countries from this index that are the least corrupt, only Singapore and post-transition Hong Kong are not fully democratic, and both have broadly inherited the rule of law from Britain.³²

Additionally, a rough study of the current number of refugees compared to the type of regime from which they are fleeing shows that seventy-seven percent come from nondemocratic regimes, while virtually none come from well-established liberal democracies. Further, if one excludes the category of democracies undergoing attacks from nondemocratic regimes, then only about eight percent of refugees in the world are fleeing even “electoral democracies” (that is, democracies with elections but without a full rule of law in all its dimensions).³³ Initial Communist takeovers in China, Tibet, Cuba, Vietnam, and Nicaragua produced massive refugee outflows.³⁴ As the Berlin Wall symbolized, these Communist nations had to forcefully restrain their people from leaving. But following transitions to democracy in Romania, Poland, the Czech Republic, and Nicaragua, these nations have seen substantial refugee inflows.³⁵

We now have compelling evidence of yet another benefit of democracy. When democracies fight wars, they have fewer casualties and they win at a much higher rate than nondemocracies. Bruce Bueno de Mesquita, among others, has noted that democracies win their wars at a high rate. He suggests that the principal causes of this correlation

31. Analysis by a student assistant prepared in slide form for my War & Peace Seminar.

32. *Id.*

33. *Id.* Refugee figures are from the United States Committee for Refugees website and country reports, at <http://www.refugees.org>.

34. See, e.g., LOUISE W. HOLBORN, REFUGEES: A PROBLEM OF OUR TIME (1975).

35. See United Nations High Commissioner for Refugees (UNHCR), U.S. Committee for Refugees World Refugee Survey 2000: Romania (June 2000), at <http://www.unhcr.ch> (last visited Oct. 1, 2003); UNHCR, Country Profiles: Poland (Sept. 1999), at <http://www.unhcr.ch> (last visited Oct. 1, 2003); UNHCR, Czech Republic: Growing Number of Asylum Seekers Registered by Kosice Consulate (Apr. 15, 2003), at <http://www.unhcr.ch> (last visited Oct. 1, 2003); UNHCR, U.S. Committee for Refugees World Refugee Survey 1999: Czech Republic (Jan. 1999), at <http://www.unhcr.ch> (last visited Oct. 1, 2003); UNHCR, Country Profiles: Nicaragua (Sept. 1999), at <http://www.unhcr.ch> (last visited Oct. 1, 2003).

are that democratic leaders pick their wars better and shift resources more effectively into the war effort.³⁶ In a recent book, *Democracies at War*,³⁷ Professors Dan Reiter and Allan C. Stam show that “[s]ince 1815, democracies have won more than three quarters of the wars in which they have participated.”³⁸ After careful statistical analysis, they conclude that the principal reasons for this war-winning are two specific advantages flowing from the consent of the governed. These are, first: “[t]he explicit threat of electoral punishment and the need to generate consent of the governed at the time of action pushes democratic leaders to be particularly cautious when starting wars and, typically, to start only those wars that they will go on to win.”³⁹ And second:

On the battlefield, democratic political culture imbues democracies’ citizens with individual attributes that serve both the citizens and the state well in war as well as in peace. More often than not, the sons of democracy outfight the sons of tyranny by showing better individual initiative and leadership than their counterparts raised in and fighting for autocratic regimes.⁴⁰

This evidence of the relationship between government structures and performance on the principal goals of mankind, some of it initially funded and disseminated by the United States Institute of Peace, is so compelling that leaders all over the world now pepper their speeches with references to democracy and the rule of law. The Clinton administration had made “democracy enlargement” the core intellectual theme of its foreign policy. And the World Bank has unmistakably shifted to understanding that the key fundament for economic development is not resources, infrastructure, or even education, but rather government structures, the rule of law, and levels of human freedom in economic matters. By itself the evidence of the advantages of government rooted in democracy and the rule of law is sufficiently compelling that democracy enlargement certainly should be a long term or *milieu* goal of every nation. Indeed, the United States in the National Endowment for Democracy, the United Kingdom in the Westminster Foundation, and other European allies have already built into their foreign policies at least some mechanism for encouragement of democracy.⁴¹ And two years ago, under the influence of a Freedom

36. See Bruce Bueno de Mesquita et al., *An Institutional Explanation of the Democratic Peace*, 93 AM. POL. SCI. REV. 791 (1999).

37. DAN REITER & ALLAN C. STAM, *DEMOCRACIES AT WAR* (2002).

38. *Id.* at 2.

39. *Id.* at 4.

40. *Id.* at 193.

41. An early model here was the German *stiftungen*, or political party foundations, which

House initiative, Warsaw witnessed an impressive gathering committed to democracy in the first meeting of the "Community of Democracies."⁴² Most recently, in July 2001, German Chancellor Gerhard Schröder and Chinese Prime Minister Zhu Rongji have agreed to a two-year program for a dialogue on democratic governance.

For all its power, however, the democratic peace proposition is by itself incomplete. In its most common formulations, it focuses only on the correlation between democracy and war, and this in turn fails to capture the real strength of the case for democracy, the rule of law, and human freedom across virtually all of the most commonly shared goals of mankind. Statistical quarrels with the proposition have less ability to persuade when we see that the same correlation is common across a wide variety of human goals and on some, as with the staggering

assisted democracy advocates in Spain and Portugal in these countries' transition to democracy in the 1970s. See MARK PALMER, DESTROYING THE AXIS OF EVIL VI-6 (March 2002) (draft manuscript, on file with the author). Palmer was the principal inspiration for the 1983 establishment of the National Endowment for Democracy (NED), and his manuscript is one of the most articulate arguments to date on the need and modalities for democracy enlargement. See *id.* at VI-12. Palmer also points out in this connection the important work for democracy of labor leader Lane Kirkland as head of the AFL-CIO. *Id.* See generally MICHAEL MANDELBAUM, THE IDEAS THAT CONQUERED THE WORLD: PEACE, DEMOCRACY, AND FREE MARKETS IN THE TWENTY-FIRST CENTURY (2002).

42. The Warsaw Conference of the "Community of Democracies" in June 2000 was attended by democracy leaders and NGOs from around the world and was focused on advancing democracy. See Freedom House, U.S. Secretary of State Madeleine Albright Praises World Forum Participants (June 26, 2000), at <http://www.freedomhouse.org/media/pressrel/062700b.htm> (last visited Oct. 1, 2003). Secretary of State Madeleine K. Albright led a United States delegation to a parallel Community of Democracies Ministerial Conference attended by foreign ministers from 107 nations. See U.S. Department of State, Community of Democracies Initiative: Ministerial meeting (June 25-27, 2000), at http://www.state.gov/www/global/human_rights/democracy/cdi_index.html (last visited Oct. 1, 2003); see also Toward a Community of Democracies Ministerial Conference, Final Warsaw Declaration (June 27, 2000), at http://www.demcoalition.org/pdf/warsaw_english.pdf (last visited Oct. 1, 2003). The Warsaw Conference, among other actions, recommended that a democratic nation caucusing group be established at the United Nations. See Toward a Community of Democracies Ministerial Conference, Communiqué (June 27, 2000), at http://www.demcoalition.org/pdf/toward_comm_of_demo.pdf (last visited Oct. 1, 2003). The genesis of this Conference, and its core recommendation, was a paper that I drafted for Freedom House at the request of Ambassador Max M. Kampelman. The initial draft was subsequently turned into a joint paper with Ambassador Mark Palmer, a fellow member of the Freedom House Board. Freedom House then worked with the administration and Congress in the successful effort that generated the "Community of Democracies" initiative. For an initiative sponsored by the National Endowment for Democracy that is focused on activists and policymakers committed to democracy, see National Endowment for Democracy, Building the World Movement for Democracy: Report on the Inaugural Assembly (Feb. 14-17, 1999); at <http://www.wmd.org/conference/wmd.html> (last visited Oct. 1, 2003); National Endowment for Democracy, Democrats Honor Courageous Colleagues: World Movement for Democracy Second Assembly Concludes Today (Nov. 12-15, 2000), at http://www.wmd.org/sao_paolo/press/nov1500.html (last visited Oct. 1, 2003).

twentieth century democide, it is even more conclusive. Perhaps most importantly, since democracies are all too frequently engaged in major war, as World Wars I and II and numerous “limited wars” since attest, the concept of the “democratic peace” by itself has not explained war. After all, Rummel’s analysis of wars between 1816 and 1991, which concludes that there were no wars between established democracies in this period, also shows 155 major war pairings between democracies and nondemocracies.⁴³ How did democracies get into these wars? Are they recklessly attacking nondemocracies? Are wars between democracies and nondemocracies simply random or accidental? Or are democracies engaged in major wars with nondemocracies as a result of attacks and genocides by nondemocracies? If the latter is the case, is it because democracies are not effectively deterring? Are they inherently less effective at deterring than nondemocracies? Questions such as these, and others, caused Professors Small and Singer, who uncovered the statistical correlation of the democratic peace in their seminal *Wages of War Statistical Handbook* in 1972, to largely dismiss the proposition in their early study of war.⁴⁴ Further, the democratic peace proposition as yet has produced no consensus as to the mechanism accounting for the reduced rate of major war between well-established democracies.⁴⁵ Principal competing hypotheses focus on structural or institutional checks peculiar to democracies, on broadly shared normative or cultural perspectives, or on game-theoretic models of democratic nation interactions with adversaries.⁴⁶ Finally, there are a variety of other loose

43. RUMMEL, *supra* note 2, at 13.

44. See, e.g., Melvin Small & J. David Singer, *The War-Proneness of Democratic Regimes, 1816-1965*, JERUSALEM J. INT’L REL., Summer 1976, at 50, 67-68 [hereinafter Small & Singer] (seemingly dismissing the democratic peace because “democracies do not border upon one another very frequently over much of the period since 1816.”). The authors did recognize the democratic peace from their data, however, as they wrote, “bourgeois democracies...do not seem to fight against one another.” *Id.* at 67.

45. Professor Robert Jervis refers to the “liberal peace” as a “finding” rather than a theory, because we do not as yet have a good explanation for it. Robert Jervis, Presentation to the author’s War & Peace Seminar (Feb. 29, 2000). Professor Jervis’s interest in the high costs of war and the high gains of peace, as well as the changing values of international decision makers, as important factors relating to war would seem easily incorporated in the author’s recommended “incentive theory” focused on decisions by regime elites.

46. For an overview of these hypotheses and a focus on one element of crisis interaction in a bargaining model, see Kenneth A. Schultz, *Domestic Opposition and Signaling in International Crises*, 92 AM. POL. SCI. REV. 829 (1998) [hereinafter Schultz, *Domestic Opposition and Signaling in International Crises*]. “The model shows that the probability of war is lower when informative signals can be sent by both parties [the party in power and the opposition party in a model of two-party electoral choice] than when the government is the lone voice of the state, as it is in politics in which competition is poorly developed or actively suppressed.” *Id.* at 830. See also KENNETH A. SCHULTZ, *DEMOCRACY AND COERCIVE DIPLOMACY* 1-20 (2001).

ends with the proposition, including questions of how well the proposition applies to nations in transition to democracy, questions concerning applicability to minor coercion rather than major war, the very large question of how one effectively promotes democracy,⁴⁷ and the bottom line question of what specifically nations should do to avoid war in the likely long interim period until all nations are well-established democracies and the power of the proposition most strongly kicks in. Given the power of the democratic peace correlation and the strongly supportive parallel correlations between government type and other major community goals, it would seem a huge mistake to ignore the democratic peace.⁴⁸ But given the remaining unanswered questions with the proposition, it would seem equally necessary to formulate and test broader hypotheses if we are truly to solve the war puzzle. Indeed, it is likely the failure of the democratic peace to offer a more complete answer that encourages the continuing skepticism of the neorealists.⁴⁹ This article will suggest one such hypothesis, discuss the supporting evidence, and recommend, in general terms, actions likely to lessen the risk of war if the suggested approach is correct. But first, it may be useful to examine some additional pieces of the puzzle still on the table.

II. MORE PIECES OF THE PUZZLE

Once we realize that the correlation with government structures holds

47. For example, Anthony Lake asks the important question, among many such in democracy promotion: Is democracy created from democratic institutions themselves or from a civic culture that in turn produces such institutions? On the issue of democracy building generally, see, e.g., LARRY DIAMOND, *DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION* (1999); AMERICAN DEMOCRACY PROMOTION (Michael Cox, G. John Ikenberry & Takashi Inoguchi eds., 2000); National Endowment for Democracy, Annual Report (2000 and subsequent reports), at <http://www.ned.org/publications.html> (last visited Oct. 1, 2003); National Endowment for Democracy, Promoting Democracy in a Time of Austerity: NED's Strategy for 1997 and Beyond (1997), at <http://www.ned.org/publications/documents/strategy1997.html> (last visited Oct. 1, 2003); LEONARD R. SUSSMAN, *DEMOCRACY'S ADVOCATE: THE STORY OF FREEDOM HOUSE* (2002).

48. Further support for the democratic peace proposition comes from the more than half-century of experience with the post-World War II imposition of democracy on the former Axis Powers of Germany, Italy, and Japan. These nations have been transformed by democracy from a legacy of aggression to being among the most peaceful in the world. This example also suggests, in contrast with the Gulf War settlement, that when feasible, the most successful war termination strategy is a transition to democracy of the aggressor state.

49. Professor Kenneth N. Waltz, for example, points out that all sorts of states with every kind of political system imaginable have been involved in war. See KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 102-03 (1979); see also Kenneth N. Waltz, *Reflections on Theory of International Politics: A Response to My Critics*, in *NEOREALISM AND ITS CRITICS* 322, 329 (Robert O. Keohane ed., 1986).

across a wide range of the most important human goals and that nondemocratic structures and a lack of human freedom go hand in hand with a wide variety of failures, including war, terrorism, democide, famine, poverty, environmental degradation, corruption, narcotics trafficking,⁵⁰ infant mortality,⁵¹ and refugees, inquiry is pointed in the direction of a general explanation for this government failure in nondemocratic regimes.⁵² The explanation is almost certainly a broad mosaic of differences inherent in governance rooted in democracy and the rule of law versus governance rooted in statist models. We are all familiar with the historical reality that one major strand of thought about government runs from Aristotle through the Roman Republic, Magna Carta, Locke, Montesquieu, Madison, and the French Declaration of the Rights of Man, among other sources, to democracy, the rule of law (instead of rule *by* law), and empowerment of the individual. Another principal competing strand, with particularly disastrous consequences in the twentieth century, leads from Plato's "philosopher kings" through Machiavelli, Hobbes, Hegel, and Nietzsche to glorification of statist solutions, totalitarian leaders and war, and a disdain for human freedom and the individual. It was this latter tradition that produced Fascism, Leninism, Maoism, and a host of deadly totalitarian regimes from that of Pol Pot in Cambodia to that of Saddam Hussein in Iraq. These major competing theories about government reflect a myriad of fundamental

50. Preliminary evidence suggests that the principal problem nations with respect to trafficking in illegal drugs have been nondemocratic. A paper prepared for my War & Peace Seminar concluded on the basis of data from the 2000 *U.S. State Department Annual Report on Narcotics Control* and the Freedom House political freedom rankings that there is a significant correlation between levels of democracy and efforts to control trafficking in illegal narcotics. See Joshua S. Kirk, *The War on Drugs from Albania to Venezuela: A Comparative Look at Narcotics Control in Democratic and Non-Democratic Regimes* (December 2001) (paper prepared for my War & Peace Seminar) (on file with author). This paper concludes that the two states suspected by the State Department actually to have state-supported narcotics trafficking programs, Afghanistan and North Korea, both rated a 7 on the political freedom index, the lowest score possible. And the states ranked "poor" in narcotics control were all ranked 3 or lower in democracy level on the Freedom House index. In contrast, nineteen of the states ranked "strong" in narcotics control were ranked 1 on the Freedom House index, the highest political freedom score. And another five states with "strong" programs were ranked 2 on the Freedom House index. As with corruption, however, the relationship is askew, not a one-to-one correlation. Thus, Iran, 6 on the Freedom House index, and China and Saudi Arabia, both 7, all had strong anti-drug programs.

51. See Thomas D. Zweifel & Patricio Navia, *Democracy, Dictatorship, and Infant Mortality*, *J. DEMOCRACY*, Apr. 2000, at 99. Democracies have consistently and significantly lower infant mortality rates than dictatorships at every level of per capita GDP. After controlling for GDP, it is estimated that there are "10 more infant deaths per 1,000 live births in dictatorships than in democracies." *Id.* at 105-06.

52. The absence of civil and political freedoms is, of course, in its own right a substantial cost of nondemocracy.

differences likely to influence comparative levels of government failure. For example, in the democratic model, state leaders are likely to excel in rhetoric and popular appeal, as with a Margaret Thatcher or Tony Blair. In contrast, whatever their skills in rhetoric (and Adolf Hitler, for example, was a powerful speaker), statist leaders are likely to be specialists in violence and ruthless exercise of power (Hitler, again, provides a prime example, eventually declaring himself the supreme law giver). In many cases, as with Saddam Hussein, they will have assumed power by killing the opposition, and, as with Hitler and Stalin, they may be specialists in aggregating power and killing off any perceived challenge to their rule. More broadly, in the nondemocratic regimes it is accepted that the end justifies any means, there is no meaningful check of the rule of law on government itself, and human freedom is subordinate to the collective (Pol Pot's Kafkaesque paradise was an exemplar of all these traits). Most broadly, in such regimes the elites may virtually unilaterally make the decisions, and they have the ability to personally obtain the benefit of actions while imposing the cost on others. These differences in government structure, with their associated ideological differences, are accompanied by great differences in culture and expectations as to modes of resolution of conflict, checks, or lack thereof, on regime elites, and levels of human freedom.⁵³ These critical differences in human freedom in turn encompass both political freedoms, such as freedom of speech and association, and economic freedoms, such as protection of property and contract rights. In short, the differences at the extreme between totalitarian and liberal democratic systems are profound. They certainly include structural and normative differences, as well as different modes of interaction in crisis bargaining, but their scale of difference is far more pervasive than the current debate on the "cause" of the democratic peace may typically suggest. It is no exaggeration to speak of competing cultures of democracy and statism.⁵⁴

As a core difference underlying these competing political cultures,

53. The cultures of democracy and nondemocracy also likely indirectly affect the values, belief systems, and incentives of regime elites, as well as the citizenry as a whole. There is a robust interdisciplinary literature as to how legal norms have indirect effects on incentives and may actually change preferences. These indirect and feedback effects would seem far greater in relation to a political culture itself than to individual legal norms. *See, e.g.,* Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1997); Robert C. Ellickson, *A Critique of Economic and Sociological Theories of Social Control*, 16 J. LEGAL STUD. 67 (1987); Dennis H. Wrong, *The Oversocialized Conception of Man in Modern Sociology*, 26 AM. SOC. REV. 183 (1961).

54. The profound differences between democracy and statism form an introductory theme in a seminar I teach at the University of Virginia titled "The Rule of Law: Controlling Government."

there is yet another potentially powerful explanation for the profound difference in levels of government failure between them. Indeed, I believe this is likely the most important internal mechanism responsible for the democratic peace and other differences in performance between these forms of governance. This mechanism, which is increasingly being referred to as the “theory of government failure,”⁵⁵ won the Nobel Prize in economics in 1986. Widely known as “public choice theory” as initially developed by Professor James M. Buchanan, it posits that government decision makers will generally act rationally in pursuit of their interests, like actors elsewhere, and that the government setting, as with markets, provides mechanisms by which elites and special interest groups may be able to externalize costs on others.⁵⁶ While this theory of public decision making was developed primarily to explain significant government failure in democracies, the same underlying concept seems to operate off-the-scale within totalitarian and nondemocratic regimes to produce what might be characterized as massive government failure in those systems.⁵⁷ Norman Angell was correct in his *The Great Illusion* that the average citizen in a democracy is likely only to lose from aggressive war. But he failed to understand that regime elites in nondemocratic systems may be in a position, as was Saddam Hussein, both to personally capture the benefits of any successful aggression and to externalize the costs on others. Empirically, we also know that *nondemocratic* leaders who initiate failed wars are less likely to lose power than democratic leaders.⁵⁸ In the aftermath of the Gulf War,

55. The reader should note that the term “government failure theory” is used in this article in its classical economic sense focused on incentives for decision elites and how such incentives may encourage externalization of costs on others. In this respect, government failure theory is a parallel to “market failure theory,” focused in substantial part on this same issue of incentives in market decisions for the externalization of costs. Professor Inis Claude has reminded me that political scientists may be more likely to use the term government failure with respect to weak and incompetent governments and to think in terms of government misbehavior with respect to the excesses of powerful and abusive governments against their own or another’s people.

56. See James M. Buchanan, *Politics Without Romance: A Sketch of Positive Public Choice Theory and its Normative Implications*, in II THE THEORY OF PUBLIC CHOICE 11-22 (James M. Buchanan & Robert D. Tollison eds., 1984).

57. The principal focus of “public choice theory” has been governmental decision making within democracies, and within that focus, particularly voting behavior. It was in this context that Professor Buchanan was awarded the 1986 Nobel Prize in economics. I would suggest that the greatest importance of what I believe should be called “government failure theory,” however, is in understanding its off-the-scale applicability to nondemocracies. One early recognition of this may be found in Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AM. POL. SCI. REV. 567, 569-70 (1993).

58. See Bruce Bueno de Mesquita & Randolph M. Siverson, *War and the Survival of Political Leaders: A Comparative Study of Regime Types and Political Accountability*, 89 AM. POL. SCI. REV. 841-855 (1995).

Saddam Hussein, who lost, was, until recently, stubbornly still in power and George Bush, who won, lost the next election. Decision elites in nondemocratic nations, then, may be far more disposed to high-risk aggressive actions risking major war and other disasters for their people. This conclusion seems strongly supported by the recent statistical work of Professors Dan Reiter and Allan C. Stam as to the greater care of democratic leaders in starting wars they can win. They write:

When government must answer to the will (and anger) of the people, they start only those wars they are confident they will win. Democracies differ from other kinds of states in that democratic leaders are, as Tocqueville and others feared, restrained by the need to generate consent for their actions. Counter to Tocqueville's fears, however, the necessary pause to generate consent that democratic political institutions build into the policy-making process leads democratic elites to be far less likely than other kinds of states to enter into war impulsively, and thereby avoiding risky and costly military adventures.⁵⁹

The "theory of government failure" tells us that special interests within democracies may also sometimes beat the war drums when they believe they can obtain benefits and externalize the costs. This may have been true of the William Randolph Hearst newspaper interests in the events leading to the Spanish-American War.⁶⁰ But there is considerably less risk of such interests prevailing in high-risk settings engaging the whole nation than in the unilateral decisions of regime

59. REITER & STAM, *supra* note 37, at 193. For this reason, too, it may be that the principal form of government failure leading to major war in democracies, rather than that of high-risk aggression, is simply failure to effectively deter, either through failure to maintain the necessary military, or through failure to communicate, or even develop, an intent to defend. This absence of effective deterrence does seem to be the principal path to major war in democracies. Government failure theory would suggest that in the absence of war the electorate would be focused on benefits of peace rather than on maintenance of a strong military and that democratic political leaders would follow this preference. Once a Pearl Harbor or a 9/11 happens, however, the electorate and the political leadership quickly change their priorities.

60. The importance of the Hearst newspaper drum beating as a factor in United States involvement in the Spanish-American War may be overstated. One factor leading to this popular belief may be the Hearst papers' loud claim that it *was* their war. The reality, however, is that in 1898 the Hearst newspapers reached less than one percent of the American public. See also W. Joseph Campbell, *Warmongering Mythology*, WASH. POST, Aug. 24, 2002, at A21:

[T]he anecdote suggests a power the press does not possess—the power to propel the country to war. Often and erroneously, the Spanish-American War of 1898 has been termed 'Mr. Hearst's War.' And the 101-year-old anecdote about Hearst's vowing 'to furnish the war' has long served as Exhibit A for that badly mistaken yet undying belief.

Id. In general, a free media within democracies is likely one of the important differences between democratic and nondemocratic regimes contributing to the democratic peace.

elites in nondemocratic nations. Yes, “public opinion” can sometimes agitate for war in democracies, but in settings of high-risk aggression, as opposed to defense of fundamental values, this pull is only a distant cousin to the potential for aggression through externalization by nondemocratic regime elites. Public opinion can also generate a powerful response when democracies or their interests are threatened by aggression. The public response in the United States to the Japanese attack on Pearl Harbor brought the United States immediately and fully into World War II, and the war effort was then powerfully supported at home despite an overwhelmingly dovish public before the attack. British public opinion strongly supported the military response against Argentina’s forceful takeover of the Falklands. Most recently, in the aftermath of the 9/11 attack, public opinion in the United States has overwhelmingly supported the war against terrorism. This strong determination in the face of aggressive attack may be one of the reasons democracies rarely lose their wars.⁶¹

A lack of understanding or adequate information available to nondemocratic decision-makers may be an additional factor in the occurrence of major war. Certainly the democratic leaders of Canada have a far more sophisticated understanding of the political processes of England or the United States than did Kaiser Wilhelm II, Hitler, Tojo, Stalin, Kim Il Sung, Saddam Hussein, or Osama bin Laden. Similarly, statist models rooted in grand deductive theory rather than empirically grounded human experience may more frequently produce reality distorting filters or leaders who fail to perceive the discrepancy between the real world terrain and their ideological map.

If the “theory of government failure,” and incentives for government decision makers generally, is an important part of the explanation for major war, one would expect to find that democracies are, in fact, getting into major war principally, though not exclusively, as a result of aggression by nondemocratic states, either against the democracies directly or against nations on whose behalf the democracies then go to war. Moreover, one might also find, consistent with this hypothesis, that democracies might be quite adventurous in settings perceived as only de-minimis low-risk actions, such as the Grenada and Panama interventions for the United States, the 1956 Suez intervention for the

61. An analysis of wars in which democracies have engaged suggests that they are tenacious opponents and willing to assume considerable risk in defense of threatened values, including defense against aggression and democide. They are far less willing to take high-risk for value extension.

British and French, and an earlier era of European colonialism.⁶² And, of course, democracies could be expected to be tenacious opponents when aggressively challenged in ways that could broadly affect their citizenry.

As has been seen, the democratic peace proposition by itself does not deal with the issue of how democracies get into war with nondemocracies. Indeed, for the most part, the social science community, not being international lawyers comfortable with the normative dimension of war, have been averse to characterizing actions as aggression.⁶³ To deal with this factor, and to test the proposition that democracies were likely to have engaged in major war principally as defenders rather than aggressors, I recently explored these issues in my war/peace project. Since aggressive war has been most clearly outlawed in international relations only since the incorporation of the 1928 Kellogg-Briand standard into the United Nations Charter, the project chose to focus initially on an analysis of major interstate wars since the adoption of the Charter in 1945.⁶⁴ In that time frame, and based on the

62. While this seems self-evident with respect to colonialism, I have not tested this proposition with respect to minor coercion. One related proposition for inquiry might be whether democratic aggressiveness, when it does lead to war, produces smaller wars with lower levels of casualties. We do know that, overall, democracies have lower levels of casualties than nondemocracies in the wars they fight. It should also be noted that the United States, as a leading democracy and former colony, showed no real interest in colonialism, despite the experience with the Philippines inherited in the Spanish-American War. Indeed, a core objective of the Monroe Doctrine was to oppose colonialism in the Americas. See JOSHUA REUBEN CLARK, MEMORANDUM ON THE MONROE DOCTRINE 4-6 (1928).

63. Whether stemming from the Cold War generally, excesses of the McCarthy era, the Vietnam controversy, postmodernist relativism, or simply a fear of ideology in the quest for scientific objectivity, social scientists working in international relations all too frequently have exhibited great reluctance to address normative issues. Realists and neo-realists, in particular, for many years have been reluctant to focus on differences between nations as attributable to political systems. Professor John M. Owen IV highlighted this problem as one perhaps stemming from the need to maintain collegiality within the profession. He says: "It seems...that we've let our analysis suffer so that our relationships with colleagues may flourish!" Memorandum to the author from John M. Owen IV (January 7, 2002). I believe that this general reluctance may explain why the first rate scholars who put together the seminal *Correlates of War* project largely dismissed that project's powerful evidence of the "democratic peace" in their own conclusions about war. It was left to subsequent scholars using their database to understand the importance of the correlation. Indeed, Melvin Small and David Singer seemed to actually *urge* future scholars to ignore domestic systems as a factor in war. See Small & Singer, *supra* note 44. They write: "Perhaps the recognition that all governments, democracies and autocracies alike, are prone to war will turn our attention away from rival domestic systems to the conflict-generating properties of the system in which we all must live." *Id.* at 68. Small and Singer also seem to fail to appreciate the great differences in government structures with respect to performance in human rights and other major human goals. They say simply: "No type of regime has demonstrated a monopoly on brutishness, stupidity, incompetence or inhumanity." *Id.* at 55.

64. Useful time frames for analysis could include all known history; 1816 and after, which

totality of the historical evidence as presently understood, the project concluded that clear aggression by a democratic government in a major interstate war setting has been limited to a single instance out of approximately twenty-eight major wars studied.⁶⁵ That is, in this time-frame, there was one war scored clearly as initiated by a democratic aggressor for approximately four percent of the total wars studied; there were two additional wars most reasonably scored as democratic

would track the beginning point of the Small and Singer *Correlates of War* project; the period since the Kellogg-Briand Pact in 1928, which outlawed aggressive war; and the period since 1945 following the adoption of the United Nations Charter, which incorporated and strengthened this prohibition as adopted in Article 2(4) of the Charter. As a beginning effort, the last of these time frames has been used here.

Major interstate wars are those with more than 1,000 battle-related fatalities fought between two or more sovereign nations. This term does not include civil wars or colonial wars or those between a nation and a less than sovereign political entity. In this I have used the Small and Singer taxonomy. See Small & Singer, *supra* note 44, at 52.

65. The list of wars and conclusions of this project should be regarded as tentative. It should be noted that it scored all of the nations attacking Israel in the 1948-49 Palestine War as nondemocracies, a conclusion at odds with a subsequent student paper in my War & Peace Seminar accepting the characterization of Professors Small and Singer, which scored Syria and Lebanon as democracies at the time of that war. The best characterization in 1948, I would suggest, is to score Syria and Lebanon as not fully meeting the criteria for coherent democracy. This is a conclusion embraced by Professor Bruce Russett, at least with respect to Lebanon, in his seminal *Grasping the Democratic Peace*. See RUSSETT, *supra* note 2, at 18. The Polity III database gives 1948 Lebanon an autocracy score of 2 and a democracy score of 4 and 1948 Syria a democracy score of 5 out of a possible 10 (and a 0 autocracy score). By 1949, however, Syria has a 7 autocracy score and a 0 democracy score. See Keith Jagers & Ted Robert Gurr, POLITY III: REGIME CHANGE AND POLITICAL AUTHORITY, 1800-1994 (1996) at <http://weber.ucsd.edu/~kgledits/Polity.html> [hereinafter POLITY III]. According to Jagers and Gurr, "coherent democracy" requires a democracy minus autocracy score of 7 to 10 on their Polity III scale. See Keith Jagers & Ted Robert Gurr, *Tracking Democracy's Third Wave with the Polity III Data*, 32 J. PEACE RES. 469, 474, 479 [hereinafter Jagers & Gurr, *Tracking Democracy's Third Wave*]. By this characterization, Lebanon, at a + 2 democracy score in 1948 and Syria with a + 5 democracy score in the same year were not yet "coherent democracies."

The twenty-eight major interstate wars studied were the 1948 First Kashmir War, the 1948-49 Palestine War, the 1950-53 Korean War, the 1956 Russo-Hungarian War, the 1956 Suez War, the 1962 India-China Border War (with continuing sporadic conflict from 1961-75), the 1965 Second Kashmir War, the 1965-73 Vietnam War, the 1967 Six Day War, the 1969 Soccer War, the 1969 Israeli-Egyptian War (the war of attrition), the 1971 Bangladesh War, the 1973 Yom Kippur War, the 1974 Cyprus War, the 1975 Vietnam War (which the *Correlates of War* database treats as a separate war following the Paris Accords and U.S. withdrawal), the 1977-78 Ogaden War, the 1978-89 Tanzania-Uganda War, the 1978-89 Kampuchea Intervention, the 1979 Sino-Vietnamese War, the 1979-89 Afghanistan War, the 1980-88 Iran-Iraq War, the 1981-88 Central American War, the 1982 Falklands War, the 1982 Israel-Syria War (the Lebanon War), the 1987 Sino-Vietnamese War, the 1990-91 Gulf War, the extended conflict resulting from the breakup of Yugoslavia, including most recently the Kosovo War, and the Afghanistan War following the 9/11 attack. Without adhering to any specific statistical conclusion from this study, I believe that the thrust of this work is accurate that major interstate wars since the adoption of the United Nations Charter have been predominantly triggered by nondemocratic nation actions rather than democratic nation aggression.

aggression for an additional seven percent; and there were twenty-five major interstate wars at least arguably with nondemocratic responsibility for eighty-nine percent of the total. The one major war scored clearly as having a democratic aggressor was the Suez War of 1956 in which the United Kingdom, France, and Israel jointly attacked Egypt in the wake of Nasser's nationalization of the Suez Canal and continuing Fedayeen raids on Israel.⁶⁶ In this case, the project scored Britain and France as aggressors under the Charter principle that one could not use force even to seek to remedy a prior breach of international law if that breach did not involve the use of force. Even in this case, however, it should be noted that the actions of Britain and France were principally aimed at restoring the status quo for the Canal and were not aggression in the sense of Hitler's invasion of Poland or Hussein's invasion of Kuwait.⁶⁷ Further, the British/French joint action was effectively ended by opposition from the United States, another democratic nation that properly regarded the action as a violation of the UN Charter. The two additional cases most reasonably scored as democratic nation aggression in post-Charter major interstate wars are the actions of India in the 1971 Bangladesh War and the actions of Turkey in the 1974 Cyprus intervention. The first, however, can reasonably be scored as humanitarian intervention and the second was in response to the coup against the Government of Cyprus encouraged by a military junta in Greece.⁶⁸ None of these post-Charter major interstate wars seem to be principally motivated by democratic nation value extension, as opposed to value conservation.

66. I am aware, of course, that considerable controversy surrounds normative characterization of the Six Day War, the Vietnam War, the Central American War, and the recent Afghanistan War, among other wars in this post-Charter universe, as well as the issue of humanitarian intervention present in the Kosovo War. I have scored these wars based on my belief, developed in detail elsewhere, that these wars were not initiated by democratic nation aggression. See, e.g., JOHN NORTON MOORE, *LAW AND THE INDO-CHINA WAR* (1972); JOHN NORTON MOORE, *THE SECRET WAR IN CENTRAL AMERICA* (1987); NATIONAL SECURITY LAW (John Norton Moore, Frederick S. Tipson & Robert F. Turner eds., 1990).

67. If one separates the casualties from the British-French action in the Suez Crisis from those generated by the Israeli response to the Fedayeen raids, then the total of approximately 676 to 865 casualties falls below the 1000 casualty cutoff for major war. Thus it could be argued that even this single example of clear democratic aggression is not a valid example of democratic aggression in major war, that is, arguably this example fits in the category of minor coercion. Certainly that was true from the British and French standpoint; total French casualties were ten and total British casualties were in the range of 16 to 22. See R. W. Rathbun, *Operation Musketeer: A Military Success Ends in Political Failure* (Marine Corps Command & Staff College 1984). See also ANTHONY EDEN, *FULL CIRCLE* 627 (1958); DONALD NEFF, *WARRIORS AT SUEZ* 414 (1981).

68. These settings will be reviewed subsequently in more detail.

To assess whether democracies are primarily getting into *their* wars as a result of aggression, it is necessary to separate out the wars in this universe in which a democracy was involved. While such categorization is not an exact science, I would score at least seventeen and possibly nineteen or more of these twenty-eight wars studied as involving a democracy.⁶⁹ This suggests a rough estimate of sixteen to eighteen percent of major interstate wars in which democracies were involved in this post-Charter period as resulting from democratic nation aggression. While this analysis of democratic versus nondemocratic aggression is admittedly subject to controversy, I believe that it accurately captures a reality that, at least since the adoption of the UN Charter, democratic nations predominantly get into major interstate war as a result of impermissible actions of nondemocratic nations rather than democratic nation aggression or simply through random distribution of blame or accident. One sometimes hears it asserted that democracies are as likely to be the aggressors as the targets of war. I do not believe this is remotely accurate, at least for major interstate war since the 1945 adoption of the normative standards for use of force embodied in the UN Charter.

A separate analysis in my war/peace project focused on actions of the United States, as an important democracy, in all major interstate wars throughout its history. Of eleven such major wars, including most recently World Wars I and II, the Korean War, the Vietnam War, the Central American War, the Gulf War, Kosovo, and Afghanistan,⁷⁰ the

69. Major interstate wars involving a democracy in this time period would, I believe, at minimum include the 1948 First Kashmir War, the 1950-53 Korean War, the 1956 Suez War, the 1962 India-China Border War, the 1965 Second Kashmir War, the 1965-73 Vietnam War, the 1967 Six Day War, the 1969 Israeli-Egyptian War (the war of attrition), the 1971 Bangladesh War, the 1973 Yom Kippur War, the 1974 Cyprus War, the 1981-88 Central American War, the 1982 Falklands War, the 1982 Israel-Syria War (the Lebanon War), the 1990-91 Gulf War, the extended conflict following the dissolution of Yugoslavia, including the Kosovo War, and the Afghanistan War following the 9/11 attack. Further, the 1948-49 Palestine War should probably be included, since Israel held elections and became a full democracy during the course of the war. The Polity III score for Israel in 1949 is 0 (autocracy) and 10 (democracy) (quite apart from the debate about the then democratic character of Syria and Lebanon). See POLITY III, *supra* note 65. And the 1979-89 Afghanistan War should be included, since U.S. assistance to the resistance was a key factor in the war's outcome. If the Bosnia phase of the extended Yugoslav conflict is counted as a separate war, this would add a twentieth war involving a democracy in this category.

70. These major interstate wars (over 1000 combatant casualties) are the War of 1812, 1812-14; the Mexican-American War, 1846-48; the Spanish-American War, 1898; World War I, 1917-18; World War II, 1941-45; the Korean War, 1950-53; the Vietnam War, 1965-73; the Central American War, 1981-88; the Gulf War, 1990-91; the Kosovo War, 1999; and the Afghanistan War, 2001-present. The Civil War, of course, is not an interstate war and is thus not included. Although the United States began the Revolutionary War, 1776-83, this was a war for independence from colonialism and is not appropriately scored as aggression. In any event, the

project scored the United States as arguably the aggressor in only two,⁷¹ the Mexican-American War of 1846-48 and the Spanish-American War of 1898. Both arguable cases occurred not only before the adoption of the UN Charter but also before the adoption of the Kellogg-Briand Pact in 1928 outlawing the use of force as a modality of change in international relations. Moreover, both the Mexican-American War and the Spanish-American War also contain strong features suggesting that the United States either believed that it was acting in defense of an attack on U.S. forces—as in the case of the Mexican-American War where President Polk spoke of “American blood spilled on American soil” and the Spanish-American War where the sinking of the battleship *Maine* was perceived to have been caused by a Spanish mine—or that the nation was pursuing humanitarian objectives—as was the popular perception with respect to intervention in Cuba during the Spanish-American War.⁷² Even with these two conflicts scored as arguably U.S. aggression, over eighty percent of U.S. involvement in major interstate wars has been in defense of U.S. territory, shipping, or citizens, or when the United States has been engaged in humanitarian intervention or collective defense against aggression. Some may wonder why I have not at least scored the United States actions in Vietnam as aggression given the controversy surrounding that war. But admissions from Hanoi since the war—about its ordering and controlling the insurgency from 1959 on, setting up the Ho Chi Minh trail, and openly invading the South in a Korean War style invasion after the Paris Accords—have verified the State Department White Paper view of “Aggression From the North,” that was so controversial at the time.⁷³ Similarly, evidence available

Revolutionary War is not included here since I have not scored it as an “interstate” war.

71. I am aware, of course, that others have regarded United States actions in the Vietnam War, the Central American War, the Kosovo War, and, most recently, the Afghanistan War, as in violation of the United Nations Charter. For reasons I have developed elsewhere, however, I believe the best characterization of these conflicts is to the contrary. I regard the United States role in the Vietnam War, the Central American War, and the Afghanistan War as lawful defense, and Kosovo as lawful humanitarian intervention. At minimum, in none of these wars was the United States principally motivated by value extension.

72. Stowell characterizes the action of the United States in the Spanish-American War as “[o]ne of the most important instances of humanitarian intervention.” ELLERY C. STOWELL, *INTERVENTION IN INTERNATIONAL LAW* 481 (1921). Similarly, the preamble to the Congressional Resolution in the Spanish-American War notes “the abhorrent conditions which have existed for more than three years in the Island of Cuba...[and which] have shocked the moral sense of the people of the United States” Teller Amendment, S.J. Res. 24, 55th Cong., 30 Stat. 738 (1899).

73. See generally *THE REAL LESSONS OF THE VIETNAM WAR: REFLECTIONS TWENTY-FIVE YEARS AFTER THE FALL OF SAIGON* (John Norton Moore & Robert F. Turner eds., 2002); *THE VIETNAM DEBATE* (John Norton Moore ed., 1990).

since the Central American War supports the aggressive initiation of that war through a covert campaign by the Sandinistas to overturn neighboring governments in El Salvador, Honduras and Costa Rica.⁷⁴ That evidence suggests that it is the dissenting opinion of Judge Stephen Schwebel, rather than that of the majority of the International Court of Justice in the *Nicaragua* case,⁷⁵ which has stood the test of time.⁷⁶

The conclusion of this article that democracies are usually not the aggressor in the initiation of major international wars runs counter to a widely held assumption within the social science community. A principal reason for that assumption may be an uncritical acceptance of normative conclusions drawn from the David Singer and Melvin Small *Wages of War* statistical compilation as part of the *Correlates of War* project and an important article by these authors in the *Jerusalem Journal of International Relations* that together have been the most influential starting point for serious empirical analysis about war.⁷⁷ Several points should be noted in this regard. First, simply measuring how frequently democracies are engaged in war, while useful for some inquiry, does not tell us who was responsible for such war, that is, who

74. See, e.g., ROBERT F. TURNER, NICARAGUA V. UNITED STATES: A LOOK AT THE FACTS (1987); Letter from Roger Miranda Bengoechea to John Norton Moore (Oct. 24, 1990), reprinted in 85 ASIL PROC. 35, 36-37 (1991); Douglas Farah, *Managua Blasts Rip Lid Off Secrets*, WASH. POST, July 14, 1993, at A1.

75. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 1 (June 27).

76. *Id.* at 170 (dissenting Opinion of Judge Schwebel). Following his dissent in the *Nicaragua* case, Judge Schwebel, of course, went on to become the President of the Court.

77. See DAVID SINGER & MELVIN SMALL, THE WAGES OF WAR 1816-1965: A STATISTICAL HANDBOOK (1972). See also Small & Singer, *supra* note 44. Yet another study that may sometimes mislead about the aggressiveness of democracies in initiating major war is that by Christopher Gelpi in the *Journal of Conflict Resolution*. See Christopher Gelpi, *Democratic Diversions: Governmental Structure and the Externalization of Domestic Conflict*, 41 J. CONFLICT RES. 255 (1997). Thus, Levy, usually a careful observer, writes of this study: "Gelpi (1997) hypothesizes that the option of domestic repression is less available to democratic leaders and finds that democratic states were more likely than authoritarian regimes to initiate the use of force between 1946 and 1982." Levy, *supra* note 3, at 154. In reality, Gelpi is not focused on major war in this study but rather on "crisis escalation." Gelpi, *supra*, at 279. Indeed, he is not even focused on initiation of crisis but only on its escalation. So he says, "[I]t is possible that democracies are generally less likely to initiate disputes." *Id.* A tip-off that this is not a study of responsibility for major war is that Gelpi uses a database of 180 international crises between 1948 and 1982 (an adaptation of the International Crisis Behavior [ICB] data set), while I score only 28 major interstate wars in the longer period from 1948 to the present. *Id.* at 256. Moreover, he defines "major use of force" not as more than 1,000 combat casualties but rather as "more than 1,000 troops engaged in combat." *Id.* at 265. His thesis, for which he finds empirical support, is that democracies engage in more diversionary behavior to divert attention from domestic crises than do authoritarian regimes. This study may illustrate aggressiveness of democracies in minor coercion settings, but even here the normative criteria used simply of "force initiated," *id.* at 265, is suspect.

was the aggressor. There is a crucial difference between Nazi Germany and Poland in the origins of World War II even though both nations were engaged in that war. Failure to focus on the centrality of this issue of which actor was acting lawfully, that is, the *jus ad bellum* issue, is a major shortcoming of much of the social science work in this area. Second, the 1972 *Wages of War* study covers the period of 1816-1965, which is predominantly before the 1928 Kellogg-Briand Pact and the 1945 United Nations Charter outlawing aggressive war between nations. While this point should not be decisive for empirical inquiry about aggressiveness, it is also certainly not irrelevant for such an inquiry. For, before at least the Kellogg-Briand Pact, war as a modality of pursuing foreign policy goals was not regarded as inevitably impermissible.

Perhaps one reason the Small and Singer article in the *Jerusalem Journal* has been so influential with respect to the normative issue is that this article by the principal founders of empirical research about war did ask about "the initiation of hostilities." On this point the authors concluded that out of the only nineteen major interstate wars involving a democracy at all (from a total of fifty major interstate wars in their period of study), "bourgeois democracies initiated, or were on the side of the initiator, in eleven (58%) of them."⁷⁸ But by their own admission this study did not seek to determine who the aggressor was or who was acting lawfully in the initiation of force. Thus, the authors write,

[W]e were not...trying to identify the 'aggressor' or those parties that were most to blame, nor to estimate how much of the variance in the onset of war was accounted for by each protagonist.... [W]e sought only to identify the nation that either fired the first salvo or crossed

78. Small & Singer, *supra* note 44, at 66.

The nineteen major interstate wars identified by Small and Singer as involving a democracy are the 1823 Franco-Spanish War, the 1846-48 Mexican-American War, the 1849 War of the Roman Republic, the 1862-67 Franco-Mexican War, the 1864 Second Schleswig-Holstein War, the 1884-85 Sino-French War, the 1897 Greco-Turkish War, the 1898 Spanish-American War, the 1911 Italo-Turkish War, the 1912-13 First Balkan War, the 1913 Second Balkan War, the 1914-18 World War I, the 1939-45 World War II, the 1939-40 Russo-Finnish War, the 1948-49 Palestine War, the 1950-53 Korean War, the 1956 Sinai War, the 1962 Sino-Indian War, and the 1965 Second Kashmir War. *Id.* at 56-58.

The eleven major interstate wars identified by Small and Singer as having a democratic nation either as initiator or "on the side of the initiator" are the 1846-48 Mexican-American War, the 1849 War of the Roman Republic, the 1884 Sino-French War, the 1897 Greco-Turkish War, the 1898 Spanish-American War, the 1911 Italo-Turkish War, the 1912 First Balkan War, the 1939 Russo-Finnish War (after 1941), the 1948 Palestine War, the 1956 Sinai War, and the 1965 Second Kashmir War. *Id.* at 66.

Small and Singer also identify forty-three "extrasystemic wars" during this period. *Id.* at 59-60.

an undisputed boundary in force....⁷⁹

As any international lawyer knows, this “first salvo” standard is a hopelessly simplistic approach by which to judge complex *jus ad bellum* issues.⁸⁰ Among other problems, this standard ignores lawful response to covert attack, humanitarian intervention, and many other issues in *jus ad bellum* law. Not surprisingly, then, the conclusions of the authors about these eleven democratic “initiators” tell us little about the more complex reality of the normative issue. Indeed, preliminary analysis of the eleven “democratic initiator” cases suggests that Small and Singer were wrong under *jus ad bellum* standards, or otherwise overstated the case of democratic nation initiation, in at least nine out of the eleven cases they cite. Thus, in the Mexican-American War of 1846-48, while arguably the United States was the aggressor, as has been seen, it is also reasonably arguable that Mexico was the aggressor. Moreover, the characterization by Small and Singer of the United States as the aggressor is not even consistent with their own restrictive normative standard since Mexican forces fired the first shots in disputed territory, leading to the cry: “American blood spilled on American soil.” With respect to the 1849 war by France against the Roman Republic, Professor Bruce Russett reminds us that “both parties were but ephemerally democratic.”⁸¹ The 1897 Greco-Turkish War in Crete had at least strong overtones of humanitarian intervention. Indeed, Greece originally intervened in Crete not only to end Ottoman colonial control of the island, but also in response to killings of Christian Greeks in Crete. Further, British, French, Italian, and Austrian troops also landed in response to the crisis. Again, as has been seen, the Spanish-American War of 1898 was arguably initiated by American aggression, but it is at least equally arguable that the case was one of humanitarian intervention and perceived defensive response to the sinking of the battleship *Maine*. The example given of Finnish fighting allegedly on the side of the German initiator in World War II is patently absurd. Finland was actively at war only with the Soviet Union in an effort to

79. *Id.* at 52-53.

80. See generally MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1961).

81. RUSSETT, *supra* note 2, at 18. Polity III scores also tell us that “democratic” France was no democracy in 1847 or in 1852. This period of “democratic” French governance, scored by Polity III as a 6 out of 10 (with a 0 autocracy score), was fleeting. By 1852, France has a score of 8 (autocracy) and 0 (democracy). And even with a + 6 democracy score in 1848-49, France was not yet a “coherent democracy” using the Jagers and Gurr + 7 requirement. See POLITY III, *supra* note 65. Similarly, the Roman Republic is scored by Polity III as zero on the democracy scale in 1848 and 1850.

recover its territory taken by Soviet aggressive attack in the Winter War of 1939-40 (a legacy of the cooperation between Stalin and Hitler), and there is no record of casualties between any democracy and Finland in this war that would meet the 1000 casualties standard. Indeed, the allies in World War II were almost in a two front war, since the British had proposed an allied expedition to assist the Finns in their initial effort against Stalin's aggression. The bottom line here is that the Finns fought to defend their homeland against Stalin's aggression. The 1956 Suez War is a fair example of democratic aggression under the Charter standard, but when one leaves out the casualties from the Israeli defensive action against guerrilla raids into Southern Israel, then the British-French action that qualifies as aggression does not meet the 1000 combatant casualties standard for major war. The Second Kashmir War of 1965 was not initiated simply by an unprovoked Indian attack on Pakistani-held portions of Kashmir. Rather, India was responding to an escalating Pakistani-supported guerrilla struggle in Indian-held portions of Kashmir. Bridges were being blown up and police stations attacked by infiltrators from Pakistani-held areas of Kashmir and, in response, India crossed the cease-fire line to cut off infiltration by asserting control of key mountain passes.⁸² I would not accept the scoring of democratic nation aggression by Italy in the 1911 Italo-Turkish War. The Italian action in Tripoli, although significantly motivated by an expanding French presence in North Africa, is best scored as value extension and thus aggression. But the government was no more democratic in its foreign policy decision making in this war than was Germany in World War I. The Polity III score for Italy in 1911 is four on the autocracy scale and only three on the democracy scale for a combined score of plus one autocracy.⁸³ In the Italian constitutional monarchy, the king had supreme command of the military and the

82. In a conversation I had with General Indarjit Rikhye, who was at the time of the Second Kashmir War the military adviser to the UN Secretary-General, he pointed out that the UN had received reports from its observer group in Pakistan (UNOGIP) of the Pakistan aided insurgency prior to the Indian response.

83. In contrast, Germany in 1914 is scored by Polity III as 3 on the autocracy scale and 5 on the democracy scale. That is a combined + 2 democracy score, far from the + 7 required for "coherent democracy" by the Jagers and Gurr criteria. From 1919, following World War I, down to 1932, Germany shifts toward democracy, with a score of 0 (autocracy) and 6 (democracy). With the rise of Hitler, Germany shifts strongly away from democracy with a score of 9 (autocracy) and 0 (democracy) from 1933-45. And after 1945, following World War II, Germany shifts to its present strong democracy with a score of 0 (autocracy) and 10 (democracy). Austria, Germany's principal ally in World War I, is scored by Polity III as 5 (autocracy) and 1 (democracy) before the war. Austria shifts to coherent democracy only in 1920 after the war. See POLITY III, *supra* note 65.

power to declare war. Further, in this war the premier made the decision to go to war and received the king's consent. "Parliament was not in session and not consulted."⁸⁴ In the 1884-85 Sino-French War, democratic France was in Vietnam under a Franco-Vietnamese Treaty by which France guaranteed the independence of Vietnam against all other powers. Thus Vietnam was a French protectorate at the time of the war. In that setting, China supported Vietnamese tribal groups in the north resisting the French. The war took place in Vietnam after Chinese forces looted their own flag and revealed their Chinese uniforms following a period of clandestine Chinese support for the Vietnamese resistance. Finally, as a possible tenth oversimplification, I do not believe that the Small and Singer characterization of Syria and Lebanon as democratic nations in the 1948 Palestine War is best for scoring. These states were not coherent democracies, though in fairness, Syria at least was an incipient democracy meeting the Small and Singer criteria.⁸⁵ The point is simply that whatever their compliance with the Small and Singer restricted normative standard, these examples do not establish the normative point that well-established democracies are as aggressive as nondemocracies in the initiation of major interstate war.

As a check on my own analysis of the Small and Singer *Correlates of War* normative conclusions, I encouraged a student in my War & Peace Seminar to independently examine the nineteen wars (out of fifty overall in the *Wages of War* database) involving democracies in order to assess responsibility for initiation.⁸⁶ His conclusion was that in thirty-one percent of these wars involving democracies, the democracies were the aggressors; in fifty-eight percent of these wars, the nondemocracies were the aggressors; and in eleven percent of these wars, there was mutual aggression.⁸⁷ Moreover, the total number of major interstate

84. See C. J. LOWE & F. MARZARI, *ITALIAN FOREIGN POLICY 1870-1940* 117 (1975).

85. Small and Singer have a legitimate argument with respect to initiation of the war from Syria and Lebanon, however. The war was enthusiastically supported by Syria, which had approximately 8,000 troops committed to the fighting, and it was a Syrian, Fawzi al-Kaukji, the second in command of the Arab forces, who was their effective leader. Even if this case is scored for democratic nation aggression in major interstate war, this would leave only three to six out of the nineteen wars involving democracies reasonably so scored, for a democratic aggression score of approximately 16-32% of the major wars in which they were involved from 1816-1965, rather than 58%, as Small and Singer conclude. The three are the 1912-13 First Balkan War, the 1948 Palestine War, and the British-French action in the 1956 Suez War. It would be six if the Mexican-American, Spanish-American, and 1884-85 Sino-French Wars are also included.

86. See Bennett B. Borden, *Applying Lessons from the Democratic Peace to Wars with Non-Democratic States* 5-6 (Fall 2001) (paper prepared for my War & Peace Seminar) (on file with author). In reaching his conclusions, Mr. Borden accepted the definition of democracy in the Small and Singer 1976 article for the *JERUSALEM J. INT'L REL.*, *supra* note 44.

87. Borden, *supra* note 86, at 43.

wars (using the conventional Small and Singer 1000 casualty cut-off for major war), which he scores as initiated by democratic aggression in this entire period from 1816 to 1965, is but six. Only two of these six wars, and none scored as caused by mutual aggression, occurred after the 1928 Kellogg-Briand Pact outlawing aggressive war as a modality of conducting foreign policy. Leaving aside the two wars scored as caused by mutual aggression,⁸⁸ this leaves a total of forty-eight major wars in the period, with only six of these scored as the responsibility of a democratic aggressor. That is, approximately only thirteen percent of the wars in this period were scored as caused by a democratic aggressor. While this statistic is not particularly meaningful in the absence of appropriate adjustment for the lesser number of democracies, it is hardly support for the proposition that democracies are as aggressive as nondemocracies. Moreover, even this analysis overstates the case of democratic nation aggressiveness within its statistical universe, for significant adjustment is required of these six wars.⁸⁹ The six wars are the 1897 Greco-Turkish War, the 1898 Spanish-American War, the 1911 Italo-Turkish War, the 1912 First Balkan War, the 1948 Palestine War, and the 1956 Suez War. With respect to each of these wars, none is of the magnitude of World War I, World War II, or the Korean War—all scored as caused by nondemocratic nation aggression.⁹⁰ As an initial observation about these wars, then, they seem not to have precipitated the level of casualties associated with the worst nondemocratic nation aggression. It is also useful to again briefly examine the specifics of each of these six wars with respect to their scoring as democratic nation aggression initiating a major war. Thus,

88. These wars scored by Mr. Borden as caused by mutual aggression were the 1848 Mexican-American War and the 1884 Sino-French War. The Sino-French War of 1884-85 was fought between France and Chinese forces in Vietnam. While France was in Vietnam as a result of earlier colonial campaigns, at the time of the Sino-French War it was in Vietnam pursuant to a Franco-Vietnamese Treaty by which France promised to protect Vietnamese independence against any other power. China was supporting Vietnamese tribal groups resisting the French and may have been motivated to continue an amorphous tributary relationship with Vietnam. *Id.* at 22-24.

89. Mr. Borden, who undertook this study, did not accept the lawfulness of humanitarian intervention and this is reflected in his scoring. *Id.* at 10.

90. By far the highest number of casualties in these six wars was the approximately 80,000 combatant casualties in the First Balkan War. The Italo-Turkish War had approximately 20,000 casualties. None of the other four exceeded 8,000. Small and Singer did find that interstate wars involving democracies had discernibly lower national battle deaths. They write: "[T]he average national fatality figure was 91,900 for the interstate wars in which the democracies participated, compared to 167,300 per nation in all other wars." Small and Singer went on to conclude, however, that this difference was not statistically significant. Small & Singer, *supra* note 44, at 64.

the 1897 Greco-Turkish War was precipitated by a Greek humanitarian intervention against Turkish mistreatment of Greeks in Crete, in which British, French, Italian, and Austrian troops also participated. Today scholars would debate whether the precipitating intervention, at least, was lawful humanitarian intervention rather than aggression.⁹¹ Similarly, the 1912 First Balkan War, in which Greece *joined* a war against Turkey declared by Serbia and Bulgaria, reflected Greek concern about treatment of ethnic Greeks in the Balkans. Both the 1897 Greco-Turkish War and the 1912 First Balkan War also reflected a Greek objective of independence for the Greek people from Ottoman colonial rule. International law today would not score wars of independence from colonialism as aggression. We have already seen that in the 1898 Spanish-American War the United States not only thought that the battleship *Maine* had been sunk by a mine, but was also concerned about Spanish mistreatment of the indigenous Cubans. The 1948 Palestine War was scored in this study as precipitated by aggression from a democratic Syria and Lebanon, among other states attacking Israel on the expiration of the British mandate. The Arab-Israeli Conflict is a complex setting with features both of interstate and civil war. While I would agree that the 1948 attack against Israel was best characterized as aggression under the Charter, the complexity of the positions of the parties, or whether Syria and Lebanon should be treated as democracies in 1948, is hardly reflected in this simple scoring.⁹² We have seen that the British and French action in the 1956 Suez War is best characterized as aggression under the Charter. Nevertheless, the objectives of the British and French were principally to impose international control to protect access to the Canal for all nations following Nasser's nationalization, while recognizing Egypt's sovereign right to a fair return from operation of the Canal. The French

91. There is a rich literature on humanitarian intervention. As a good beginning, see the Brownlie-Lillich debate, Chapters 10-11, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217-251 (John Norton Moore ed., 1974). It should be noted that historically many recognized humanitarian interventions have involved Ottoman or Turkish persecutions in settings not dissimilar to the provocations felt by the Greeks in the Greco-Turkish War of 1897 and the First Balkan War of 1912-13. For examples, see M. GANJI, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 22-24, 26-29, 29-33, and 33-37 (1962).

92. On the Arab-Israeli conflict generally, see I-III *THE ARAB-ISRAELI CONFLICT: READINGS AND DOCUMENTS* (John Norton Moore ed., 1974), *THE ARAB-ISRAELI CONFLICT: READINGS AND DOCUMENTS* (John Norton Moore ed., abr. & rev. ed. 1977); IV *THE ARAB-ISRAELI CONFLICT: THE DIFFICULT SEARCH FOR PEACE I-II* (John Norton Moore ed., 1991). In the 1948 War, the predominant perception in Syria and Lebanon at least was that they were fighting for value conservation not value extension. I believe that the best characterization for Syria and Lebanon in 1948 is that they did not fully meet the criteria for coherent democracy.

were further motivated by Nasser's support of insurgencies in North Africa. I also believe that the Israeli part of this action, in response to continuing terrorist raids into Israel and a blockade by Egypt of Israeli shipping in the Gulf of Aqaba, should be scored as defensive. Further, as has been noted, if we leave this defensive Israeli portion of the action out of the calculus, the total casualties in the British and French portions were below the one thousand casualty cutoff for major war. As has been seen, the government of Italy was not really democratic in its foreign policy in 1911 and the decision by Italy for war was made without consulting Parliament and subsequently proved quite unpopular.⁹³ Of these six wars, only the 1911 Italo-Turkish War, in which an autocratic Italy sought to take from Turkey the cities of Tripoli and Cyrenaica in Libya, and possibly the participation of Syria and Lebanon in the 1948 Palestine War seem to have originated principally in efforts at aggressive value extension. And the initiators in these two cases were not coherent democracies.

Because of its great influence, it is also useful to examine the *Correlates of War* scoring as to the "initiator" in post-Charter major interstate wars.⁹⁴ The *Correlates of War* count twenty-three major interstate wars from the adoption of the Charter through the Gulf War in 1990. Fifteen of these wars arguably involve a democracy and, of these, nine are scored by the *Correlates of War* as initiated by these democracies.⁹⁵ Thus, the *Correlates of War* database, without more explanation, seems to imply that democracies were responsible for sixty percent of the major interstate wars involving a democracy since adoption of the United Nations Charter.⁹⁶ Normative assessment going beyond simplistic scoring based on who fired first (and also reviewing democratic credentials), however, shows that any such implication is an exaggeration. Indeed, while we should score at least two and possibly three of these as aggression,⁹⁷ none of these actions by a coherent

93. See C. J. LOWE & F. MARZARI, *supra* note 84, at 117. "Giolitti's coalition system fragmented under the pressure of the Tripoli war." *Id.*

94. See <http://www.umich.edu/~cowproj/>. See also MELVIN SMALL & J. DAVID SINGER, *THE WAGES OF WAR, 1816-1965: A STATISTICAL HANDBOOK* (1972); MELVIN SMALL & J. DAVID SINGER, *RESORT TO ARMS: INTERNATIONAL AND CIVIL WAR, 1816-1980* (1982); *MEASURING THE CORRELATES OF WAR* (J. David Singer & Paul Diehl eds., 1990).

95. These nine are the 1948 First Kashmir War, the 1948 Palestine War, the 1956 Suez War (Sinai Campaign), the 1965-73 Vietnam War, the 1965 Second Kashmir War, the 1967 Six Day War, the 1971 Bangladesh War, the 1974 Turkey-Cyprus War, and the 1982 Israel-Syria War (the Lebanon War).

96. The *Correlates of War* project does not provide a democracy scoring and, as such, it does not explicitly provide this conclusion about democratic nation responsibility for war.

97. The actions of Britain and France in the 1956 Suez Crisis and of Turkey in the 1974

democracy was principally motivated by value extension. In the First Kashmir War in 1948, a two-month old democratic India responded to tribal incursions into disputed areas of Kashmir supported by Pakistan and commanded at least in part by Pakistani military. Further, India was responding to an agreement by the recognized Government of Kashmir, supported by Kashmir's majority political party, allowing India to respond to the tribal incursions.⁹⁸ Indian action in this unresolved political dispute was not motivated by value extension. The attacks by Syria and Lebanon on Israel in the 1948 War have already been discussed. Neither country was a coherent democracy at the time.⁹⁹ Contrary to the implications from the *Correlates of War* scoring, I believe that the best scoring for Israel in the 1956 Sinai Campaign, the 1967 Six Day War, and the 1982 Israel-Syria War (the Lebanon War) is that Israel lawfully acted in defense in these wars.¹⁰⁰ The 1965-73 Vietnam War also has been discussed, but this scoring of United States initiation in the face of what is now trumpeted by Hanoi about its 1959 decision to begin the war seems rather dated. We have also previously discussed the Second Kashmir War. Again I believe this is best scored as a defensive response by India to Pakistan-assisted guerrilla attacks into Kashmir. The 1971 Bangladesh War, in which India intervened in a humanitarian crisis in East Pakistan resulting in the independence of Bangladesh, is, I believe, also reasonably scored as a humanitarian intervention.¹⁰¹ Here, the Government of Pakistan sought to set aside by force the results of an election in then East Pakistan won by the majority Bengalis. Following a humanitarian slaughter in East Pakistan, refugees poured over the border into India. In that setting, India at least believed that it was acting for humanitarian reasons and supporting self-determination in Bangladesh. The 1974 intervention by Turkey in Cyprus was triggered by a coup against the elected Cypriot government of Archbishop Makarios, encouraged by a military junta in Greece seeking Cypriot union (*enosis*) with Greece. In that setting, Turkey, one

Cyprus War should be placed here. Quite possibly the actions of India in the 1971 Bangladesh War should also be included.

98. See GENERAL INDAR JIT RIKHYE, *TRUMPETS AND TUMULTS: THE MEMOIRS OF A PEACEKEEPER* 95-96 (2002).

99. The Polity III scores for Lebanon and Syria in 1948 were 5 out of 10 for Syria and 4 out of 10 for Lebanon on the democracy scale, with Lebanon also adding a score of 2 on the autocracy scale. See POLITY III, *supra* note 65.

100. The 1982 Israel-Syria War grew out of a civil war in Lebanon and escalating terrorist attacks against Israel from groups operating from Lebanon. Syria intervened in the fighting between Israel and the terrorist groups, and there were air battles between Israel and Syria.

101. See FERNANDO R. TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (2d ed. 1997).

of the treaty guarantors of the Cypriot government, intervened and occupied nearly forty percent of the island.¹⁰² While the Turkish intervention certainly went too far and was accompanied by widespread human rights violations, it was not, at least initially, motivated by value extension.¹⁰³ Rather than the apparent *Correlates of War* scoring of nine democratic nation “initiators,” a more complete international legal scoring would score two or possibly three of these as illegal actions by coherent democracies.¹⁰⁴ Further, none are examples of well-established liberal democracies seeking to use force principally for value extension. Three out of twenty-three total wars amounts to thirteen percent of the wars from the creation of the UN Charter to 1990 caused by democratic aggression. And three out of the fifteen wars involving democracies is only twenty percent of the wars in which democracies were involved in this period. It is also instructive to compare the casualties in the wars resulting from illegal actions by coherent democracies in these twenty-three wars with those caused by nondemocracies. Using the *Correlates of War* casualty figures, and adjusting the 1956 Suez War to ascribe 865 casualties to the British and French action, thus scoring three of these twenty-three wars as resulting from illegal actions by coherent democracies, produces a figure of 13,365 casualties for the democratic nation wars¹⁰⁵ and 3,320,304 for those with nondemocratic nation responsibility.¹⁰⁶ That is, in human casualty terms, democratic nation

102. Mansfield and Snyder also remind us that electoral democracy was only restored to Turkey in 1973 and domestic authority was fragmented. See Mansfield & Snyder, *supra* note 11, at 306-08.

103. See the analysis in Benjamin M. Meier, *Reunification of Cyprus: The Possibility of Peace in the Wake of Past Failure*, 34 CORNELL INT'L L.J. 455 (2001). Bruce Russett also points out in connection with the 1974 Turkish intervention in Cyprus that crises in which both Greece and Turkey had democratic governments were more easily contained. “By contrast, the 1963-64 clashes—when democratic Greek and Turkish governments supported their protégés during outbreaks on the islands—were much more easily contained, largely by an American warning and UN peacekeeping action. And confrontations later in the 1970s, between democratic governments, were restrained short of any fatalities....” BRUCE RUSSETT, *supra* note 2, at 20.

104. These would be, I believe, the British and French action in the 1956 Suez War, Turkish action in the 1974 Cyprus intervention, and possibly Indian action in the 1971 Bangladesh War. To these, as a possible fourth, might be added the actions of Syria in the 1948 Palestine War if this state is accorded democratic status in 1948.

105. These three wars and their casualty figures are 865 for the French and British action in the 1956 Suez War, 11,000 for the 1971 Indian intervention in Bangladesh, and 1,500 for the 1974 Turkish intervention in Cyprus.

106. These twenty wars and their casualty figures (plus the casualties in the Israeli-Egyptian theater of the 1956 Suez War) are the First Kashmir War, 2,000; the 1948 Palestine War, 8,000; the Korean War, 909,833; the Russo-Hungarian War, 4,002; the Israeli-Egyptian front in the 1956 Sinai War, 2,356 (my estimate); the Assam War, 1,853; the 1965-73 Vietnamese War, 1,021,442; the Second Kashmir War, 7,061; the Six Day War, 19,600; the 1969 Israeli-Egyptian War (the war of attrition), 5,368; the 1969 Soccer War, 1,900; the Yom Kippur War, 16,401; the 1975

major interstate war violence in these post-Charter wars from 1948 through the 1990 Gulf War is less than one-half of one percent of the nondemocratic nation violence in such wars.¹⁰⁷ This is a very different picture than one gets simply from the “war initiators” scoring of the *Correlates of War*.

The bottom line is that the *Correlates of War* database provides thin gruel for any conclusion that democracies are as aggressive as nondemocracies in major interstate war. This would seem particularly so for the post-Charter era. Of particular significance, there seem to be few major interstate wars in any time frame clearly initiated by a well-established liberal democracy motivated principally by value extension.

It may be useful to summarize the paths to war for democracies in the nineteen major wars in which they have been involved since creation of the UN Charter. Seven involved guerrilla, terrorist, or sporadic attacks against the democracy or a treaty ally.¹⁰⁸ A further seven involved direct invasions of the democracy or a state then assisted by the democracy.¹⁰⁹ One involved a severe threat of attack against the democracy.¹¹⁰ One involved a humanitarian intervention following a closely related genocide.¹¹¹ And the three scored here as likely aggression under the Charter in fact were in response, respectively, to an illegal takeover of the Suez Canal,¹¹² a severe humanitarian crisis related to an ongoing genocide,¹¹³ and an externally supported military coup threatening to upset a delicate balance between Greek and Turkish interests in Cyprus.¹¹⁴ This clearly suggests that at least since the adoption of the

Vietnamese War, 8,000; the 1977 Ethiopian-Somalian War, 6,000; the 1978 Ugandan-Tanzanian War, 3,000; the 1979 Sino-Vietnamese War, 21,000; the Iran-Iraq War, 1,250,000; the Falklands War, 910; the 1982 Israel-Syria War (the Lebanon War), 1,235; the 1987 Sino-Vietnamese War, 4,000; and the Gulf War, 26,343.

107. See the *Correlates of War* project, *supra* note 94.

108. These are the 1948 and 1965 First and Second Kashmir Wars, the 1965-73 Vietnam War, the 1969 Israeli-Egyptian War (the war of attrition), the 1981-88 Central American War, the 1982 Israel-Syria War (the Lebanon War), and the 2001 Afghanistan War.

109. These are the 1948 Palestine War (included if Israel is scored as the only “coherent democracy” during the war), the 1950-53 Korean War, the 1962 India-China Border War, the 1973 Yom Kippur War, the 1982 Falklands War, the 1990-91 Gulf War, and the 1979 Afghanistan War (if included as a result of support by democratic nations for the Mujahideen). For a discussion of the 1973 Yom Kippur War, see Nadav Safran, *Trial by Ordeal: The Yom Kippur War, October 1973*, 2 INT’L SEC. 133 (1977). The 1962 India-China Border War was initiated through invasion by China across the 1914 Simla Agreement boundary.

110. The 1967 Six Day War.

111. Kosovo, following the “ethnic cleansing” in Bosnia.

112. The 1956 Suez War. And, of course, Israel was involved principally in response to ongoing Fedayeen raids.

113. The 1971 Bangladesh War.

114. The 1974 Cyprus War.

UN Charter in 1945, the principal path to war for democracies has been nondemocratic attack or genocide.¹¹⁵

If democratic nations are getting into major war predominantly as a result of aggression or democide by nondemocratic regimes,¹¹⁶ then the evidence strongly suggests, at least for purposes of continuing our search for a more comprehensive hypothesis about war, that the key missing link in democratic peace theory is the importance of external deterrence. That is, are democracies getting into war predominantly in settings where they fail adequately to deter a potential nondemocratic decision elite willing to engage in high-risk behavior? Considerable evidence suggests that the answer is yes.

Before examining the evidence, if we are to avoid confusion, it is important that we define what we mean by “deterrence” and “effective deterrence” for the purposes of this hypothesis. Deterrence for our purposes is the totality of *external* incentives, that is, incentives from the international environment, which may be high or low, adequate or inadequate. Effective deterrence will be regarded as that aggregate of external incentives understood by a potential aggressor as adequate to prevent an aggressive action. In this respect, factors affecting deterrence encompass the totality of positive and negative incentives, including potential military responses and security arrangements, military and power asymmetries, economic relations and trade, access to strategic materials, diplomatic actions, effects of international organizations and international law, alliances, collective security, contiguity, and other “opportunity” factors, etc., or the lack thereof with respect to any of these elements. Note specifically that actions affecting incentives can be either military or non-military, either positive (offering potential benefits) or negative (offering potential costs), either fixed (that is,

115. An analysis for the eleven major wars in which the United States has been engaged throughout its history produces a similar pattern. In four wars, the United States, its shipping, or a state it then assisted in defense were directly attacked or invaded. These are World Wars I and II, the Korean War, and the Gulf War. If the 1979 Afghanistan War is included as a twelfth major war in which the United States was involved, it would also be in this category of response to direct invasion. In four wars, the United States, its shipping, or a treaty ally were attacked through guerrilla, terrorist, or sporadic attacks. These are the War of 1812, the Vietnam War, the Central American War, and the 2001 Afghanistan War. In Kosovo, the United States was involved with other democratic allies in a humanitarian intervention following a genocide in Bosnia. And even in the two major wars scored here as arguably due to U.S. aggression, in the Mexican-American War, the United States believed American forces had been fired upon on American soil, and in the Spanish-American War, the United States was responding to a perceived attack against the *U.S.S. Maine* and a humanitarian disaster in Cuba.

116. A more complete statement here might emphasize illegal actions by nondemocratic nations as a principal cause of major war or that the involvement of democratic nations in major war is not predominantly a result of their own *jus ad bellum* violations or both.

contiguity¹¹⁷) or variable (for example, effects of diplomacy or alliances), either objective (for example, military divisions or nuclear weapons) or subjective (for example, elite belief systems or perceptions as to intent), or any combination of the above. Such factors also encompass both denial of objective and threat of punishment (imposition of costs) in classic deterrence theory.¹¹⁸ Effective deterrence requires *understanding* by the potential aggressor of an aggregate of incentives sufficient to prevent the aggression. As such, communication and subjectivities, including interactions with the perspectives and belief system of the potential aggressor and past statements and actions of any potential defender, are critical for effectiveness.¹¹⁹ Ultimately, as the term is used in this article, *effective deterrence is a state of mind of the potential aggressor based on perceptions of an aggregation of external incentives.*¹²⁰

As many scholars have demonstrated, deterrence is also a complex concept in which we need to proceed carefully in context and across cultures and with appreciation of both direct and indirect effects. For example, in tracing the lack of deterrence before World War II, the actions of the British and French at Munich not only led Hitler to believe the Western Powers had no stomach for war and were “worms,” but they also led Stalin to believe that he should strike a separate deal

117. It is well known that contiguity is an important factor in predicting conflict. Russett and Oneal report in their new book that “many tests have confirmed that geographical proximity has the greatest, most consistent influence on the likelihood that conflict will occur.” RUSSETT & ONEAL, *supra* note 8, at 100.

118. See Alexander L. George, *The Role of Force in Diplomacy*, Chapter 4, in *THE USE OF FORCE AFTER THE COLD WAR 78-79* (H. W. Brands ed., 2000). With respect to the distinction between “deterrence” and coercive diplomacy, or “compellance” in classic deterrence theory, see Chapters 13, *Deterrence*, and 14, *Coercive Diplomacy*, in GORDON A. CRAIG & ALEXANDER L. GEORGE, *FORCE AND STATECRAFT 197-212* (2d ed. 1990).

The strategy of coercive diplomacy (or *compellance*, as some prefer to call it) employs threats or limited force to persuade an opponent to call off or undo an encroachment—for example, to halt an invasion or give up territory that has been occupied. Coercive diplomacy therefore differs from the strategy of deterrence...which employs threats to dissuade an opponent from undertaking an action that he has not yet initiated.

Id. at 197.

119. It is at this point that differences in crisis bargaining between democratic and nondemocratic actors may play a role in war. For the effect on crisis signaling of opposition parties within a democracy, see Schultz, *Domestic Opposition and Signaling in International Crises*, *supra* note 46.

120. A failure of communication, and the subjectivities side of deterrence rather than objectivities exclusively, seem to have been the core reason for an absence of effective deterrence in United States entry into World War II (Pearl Harbor), the Korean War, the Gulf War, Kosovo, and possibly the war on terror as well. In contrast, United States entry into World War I seems to be rooted in an inadequate military to deter a Germany by then bogged down in trench warfare.

with Hitler since the French had been unwilling to join the offered Soviet guarantee for the independence of Czechoslovakia conditioned on French joint agreement. In turn, Stalin's Molotov-Ribbentrop alliance not only drastically reduced the deterrence of Hitler by removing the traditional German problem of a two front war (indeed, it now assured Soviet complicity in dividing up Eastern Europe), but it led Hitler to believe that the British would not take seriously their guarantee to Poland since he believed his Pact with Stalin was a *deterrent to British action in defense of Poland*. Of critical importance in understanding deterrence, it should also be noted that secret threats or capabilities are not enough. Communication of the positive or negative incentives or, more broadly, adequate perception of the costs by the decision elite considering the action is essential. The failure of deterrence by the United States before the Korean and Gulf Wars was not a lack of appreciation of the United States as a nuclear superpower but rather a conviction, based on the totality of U.S. actions and communications, that U.S. power was irrelevant to the planned aggression. Similarly, communication of will or intent is not adequate if it is perceived that the means for carrying out the threat are unavailable. Woodrow Wilson clearly signaled to Germany before the United States entered World War I that if Germany did not stop sinking neutral American shipping, the United States would enter the war against Germany. But in this case, Germany's assessment of profound United States military weakness coupled with their dire need to shut down shipping to Britain if they were to reverse the stalemate on the Western Front led them to continue to sink American ships, bringing the United States into the war. The German miscalculation was that it would take the United States at least a year to become an effective participant. In this they were wrong by a few crucial months. Similarly, the Japanese attack at Pearl Harbor was not based on the illusion that the United States would not then enter the war against Japan. Rather, the combination of then inadequate U.S. military strength, coupled with a conviction that a military strike against Pearl Harbor could effectively free Japan in the Pacific for a matter of months led Japanese leaders to believe that the United States would sue for peace in the face of their overwhelming military superiority. Effective deterrence, conversely, does not mean simply intransigence or bullying. It seeks a realistic mix of incentives sufficient to produce the desired action or inaction and recognizes that in some settings, an absence of flexibility may produce a

contrary result. It must be contextual, accounting for the myriad relevant features affecting incentives and beliefs.¹²¹ We should never underestimate the complexity of achieving effective deterrence.¹²² Moreover, we should always bear in mind that some actions taken for deterrence may produce an opposite effect unless levels of deterrence necessary for true effectiveness are achieved. For example, economic sanctions critical to a challenger's objectives or a clear commitment to defense in a setting otherwise lacking the elements of full effective deterrence would be inadequate. Some have argued that this was a problem with U.S. policy toward Japan prior to the Pearl Harbor attack.¹²³ Finally, deterrence should never be perceived as a substitute for a comprehensive and well-designed foreign policy.¹²⁴

121. For an analysis stressing the significance of a challenger's "particular beliefs and filters that define their thinking," see KEITH B. PAYNE, *THE FALLACIES OF COLD WAR DETERRENCE AND A NEW DIRECTION* x (2001).

122. For more skeptical views about deterrence, and particularly the difficulties in achieving effective deterrence, see ROBERT JERVIS ET AL., *PSYCHOLOGY AND DETERRENCE* (1985); RICHARD N. LEBOW, *BETWEEN PEACE AND WAR: THE NATURE OF INTERNATIONAL CRISIS* 273 (1981).

123. There is a sophisticated analysis of deterrence in light of Japanese goals and problems on the eve of the Pearl Harbor attack in Bruce M. Russett, *Refining Deterrence Theory: The Japanese Attack on Pearl Harbor*, Chapter 9, in the classic DEAN G. PRUITT & RICHARD C. SNYDER, *THEORY & RESEARCH ON THE CAUSES OF WAR* 127 (1969).

Recall the...formulation, which said that deterrence would succeed only if the utility of fighting a war times its apparent probability was less than the utility of no attack, i.e., of the status quo. While the option of attacking the colonies worked out, in Japanese thinking, to a most unattractive future, the status quo was also highly unpalatable. The poor prospects connected with both of these options (attacking the colonies and not attacking them) set the stage for the adoption of a third strategy of attacking the defender's vulnerable deterrent.

Id. at 135. This is not an argument that deterrence does not work but rather that achieving effective deterrence is complex and that some actions taken for the purpose of deterrence may have an opposite effect if, in fact, they do not create effective deterrence. The United States economic sanctions against Japan before the Pearl Harbor attack, in the presence of a myriad of factors persuading the Japanese that the United States would not stay the course if its Pacific fleet were taken out in a surprise attack and an absence of other alternatives perceived as acceptable to then Japanese leadership, may be a good example of this.

124. For a discussion by a master of deterrence and coercive diplomacy, see George, *supra* note 118. Several of Professor George's observations about deterrence are particularly striking in relation to the path to past wars. These include:

The absence of a deterrence commitment—as in U.S. policy in the months prior to North Korea's attack on South Korea—should also be subjected to timely review to ascertain whether deterrence is needed ...[and] [d]eterrence, which relies on threats, is better conceived as part of a broader influence theory that combines threats with positive inducements and diplomatic efforts to explore the desirability and feasibility of working out a mutually acceptable accommodation of conflicting interests. To do so, however, requires a correct understanding of the adversary's motives, needs, and longer-range goals. This is necessary not only to ascertain how and what kind of an accommodation is possible, but also to assure that the effort to do so will not degenerate into

As so broadly conceived, there is strong evidence that deterrence—that is, the effect of external factors on the decision to go to war—is the missing link in the war/peace equation. In my War & Peace Seminar, I have undertaken to examine the level of deterrence before the principal wars of the twentieth century.¹²⁵ My examination has led me to believe that in every case the potential aggressor made a rational calculation that the war would be won, and won promptly. In fact, the longest period of time calculated for victory through conventional attack seems to be the roughly six weeks predicted by the German General Staff as the time necessary to prevail on the Western Front in World War I under the Schlieffen Plan. Hitler believed in his attack on Poland that Britain and France would not take the occasion to go to war with him. And he believed in his 1941 Operation Barbarossa against the Soviet Union that “[we] have only to kick in the door and the whole rotten structure will come crashing down.”¹²⁶ In contrast, following Hermann Goering’s failure to obtain air superiority in the Battle of Britain, Hitler called off the invasion of Britain and shifted strategy to the nighttime bombing of population centers, which became known as the Blitz, in a mistaken effort to compel Britain to sue for peace. Planners of the North Korean attack on South Korea and Hussein’s attack on Kuwait calculated that the operations would be complete in a matter of days. Indeed, virtually all principal wars in the twentieth century, at least those involving conventional invasion, were preceded by what I refer to as a “double deterrence absence.” That is, the potential aggressor believed that they had the military force in place to prevail promptly *and* that nations that might have the military or diplomatic might to prevent this were not inclined to intervene.¹²⁷ This

appeasement, which will only whet the adversary’s appetite.

Id. at 75.

125. For greatest confidence in result, I would want to score the level of deterrence before *all* major wars throughout human history, or at least all major wars in the twentieth century or subsequent to the United Nations Charter. I have not yet carried out those exercises.

126. JAY M. SHAFRITZ, *WORDS ON WAR: MILITARY QUOTATIONS FROM ANCIENT TIMES TO THE PRESENT* 358 (1990).

127. In his study of extended deterrence Paul K. Huth writes:

If policymakers believe that a quick and decisive attack will be successful, then deterrence is likely to fail. Conversely, if policymakers estimate that military force cannot be applied successfully in a quick and low-cost manner, then deterrence is likely to prevail.... [T]he initial decision of whether to wage war is generally based on a potential attacker’s estimate of the chances of military victory at the outset to early stages of armed conflict.

PAUL K. HUTH, *EXTENDED DETERRENCE AND THE PREVENTION OF WAR* 40-41 (1988). My analysis of the case studies supports the importance of this point based on a “double deterrence absence” as defined above. Chapter 3, “Hypotheses on Deterrence,” in this study of extended

analysis has also shown that many of the perceptions we have about the origins of particular wars are flatly wrong. Anyone who seriously believes that World War I was begun by competing alliances drawing tighter should examine the real historical record of British unwillingness to enter a clear military alliance with the French or to so inform the Kaiser. Indeed, this pre-World War I absence of effective alliance and resultant war contrasts sharply with the later robust NATO alliance and an absence of World War III.¹²⁸

Considerable other evidence seems to support this historical analysis as to the importance of deterrence. Of particular note, in 1995 Yale Professor Donald Kagan, a preeminent U.S. historian who has long taught a seminar on war, published a superb book *On the Origins of War and the Preservation of Peace*.¹²⁹ In this book he conducts a detailed examination of the Peloponnesian War, World War I, Hannibal's War, and World War II, among other case studies. A careful reading of these studies suggests that each war could have been prevented by achievable deterrence and that each occurred in the absence of such deterrence.¹³⁰ Game theory seems to offer yet further

deterrence by Paul K. Huth develops a number of important factors in deterrence, including military alliances, trade, contiguity, strategic raw materials, and past behavior of the defender in relation to the potential aggressor.

128. While the argument that World War I was caused by competing alliances drawing tighter is simply historically misinformed, the powerful German/Austrian alliance *was* likely a substantial factor in encouraging the aggressive Austrian attack on Serbia that precipitated this "Great War." That is, the real role of alliances as a causative factor in World War I was a powerful alliance employed for aggression, while the defensive alliance remained unconsolidated. Certainly the German "blank check" to Austria created an important incentive for Austrian decision makers to commit to war. Further, this same alliance was likely a factor in Germany's decision to attack France following Russian mobilization on the Eastern front. Possibly the Russian decision to mobilize following Austria's attack on Serbia was influenced by Russia's alliance with France. But any such factor was relevant only *after* the initial aggressive attack that precipitated the war. On "the alliance system" as a cause of World War I, see generally JOACHIM REMAK, *THE ORIGINS OF WORLD WAR I 1871-1914* (1967). Remak writes with respect to the alliance system as the cause of World War I:

The alliance system, then? Perhaps, if alliances had actually been as binding and inflexible as some writers have made them out to be. But they were not. The British would consistently refuse a clear-cut promise to come to the assistance of France, let alone Russia, in case of war.... [M]ight one not rather say that if only the alliances had been stronger, Europe would have been less troubled?

Id. at 89.

129. DONALD KAGAN, *ON THE ORIGINS OF WAR AND THE PRESERVATION OF PEACE* (1995) (Professor Kagan, the Bass Professor of History, Classics, and Western Civilization at Yale, is widely regarded as the dean of classical studies in the United States for his histories of the Peloponnesian War).

130. In discussing these case studies with me in preparation for participation as a guest lecturer in my War & Peace Seminar, Professor Kagan accepted this characterization of his work.

support for the proposition that appropriate deterrence can prevent war. For example, Robert Axelrod's famous 1980s experiment in an iterated prisoner's dilemma, which is a reasonably close proxy for many conflict settings in international relations, repeatedly showed the effectiveness of a simple tit for tat strategy.¹³¹ Such a strategy is at core simply a basic method of deterrence, influencing behavior through incentives. Similarly, much of the game-theoretic work on crisis bargaining (and the danger of asymmetric information) in relation to war and the democratic peace assumes the importance of deterrence through communication of incentives.¹³² The well-known correlation between war and territorial contiguity seems also to underscore the importance of deterrence and is likely principally a proxy for levels of perceived profit and military achievability of aggression in many such settings.

It should further be noted that the democratic peace is not the only significant correlation with respect to war and peace, although it seems to be the most robust. Professors Russett and Oneal, in recently exploring the other elements of the Kantian proposal for "Perpetual Peace," have also shown a strong and statistically significant correlation between economically important bilateral trade between two nations and a reduction in the risk of war between them. Contrary to the arguments of "dependency theorists," such economically important trade seems to reduce the risk of war regardless of the size relationship or asymmetry

131. See ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 27-54 (1984). See also Douglas R. Hofstadter, *Metamagical Themas*, 248(5) *SCI. AM.* 16 (1983). If, however, contrary to Axelrod's tit for tat game parameters, the real-world decision for the war/peace game is played absent effective deterrence and thus creates a mismatch between the gains in remaining a law-abiding nation and those from carrying out successful aggression, as too frequently seems the reality, it is to be expected that aggression may be frequent. See generally Paul G. Mahoney & Chris W. Sanchirico, *Competing Norms and Social Evolution: Is the Fittest Norm Efficient?*, 149 *U. PA. L. REV.* 2027 (2001) (This innovative article applying evolutionary game theory has a good discussion of "efficiency" and "mismatch risk" parameters in games such as the famous Axelrod experiment). Theoretically, then, game theory may also tell us that our world of aggressive war has come about at least in part because of insufficient deterrence; that is, because the war/peace decision is perceived by a potential aggressor as *not* really an efficiently played iterated prisoner's dilemma but rather as a game with a severe "mismatch" in relative payoffs between a decision to remain a law-abiding nation and a decision for aggressive war. The international legal prohibition against the aggressive use of force (that is, a prohibition of force for value extension as opposed to value conservation) is intended to redress this "mismatch." More broadly, in the decentralized international system, a wide variety of deterrent factors perform this role. Further, to end the "mismatch" risk requires more than a pattern of future non-cooperation. For if the perspective of the potential aggressor is heavily weighted toward *present* rather than future risks and rewards, the long term benefits of peaceful cooperation may have little weight in the calculus for aggression. See *id.* at 2058-59.

132. See, e.g., Schultz, *Domestic Opposition and Signaling in International Crises*, *supra* note 46, at 829; SCHULTZ, *supra* note 46, at 3-10, 16-18.

in the trade balance between the two states. In addition, there is a statistically significant association between economic openness generally and reduction in the risk of war, although this association is not as strong as the effect of an economically important bilateral trade relationship.¹³³ Russett and Oneal also show a modest independent correlation between reduction in the risk of war and higher levels of common membership in international organizations.¹³⁴ And they show that a large imbalance of power between two states significantly lessens the risk of major war between them.¹³⁵ All of these empirical findings about war also seem to directly reflect incentives. That is, a higher level of trade would, if foregone in war, impose higher costs in the aggregate than without such trade,¹³⁶ though we know that not all wars terminate trade. A large imbalance of power in a relationship rather obviously impacts deterrence and incentives. Similarly, one might incur higher costs with high levels of common membership in international organizations through foregoing some of the heightened benefits of such participation or otherwise being presented with different options through the actions or effects of such organizations.

These external deterrence elements may be yet another reason why democracies have a lower risk of war with one another. For their freer markets, trade, commerce, and international engagement may place them in a position where their generally higher level of interaction means that aggression will incur substantial opportunity costs. Thus, the “mechanism” of the democratic peace may be an aggregate of factors affecting incentives, both *external* as well as *internal* factors. Because of the underlying truth in the relationship between higher levels of trade and lower levels of war, it is not surprising that theorists throughout human history, including Baron de Montesquieu in 1748, Thomas Paine in 1792, John Stuart Mill in 1848, and, most recently, the founders of the European Community, have argued that increasing commerce and interactions among nations would end war. Though by themselves these arguments have been overoptimistic, it may well be that some level of

133. RUSSETT & ONEAL, *supra* note 8, at 145-51.

134. *Id.* at 172-74.

135. *Id.* at 171-73. In a comment to the author Russett notes: “deterrence does matter; i.e., overwhelming power discourages violent conflict (both sides know who will win, so the weak knuckle under)—BUT, the power differential has to be very great to have much effect....” Letter to the author from Bruce M. Russett (September 24, 2001).

136. Paul K. Huth also cites high levels of trade (and possibly high levels of direct foreign investment) between a potential target of aggression and its potential defender as increasing deterrence. Presumably such ties give notice that a potential defender will take an attack on a major trading or investment partner more seriously. HUTH, *supra* note 127, at 45-46.

“globalization” may make the costs of war and the gains of peace so high as to powerfully predispose to peace. Indeed, a 1989 book by John Mueller, *Retreat From Doomsday*,¹³⁷ postulates the obsolescence of major war between developed nations (at least those nations within the “first and second worlds”) as they become increasingly conscious of the rising costs of war and the rising gains of peace.

In assessing levels of democracy, there are indexes readily available, for example, the Polity III¹³⁸ and Freedom House indexes.¹³⁹ I am unaware of any comparable index with respect to levels of deterrence that might be used to test the importance of deterrence in war avoidance.¹⁴⁰ Absent such an accepted index, discussion about the importance of deterrence is subject to the skeptical observation that one simply defines effective deterrence by whether a war did or did not occur. In order to begin to deal with the obvious objections to this method and to encourage a more objective methodology for assessing deterrence, I encouraged a project to develop a rough but objective measure of deterrence with a scale from -10 to +10 based on a large variety of contextual features that would be given some relative weighting in a complex deterrence equation before applying the scaling to different war and non-war settings.¹⁴¹ An innovative first effort uniformly showed high deterrence scores in settings where war did not, in fact, occur. Deterring a Soviet first strike in the Cuban Missile Crisis produced a score of +8.5 and preventing a Soviet attack against NATO produced a score of +6. War settings, however, produced scores ranging from -2.29 (Saddam Hussein’s decision to invade Kuwait in the Gulf War), -2.18 (North Korea’s decision to invade South Korea in the Korean War), -1.85 (Hitler’s decision to invade Poland in World War II), -1.54 (North Vietnam’s decision to invade South Vietnam following the Paris Accords), -0.65 (Slobodan Milosevic’s decision to defy NATO in Kosovo), +0.5 (the Japanese decision to attack Pearl Harbor), +1.25 (the Austrian decision, encouraged by Germany, to attack Serbia, which

137. JOHN MUELLER, *RETREAT FROM DOOMSDAY: THE OBSOLESCENCE OF MAJOR WAR* (1989). Mueller concludes: “[S]ubstantial war in the developed world is highly unlikely, at least in the foreseeable future.” *Id.* at 227.

138. See POLITY III, *supra* note 65.

139. See, e.g., *FREEDOM IN THE WORLD: THE ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES 2001-2002* (Adrian Karatnycky et al. eds., 2002).

140. There is, of course, the *Correlates of War* composite capabilities index. See BRUCE RUSSETT & JOHN ONEAL, *supra* note 8, at 103. This, however, is not a deterrence index. The United States is much stronger than Iraq but it still failed to deter the invasion of Kuwait.

141. See Anthony A. Stenger, *Measuring Deterrence: A Comprehensive Methodology for Rating Deterrence Levels* (2000) (paper prepared for my War & Peace Seminar) (on file with author).

was the real beginning of World War I), to +1.75 (the German decision to invade Belgium and France in World War I). As a further effort at scaling and as a point of comparison, I undertook to simply provide an impressionistic rating based on my study of each pre-crisis setting. That produced high positive scores of +9 for both deterring a Soviet first strike during the Cuban Missile Crisis and NATO's deterrence of a Warsaw Pact attack and even lower scores than the more objective effort in settings where wars had occurred. Thus, I scored North Vietnam's decision to invade South Vietnam following the Paris Accords and the German decision to invade Poland at the beginning of World War II as -6. I scored the North Korean/Stalin decision to invade South Korea in the Korean War as -5, the Iraqi decision to invade Kuwait as -4, Milosevic's decision to defy NATO in Kosovo and the German decision to invade Belgium and France in World War I as -2, and the Austrian decision to attack Serbia and the Japanese decision to attack Pearl Harbor as -1. Certainly even knowledgeable experts would be likely to differ in their impressionistic scores on such pre-crisis settings, and a more objective methodology for scoring deterrence would be valuable. Nevertheless, both exercises did seem to suggest that deterrence matters and that high levels of deterrence can prevent war.

Yet another piece of the puzzle, which may clarify the extent of deterrence necessary in certain settings, may also assist in building a broader hypothesis about war. In fact, it has been incorporated into the efforts at scoring deterrence just discussed. That is, newer studies of human behavior are increasingly showing that certain perceptions of decision makers can influence the level of risk they may be willing to undertake. It now seems likely that a number of such insights about human behavior in decision making may be useful in considering and fashioning deterrence strategies. Perhaps of greatest relevance is the insight of "prospect theory," which posits that individuals evaluate outcomes with respect to deviations from a reference point and that they may be more risk-averse in settings posing potential gain than in settings posing potential loss.¹⁴² The evidence of this "cognitive bias,"

142. See generally Jack S. Levy, *Prospect Theory and International Relations: Theoretical Applications and Analytical Problems*, in *AVOIDING LOSSES/TAKING RISKS: PROSPECT THEORY AND INTERNATIONAL CONFLICT* (Barbara Farnham ed., 1994) (Barbara Farnham's *Introduction* and *Conclusion* to this volume also explore some of the caveats in applying "prospect theory" to political decision making. See *id.* at 1 and 159); Jack S. Levy, *Loss Aversion, Framing Effects, and International Conflict: Perspectives from Prospect Theory*, in *II HANDBOOK OF WAR STUDIES* 193 (Manus I. Midlarsky ed., 2000); ROSE McDERMOTT, *RISK-TAKING IN INTERNATIONAL POLITICS: PROSPECT THEORY IN AMERICAN FOREIGN POLICY* (1998). "[F]indings show no difference in the way that experts and novices are affected by framing or in

whether in gambling, trading, or, as is increasingly being argued, foreign policy decisions generally, is significant. Because of the newness of efforts to apply a laboratory-based “prospect theory” to the complex foreign policy process generally, and particularly due to ambiguities and uncertainties in framing such complex events, our consideration of it in the war/peace process should certainly be cautious. It does, however, seem to elucidate some of the case studies.

In the war/peace setting, “prospect theory” suggests that deterrence may not need to be as strong to prevent aggressive action leading to perceived gain. For example, there is credible evidence that even an informal warning to Kaiser Wilhelm II from British Foreign Secretary Sir Edward Grey, if it had come early in the crisis before events had moved too far, might have averted World War I. And even a modicum of deterrence in Kuwait, as was provided by a small British contingent when Kuwait was earlier threatened by an irredentist Iraqi government in 1961, might have been sufficient to deter Saddam Hussein from his 1990 attack. Similarly, even a clear U.S. pledge to defend South Korea before the attack might have prevented the Korean War. Conversely, following the July 28 Austrian mobilization and declaration of war against Serbia in World War I, the issue for Austria may have begun to be perceived as loss avoidance, thus requiring much higher levels of deterrence to avoid the resulting war. Similarly, the Rambouillet Agreement may have been perceived by Milosevic as risking loss of Kosovo and his continued rule of Serbia, and, as a result, may have required higher levels of NATO deterrence to prevent Milosevic’s actions in defiance. Certainly NATO’s previous hesitant response against Milosevic in the Bosnia phase of the Yugoslav crisis did not create a high level of deterrence.¹⁴³ One can only surmise whether the

how they respond to incomplete information.... [E]xperts are found to display essentially the same biases in judgment and decision making as college students.” *Id.* at 34. See also Robert Jervis, *Political Implications of Loss Aversion*, 13 *POL. PSYCHOL.* 187 (1992).

143. See STEPHEN T. HOSMER, *THE CONFLICT OVER KOSOVO: WHY MILOSEVIC DECIDED TO SETTLE WHEN HE DID* (2001). In this important RAND study on the Kosovo War, Stephen T. Hosmer writes:

One likely reason Milosevic did not capitulate early on was that he thought it too dangerous to do so. The proximate cause for the NATO bombing that began on March 24, 1999, was Milosevic’s refusal to sign the Rambouillet Agreement, which he and other Serbs opposed primarily because it would have ended the Serb hegemony in Kosovo. The agreement would have severely restricted Serbia’s military and police presence in the province and empowered NATO to constitute and lead a military force to help keep the peace. Serbs also believed the Rambouillet terms would have jeopardized Serbia’s ultimate sovereignty over Kosovo by permitting the province’s future to be determined by a referendum—a vote they knew the Kosovo Albanians seeking independence surely would have won. Although the Belgrade leaders did not

killing in Kosovo could have been avoided had NATO taken a different tack, both structuring the issue less as loss avoidance for Milosevic and considerably enhancing deterrence. Suppose, for example, NATO had emphasized that it had no interest in intervening in Serbia's civil conflict with the Kosovo Liberation Army (KLA) but that it would emphatically take action to punish massive "ethnic cleansing" and other humanitarian outrages, as had been practiced in Bosnia. And on the deterrence side, suppose it made clear in advance that any NATO bombardment would be severe, that ground troops would be introduced if necessary, that in any assault it would pursue a "Leadership Strategy" focused on targets of importance to Milosevic and his principal henchmen (including their hold on power), and that unlike earlier in Bosnia, NATO immediately would seek to generate war crime indictments of all top Serbian leaders implicated in any atrocities. The point here is not to second-guess NATO's actions in Kosovo but to suggest that taking into account potential "cognitive bias," such as "prospect theory," may be useful in fashioning effective deterrence. "Prospect theory" may also be relevant in predicting that it is easier to deter (that is, lower levels are necessary) an aggression than to undo that aggression. Thus, much higher levels of deterrence were probably required to compel Saddam Hussein to leave Kuwait than to prevent him from initially invading that State. In fact, not even the presence of a powerful Desert Storm military force and a Security Council Resolution directing him to leave caused Hussein to voluntarily withdraw. As this

cite them at the time as reasons for their refusal to sign the agreement, other provisions of the Rambouillet Agreement also seriously infringed on their nation's sovereignty by according NATO forces access, billeting, and utilization rights throughout the entirety of the Federal Republic of Yugoslavia (FRY).

Milosevic might have endangered his continued rule had he accepted Rambouillet's terms without a fight or a prior consensus to yield on the part of the Serbian populace. The Serbian people were strongly attached to Kosovo as the cradle of their ancient culture, and Milosevic's rise to power and credibility as a nationalist leader stemmed largely from his promotion of Serb hegemony in the province. Moreover, Milosevic had relied on Kosovo as a means to bolster his sagging political position within Serbia, exploiting the issue to raise nationalist passions, mobilize public support, and distract the people from the other serious problems plaguing Serbia.

....

While Milosevic expected to be bombed if he refused to sign the Rambouillet Agreement, his intelligence sources and perceptions of recent U.S. and NATO behavior probably encouraged him to believe that any NATO air strikes would be of limited duration and severity. But even if the bombing proved more costly than expected, Milosevic apparently assumed that sufficient countervailing pressures would eventually come to bear on NATO to cause the allies to terminate the bombing and agree to interim arrangements for Kosovo that were more acceptable to Belgrade.

Id. at xiii-xiv.

real world example illustrates, there is considerable experimental evidence in “prospect theory” of an almost instant renormalization of reference point after a gain. That is, relatively quickly after Saddam Hussein took Kuwait, a withdrawal was framed as a loss setting, which he would take high risks to avoid. Indeed, we tend to think of such settings as settings of compellance, requiring higher levels of incentive to achieve compulsion producing an action, as opposed to lower levels of deterrence needed for prevention.

One should also be careful not to overstate the effect of “prospect theory” or fail to assess a threat in its complete context. We should remember that a belated pledge by Great Britain to defend Poland before the Nazi attack did not deter Hitler, who believed under the circumstances that the British pledge would not be honored. It is also possible that the greater relative wealth of democracies, which have less to gain in all out war, is yet another *internal* factor contributing to the “democratic peace.”¹⁴⁴ In turn, this also supports the extraordinary tenacity and general record of success of democracies fighting in defensive settings, as they may also have more to lose.

In assessing the adequacy of deterrence to prevent war, we might also want to consider whether extreme ideology, strongly at odds with reality, is a factor requiring higher levels of deterrence for effectiveness. One example may be the extreme ideology of Pol Pot, which led to his false belief that his Khmer Rouge forces could defeat the Vietnamese.¹⁴⁵ He apparently acted on that belief in a series of border incursions against Vietnam that ultimately ended in his losing a war. Similarly, Osama bin Laden’s 9/11 attack against America, hopelessly at odds with the reality of his defeating the Western World and producing for him a strategic disaster, seems to have been prompted by his extreme ideology rooted in a distorted concept of Islam at war with the enlightenment. The continuing suicide bombings against Israel, encouraged by radical rejectionists and leading to fewer and fewer gains for the Palestinians, may be another example. If extreme ideology is a factor to be considered in assessing levels of deterrence, it does not mean that deterrence is doomed to fail in such settings but only that it must be at higher levels (and properly targeted toward the relevant

144. To the contrary, Russett’s work has not found much of a correlation with relative wealth independent of democracy. Any relative wealth effect may be overwhelmed by other factors.

145. During 1977 the Khmer Rouge attacked villages in border areas in both Vietnam and Thailand. Pol Pot apparently believed his own propaganda that each Khmer Rouge could kill thirty Vietnamese and, thus, that his forces could defeat Vietnam. The October and December Vietnamese responses to these attacks, from what was then a nation with one of the largest armies in the world, would likely have deterred most actors.

decision elites behind the specific attacks) to be effective, as is also true in perceived loss or compellance settings.¹⁴⁶

Even if major war in the modern world is predominantly a result of aggression by nondemocratic regimes, it does not mean that all nondemocracies pose a risk of war all, or even some, of the time. Salazar's Portugal did not commit aggression. Nor, today, do Singapore or Bahrain or countless other nondemocracies pose a threat. That is, today nondemocracy comes close to a necessary condition in generating the high-risk behavior leading to major interstate war. But it is, by itself, not a sufficient condition for war. The many reasons for this, of course, include a plethora of internal factors, such as differences in leadership perspectives and values, size of military, and relative degree of the rule of law, as well as levels of external deterrence.¹⁴⁷ But where an aggressive nondemocratic regime is present and poses a credible military threat, then it is the totality of external factors, that is, deterrence, that become crucial.

II. DEMOCRACY AND DETERRENCE

Fitting the puzzle together, major interstate war seems predominantly to be a synergy between a potentially aggressive nondemocratic regime and an absence of effective levels of deterrence. That is, democratic nations do not need to deter other democratic nations through external incentives even where contiguity, and thus higher risk, is present. Canada does not, and need not, fear a United States invasion, despite the overwhelming military superiority of the United States. And Belgium

146. Perhaps also, just as the correlation between democracy and avoidance of aggression leading to major interstate war is not perfect, so too the correlation between levels of deterrence reasonably assumed adequate to deter and an absence of aggressive attack is likely not perfect.

147. Captain Jane G. Dalton poses an important question in relation to why some nondemocracies are aggressive and others are not. She writes:

[M]ight [there] be some way to determine the factors that cause some non-democratic regimes to be aggressors against their neighbors, while others are not so inclined. In an era of limited resources for military deterrence and when the political will for deterrence is often lacking, it would be helpful to identify those non-democratic regimes that pose the most threat of aggression.

Letter to the author from Captain Jane G. Dalton, Legal Counsel to the Office of the Chairman of the Joint Chiefs of Staff (Oct. 1, 2001). This question points the way not only to the importance of external and internal incentives, in varying contexts, but also to the psychology and belief systems of regime elites; that is, the Waltz first "level of analysis." It may be an appropriate focus for a somewhat broadened "warning-response" mechanism recommended in the "Consequences for Foreign Policy" section of this article. As a rough beginning point, we might also explore whether risk of aggression rises as a nation becomes less democratic on a scale from liberal democracy through electoral democracy, through authoritarian and autocratic regimes to totalitarian governments. The totalitarians likely present the highest risk.

does not, and need not, fear a French invasion, despite the overwhelming military superiority of France. But NATO was certainly correct to work assiduously to deter an invasion from the then Soviet Union. Indeed, NATO may well have prevented World War III and may have been one of the most effective foreign policy initiatives in U.S. history.

The principal path to major war for democracies seems to be failing to ensure adequate levels of deterrence when confronted by potential aggressors. As has been seen, this can occur because of an absence of adequate military forces, as was true of the United States' entry into World War I and, in part, the Japanese attack on Pearl Harbor; or lack of communication of intent, as was true in the Korean and Gulf Wars;¹⁴⁸ or lack of believability of the guarantee, as was true of British entry into World War II and, in part, Milosevic's decisions to defy NATO in Bosnia and Kosovo. This means, if correct, that democracies should focus on ensuring effective levels of deterrence in response to threats of aggression or democide, considering all such factors, in settings where they would otherwise be prepared to go to war. To recognize this imperative, however, is not to supply the answers to the considerable strategic and political difficulties in meeting this challenge in settings such as those Britain faced when Hitler threatened Europe or those the United States faced when Hussein threatened Kuwait. But understanding the problem, and then focusing on the right objective, is at least a necessary condition for war avoidance.

Given the likely principal path to war for democracies, does the evidence suggest that democracies are uniquely poor at deterrence? Certainly some visible features of democracies may contribute to misperceptions by potential aggressors. The healthy pluralism and robust free speech, the anti-war skepticism, the checks and balances, and diffusion of power between the executive and legislative branches may all contribute to undermining deterrence in specific settings. Hitler was certainly encouraged by the infamous 1933 Oxford Union pledge: "This House will under no circumstances fight for its King and

148. In turn, this lack of communication of intent may stem from the lack of any intent; that is, the failure to have made any decision to actively engage in defense in the event of attack. That seems to have been the reality for Great Britain before World War I and the United States before both the Gulf and Korean Wars. Indeed, the Korean setting suggests that what consideration had been given to the defense of South Korea may have been at least impliedly negative relative to felt priorities in Europe before President Truman's post-attack decision "not on my watch." This problem of advance commitment may be one of the most difficult issues for democracies in enhancing their effectiveness in deterrence.

Country”¹⁴⁹ and the record of British and French diplomacy from 1935 to 1939 caving to Hitler’s demands. Japan was certainly encouraged in its perception of a weak United States, little committed to its Pacific interests, by the pervasive isolationist mood in the United States as reflected in the 1934-36 Nye Commission,¹⁵⁰ five “neutrality laws” passed from 1935 to 1939, the 1938 Ludlow Amendment,¹⁵¹ and the fact that when Congress finally reinstated the draft it did so by only one vote and on condition that no draftees fight outside this hemisphere. Examples of such misguided efforts to avoid war are legion. It is possible that settings of lessened public perception of war risk may generate political responses that can sometimes result in inadequate deterrence against the next major threat.¹⁵² Examples of such a cycle can be seen in the rapid U.S. demobilizations following World Wars I and II and, to a lesser extent, following the Cold War.

It is doubtful, however, that democracies are uniquely poor at deterrence. Rummel’s analysis of major wars between 1816 and 1991 shows that there were 198 war pairings between nondemocracies, the

149. Martin Ceadel, *The “King and Country” Debate, 1933: Student Politics, Pacifism, and Dictators*, 22 HIST. J. 397 (1979). See also ROBERT BLAKE, *THE DECLINE OF POWER* 184 (1985).

150. REPORT OF THE SPECIAL COMMITTEE ON INVESTIGATING THE MUNITIONS INDUSTRY, SENATE, 74TH CONG. 2D SESS., (Feb. 24, 1936). A principal thesis of this investigation was that the munitions industry was responsible for American entry into World War I. The tone of the investigation was isolationist.

151. The Ludlow Amendment was a constitutional amendment that would have barred United States participation in war, except in the case of invasion, unless the American people voted for war in a popular referendum. After putting great pressure on members of his party to oppose the measure, President Roosevelt prevented the amendment from being brought to the floor of the House by a relatively close vote of 209 to 188. The amendment had been revived by congressional isolationists in the aftermath of the December 1937 *Panay* incident in which an American gunboat at anchor in the Yangtze River was sunk by Japanese planes. Although Japan apologized for the incident, the isolationists were fearful that Roosevelt would use the incident for war with Japan. See II MELVIN I. UROFSKY & PAUL FINKELMAN, *A MARCH OF LIBERTY: A CONSTITUTIONAL HISTORY OF THE UNITED STATES* 732-33 (2002).

152. In a somewhat parallel argument, John M. Owen IV has suggested to the author that among other reasons why he is skeptical of my conclusion that democracies are probably no worse at deterrence than nondemocracies:

[C]apitalists don’t like war, and will generally resist state efforts to divert societal resources into military spending and hence deterrence....[and] democracies tend to prosper and thereby produce elites who are idealists and pacifists; these elites pressure democracies to reduce military spending and stay aloof from alliances (witness Britain in 1914; America before 1917 and between 1919 and 1941; indeed, witness the permanent anti-war movement in the West since the 1960s).

Memorandum to the author from John M. Owen IV (January 7, 2002). Interestingly, this first argument is the mirror image of an old Marxist refrain I sometimes heard when I chaired the United States Institute of Peace: that wars were caused by capitalist pressures in a search for markets or arms sales.

largest category of war in this period.¹⁵³ If the earlier analysis of the importance of deterrence in war avoidance when dealing with potential aggressors is correct, then this level of war between nondemocracies suggests that nondemocratic regimes also may have great, if not greater, difficulty deterring.¹⁵⁴ Perhaps the principal mechanisms are somewhat different, as when totalitarian leaders pursue superficially shrewd deals with other such leaders that backfire, as with the Molotov-Ribbentrop Pact. We might also note in favor of the deterrent ability of democracies that they can be quite effective at deterrence when they clearly focus on and unite against the threat. NATO, as has been urged, may be one of the most effective efforts at deterrence in human history. Similarly, the coalition forces in the Korean and Gulf War seem to have put in place effective deterrence to prevent a recurrence. Further, the fact that democracies overwhelmingly win the wars they fight should add to their effectiveness in deterrence.¹⁵⁵ Evidence also suggests that “when democratic states are strongly resolved to use force, they are better able to convince their opponents of that fact than are nondemocratic states.”¹⁵⁶ The real lesson may simply be that ensuring effective deterrence is difficult and that if the model is correct, leaders need to focus more explicitly on achieving it against threatening nondemocracies.¹⁵⁷

153. See RUMMEL, *supra* note 2, at 13.

154. Without adjusting for the greater number of nondemocracies in the 1816-1991 period, one cannot reach any conclusions from this data about the greater or lesser propensity to war of nondemocracies. Professor Russett indicates that his work finds that “autocracies are about as likely to fight each other as they fight democracies.” Letter to the author from Professor Bruce M. Russett (September 24, 2001).

155. Factors accounting for this impressive track record in war winning may include the general greater wealth of democracies, their greater ability to obtain credit for war financing, a more motivated military and citizenry, greater vulnerability of their leadership to removal in the event of war loss, and greater effectiveness of their leadership in engaging in wars they can win. See generally DAN REITER & ALLAN C. STAM, *DEMOCRACIES AT WAR* (2002).

156. SCHULTZ, *supra* note 46, at xiv. Schultz also writes: “The prediction of fewer wars [for democracies] derives solely from the democratic state’s superior ability to signal its true preferences....” *Id.* at 232. Further, he concludes, “threats from democratic governments are less likely to be resisted than threats made by nondemocratic governments. The reason is credibility....” *Id.* at 234. And he says, “Extended deterrent threats made by democratic governments and supported by major opposition parties are more likely to be successful than are threats made by nondemocratic governments.” *Id.* at 234. But dissent by opposition parties, when present, may reduce the effectiveness of democratic state deterrence. See *id.* at 233. Of relevance to the democratic peace Schultz concludes: “[D]emocratic states issue challenges at a lower rate, face resistance at a lower rate, and consequently fight wars at a lower rate than do nondemocratic states.” *Id.* at 237. See also Schultz, *Domestic Opposition and Signaling in International Crises*, *supra* note 46.

157. Professor Bruce Russett has suggested that with respect to avoidance of the largest wars the core problem in deterrence is not settings where one power has overwhelming advantage but

If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional “causes” of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty and social injustice, competition for resources, incidents and accidents, greed, fear, perceptions of “honor,” and many other factors. Such factors may well play a role in motivating aggression or generating fear and manipulating public opinion. The reality, however, is that while some of these factors may have more potential to contribute to war than others, there may well be an infinite set of motivating factors, or human wants, motivating aggression. It is not the independent existence of such motivating factors for war but rather the circumstances permitting or encouraging high-risk decisions leading to war that is the key to more effectively controlling armed conflict. And the same may also be true of democide. The early focus in the Rwanda slaughter on “ethnic conflict,” as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents.¹⁵⁸ Certainly if we were able to press a button and end poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of robust correlation with any of these “traditional” causes of war that is reflected in the “democratic peace.” Further, given the difficulties in overcoming many of these social problems, an approach to war exclusively dependent on their solution may doom us to war for generations to come.

rather settings of relatively even balance. Here the problem is “how to commit credibly... [when] the confidence of either side in its ability to prevail in war should not be high.” He then suggests that “democracies do seem to have some advantage [in deterrence], with an ability to commit credibly to the use of force. Especially so if they are united.” Letter to the author of Sept. 24, 2001.

158. See, e.g., MICHAEL M. BARNETT, *EYEWITNESS TO A GENOCIDE: THE UNITED NATIONS AND RWANDA* (2002); Alan J. Kuperman, *Rwanda in Retrospect*, FOREIGN AFF. 94 (Jan./Feb. 2000); *Rwanda: The Preventable Genocide*, OAU Doc. IPEP/Panel (May 29, 2000); Ken Ringle, *The Haunting*, WASH. POST, June 15, 2002, at C1; Brian Allan Hughes, *A Case Study of the Rwandan Genocide* (April 20, 1999) (paper prepared for my War & Peace Seminar) (on file with author).

A useful framework for thinking about the war puzzle is provided in the Kenneth Waltz classic *Man, the State and War*,¹⁵⁹ first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or “images,” of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high-risk behavior leading to major war. In this, the “democratic peace” is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision to go to war, is also critical *when government structures do not restrain such high-risk behavior on their own*. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant—I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who are disposed to aggressive military adventures and in creating incentive structures predisposed to high-risk behavior. We might also want to keep open the possibility that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders as we assess the likelihood of aggression and levels of necessary deterrence. Nondemocracies’ leaders can have different perceptions of the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, the key to war avoidance is understanding that major international war is critically an interaction, or synergy, of certain characteristics at levels two and three—specifically an absence of democracy and an absence of

159. KENNETH N. WALTZ, *MAN, THE STATE, AND WAR: A THEORETICAL ANALYSIS* (1954). The Institute of War and Peace Studies is at Columbia University.

effective deterrence.

Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high-risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk.¹⁶⁰

III. TESTING THE HYPOTHESIS

Hypotheses, or paradigms, are useful if they reflect the real world better than previously held paradigms. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. No general construct will fit all cases even in the restricted category of "major interstate war;" there are simply too many variables. We should insist, however, on testing against the real world and on results that suggest enhanced usefulness over other constructs. In testing the hypothesis, we can test it for consistency with major wars. That is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence?¹⁶¹ And although it, by itself, does not prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in non-war settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy. That is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

Running the hypothesis for the principal wars of the twentieth century does seem to provide support. While until recently the origins of World War I were more actively debated, there seems increasing support for the proposition, deeply believed by President Woodrow Wilson and enshrined in the Versailles Treaty, that nondemocratic

160. I am indebted to John M. Owen IV for noting this powerful way of integrating my argument concerning the central importance of both democracy and deterrence in war avoidance. Memorandum to the author from John M. Owen IV (January 7, 2002).

161. For greatest confidence in result, I would want to score *all* major wars throughout human history as to the extent to which they present both a nondemocratic aggressor and an absence of effective deterrence. I have not yet carried out such an exercise.

Germany and Austria were the aggressors.¹⁶² The key is understanding that the war really began on the Eastern Front with an aggressive Austrian attack against Serbia, enthusiastically encouraged by Germany. That aggression in turn precipitated a cascade of Russian mobilization and Germany's declaration of war against France, Russia, Luxembourg, and Belgium. Even after the attack on Serbia, France ordered its troops to pull back from the border with Germany. And democratic Italy, a formal ally of the Central Powers, declared that it was only committed to a war of defense and accordingly pulled out of the coalition and instead joined the Entente Powers. Contrary to the oft-repeated arguments about World War I being caused by a tightening of competing alliances, there was no real alliance with Britain, except at a low level in military to military planning, and the British would not even tell the French that they would assist them in the event of German invasion because it might leak to the Germans! Much less did they seek to communicate such a pledge to Kaiser Wilhelm II. Indeed, we know that even late in the crises, both the Kaiser and Foreign Secretary Gottlieb von Jagow believed that Britain would remain neutral. In turn, the lack of British willingness to publicly join forces with France in deterring Germany reflected a split within the Liberal leadership. The prime minister, H. H. Asquith, confided to his girlfriend: "I suppose a good 3/4 of our own party in the H[ouse] of Commons are for absolute non-interference at any price."¹⁶³ And as to the initial attack on Serbia, the Kaiser felt the risks of Russian intervention were low since he believed Russia was in no way prepared for war. This understanding of the aggressive intentions of Germany's leaders in World War I, even if they did not seek the kind of world war that resulted, is now widely accepted in Germany, as reflected, for example, in the work of the

162. Despite its beginning democratic institutions, the decision for war in Germany was not democratically controlled. *See generally* KAGAN, *supra* note 129.

[T]he Kaiser [was]...the supreme commander of the armed forces; he alone had the privilege of making foreign policy and of making war and peace. To be sure, no man could carry out those responsibilities alone, nor was the Kaiser free from pressures that influenced his decisions, yet it would be a mistake to ignore the degree to which the Kaiser and his appointed officials were free to make the most fateful decisions for his nation and people. One scholar rightly calls the German Empire, "an autocratic monarchy with a few parliamentary trimmings.... [I]t is not an exaggeration to say that [in foreign affairs] the Reich Constitution endowed the House of Hohenzollern with an almost absolutist position."

Id. at 86.

163. MICHAEL & ELEANOR BROCK, H. H. ASQUITH LETTERS TO VENETIA STANLEY 146 (1982).

German historian Fritz Fischer.¹⁶⁴ Paradoxically, some in the United States, France, and Britain seem to have accepted the arguments to the contrary poured out by the special section of the German Foreign Office set up after the war to challenge the imputation of German war guilt.¹⁶⁵

World War II is, on the Western Front, a poster child for the paradigm.¹⁶⁶ The paradigm also meets the origins of the war in the Pacific theater as well, where the government of Tojo intentionally set out on an aggressive “Southern Strategy” following Japan’s aggression against China and growing resource concerns from the resulting sanctions. No doubt deterrence, which might have been expected from Britain, France, and the Netherlands in the area of Japanese expansion, was substantially reduced by the then perceived defeat of all three powers by Hitler.¹⁶⁷ The United States seemed the only real obstacle to the proposed hegemony, and many factors suggested to Japanese leaders that the United States could be effectively removed by a major strategic blow against the fleet concentrated at Pearl Harbor.¹⁶⁸

Whatever the debate about the comparative roles of Stalin and Kim Il Sung in the Korean invasion, it is clear that there was almost no deterrence before the attack. U.S. military forces, except for a 500-man training team, were withdrawn from South Korea in 1949. Congress had refused to adequately arm the government of South Korea as requested by our ambassador and military command in Korea, and both Secretary

164. See, e.g., FRITZ FISCHER, *GERMANY’S AIMS IN THE FIRST WORLD WAR* (1967) (originally published in German in 1961); FRITZ FISCHER, *WORLD POWER OR DECLINE: THE CONTROVERSY OVER GERMANY’S AIMS IN THE FIRST WORLD WAR* (1974) (originally published in German in 1965).

165. For a discussion of this special “War-Guilt Section” or “Kriegsschuldreferat,” and the periodical it published, see MARTIN GILBERT, *THE ROOTS OF APPEASEMENT* 23 (1966).

166. For a stimulating discussion of “Munich” and the meaning of “appeasement” in the origins of World War II, see *THE MEANING OF MUNICH FIFTY YEARS LATER* (Kenneth M. Jensen & David Wurmser eds., United States Institute of Peace 1990).

167. Japan had initially focused on expansion to the North against the Soviet Union. But a number of factors both deterred the Japanese in that focus and ultimately reduced deterrence against the alternate “southern strategy.” Thus, in a test effort against the Soviets in 1939, Japan lost over 15,000 in the Nomonhan incident (or Soviet-Japanese Border War) near the Mongolian border. Subsequently, after Hitler invaded the Soviet Union, Japan assembled an army to invade the Soviet Union. But the Soviets still kept enough divisions in the East to deter Japan from invading but not enough to present a credible threat of a two front war for Japan. The threat of a two front war for Japan was furthered reduced by the April 1941 Japanese-Soviet neutrality pact. Moreover, in July of 1941, Japan successfully occupied Indochina without French resistance, thus confirming the “southern strategy.”

168. The absence of effective deterrence before Pearl Harbor is effectively summarized by Professors Reiter and Stam as “the hypernationalist military government in Japan drastically underestimated the American willingness to fight when attacked.” REITER & STAM, *supra* note 37, at 36.

of State Dean Acheson and General Douglas MacArthur, as Supreme Allied Commander Far East, had made public statements implying that Korea was beyond the United States defense perimeter.¹⁶⁹ Indeed, these statements were consistent with the views of the Joint Chiefs in the prevailing climate of limited military resources and focus on the Soviet threat in Europe. Kim Il Sung is said to have sought to persuade Stalin that the United States would not intervene because the attack would be a decisive surprise attack lasting only a few days or weeks. And the overall strategic equation had just been drastically changed by the 1949 Soviet explosion of their first atomic weapon and the Communist takeover of China.¹⁷⁰ Moreover, if the United States had not fought to prevent a Communist takeover of China, why would it do so in Korea?

The Vietnam morass cannot be quickly summarized, but it should be noted that the defeat of South Vietnam came about only after the Paris Accords had produced a Nobel Peace Prize for both sides and that, following the American force withdrawal, congressional abandonment of Vietnam, and collapse of the presidency in Watergate, a totalitarian North launched a twenty-two division Korean style regular army invasion of the South. The absence of deterrence was so complete that North Vietnam kept back only its anti-coup division around Hanoi. And the lack of American will for reengagement was so total that President Ford was not even able to get both houses of Congress to agree on a simple authorization to use U.S. forces for the orderly evacuation of Americans from Saigon.¹⁷¹

The Iran-Iraq War and the Gulf War also closely fit the hypothesis. In both, an aggressive Saddam Hussein, sensing an absence of effective deterrence, initiated an attack. The collapse in Iranian deterrence, which lured Hussein in the war against Iran, was a product of the domestic turmoil following the fall of the Shah. Kuwait simply seemed an easy target after the bitter experience in the war with Iran. And, while there could have been signals from the United States or Britain to give Saddam pause before the invasion of Kuwait, no such signals

169. The Acheson statement, reprinted at 20 DEPT. STATE BULL. 106 (1950), is well known. For the little-known MacArthur statement, see THE NEW YORK TIMES (March 2, 1949). There has also been informed speculation that the Soviets affirmed from intelligence efforts directed against the United States the then relative lack of U.S. interest in Korea and the relatively weak intelligence and military assets in the area.

170. On the Korean War, see generally THE KOREAN WAR IN RETROSPECT (Daniel J. Meador ed., 1998).

171. For President Ford's unsuccessful effort to get congressional authorization for the evacuation of United States personnel from Vietnam, see ROBERT F. TURNER, THE WAR POWERS RESOLUTION: ITS IMPLEMENTATION IN THEORY AND PRACTICE 48-59 (1983).

materialized.¹⁷² As the dramatic reduction in deterrence accompanying the Iranian revolution illustrates, it is possible that the apparently greater risk of war for nations undergoing a transition to democracy, postulated by Professors Mansfield and Snyder in their 1995 *Foreign Affairs* article “Democratization and War,” may result, at least in part, from the dramatic reduction in levels of deterrence in many such settings.¹⁷³ Prior to the ongoing revolution in the former Soviet Union, for example, levels of deterrence from centralized state power made a serious Chechnya insurrection unlikely.

Conversely, the Gulf War illustrates yet another example of how *effective* deterrence may have *worked* to prevent Saddam Hussein from using chemical weapons against the coalition to liberate Kuwait, despite his earlier use of such weapons against Iran and even his own people. George Bush and Margaret Thatcher clearly warned Hussein that the coalition would not tolerate the use of weapons of mass destruction. In a letter to Hussein, Bush said, “[Y]ou and your country will pay a terrible price if you order unconscionable acts of this sort.”¹⁷⁴ A UN Special Commission on Iraq later found copies of this Bush letter all over the country. And a 1994 European Union Assembly report found that the presence of nuclear weapons on U.S. aircraft carriers in the Gulf may well have deterred Iraq.

The failure of the second phase of the UN operation in Somalia and subsequent failed UN efforts in Rwanda also reflect an absence of effective deterrence against aggressive nondemocratic regimes. The first phase of the Somalia operation, undertaken by President George Bush at

172. On the Gulf War, see generally JOHN NORTON MOORE, *CRISIS IN THE GULF: ENFORCING THE CONSTITUTION* (1992).

173. To the contrary, the latest work by Mansfield and Snyder addresses the question as to whether the reason for the greater involvement in war that they find for nations undergoing a transition to democracy relates to an enhanced military weakness and concludes that this factor cannot provide “the main reason for their heightened risk of war.” See Mansfield & Snyder, *supra* note 11, at 333 (2002). The authors report that they find such incomplete democratizing transition states frequently “the initiators of war.” *Id.* at 298, 330-33. They also report, however, that “transitions that quickly culminate in a fully coherent democracy are much less perilous.” *Id.* at 298. Since the normative database that Mansfield and Snyder use to score war initiation is the well-known Small and Singer *Correlates of War* project, which seems not to register the at minimum post-Charter differentiation between democratic and nondemocratic nation aggression in major war, I remain skeptical about the Mansfield and Snyder conclusion that nations in incomplete transition to democracy owe any enhanced involvement in conflict to their own aggressive initiation of war. It should be noted that the broader Mansfield and Snyder thesis about a higher rate of war among nations in transition to democracy also remains subject to considerable debate. But even if their thesis is accepted in full, it does not detract from the core of the “democratic peace” findings.

174. MICAH SIFRY & CHRISTOPHER SERF, *THE GULF WAR READER: HISTORY, DOCUMENTS, OPINIONS* 178-79 (1992).

the urging of Secretary General Boutros Boutros-Ghali, may have saved as many as a million Somalis from starvation as feuding clan leaders sought to use starvation as a weapon in their political struggles. Following withdrawal of the bulk of U.S. forces, however, Mohamed Farrah Aidid and his Habr Gidr clan began attacking UN forces in a bid to take control rather than participate in a UN brokered coalition government. On June 24, 1993, twenty-four Pakistani UN peacekeepers were killed, apparently by Aidid's forces. These attacks occurred in a setting of substantially reduced deterrence. Understandably, UN leadership, supported by the United States, sought to hold Aidid responsible and to move forward with the mission. Subsequently, after the United States led a special operation in Mogadishu against Aidid's forces that resulted in two MH-60 Black Hawk helicopters shot down and eighteen U.S. soldiers dead, President Bill Clinton ended the effort to control Aidid, rather than commit the forces necessary to decisively carry out the Security Council mandate. The result, in a setting of already low deterrence, was a collapse of the UN mission. One week after the battle of Mogadishu, in a context of wide press attention given in the aftermath of that battle to the body of an American soldier dragged through the streets, the *U.S.S. Harlin County*, on a UN peacekeeping mission to Haiti, was turned away from the dock in Port-au-Prince by an orchestrated "riot" of fewer than 200.¹⁷⁵ The detrimental consequences for UN operations continued. General Marrack Goulding, the UN Under-Secretary-General for Political Affairs, informed me that following Clinton's decision to stand down U.S. forces in Somalia, UN peacekeepers around the world were greeted with the cry: "Welcome to Mogadishu." It was in that climate that autocratic Hutu leaders in Rwanda concluded that killing a few UN peacekeepers would cause them to go home and give the Hutu extremists a free hand against the Tutsis. They promptly attacked and killed Belgian peacekeepers and were rewarded when Belgium followed Clinton's lead and withdrew their forces. At that point no further consensus could be developed in the Security Council to intervene against the developing genocide in Rwanda. We will never know what would have happened had Clinton stuck with the UN mandate in Somalia and committed U.S. forces to overwhelmingly prevail against Aidid and his apparent Osama bin Laden backers. We do know, however, that the collapse of the UN operation in Somalia and the subsequent genocide in Rwanda took place in a setting of rapidly

175. On the Somalia operation, see generally MARK BOWDEN, *BLACK HAWK DOWN* (2000).

decreasing deterrence against nondemocratic regimes.¹⁷⁶

Non-war settings, or “the dogs that did not bark,” also seem generally consistent with the hypothesis. Thus, neither Canada nor Switzerland seek to militarize their borders with the United States or France, respectively, despite overwhelming military (including nuclear) superiority by their large and contiguous democratic neighbors. Nor do the citizens of the United States fear the French or British nuclear deterrents, despite their ability to devastate the United States—*vice versa* for the citizens of France and Britain. And NATO, where substantial levels of conventional and nuclear deterrence are present, is a tight alliance that may well have avoided major war *wherever its pre-commitments were clear*, as was certainly true for any conventional invasion of the core of NATO.

Analysis of abrupt changes in the two elements in the war synergy also lends support to the hypothesis. As examples, the ongoing shift in the former Soviet Union from totalitarianism toward democracy produced changes of enormous consequence, many of which would have been unthinkable under the former Soviet regime. These include the fall of the Berlin Wall, the reunification of Germany, the dissolution of the Warsaw Pact, the expansion of NATO to the East, dramatic reductions in military forces, the sale by Russia to the U.S. of fissionable material recycled from Soviet nuclear weapons, and at least a partial removal of the old Soviet automatic veto in the Security Council. Moreover, the spillover effects on arms control from these governmental changes in the former Soviet Union were far greater than the converse spillover from arms control on U.S./Soviet political relations. And, as examples with respect to levels of deterrence, it has already been noted that the internal turmoil following the Iranian revolution produced a rapid decrease in deterrence and ultimately a mistaken attack by Saddam Hussein. Conversely, once coalition forces had been committed to defend Saudi Arabia in Operation Desert Shield, deterrence against a full scale Iraqi attack on that country increased

176. As Mark Bowden, the author of *Black Hawk Down* has written,

No matter what ultimate impact Aidid's arrest would have had on the UN's goals in Somalia, it was important to see the mission through once Task Force Ranger was committed. The lesson our retreat taught the world's terrorists and despots is that killing a few American soldiers, even at a cost of more than five hundred of your own fighters, is enough to spook Uncle Sam.... Military credibility is not just a matter of national pride. It lessens the chances of war because enemies are less inclined to challenge....

Id. at 428-29.

In a conversation with me, Under-Secretary-General Goulding also agreed that if the United Nations had been able to seize and try General Aidid that the subsequent attack on the Belgian peacekeepers in Rwanda may never have occurred.

dramatically. Even in the absence of Desert Storm, the threat had likely passed for Saudi Arabia. Similarly, the partly internal, partly international wars in the ongoing breakup of the former Yugoslavia seem to be a product, at least partly, of a variety of factors reducing deterrence that was formerly present under Tito's iron rule. It might also be noted that the absence of direct great power war since World War II—the longest such period in five centuries—coincides with the powerful increase in deterrence from nuclear forces.

This quick survey, simply using historical case studies, is not presented as a full test of the hypothesis but rather as suggestive of the kinds of inquiry needed to more fully explore it. Certainly efforts to date by the author along these lines reinforce the suggested importance of the two principal elements of the hypothesis. The many powerful correlations between democratic governance and a wide range of human aspirations also lends support to at least the “democratic peace” component of the hypothesis. As an important point of emphasis, the reader should keep in mind that the hypothesis has been developed for *major interstate war*, not for settings of minor coercion, civil war, or colonial wars, although there is likely some relevance for those settings as well.¹⁷⁷

These case studies also do not bear out the classical argument that war is simply caused by the “security dilemma” itself in an anarchic international system.¹⁷⁸ Austria, with German urging, did not attack Serbia in World War I because of fear of Serbian invasion. Indeed, it had intelligence that the assassination of the archduke by a representative of the “Black Hand” was *not* an action of the Serbian government. Nor was Hitler motivated in his attack on Poland by fear of

177. There is no reason to believe that “incentive theory” as an approach recommended here would not work as well in minor coercion and civil war settings as I believe it will for major war and other principal foreign policy objectives. Minor coercion settings, however, may well reflect more active democratic nation use of force, although I believe that in the modern world such minor coercion by democracies is likely predominantly still to reflect value conservation rather than value extension. Civil wars, however, may present different key variables than those for interstate war as discussed here. The international law normative standards concerning *jus ad bellum*, for example, are not principally applicable in purely internal conflicts. Likely, however, the degree of democratic legitimacy of decision makers initiating military force and the levels of effective deterrence will retain importance in such civil war settings. For example, several student papers in my War & Peace Seminar have demonstrated a striking applicability of the democracy/deterrence synergy to the American Civil War; the not yet democratic Confederacy initiated the use of force at Fort Sumter and levels of Union deterrence were low. The European urge for colonies, of an earlier era, was likely perceived by them principally as low risk minor coercion. Once attained, however, the colonial powers were willing to expend substantial blood and treasure to retain them, as France's struggles in Algeria and Indo-China recall.

178. See also RANDALL L. SCHWELLER, *DEADLY IMBALANCES* (1998).

that country. And does anyone really believe that Saddam Hussein feared an attack from Kuwait? Similarly, these case studies of principal wars of the twentieth century do not consistently support a theory of war resulting from an action-reaction in the search for security leading to a “conflict spiral.” Again, does anyone seriously believe that such a “spiral” explains Hitler’s invasion of Poland or Hussein’s invasion of Kuwait? Further, perhaps the clearest such “action-reaction spiral” we might argue—the massive nuclear arms build-up between the United States and the Soviet Union—did not result in war. And if we change the focus of the security dilemma from fear-of-attack-as-cause to one of war-occurs-because-there-is-no-international-enforcement-mechanism-to-prevent-it, while the above case studies do fit, all wars and all non-wars also fit. The theory then over predicts and tells us little about individual wars in the real world.¹⁷⁹ Further, in this broadest sense “the security dilemma” is itself a statement about a generalized absence of deterrence against aggression in the international system. And the

179. Other traditional approaches to the cause of war, which, like the “security dilemma,” over predict, include the existence of nation states, differing national interests of nations, disputes among nations, armaments, and aggression rooted in the nature of man. All apply to a greater or lesser degree to all wars but they also apply to a universe of non-wars. As such, while in some sense they may be relevant, they over predict and give little useful macro information about the cause of war. Other “causes” with a problem of over prediction, although they may not be present in all wars, include absence of dispute settlement mechanisms, ideological disputes, ethnic and religious differences, social and economic injustice, poverty, emotions of fear, greed, and honor, competition for resources, markets, or other values, trade disputes, and munitions manufacturers. For example, Professor Rudy Rummel has determined that there is a huge universe of settings in which peoples of different ethnic or religious backgrounds live together peacefully. While unquestionably the use of the ethnic or religious card can be employed to motivate aggression or genocide, these differences by themselves do not explain such events. Similarly, given the background of Osama bin Laden and many of his top al-Qaeda associates, the mantra that the 9/11 attacks were simply the product of “poverty” is laughable. See PETER L. BERGEN, *HOLY WAR INC.* 29 (2001). We do want to reduce poverty, and support for democracy, the rule of law, trade, and human freedom are the most effective means to serve that goal. Further, a reduction of poverty and enhancing growth will likely have some effect in reducing violence. It is myth, however, to simply ascribe war or terrorism to poverty. For example, “[a]n analysis of 350 terrorists identified in newspapers between 1966 and 1976—people who belonged to 18 groups, such as Japan’s Red Army and Turkey’s People’s Liberation Army—found that about two-thirds had been to college.” Sebastian Mallaby, *Does Poverty Fuel Terror?* WASH. POST, May 20, 2002, at A21.

One traditional argument about the cause of war that seems not to predict major war even as well as a stopped clock tells time is that wars result by accident. Evan Luard concludes in his survey of wars since 1400: “It is impossible to identify a single case in which it can be said that a war started accidentally; in which it was not, at the time the war broke out, the deliberate intention of at least one party that war should take place.” EVAN LUARD, *WAR IN INTERNATIONAL SOCIETY: A STUDY IN INTERNATIONAL SOCIOLOGY* 232 (1986). A possible minor example of an accidental war, however, is the brief 1969 “soccer war” between Honduras and El Salvador. See *id.*, at n.227.

“security dilemma” argument in all its manifestations does capture a part of the reality that security concerns may, in particular contexts, generate powerful incentives for action and otherwise affect the deterrent context.

IV. BUILDING ON OTHER APPROACHES

As we seek broader understanding of war and measures for avoiding it, we should seek to identify and incorporate the insights from other approaches that have to date served as the principal arsenal against war. Certainly neither the importance of democracy nor the importance of deterrence as measures for war avoidance is a new insight. As has been seen, focus on the importance of democracy in this respect goes back at least to Kant, and there is a classic statement of deterrence in Sun Tzu’s *The Art of War*¹⁸⁰ over 2000 years before Carl von Clausewitz in his classic *On War* wrote of war as “a branch of political activity.”¹⁸¹ Similarly, many other approaches, including diplomacy, balance of power, collective security, arms control, and peaceful mechanisms for dispute resolution, offer insights that should not be lost in the search for a more complete explanation of war. The challenge is to incorporate insights from all approaches while recognizing the limitations that may also be inherent in some. Given the cacophony of competing admonishments to decision makers in the effort to achieve security, it is also important that we develop greater consensus around approaches that are rooted in better supporting evidence and the best insights from all approaches. One still hears voices arguing against the importance of democracy or urging that deterrence is illusory in the search for peace. In international law, there is still a powerful “minimalist” camp, analogous to a “minimalist” view in deterrence theory, which focuses on arguments limiting the right of individual and collective defense while largely ignoring the problem of aggressive attack, whether such attack is open invasion or clandestine terrorism. The theorists taking this view seem not to recognize that to effectively treat aggression and defense identically under the law is to destroy law’s effectiveness in enhancing deterrence.

Diplomacy is a critical tool. When done well, negotiation can not

180. SUN TZU, *THE ART OF WAR* (Ralph D. Sawyer ed., 1994). Sun Tzu wrote: “In order to cause the enemy to come of their own volition, extend some [apparent] profit. In order to prevent the enemy from coming forth, show them [the potential] harm.” *Id.* at 191.

181. See CARL VON CLAUSEWITZ, *ON WAR* (Michael Howard & Peter Paret trans. & eds., 1984) (the original notes date from 1816-1830). “[W]ar is only a branch of political activity” *Id.* at 605.

only settle longstanding disputes and promote stable expectations but it can also mobilize deterrence and in many ways reduce the risk of war. As such, diplomacy is certainly a staple in the struggle against war. But diplomacy alone is not always the answer to the problem of war. And when poorly conceived, as in the Munich debacle, it can exacerbate the risk of war and further undermine deterrence. Even the best-intentioned efforts at peaceful resolution may unravel, as the recent effort by President Clinton to assist in resolving the Palestinian/Israeli conflict illustrates all too tragically.

Balance of power theory is many things, including a useful predictive tool. Its insight that power matters is of fundamental importance. Indeed, power is an important component of deterrence. Bruce Russett and John Oneal report from their empirical analysis of war that “an overwhelming imbalance of power... has an important deterrent effect.”¹⁸² In many respects, however, a focus on government structures and on deterrence itself, including the crucial communication dimension of deterrence, may be a more important predictive focus than reliance on the distribution of power through “equilibrium,” “bipolarity,” and “multipolarity,” or “hegemonic transitions” of power in the international system.¹⁸³ It should also be noted, as this multiplicity of theories suggests, that balance of power theory, broadly conceived, as yet has produced no consensus reconciling its own opposing approaches. This is particularly true in the struggle between true “balance of power” theorists who believe that balance is stabilizing and the “power transition” theorists who believe that hegemony is stabilizing.¹⁸⁴ Neither has been able to convincingly explain the occurrence of war. But paradoxically, both can be correct in reflecting the importance of power as one factor in a complex context of deterrence. Moreover, the sometimes implicit equating of national interest with the actions of a nation’s leaders may miss the crucial insight that it may be the interests of the regime elites, not some amorphous national interest, which is driving policy in nondemocratic nations. And a focus on achieving a

182. RUSSETT & ONEAL, *supra* note 8, at 146.

183. In general these realist and neorealist approaches by themselves have not produced strong results when empirically tested. See generally PAUL K. HUTH, *STANDING YOUR GROUND* 182 (1998).

184. Jack Levy describes this core clash among balance of power theorists:

Because balance of power theory posits that concentrations of power are destabilizing and that hegemony never occurs, while power transition theory posits that hegemony frequently occurs and is stabilizing, the two appear to be diametrically opposed. Indeed, power transition theory grew directly out of Organski’s critique of balance of power theory (Organski and Kugler, 1980).

Levy, *supra* note 3, at 355.

balance may distract us from the threat of internal democide and other failures of deadly regimes as may be illustrated by the aftermath of the Gulf War in which Saddam Hussein likely killed more Shi'ites and Kurds than there were combatant casualties in the war itself.

Collective security, as sought through the League of Nations and now the United Nations, offers considerable theoretical justification if deterrence is a crucial variable in war avoidance. Sadly, however, its limitations in the real world, including community differences in defining aggression, the free-rider problem, the veto, and the need to produce a powerful champion that will lead the effort, have hampered realization. As we examine realistic ways to enhance collective security despite these real-world obstacles, we may sharpen our effort by comparing successful collective security, as in NATO, with the more problematic global effort. In doing so, an additional shortcoming of UN efforts emerges that might be susceptible to improvement. NATO achieves high deterrence in large part because it is a *known pre-commitment with forces in the field*. This stands in sharp contrast with the *possibility*, likely remote in most settings, that the United Nations might take action after the fact in the event of aggression. It might be possible, without undertaking unachievable "reforms," to encourage selective Security Council pre-commitments, possibly even with forces in the field earmarked from willing member states and financed by the requesting state. Efforts to pursue a meaningful presence force available for such Security Council actions, including pre-commitments, might be useful in deterring both war and all too frequent democide. The Security Council already has the equivalent of a pre-commitment in both Korea and Kuwait against any renewed attack. Why must such pre-commitments come only after a war? And above all, as Somalia, Bosnia, and Rwanda all demonstrate, when the Security Council commits, it must do so with overwhelming force and it must prevail. Anything short of this merely reduces the already limited effectiveness of the United Nations.¹⁸⁵

Despite lack of substantial evidence that arms races cause war, well done arms control can properly serve a variety of worthy goals. These include enhancing stability, reducing the risk of accidental or unauthorized launch, banning certain inhumane systems or practices, reducing defense expenditures, and contributing to confidence building. Further, the problem of weapons of mass destruction is a special

185. For further development of these suggestions for enhancing United Nations effectiveness against war and democide, see Moore, *Toward a New Paradigm*, *supra* note *.

problem requiring special attention. We should not, however, fall into the trap of focusing on arms control as the central element in war avoidance. And we should understand that poorly done arms control has the potential to undermine deterrence, as when the United States accepted a fortification freeze in its Pacific Island possessions in the 1922 Washington Agreement. The Japanese concluded that the United States lacked the will to defend their territories there. Similarly, the 1935 Anglo-German Naval Agreement—made in blatant disregard of the limitations imposed on Germany by the 1919 Treaty of Versailles, ignoring massive known violations by Germany of those legal restraints, and negotiated secretly without Britain even notifying their French ally of the effort—may well have reduced deterrence on Hitler. Banning the indiscriminate use of landmines, too often strewn about by ruthless dictators with disregard for records as to their location or the protection of civilians, is an important achievement. But to unnecessarily include the clearly marked defensive mine barrier in areas such as the border between North and South Korea is to reduce deterrence against aggression.¹⁸⁶ Finally, arms control, to be most effective, needs not only verification, which is affirmed by all whenever arms control is mentioned, but also effective compliance, which seems too often to be neglected.

Certainly mechanisms for encouraging peaceful settlement of disputes and resolution of disputes by law rather than force are worthy additions to our arsenal against war. In the long run, establishment of stable expectations about authority in the international system and encouragement of a genuine rule of law among nations is in the interest of all. In this respect the newer “institutionalists,” with their focus on the cooperative growth of international law and organizations, are on sound ground.¹⁸⁷ Again, however, we should not confuse the development of third party dispute resolution mechanisms with an adequate answer to the problem of war. This was the core approach of the United States in war avoidance roughly from the turn of the century until after World War I. In fact, the roots of what has now become the

186. A negotiation leaving the United States, the nation with the most powerful military in the world, unable to sign the agreement also hardly helps to strengthen this important ban on indiscriminate use of landmines.

187. See, e.g., William C. Bradford, *International Legal Regimes and the Incidence of Interstate War in the Twentieth Century: A Cursory Quantitative Assessment of the Associative Relationship*, 16 AM. U. INT'L L. REV. 647 (2001); William J. Aceves, *Institutionalist Theory and International Legal Scholarship*, 12 AM. U. J. INT'L L. & POL'Y 227 (1997); John K. Setear, *An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law*, 37 HARV. INT'L L. J. 139 (1996).

International Court of Justice, established in its predecessor Permanent Court in the aftermath of World War I as a mechanism against war, is reflected in the name of the Andrew Carnegie endowed building for the Court at the Hague—the “Peace Palace.” But the problem with third party dispute settlement as a *core* modality for war avoidance is, quite simply, that the problem of international aggression is predominantly analogous to the problem of controlling criminal behavior, not that of resolving civil disputes. To say that Germany and Poland or Iraq and Kuwait should have resolved their disputes peacefully rather than going to war is to shockingly fail to understand that these wars were not mutual undertakings, like a contract to buy grain, but rather were the result of German and Iraqi aggression *and* that the aggressors had no serious pretensions to any kind of lawful claim to the victim state.¹⁸⁸ Nor is this any different with respect to the Austrian demands made against Serbia preceding the outbreak of World War I, which were *designed* to be rejected. Not surprisingly, both Austria and Germany rejected British efforts to mediate the “dispute” with Serbia. In this respect the aggressors are like the criminal gunman who demands your wallet. This problem of criminal behavior is not solved by dividing the wallet between the parties in court. Rather, criminal behavior is understood as requiring deterrence. Not to understand this central feature of the problem of controlling war is to fail to understand the origins of most major wars. International law established at Nuremberg that waging a war of aggression is a crime for which the responsible regime elites may be held accountable. *That* is the appropriate context.¹⁸⁹

188. Similarly, any assumption in crisis bargaining that all actors always seek to avoid the use of force in resolving their “disputes” may fall into this same trap. Certainly rational actors seek to avoid becoming embroiled in war with costs exceeding the gains of their decisions, just as the criminal wants to avoid going to jail. But, as with the criminal, ruthless aggressors may well intend to achieve their gains (value extension) through coercion imposed on others. In this connection, Kenneth A. Schultz’s description of the starting assumption in the crisis bargaining literature focused on “uncertainty” and “asymmetric information” is striking. He writes: “This literature starts with a simple insight: because wars are costly for all sides, states generally have incentives to find peaceful settlements of their disputes that allow them to avoid these costs.” SCHULTZ, *supra* note 46, at 3. The calculation of the criminal aggressor, to the contrary, may be simply: Can I get away with this use of force at reasonable cost?

189. In emphasizing this point, Professor Inis Claude uses the analogy that we all too frequently tend to think of war as “a prize fight between two boxers who have agreed to fight, rather than a struggle between a determined aggressor and an unwilling victim....” Comment to the author.

In the absence of deterrence, the game theoretic “mismatch” risk may also lower the chance of controlling aggression through an evolutionary pattern of cooperation. For a discussion of “mismatch” risk, see Mahoney & Sanchirico, *supra* note 131.

There are other approaches also that can contribute to peacemaking and peacekeeping. One such is “track two” diplomacy, where citizen diplomats seek to build bridges with their counterparts in other countries.¹⁹⁰ This approach, if undertaken in support of governmental efforts to diplomatically resolve conflict, may provide political leaders with a base of support for their peace efforts. Similarly, there are a variety of specific modalities for either promoting democracy or incentives against aggression, which, under our core theory, reflect the crucial variables of democracy and deterrence. These include war termination resulting in substitution of democratic government for a previous nondemocratic aggressor, promotion of robust international trade, and clarity of communication with respect to deterrence signals. Strategies generally of war termination and crisis management also deserve attention.¹⁹¹

V. TOWARD INCENTIVE THEORY

The “democratic peace” emerged in the effort to solve the war puzzle. The apparent robust correlation between government type and avoidance of war, though, encouraged research about the relationship between government type and other major foreign policy goals. Thus, in the late 1980s the United States Institute of Peace, which had been instrumental in funding many of the early studies on the democratic peace, funded a major study by Professor Rudy Rummel examining the relationship between government type and “democide” (a more inclusive term including genocide as well as killing of political opponents not technically included in the legal definition of genocide). The staggering finding of the Rummel study, since published in *Death by Government*,¹⁹² that in the twentieth century governments slaughtered their people at a rate double to four times that of combatant casualties in all wars in the period, is one of the most important findings about the world in which we live. Rummel’s work, which was subsequently nominated for a Nobel Peace Prize, shows the same correlation with government type that was the hallmark of the democratic peace. Unlike

190. See generally LOUIS DIAMOND & JOHN McDONALD, MULTI-TRACK DIPLOMACY: A SYSTEMS APPROACH TO PEACE (1996); CENTER FOR THE STUDY OF FOREIGN AFFAIRS, CONFLICT RESOLUTION: TRACK TWO DIPLOMACY (John W. McDonald & Diane B. Bendahmane ed., 1987); UNITED STATES INSTITUTE OF PEACE, PRIVATE PEACEMAKING: USIP-ASSISTED PEACEMAKING PROJECTS OF NON-PROFIT ORGANIZATIONS (David Smock ed., 1998).

191. See, e.g., CRAIG & GEORGE, *supra* note 118, at Chapters 15, *Crisis Management*, and 16, *War Termination*.

192. RUMMEL, *supra* note 2.

the democratic peace, however, which, because it deals with war between states, inevitably must encounter the problem of interaction between states with different government, and thus still leaves the overall issue of war clouded, research on democide focuses cleanly on the actions of individual states. The result is unmistakable. The overwhelming tragedy of democide in the twentieth century is a product of the actions of nondemocratic states.¹⁹³ This finding in turn suggested that the democratic peace finding was indeed of great importance and pointed the way to early efforts at “democracy enlargement” or “rule of law engagement” as an important foreign policy focus. The unprecedented talks between the United States and the then Soviet Union in 1990 on “the rule of law,” followed shortly thereafter by the brilliant success of Ambassador Max Kampelman in persuading the neutral and non-aligned in Europe and the former states of the Soviet Union to join with the NATO countries to adopt a specific charter for democracy in the 1990 Copenhagen Document, were the early diplomatic successes of this focus.¹⁹⁴

My work at the University of Virginia subsequently began to link parallel work in the economic literature showing a critical relationship between government type and economic growth, the work of Professor Sen showing that government type was the key variable in famines, work by many showing the dramatic failure of totalitarian governments in dealing with the environment, and preliminary findings showing a link between government type and support for terrorism, levels of corruption, narcotics trafficking, infant mortality, refugee flows, and, to some extent, even women’s rights. Again, in the aggregate the correlations were unmistakable and on some issues suggestive that levels of democracy/rule of law and human freedom broadly were *the* most important variables in performance. In this context, in 1993 Mancur Olson, who had been a fellow of the Institute of Peace, wrote an important article in the *American Political Science Review* on “Dictatorship, Democracy and Development,” concluding that “[T]he autocrat...has an incentive to charge a *monopoly* rent and to levy this

193. The all too frequent democide by nondemocratic states also creates a condition in the international system leading to humanitarian interventions by democratic states easily, and misleadingly, scored as “initiation” of war by democracies.

194. See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, July 29, 1990) *reprinted in* 29 I.L.M. 1305 (1990). This is the most important document to date concerning the “internationalization” of democracy and, in its historical significance, may ultimately rank with the Magna Carta. Subsequently, a plethora of official pronouncements have pursued this “internationalization” of democracy.

monopoly charge on *everything*.”¹⁹⁵ Government failure theory, rooted in incentives of regime elites and developed to explain modest government failure in democracies, seemed to operate off the scale, along with other factors, in producing massive failure in nondemocracies.

These important findings, all pointing toward the great importance of democratic governance, human freedom, and the rule of law, are too recent to have generated any focused theoretical literature on the underlying commonalities. As has been suggested, however, there is good reason to believe that a core mechanism underlying these extraordinary correlations may be the insight called “government failure theory,” which won the 1986 Nobel Prize in economics. Thus, war may be, at least in significant part, a product of government failure in which nondemocratic regime elites believe they can externalize costs while personally obtaining the benefits of any successes. As with “market failure,” which operates principally from a similar mechanism of externalities, when such “government failure” occurs it needs external checks to right the balance in incentives.¹⁹⁶ With market failure, this role is performed by government. With war, absent such a central government, it must be a product of the totality of external actions creating deterrence through incentives.

Similar mechanisms related to incentives seem to underlie other correlations with government type. Thus, the principal democide seems to be generated either to capture or maintain power or in pursuit of some twisted vision or perceived gain of the regime elite. And the cost is paid by the millions of victims tortured or killed. The forgotten holocaust in the Congo from 1885 to 1908, which may have killed as many as ten million, was a giant forced labor camp for the personal enrichment of King Leopold II of Belgium.¹⁹⁷ Pol Pot’s slaughter in Cambodia seems to have been intended both to keep Pol Pot in power and to pursue his twisted vision of utopia. Subject to the now well-understood areas of market failure, such as negative externalities and public goods, the efficiencies of free human economic exchange have been understood since the days of Adam Smith. The modern evidence persuasively shows that indeed free markets, non-coercively responding to millions

195. See Olson, *supra* note 57, at 569-70. For a more recent exposition of this theme, see SHLEIFER & VISHNY, *supra* note 22, at Chapter 7, “*The Politics of Market Socialism*.”

196. “Government failure” also results from inadequate information associated with centralized decision and transaction costs associated with governmental interventions, among other factors.

197. See Richard F. Hamilton, *Forgotten Holocaust*, WASH. POST, Jan. 7, 2001, at B7. See also JOSEPH CONRAD, *HEART OF DARKNESS* (Penguin Books 1999).

of decentralized individual responses to incentives and functioning in modern democratic nations under the rule of law, are the route to economic development. And efforts of nondemocratic regime elites to manipulate markets for their own benefit or statist vision, while sometimes producing impressive short run results, are a long term prescription for slow growth and economic failure. One of the real surprises of the recent work examining correlations of major human goals with government type has been the dawning realization that environmental failure is not simply a product of market failure but rather is also a product of government failure and that, as with other government failure, it occurs off the scale in nondemocratic nations. Again, the mechanism here seems in large part to be a skewed incentive structure, which enables regime elites to pursue their objectives—the environment be damned. Similar mechanisms working through skewed incentive structures and governmental failure seem to underlie the correlations with support for terrorism, corruption, and, of course, efforts of individual citizens, themselves responding to incentives, to flee the failed governments and, if unlucky, to become refugees. Most recently, the statistical analysis of Professors Reiter and Stam demonstrating that democratic leaders are far more cautious in picking their wars because of the nature of their domestic political incentives, lends further support to a focus on the incentives of decision elites.¹⁹⁸

This expansive focus suggests that the “democratic peace” has now evolved into a broader new paradigm in foreign relations focused on the importance of liberal democracy, the rule of law, and human freedom in achieving virtually the full range of important goals of foreign policy. Underlying this broader approach may be a pervasive effect of incentives, particularly as they affect regime elites by government type.

As with war, which is not simply an internal issue within states, when terrorism, massive democide (as in Pol Pot’s Cambodia, Rwanda, or the former Yugoslavia), or massive environmental degradation (as with Chernobyl in the former Soviet Union) is taking place, the only remaining modality of control is the totality of external incentives through deterrence. That is, when nondemocratic government structures massively fail, affecting the interests and commitments of other nations, the only remaining check is for other nations to structure effective external deterrence through incentives. This focus on external incentives as an important factor in war avoidance would also seem consistent with

198. See REITER & STAM, *supra* note 37. “Democratic leaders know that there are few greater political disasters than wasting the lives of their citizens in a losing cause.” *Id.* at 4.

the emphasis of some on the high costs of war and the high gains of peace, or preventing profit from war, as core fundamentals of war avoidance in the modern world. Where such an unfavorable balance of incentives to war is, in fact, perceived by decision elites, one would expect more restrained behavior. Possibly the shift from territorially based agriculture to a more global commerce, if sufficiently pronounced, may itself serve as a factor in reducing the perceived profits from war and, thus, the incidence of war. As Norman Angell's misplaced faith before World War I should remind us, however, this is only one factor affecting incentives. Similarly, it is possible that the theories of Marx and others about war resulting from uneven economic growth, if true at all, largely simply reflect the differential rates of growth between democratic and nondemocratic nations and the resulting possibly heightened incentives of the slow-growing nations to aggression. That is, for failed governments, the costs of war and the gains of peace may not be perceived as sufficiently high, absent other incentives, to deter. It is also possible that failed governments have greater incentive to engage in "scapegoating" or "diversionary war," at least in initiating major war, thus incorporating yet another popular theory about war under the importance of incentives.¹⁹⁹ To the contrary, however, Lenin's theories about "monopoly capitalists" as promoting war²⁰⁰ completely misses the opposite reality of the generally dovish behavior of the business community and an incentive structure in that community far more inclined to the high costs of war and high gains from peace.

The recent work on civil war by Paul Collier, the World Bank's research director, provides further conceptual support for a new foreign policy paradigm focused on incentives. Collier and his colleagues have created innovative models focused on isolating the most important causative factors in the initiation and duration of civil wars. Their broadest methodology is economic analysis of expected costs and benefits of the decision to rebel, including analysis of discount models where appropriate. More specifically, their approach focuses on understanding the calculus of incentives for the decision to rebel, with an empirical search for critical factors affecting such incentives.²⁰¹ As

199. *But see* Gelpi, *supra* note 77. Gelpi concludes in this study of crisis escalation that democracies engage in more diversionary behavior than nondemocracies.

200. *See* VLADIMIR IL'ICH LENIN, *IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM* (Pluto Press 1996).

201. *See, e.g.*, Paul Collier, Anke Hoeffler & Mans Soderbom, *On the Duration of Civil War* (paper prepared for the World Bank Development Research Group, May 2001); Paul Collier & Anke Hoeffler, *Greed and Grievance in Civil War* (paper Oct. 21, 2001); Paul Collier & Anke

such, Collier's approach employs, in the civil war context, several core components of incentive theory as recommended here. These include a focus on decision by those controlling decision, a focus on the totality of incentives affecting decision in context, and a focus on identifying key variables affecting incentives. Just as Collier and colleagues have sought to identify key variables affecting incentives in civil war,²⁰² so too incentive theory broadly identifies democracy and deterrence as key variables in major interstate war (mixing the idealist and realist perspectives in a broader model). And incentive theory seeks to identify, from the work of many scholars, other important factors affecting these general variables, including geographic contiguity, high levels of bilateral trade, substantial disparities in power, and mutual participation in international organizations. With its focus on decision, incentive theory also invites inclusion of behavioral factors from Waltz's first level of analysis, although this article only begins such an effort with incorporation of "prospect theory" and speculation as to the effect of extreme ideology on deterrence.²⁰³

Hoeffler, *On the Economic Causes of Civil War*, 50 OXFORD ECON. PAPERS 563 (1998). See also H. I. Grossman, *A General Equilibrium Model of Insurrections*, 81 AM. ECON. REV. 912 (1991).

202. In their paper "On the Duration of Civil War," Collier and colleagues conclude that "[T]he duration of a [civil] conflict is substantially increased if the society is composed of a few large ethnic groups, if there is extensive forest cover, and if it commenced since 1980." Collier et al., *On the Duration of Civil War*, *supra* note 201, at Conclusion. They continue:

None of these variables has any significant influence on the risk of conflict initiation. An implication is that the anticipated duration of conflict does not significantly influence the decision to rebel. In turn, this suggests that the initiation of rebellion is not closely related to the prospect of post-victory goals, as assumed in most previous theoretical models. This is consistent with our finding that neither inequality nor political repression prior to conflict is significantly related to either the initiation or the duration of conflict. Instead, our results on the duration of conflict are consistent with our previous analysis of its initiation. There we argued that the critical factors were those that determined whether rebellion was financially and militarily viable as a continuing enterprise during conflict. In this framework, since observed rebellions start out as viable, they persist unless financial or military circumstances change.

Id.

It should be noted that the universe of nations from which Collier and colleagues compiled their war observations in their paper on the duration of civil war was, in their terms, "characterized by very low levels of democracy" *Id.* at Empirical Analysis.

The Collier and Hoeffler paper on *Greed and Grievance in Civil War* concludes: "We ... find that opportunity provides considerably more explanatory power than grievance. Economic viability appears to be the predominant systematic explanation of rebellion." *Id.* at Abstract.

203. Yet another way of conceptualizing incentive theory is that by consciously focusing on *incentives affecting regime decision makers* it enables an integration of all three levels of analysis. That is, it recognizes as relevant for understanding, prediction, and intervention incentives generated by individual perceptions, beliefs, and values (first level), incentives generated by form of government (second level), and incentives generated externally from the nature of the international system and non-national actors (third level), *all* simultaneously

Incentive theory also avoids the erroneous implication of the “democratic peace” that democracies may never commit aggression.²⁰⁴ While the evidence suggests that democratic nation leaders are far less likely to engage in high-risk action leading to major war, democratic nations have engaged in aggressive use of force, such as the British/French action against Egypt in the Suez War or U.S. actions during the Bay of Pigs fiasco. As these examples illustrate, democracies may be quite adventurous in what for them are minor coercion settings.²⁰⁵ The actions of the tenuous democracies of Syria and Lebanon in attacking Israel in the 1948 war, those of India in the 1971 intervention in Bangladesh, and those of Turkey in the 1974 intervention in Cyprus arguably also provide modern counterexamples in major interstate war. And in an earlier era, European democracies, at least, have had their fling at aggressive imposition of colonialism. Indeed, even in a post-Charter environment France fought wars in Algeria and Vietnam in an effort to maintain her colonies.²⁰⁶ It is to be expected that democratic leaders too will respond to an aggregation of internal and external incentives, particularly defense against forceful change or widespread genocide, although their internal incentive structure is quite different from that of nondemocratic elites.²⁰⁷ This is

operating on the decision maker. While the evidence suggests that levels two and three (democracy and deterrence) usually contain the critical variables, in real-world decisions all three levels are in play and mutually interacting, and any of the three may be critical. Moreover, incentive theory recognizes that factors arguably not arising from any of these three levels of analysis may be relevant as, for example, geography or forest cover in the conflict arena.

204. This, of course, is not a claim made by principal scholars supporting the “democratic peace.”

205. The recent statistical work on democratic war winning by Professors Reiter and Stam would also seem to provide theoretical support to some democratic adventurism in minor coercion settings presenting low risk and high public approval. They write: “as democracies become more confident they will win, they become increasingly likely to initiate a dispute or the use of violence.” REITER & STAM, *supra* note 37, at 50. The work of Christopher Gelpi on “crisis escalation” may also lend support to democratic adventurism in minor coercion settings. See Gelpi, *supra* note 77. It is likely also that at least in the post-Charter period democracies undertaking even these low risk actions are for the most part motivated by defensive aims rather than value expansion. Panama and Grenada provide examples in United States practice.

206. This category of colonial wars is a significant category of democratic nation aggression in an earlier era. The mechanism here is likely that from the perspective of the colonial powers these were predominantly minor coercion settings expected to generate good returns. Prevailing belief systems also supported such actions as spreading “civilization.” Once the colony was established, however, “loss aversion” kicked in and the colonial power was prepared to expend considerable blood and treasure to retain the colony. England in the Revolutionary War, the United States in the Second Philippine War, and France in the conflicts in Algeria and Indo-China provide examples. It should be noted, however, that in the post-Charter period, while France fought to retain its colonies in Algeria and Indo-China, it did not initiate these conflicts.

207. Professor Miriam Fendius Elman argues: “[W]e find that democracies may act

not to discount the great importance of democracy. Indeed, one of this article's themes is that democracy is far more important across a wide range of human aspirations than is commonly understood, including its lesser propensity to wage major aggressive war. It is to suggest, however, that a theoretical approach focused on incentives, both internal and external, is a better basis for understanding and predicting the behavior of all nations, democratic as well as nondemocratic.

One objection that might be raised to incentive theory broadly is that it assumes rational actors. That is, if actors are not rational, then a focus on incentives in an effort to alter their behavior would be unavailing. At least four points might be raised in response to what at first blush seems a significant objection. First, an examination of historical case studies overwhelmingly suggests rational actors in decisions to commit aggression and other insults to the international community.²⁰⁸ Such decisions certainly are ruthless, indeed, sometimes barbaric in their inhumanity, and they are frequently mistaken about ultimate consequences. But they are not the actions of those unable to consider consequences.²⁰⁹ Indeed, history suggests that the seriously mentally ill are unlikely to assume power and if they do, they are unlikely to remain in power. Further, in many settings the decisions of a network of others, relating to financing, political support, etc., may be necessary for maximum effectiveness, and this requirement reduces the likelihood of control by the truly ill. Second, as with the evidence of the "democratic peace" itself or issues of whether nondemocracies are aggressors in major interstate conflict, it is a mistake to assume that the concept should be discarded unless it is 100 percent applicable with no counter-

aggressively for two reasons. First, illiberal leaders can pursue hard-line policies against liberal states, including war. Second, the influence of public opinion on foreign policy making can increase the chances for war." PATHS TO PEACE, *supra* note 12, at 486. Incentive theory, as a focus, would certainly want to examine these and other possible paths to war from democratic nation behavior. I would stress, however, the great importance of both democracy and deterrence in affecting incentives and, thus, the paths to war. Failing to provide effective deterrence of an aggressive nondemocratic regime is, in the modern world, likely the principal path to major war for democracies.

208. This is emphatically not to suggest that such "rational" actors are free from a variety of "cognitive biases" in their decision-making. As "prospect theory" suggests, we are increasingly learning of the importance of such factors.

209. It should be noted that sociopaths are rational; they simply lack a superego or sense of morality. Further, even psychopaths may be capable of responding to incentives. For an analysis from a professor of psychiatry and political psychology that the 9/11 terrorists were "psychologically 'normal,'" see Jerrold M. Post, M.D., *Killing in the Name of God: Bin Laden and Radical Islam*, FOREIGN SERVICE J., Dec. 2001, at 31. Dr. Post stresses that to deter those motivated by ideological factors requires responsive "psychological warfare," directly taking on the arguments used to justify the terrorists' attacks. *Id.* at 33.

examples. It may be that some small percentage of actions by national or other powerful leaders are actions of the mentally deranged. This does not, however, eliminate the utility of focusing on incentives to influence decisions of rational actors—likely the overwhelming reality for most regime and other powerful elites—whose control of the military poses the greatest threat. In fact, to develop a counter theory for action based on this non-rational actor objection would be to assume that at least the majority of core decisions for war are made by irrational actors. There is no evidence whatsoever suggesting that such a premise is correct. Third, in any small universe of non-rational²¹⁰ national leaders, there is no reason to believe that *any* approach would be more effective. *All* present approaches to war avoidance rely on an ability to influence rational actors and, thus, incentive theory, calling for the broadest focus on national and international level incentives, certainly should be no less effective than other approaches. Recognition of even a small category of settings where for reasons of individual psychology deterrence may not work or may work only at considerably higher levels, however, would point to taking the individual “image” into account in a more complex model, at least to assist in prediction. Finally, in any setting where the decision for war or democide cannot be influenced for the better before the act, one will inevitably engage in a full panoply of diplomatic, economic, military, and other actions to inhibit the major aggression, terrorism, or democide. Such actions, aimed at reducing and controlling the capabilities and opportunity for the impermissible action, will frequently resemble the same kinds of measures one would take under incentive theory. In short, this seemingly plausible objection to incentive theory, on closer examination, does not seem persuasive.

It is appropriate, then, that we embrace the “democratic peace” while moving beyond it to a new, more complete paradigm in foreign policy that may focus our attention more effectively on the nature of the problem and useful methods for response. That new paradigm will focus on democracy and deterrence, but its core underlying mechanism may be that of incentives. Perhaps the new paradigm, which seeks to incorporate the best insights from the full range of past approaches to foreign policy, might be termed “incentive theory.” The very breadth of the term may offer greater insight as to the great range of relevant variables affecting incentives and, thus, the decision for war or peace.

210. For an interesting analysis of the problem of rationality in war, see MUELLER, *supra* note 137, at 227-32.

This point deserves emphasis! It is likely that past approaches focusing more narrowly on one or a few variables in the search for peace miss the complexity and richness of context that can affect incentives of decision elites. The fullest understanding about war is not found in any one of Waltz's three images, but rather in a rich synergy of factors from among them. As such, the new theory blends both classical realism and idealism, but goes beyond both.²¹¹ A focus on a broad range of factors affecting incentives also facilitates a multi-disciplinary application of human knowledge. It may even point the way to reconciling puzzles within approaches, such as balance of power, where at least some apparent inconsistencies are revealed as simply an absence of sufficient sensitivity to the contextual richness of incentives. A further advantage of a focus on incentives is to encourage focus on the individual decisions responsible for aggressive war and other government failures. Major war and democide do not result from a foreordained juxtaposition of impersonal forces, as in the alignment of planets. Rather they are the consequence of individual decisions responding to a totality of incentives. As such, if we are to control such failures, we must focus on the principal factors that can affect the decisions responsible for them. Moreover, response to incentives seems to be the core mechanism by which nature produces both biological and cultural evolution. Should we be surprised if it turns out to be of central importance for foreign policy?

VI. TERRORISM AND THE EVENTS OF SEPTEMBER 11

While incentive theory has been developed for major interstate war, it seems also to have resonance for international terrorism. The most deadly international terrorism is state-sponsored or supported. As has been seen, principal state sponsors of terrorism, including Afghanistan

211. In his important study of territorial disputes and international conflict, Paul K. Huth develops what he calls a "modified realist model" that integrates both "domestic and international levels of analysis." He concludes with respect to this model:

The hypotheses posited that both domestic political variables as well as international political-military conditions should play important roles in explaining the initiation, escalation, and settlement of territorial disputes. In each of these chapters the statistical tests provided strong support for the modified realist model, and the conclusion that the incorporation of domestic politics into the theoretical model added considerably to our ability to explain patterns of international conflict over disputed territory.

HUTH, *supra* note 183, at 181. I believe that this integration of the domestic and international levels of analysis, or with some latitude what we might refer to as the "realist" and "idealist" perspectives, is an essential step in understanding the dynamics of war. This is a central tenet of "incentive theory" as recommended in this article.

under the Taliban, Iran, Iraq, Libya, the Sudan, and Syria, are totalitarian or authoritarian. Similarly, the private groups that undertake terrorism, with or without state support, are overwhelmingly anti-democratic. Indeed, they typically exhibit a commitment to violence, a disdain for human freedom and the rule of law, a collectivist orientation that the masses must be indoctrinated in what they want (i.e., that real people's wants are merely "false consciousness"²¹²), and frequently anti-modernism.²¹³ And, as with interstate war, the terrorist decision elites are able to externalize the costs of their actions on innocent civilians and even their own converts. Further, terrorism overwhelmingly occurs in settings where those initiating its use expect it, on balance, to be a strategy that will promote their objectives; that is, it occurs in settings absent effective deterrence. Indeed, until the events of September 11, the global response to terrorism had been weak, treating terrorism predominantly as a natural feature of a complex world to be dealt with largely by law enforcement. And the principal thrust of terrorism has been directed aggressively against democratic nations and governments.

The heinous attack of September 11 directed against more than 50,000 civilians and, in its financial fallout, touching literally every nation on earth, strikingly fits this democracy/deterrence synergy. Osama bin Laden's al-Qaeda classically illustrates the anti-democratic radical regime syndrome.²¹⁴ The Taliban government of Afghanistan, which provided sanctuary and support, was also strongly anti-democratic. With respect to levels of deterrence, the Osama bin Laden organization had been able to execute a continuing pattern of attacks against U.S. interests with little sustained response. These included the 1998 attacks against U.S. embassies in Kenya and Tanzania following a *fatwa* earlier that year virtually declaring war on America. Most recently, before what may have been their *second* attack on the World Trade Center, the organization seems to have been involved in the

212. Abimael Guzman, for example, the founder of the Shining Path insurgency in Peru, is quoted as saying: "[T]he masses have to be taught through overwhelming acts so that ideas can be pounded into them" Carlos Ivan Degregori, *Origins and Logic of the Shining Path*, in *THE SHINING PATH OF PERU* 40 (David Scott Palmer ed., 1992).

213. Anti-modernism runs deep in radical thought. For Pol Pot in Kampuchea, Abimael Guzman in Peru, and the Taliban and al Qaeda in Afghanistan, among many other such apocalyptic movements, modernity is the enemy. With respect to anti-modernism in the thought of Osama bin Laden and his followers, see David Ignatius, *The Psyche of a Bin Laden*, WASH. POST, Oct. 28, 2001, at B7; Paul Hollander, *It's a Crime That Some Don't See This as Hate*, WASH. POST, Oct. 28, 2001, at B3. The "unibomber" in the United States was a paradigm of "anti-modernist" thought.

214. See, e.g., PETER L. BERGEN, *HOLY WAR INC.* (2001).

attack on the *U.S.S. Cole* in Yemen, an attack which produced no visible response from the United States.

As with major interstate war, looking to the “underlying grievance” of such terrorism as a mode of understanding or controlling it does not always offer useful information. Ironically in this case, the United States is being attacked from a country, Afghanistan, which the United States took the lead in defending from earlier Soviet attack. In the years following, the United States has given the people of Afghanistan over \$100 million in food aid, despite the failure of their then Taliban government and its increasing repressiveness. The United States, as evidenced by the efforts of Presidents Jimmy Carter and Clinton, has been the most engaged nation in the world in seeking to resolve the Arab/Israeli conflict. The United States, as one of the few nations in the world with a Jeffersonian anti-establishment of religion clause, is one of the most religiously tolerant nations in the world. The United States, acting at the request of a United Nations Secretary-General from Egypt, may have saved a million Muslims from starvation in Somalia. And the wars fought by the United States, in the Gulf, Bosnia, and Kosovo, were fought in defense of Islamic peoples. President George W. Bush is correct that the United States is really being attacked as the powerful leader of democracy, modernity, and human freedom. And its response, emphatically, will not be against Arabs, the Islamic religion, or the people of Afghanistan or any other state. Overwhelmingly, people around the world of all religions or ethnic backgrounds share a desire for peace and human freedom. It is the ruthless purveyors of violence who have a different agenda.

VII. CONSEQUENCES FOR FOREIGN POLICY

New slogans in foreign policy are easier to achieve than effective results. The foreign policy process is inevitably one of constrained options, inadequate information, choice among conflicting goals, and competing views as to the most appropriate actions. In that messy process, as Thomas Kuhn reminded us more than a quarter century ago in his seminal work on “The Structure of Scientific Revolutions,”²¹⁵ we are also consciously or unconsciously ruled by our prevailing paradigms. What we believe shapes what we do. It may be useful, then, to briefly examine some of the general consequences for foreign policy of a paradigm rooted in the importance of internal and external

215. See THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

incentives.²¹⁶

Before examining some of the consequences for foreign policy of the new paradigm, it may be useful to begin by a brief focus on what it is not. It is emphatically not democracy building by aggressive use of force or a democratic “just war” or “crusade for democracy.”²¹⁷ It is not an effort to impose a *Pax Americana* or to impose American cultural values alien to others. It is not a prescription that all nondemocracies are a threat to the peace. It is not even a recommendation that we should not diplomatically engage our democratic allies when they make mistakes. Nor is it a recommendation to engage beyond our means or to naively intervene in settings where we have little ability to influence or little national interest.

Most importantly, the full range of correlations of important foreign policy goals with democracy and the rule of law suggests that an important *milieu* goal is support for democracy and the rule of law.²¹⁸ This could include internationalization of the fundamentals of democracy, as is already reflected, for example, in the path-breaking Copenhagen Document²¹⁹ and as has been a mainstay of the human rights movement

216. For those uncomfortable talking about “theory” or “paradigms,” perhaps Alexander George’s teaching construct of “generic knowledge” might be a useful substitute. See George, *supra* note 118, at 71-73.

217. While democratic peace theory and the newer incentive theory might seem to some theoretically to support even the imposition of democracy by force, there are powerful reasons against any such conclusion, other than as a war termination strategy where feasible following an aggressive attack. These include the enormous “transaction” costs of war in an age of weapons of mass destruction and the inevitable erosion of the core Charter prohibition against the aggressive use of force. Such a policy would also risk a powerful anti-democratic backlash. A forceful crusade for democracy is an unequivocally bad idea!

218. Norman A. Graebner, one of the Nation’s top diplomatic historians, reminds me in this context that Hamilton, Adams, Washington, and other of the founding fathers of the United States, urged in the Nation’s diplomacy “the avoidance of crusades that transcended the country’s interests and ... exceeded what the country could achieve.” Letter to the author from Norman A. Graebner (Nov. 21, 2001) (on file with author). This is an appropriate caution as we work to develop an effective foreign policy for democracy and rule of law engagement. We might also keep in mind, however, that not only does the evidence suggest that democracy is strongly in the national interest but democracy enlargement/rule of law engagement are simply the logical next step in a human rights engagement strategy that has been supported now through five administrations on a bipartisan basis. For an excellent argument that “the United States should make promoting democracy abroad one of its central foreign-policy goals,” see Sean M. Lynn-Jones, “Why the United States Should Spread Democracy,” BCSIA Discussion Paper 98-07, Kennedy School of Government, Harvard University, March 1998. The theme of “rule of law engagement” or “democracy enlargement” was developed by the first Board of the U.S. Institute of Peace in the late 1980s, based on the important evidence then available to the Institute about war and democide.

219. See The Document of the Copenhagen Meeting, *supra* note 194. Many subsequent agreements also reflect this internationalization of democracy. See, e.g., the Inter-American Democratic Charter (Lima, Sept. 11, 2001). “[T]he member states expressed their firm belief that

since World War II. Even in human rights terms, we now know that if we are serious about human rights, we must be serious about building democracy and the rule of law.²²⁰ Similarly, the United States might assume the lead in coordinating a government level “Community of Democracies” offering assistance in the transition to democracy, along the lines of the existing Freedom House initiative and Warsaw Ministerial Meeting in June of 2000. The United Nations and regional organizations such as the Organization of American States should be important forums to cooperatively pursue rule of law engagement. In this connection, a new Democratic Nation Caucusing Group at the United Nations, as has already been recommended by the first meeting of the informal Community of Democracies, would seem useful. The U.S. government should also encourage other democratic governments, universities, and foundations around the world to expand their efforts to assist in democracy development and to train persons from all continents and cultures specifically in democratic governance and the rule of law. Further, when forced by the necessities of defense to replace a government, as recently was the case in Afghanistan, the democracies should stay the course to ensure a meaningful transition to democracy.²²¹ One of the obvious enhancements in democracy building efforts worldwide would be to substantially increase our financial

democracy, peace, and development are inseparable and indivisible The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.” *Id.* at *Preamble and Article 1*.

220. The good news is that the sweep of history in the twentieth century has seen a significant expansion of democracy. See FREEDOM HOUSE, *DEMOCRACY’S CENTURY: A SURVEY OF GLOBAL POLITICAL CHANGE IN THE 20TH CENTURY*, at <http://www.freedomhouse.org/reports/century.pdf> (last visited Oct. 25, 2003):

Electoral democracies now represent 120 of the 192 existing countries and constitute 62.5 percent of the world’s population. At the same time liberal democracies—i.e., countries Freedom House regards as free and respectful of basic human rights and the rule of law—are 85 in number and represent 38 percent of the global population.

Id. at 1. While “the majority of the world’s Muslims live under democratically constituted governments,” there is a “democracy gap” between the Islamic countries and the world as a whole. See Adrian Karatnycky, *Muslim Countries and the Democracy Gap*, 13 J. DEMOCRACY 99, at 103-04 (2002). See also Adrian Karatnycky, *Making Democratization Work*, HARV. INT’L REV., Summer 2002, at 50; Jagers & Gurr, *Tracking Democracy’s Third Wave*, *supra* note 65. For the state of democratic line reform in East Central Europe and the Newly Independent States, see *NATIONS IN TRANSIT 2000: CIVIL SOCIETY, DEMOCRACY, AND MARKETS IN EAST CENTRAL EUROPE AND THE NEWLY INDEPENDENT STATES* (Adrian Karatnycky, Alexander Motyl & Amanda Schnetzer eds., 2002).

221. The post-World War II imposition of democracy in Germany, Italy, and Japan suggests that an external imposition of democracy in a post war setting can lead to a stable and peaceful democracy. See Alexander Barone, *War Termination: The Effect of Imposition of Democracy* (2001) (paper prepared for my War & Peace Seminar) (on file with author).

resources for such efforts, as well as that of our democratic allies.²²²

With respect to long term efforts to assist the development of democracy and the rule of law, it is particularly important that we *not* fall into the common trap of believing that promoting democracy simply means promoting free elections. Free elections are an essential element of genuine democracy,²²³ but as the United States overview paper articulated for the then Soviet Union in the 1990 rule of law talks, liberal democracy is an important mix of principles, including limited government, checks and balances, free elections, protection of the individual from the state, known and efficient legal rules facilitating human creativity and exchange, legal constraints on government officials, an independent judiciary, respect for economic freedom (including property and contract rights), and many others.²²⁴ We should particularly note that a climate of informational and political freedom, including freedom of speech, a free and independent media, and freedom of assembly, is an essential element of an informed electorate. In the absence of such freedoms, even elections can become an instrument for the authoritarian.²²⁵

222. On March 22, 2002, Freedom House appealed to U.S. Secretary of State Colin Powell and members of Congress to substantially increase financial resources for democracy building worldwide. The letter, signed by the author along with many others, said: "Any effective long-term strategy to combat terrorism and other extremist violence must place democratic governance, accountability, transparency, rule of law, human rights, a robust civil society, civic education and regular competitive elections at its core." Press Release, Freedom House, Coalition Urges U.S. to Spend More on Global Democracy (Mar. 26, 2002) at <http://www.freedomhouse.org/media/pressrel/032602.htm> (last visited Oct. 25, 2003). I believe that the U.S. should also be proactive in encouraging our democratic allies to substantially increase their funding for democracy building.

223. We should *not* forget the great importance of free elections. See Elizabeth Spiro Clark, *Why Elections Matter*, 23 WASH. Q. 27 (2000).

224. See John Norton Moore, *The Rule of Law: An Overview*, Paper Presented to the Seminar on the Rule of Law, Moscow and Leningrad, USSR (March 19-23, 1990) (later published as USIA translation into Russian for conference proceedings publication, Progress Press, USSR, August 1991) (the author served as the co-chairman of the United States Delegation for these first talks between the United States and the then Soviet Union on the rule of law). For an important discussion about operationalizing democracy, see Jagers & Gurr, *Tracking Democracy's Third Wave*, *supra* note 65, at 471-72.

An under appreciation of the range of factors required for coherent democracy may have contributed to the confusion that has surrounded the issue of the "aggressiveness" of democracies. Germany in World War I, Italy in the 1911 Italo-Turkish War, and Syria and Lebanon in the 1948 Palestine War simply were not coherent democracies at the time of their war initiation.

225. There is a robust controversy as to what other factors, if any, in addition to liberal democratic constitutionalism are needed for stable and meaningful democracy. Must democracy be underpinned by a population that has achieved solidarity and fundamental agreement on some basic values? Does it depend on some minimum level of economic development or education? Perhaps also, even electoral and unstable democracy is preferable to the alternatives. The point to be stressed here is that the achievement of *liberal* democracy seems to be a requirement for stable

While an electoral democracy is certainly superior to totalitarianism, the full benefits of democracy, including quite probably the very stability of democratic institutions, comes from achieving liberal democracy.²²⁶ History is littered with short-lived electoral democracies that have never achieved the full range of controls and limitations required by liberal democracy and a full commitment to human freedom. Indeed, a lesson of early Greek democracy, as well as of the early French Revolution, is that government based *solely* on majority will or populism also leads to political excess that may include the killing of opponents. This is also an important reality with respect to economic life. Protecting individuals and minorities from majority excess is an essential element of liberal democracy. Nor should we focus solely on the minutiae of democracy, such as improving court reporting procedures as our mode of promoting democracy—a mode all too attractive perhaps because it generates little controversy. The real payoff is on the big picture of overall systemic changes leading to liberal democracy and respect for human freedom in all its dimensions. The rather limited focus, and resultant limited success, of democracy building in Haiti may provide an object lesson as to both the difficulty and importance of rule of law engagement in the grand manner.

Incentive theory, with its respect for human freedom, would also strongly support efforts to remove trade barriers and broaden the parameters for human economic choice. Free trade not only economically benefits both sides in the trade but can also through time contribute to the network of cooperative positive incentives that seems to be a substantial factor in reducing war. Further, in enhancing economic growth, trade enhances the wealth of nations, which in turn tends to correlate with enhanced environmental standards. The

democracy. The failure to achieve liberal democracy, and particularly democracy succumbing to majoritarian excess and demagoguery, seems a potent source for reaction and loss of democracy. This reality is evident from the fall of the Roman Republic, through the excesses of the French Revolution, down to unstable emerging democracies today.

There is reason to believe that the “democratic peace” and other correlations with government structures in the aggregate operate in their intensity of effect on a spectrum ranging from liberal democracy through electoral democracy, through authoritarian or autocratic regimes to totalitarianism. This spectrum is most directly visible with respect to democide, where modern liberal democratic nations are *de minimis*, the kilokillers, killing in the thousands, are found among the authoritarian and autocratic regimes and the megamurderers, killing in the millions, are found among the totalitarians.

226. Jagers and Gurr conclude from their work with the Polity III data that “we contend that the more coherent a polity’s democratic structure, the greater its prospects for democratic persistence and consolidation.” Jagers & Gurr, *Tracking Democracy’s Third Wave*, *supra* note 65, at 478.

protestors against trade and “globalization” in Seattle, Zurich, Quebec, Göteborg, and Genoa seem as much “old thinkers” as the anarchists with whom they found common cause. U.S. efforts to promote free trade globally, and particularly to build on the North American trade agreement achievement throughout Latin America, seem strongly in the common interest. This, of course, does not mean that we should neglect efforts to protect workers and the environment.²²⁷

Just as the long run focus must be on democracy enlargement and the rule of law, we must also focus on enhancing deterrence against war, terrorism, democide, environmental degradation, and corruption. As long as incentives within many nations do not properly operate to control these scourges, then the incentives must be supplied externally. The world of the immediate future, at least, is likely to be a world of a moderate number of liberal democracies, a large number of emerging and perhaps unstable democracies, and a continuation of some ruthless and aggressive nondemocratic actors. In this world, as with support for democracy, deterrence, in all its dimensions, must be understood as an essential element of foreign policy.

Enhancing deterrence against war and terrorism in turn requires a focus on all elements of deterrence, from maintenance of a strong military to appropriate decision making and advance communication about unacceptable actions. In this connection, we might also explore ways to enhance collective security, particularly by considering the operation of collective security in deterrence terms. What might be realistically achieved in strengthening the United Nations against war, terrorism, and democide by *advance* commitments and preparations against particular threats rather than simply after the fact consideration? As we seek to deter, we should also keep alert to the relevance of belief systems and “cognitive bias,” particularly “prospect theory,” in framing appropriate strategies. And we should seek out opportunities to multiply deterrence through bilateral and multilateral coordination at all levels.

Further, if government failure and the central role of nondemocratic

227. See David Dollar & Aart Kraay, *Spreading the Wealth*, FOREIGN AFF., Jan.-Feb. 2002, at 120. The authors, economists at the World Bank, note:

[T]he current wave of globalization, which started around 1980, has actually promoted economic equality and reduced poverty.... The aggregate annual per capita growth rate of the globalizing group accelerated steadily from one percent in the 1960s to five percent in the 1990s. During that latter decade, in contrast, rich countries grew at two percent and non-globalizers at only one percent.... In general, higher growth rates in globalizing developing countries have translated into higher incomes for the poor.

Id. at 120-21. See also Jagdish Bhagwati, *Coping with Antiglobalization*, FOREIGN AFF., Jan.-Feb. 2002, at 2.

regime elites in war, democide, and terrorism is a significant factor in producing these blights, then a focus of deterrence on regime elites may be particularly productive. The motivation behind the move to international criminal courts and to holding national leaders responsible for their massive human rights violations may be reflecting the growing international consensus on this point. Sadly, of course, appropriate motivation does not ensure institutions acceptable to all—as has been the experience to date with the new International Criminal Court²²⁸—or differentiate between when such strategies are appropriate and when they may interfere with efforts at war termination or enhancing democracy. Institutions, practices, or agreements that discourage authoritarian leaders from transitioning to democracy because they fear a greater risk of prosecution or that hinder deterrence by equating aggression and defense may become part of the problem rather than the solution. A proper focus on regime elites, though, may significantly aid in deterrence. The Yugoslav, Rwandan, and, newest, Sierra Leone Criminal Courts will likely assist in this regard. Further, with respect to war-fighting itself, it would seem that NATO policy in Kosovo began a focus on deterrence against regime elites. And the post-war appraisal suggests that it may have been a productive focus.²²⁹ Further realistic

228. It is to be hoped, as was true a decade earlier in the law of the sea renegotiation, that a way will be found to meet United States concerns with respect to the International Criminal Court, thus ensuring the effectiveness of the Court.

229. In his RAND study on *Why Milosevic Decided to Settle When He Did*, Stephen T. Hosmer writes:

[O]ur understanding of Milosevic is aided by one overriding constant in his decision process: his propensity to weigh alternative courses of action almost entirely in terms of how they might affect his personal hold on power. The evidence suggests that Milosevic consistently viewed his options with regard to the Kosovo conflict solely through this lens of self-interest.

HOSMER, *supra* note 143, at 2. Hosmer also reports:

The private Belgrade news agency BETA...[said] that Milosevic, being a pragmatist, decided “to salvage what could be salvaged, that being his power in Serbia.” It also suggested that the International War Crimes Tribunal’s indictment of Milosevic on May 27 gave the FRY president an important additional incentive to stop the bombing in that he realized he could best postpone an appearance before the tribunal in Hague only if he preserved at least a partially stable country in which his word remained decisive.

Id. at 106-07. See also BENJAMIN S. LAMBETH, NATO’S AIR WAR FOR KOSOVO: A STRATEGIC AND OPERATIONAL ASSESSMENT (2001). Benjamin S. Lambeth writes in this further RAND study on the Kosovo War:

[A]nother likely factor behind Milosevic’s capitulation was...the sense of walls closing in that Milosevic must have had when he was indicted as a war criminal by a UN tribunal only a week before his loss of Moscow’s support. Yet...[another] factor may have been the mounting pressure from Milosevic’s cronies among the Yugoslav civilian oligarchy, prompted by the continued bombing of military-related industries, utilities, and other infrastructure targets in and around Belgrade in which they had an economic

possibilities here may deserve continued scrutiny. What is required is not some legalistic institution capable of abstract perfect justice that will evenhandedly pursue each and every minor violation in an imperfect world. Rather, what is needed are institutions, practices, and options simply capable of adding effective personal deterrence against the most horrendous acts of aggressive war, terrorism, or massive democide and understanding the difference between efforts to commit and efforts to control such acts.

The newer paradigm might also suggest some organizational consequences within the U.S. government. Thus, given the importance of long term efforts to promote democracy and the rule of law, it might be helpful to designate a Special Representative of the President for Democracy Assistance to more effectively coordinate U.S. government programs across agencies and to actively coordinate with interested private groups such as the American Bar Association, universities, and foundations. The current position of Under Secretary of State for Global Affairs might be one appropriate location for the additional responsibility. And on the deterrence side of the equation, it might be useful to develop a new National Security Council working group with specific responsibility to serve as a core location for early strategic warning and formulation of response against war/democide threats. The intelligence community, which in recent years has predicted wars more accurately than usually given credit, should, among other actions in settings of a high or growing threat, notify this new "war avoidance" or "warning-response" working group. The working group would then examine acceptable modalities for enhancing deterrence or, in time sensitive settings, for rapidly enhancing deterrence and, if possible, avoiding the war or democide. This new working group will address the institutional problem that simply providing advance notification of an attack, as was done by the intelligence community in the Gulf War, does not ensure that the notice is given to a working mechanism that understands the modalities for avoiding war and is structured to explore those modalities under what may be extreme time pressure. Suppose, for example, if even on the eve of Saddam Hussein's invasion of Kuwait he had received a private message jointly from George Bush and Margaret Thatcher that any attack against Kuwait would be viewed with the utmost seriousness, or an even blunter message. In many settings it may already be too late for any such action, but if only one war or democide

stake and whose destruction increasingly threatened to bankrupt them.

Id. at xiv.

per century could be avoided it would be well worth the effort.²³⁰

VIII.A FUTURE WITH FEWER WARS

In 1968, Will and Ariel Durant calculated that there had only been 268 years without war in the previous 3,421 years.²³¹ Certainly controlling war is a monumental challenge. More optimistically we might note that the numbers are misleading in failing to also tell us that individually most nations are at peace most of the time.²³² Nevertheless, because of the missed compounding of the values destroyed by war, we and all future generations are profoundly affected by past wars even in time of peace. Further, as has been all too evident in the twentieth century, the immediate cost of war, when it occurs, can be huge. World War I killed an estimated one out of every twenty-eight persons in France and one out of every thirty-two in Germany. It severely damaged the industrial base in Europe, massively multiplied the national debt of the belligerents, and retarded the growth of Europe by a minimum of eight years, from which it would not recover before the onset of World War II.²³³ World War II, with the associated Holocaust, produced at least 40 million deaths. As many as 1,700 cities and towns and 70,000 villages were devastated in the Soviet Union. Over forty percent of the buildings were destroyed in forty-nine of Germany's largest cities and many suffered much worse. Europe, as a whole, had an estimated 21 million refugees. The massive destruction of Tokyo, Hiroshima, and Nagasaki are common knowledge. Global trade, which was well developed before World War I, was set back half a century by World Wars I and II. Terror Tuesday on September 11, with over 3,000 dead in

230. Alexander George and Jane E. Holl call this problem the "warning-response" problem. Their superb discussion of the issue, and possibly missed opportunities in preventive diplomacy arising from it, are discussed in Alexander L. George & Jane E. Holl, *The Warning-Response Problem and Missed Opportunities in Preventive Diplomacy*, in REPORT IN THE CARNEGIE COMMISSION SERIES (1997). I share the thrust of their discussion that with an appropriate national policy to deal with the "warning-response" problem we might have been able to avoid the Korean and Gulf Wars and have at least mitigated the genocide in Rwanda, even in the absence of an appropriate advance deterrent policy.

231. See THE LESSONS OF HISTORY (Michael Howard ed., 1968).

232. For an excellent analysis of war through time, see Jack S. Levy et al., *Continuity and Change in the Evolution of Warfare*, in WAR IN A CHANGING WORLD 15 (Zeev Maoz & Azar Gat eds., 2001).

233. Niall Ferguson writes of World War I: "In four and a quarter years of mechanized butchery, an average of around 6,046 men were killed every day.... The First World War undid the first, golden age of economic 'globalization.'" NIALL FERGUSON, THE PITY OF WAR 436, 438 (1999). In contemporary terms the human tragedy of World War I might be thought of as two 9/11 terrorist events every day for four and a quarter years.

the collapse of the World Trade Center and global economic costs in the trillions of dollars, reminds us that we are talking about a critical challenge for *our* generation. And these horrors occurred without the unthinkable nuclear exchange. Certainly reducing the risk of war and terrorism remains a priority for all of mankind.

In contemporary thought about war avoidance, the “democratic peace” has already influenced the foreign policy of democratic nations, and appropriately so. It may be time, however, for a broader approach that both builds on the insights of the democratic peace and seeks to go beyond it to incorporate additional insights about war and other foreign policy concerns in the interest of a more complete and operationally useful foreign policy. To borrow Sir Winston Churchill’s famous phrase, as always it is left to our political leaders to “pass...from the tossing sea of Cause and Theory to the firm ground of Result and Fact.” May this newer theory, also in Churchill’s words, strengthen “the Sinews of Peace.”

