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DENOUNCING WAR AND DECLARING PEACE:
RETHINKING THE CONGRESSIONAL WAR POWERS

A DISSERTATION SUBMITTED TO THE GRADUATE DIVISION OF THE
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Abstract

Traditionally, declarations of war have been viewed as a formality and the congressional power to make them as primarily a constitutional mandate. By distinguishing a reasoned from an unreasoned declaration, it is argued instead that declarations of war possess substantive grand strategic and moral functions and, hence, that the primary motivation for making them is military and moral, not constitutional. In practical terms, this means that the Declaration of Independence is the only "good" declaration in American history, the model yet to be emulated.

The sources for the current misinterpretations are further identified as two: 1) a failure to distinguish clearly combat from war and 2) a failure to recognize that all nations, not just America, stopped declaring their wars formally during the seventeenth century.

In conclusion, the concepts developed are illustrated by analyzing five twentieth century wars.
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Preface

The purpose of this dissertation is to rethink the power to declare war. The argument takes as its starting point a paradox: On the one hand, the Federal Convention of 1787 got it right. In a representative democracy, the power to declare war must reside with the people's representatives, and only the people's representatives. Otherwise, the polity is neither fully democratic nor fully representative. On the other hand, in over two hundred years, the people's representatives have never exercised this power in any clear-cut unambiguous way. In short, why or how did democratic theory get ambushed by historical practice?

The answer comes in two parts. The first part results from a description of the decline and fall of fully reasoned formal declarations of war. This is done in Chapter 3, where the history of declarations of war is traced, beginning with the oldest Babylonian texts though to a 1938 article in which Clyde Eagleton concludes that declarations of war possess neither form nor function. The turning point in this narrative is the seventeenth century. It was then
that the nations of the world stopped declaring their wars formally, except on rare occasions.

But, if all nations stopped declaring war formally during the seventeenth century, roughly a hundred years before the Federal Convention met in Philadelphia, and if formal declarations of war possess neither form nor function, as modern scholarship has clearly determined, then the ambush is explained. As a practical matter, the power to declare war is thoroughly vacuous. Assigning it to the Congress was and is a meaningless gesture, the demands of democratic theory notwithstanding.

The second part of the response assumes that the first part is unacceptable. The historical practices of the last four hundred years notwithstanding, democratic theory cannot, or, at least, should not, be sacrificed so easily. Therefore, the task is to try to understand why the nations of the world stopped declaring war formally during the seventeenth century, a discovery which should lead to some remedy for this unsatisfactory situation. There are of course a number of reasons, but the one that is most fruitful is the conceptual one. That is, during the seventeenth century, there was a shift away from conceiving of war as policy to an empirical conception of war as violence. And, once one conceives of war as violence or conflict or a "contest" -- to use the eighteenth century
term that I shall employ most frequently -- formal declarations of war become irrelevant.

They become irrelevant because, whenever one conceives of war as violence etc., its purpose must be to destroy or kill the enemy. But why would anyone ever take the time to formally "declare" his intention to kill or destroy another since the primary effect of such a "declaration" would be to alert the enemy, thereby making the task of killing him that much more difficult? Such a "declaration" of intent to destroy serves no rational purpose or function.

The heart of the problem, therefore, lies not in the domain of democratic theory but rather in a changed conception of war. The remedy will be found in reversing this change, in conceiving of war, not as violence etc., but rather as policy or as a "condition" -- to return to Grotius' conception. Inasmuch as the conflict between conceiving of war as violence and conceiving of war as policy lies at the heart of the problem, it is examined in every chapter, although Chapter 4 is devoted exclusively to the issue. The conflict is also approached in several different ways. Clausewitz naturally figures prominently, but the bedrock of the analysis is a sharp distinction between combat and war, between the cinematographically most arresting part of war and the whole of war.

Combat is separated from war not so much because it allows one to avoid a simplistic reduction of war to its
violent fraction, but rather because that is the way I experienced war, my service in Vietnam having been divided into a period of combat in the bush and a period without combat at division and air wing headquarters. For this reason, Chapter 1 includes a section in which I describe my personal experience of war. The story is, however, skewed. Instead of recounting the dramatic incidents that occurred during my time in the bush, the incidents that make Going after Cacciato (O’Brien 1978) or Platoon (Stone 1986) so compelling, I recount the utterly banal incidents that occurred while I occupied different staff billets at headquarters. In other words, while Oliver Stone skewed Platoon in one direction by recounting the story of six patrols, which together would have occupied little more than a week of a fifty-six week tour, I skew my story in the opposite direction by describing the tedious and trite events of my eighty weeks in staff positions while largely ignoring the patrols during which I was actually shot at. Stone uses the recipe for box office success; I, the recipe for boredom. Nonetheless, by pushing my combat stories off stage in this way, I hope to engage the reader in both the perplexity and the paradox of my experience: How is it possible that my time in staff billets was both war filled and combatless?

A further advantage of this autobiographical chapter is that it allows me to achieve a number of other objectives.
Principal among these is the opportunity to approach the congressional war powers in a most untraditional manner. Since few topics have suffered more from a slavish adherence to a traditional approach, I was delighted to discover this unconventional entry into the topic. Specifically, it allowed me to displace the traditional touchstone texts -- James Madison's *Notes of the Federal Convention of 1787* and his 1793 exchange with Alexander Hamilton under the *noms de plume* Helvidius and Pacificus -- with Thomas Jefferson's *Declaration of Independence*. The importance of this displacement cannot be overemphasized. It was while comparing the *Declaration of Independence* to the five nineteenth and twentieth century congressional declarations of war that I realized why the latter possess neither form nor function. Indeed, it is only a slight exaggeration to say that my entire argument can be reduced to Jefferson's *Declaration* -- had the United States Congress done what Jefferson did, no controversy over its war powers would ever have arisen.

Many readers, however, will find my use of the *Declaration of Independence* eccentric. In particular, those adhering to the interpretation begun with James Wilson in 1790, furthered by Justice Joseph Story, and culminating in Abraham Lincoln's Gettysburg Address who view the *Declaration* as the foundational document for the United States will be caught off guard (Wills 1992, 131). Yet, by
returning Jefferson's Declaration to its original function, I have not sought to deny that it also embodies the proposition upon which the new Nation was conceived and to which she is dedicated. Rather, I have only sought to draw from it the form of a model declaration of war, there being no other example of an adequately reasoned declaration in American history. My narrow purposes, therefore, dictated a narrower, more primitive interpretation.

My constricted use of Jefferson's Declaration highlights another characteristic of the argument. Although long sections are conceptual and historical in character, the argument is basically a textual analysis. This approach is dictated by the nature of the topic. For, the power to declare is emphatically not the power to start a war, as many believe. Rather, the power to declare war is the power compose a text, to draft a document, to write a denunciation. An analysis of this power, therefore, resolves to an analysis of the quality of the text so produced. When one has isolated and identified the elements of a well composed declaration of war -- and this is done most easily through an analysis of Jefferson's Declaration -- one has, in a certain conceptual sense, exhausted the topic. This textual analysis of the Declaration is found toward the end of Chapter 2. However, in another, more practical sense, one has hardly scratched the surface of the topic, which is the purpose of Chapter 5. After
constructing an abstract idealization of both war and declarations of war in Chapters 1-4, in Chapter 5, these abstractions collide with the endlessly messy particularity of history as selected twentieth century wars are analyzed in light of their declarations, producing predictably ambiguous results.

Nothing is ever written by the author alone. Without the encouragement and criticism of others, the enterprise soon looses vitality and grinds to a halt. In my case, my principal source of both encouragement and criticism was Peter Manicas. Peter not only provided the initial intellectual foundations from which I launched this project, but the unique way in which he tempered his excitement at each new insight with insistent critique of each new shortcoming did much to propel the project along. In addition to Peter, Manfred Henningsen, Neal Milner, George Simson, and Carolyn Stephenson, all labored through a less than fully coherent manuscript and made valuable contributions. Manfred kept a close eye on my "eccentricities," identifying, if not correcting, all of them. Neal worried about the ethical or moral foundations of my outlook and, not finding them, gently suggested that I uncover them and make them explicit to the reader. George, revealing a useful prejudice, found the autobiographical passages less fulsome than required and pushed me beyond
that which reticence thought proper. Carolyn, in her Socratic way, edged me forward question by question to the realization that war could not be defined, an insight that shaped Chapter 4. That I failed to heed these well aimed criticisms in all cases is, of course, my full responsibility, as are any other deficiencies in logic, fact, or style.

And, finally, there is the home team -- my wife, LiLi, my daughter, Victoria, and my son, Kekoa -- whose patience and support quite simply made this project possible.
Chapter 1

"Something Else Is Needed"

Traditionally, a study of the congressional war powers begins with a review of the standard works on executive authority, the presidential war powers, and the extensive constitutional law literature. This approach starts with the debates in the Federal Convention, proceeds to Hamilton and Madison's 1793 exchange conducted under names of Pacificus and Helvidius, and, then, retells the story of the controversies and the case law that arose in each of America's undeclared wars, concluding with the most recent one. But what is the relevance of this traditional approach? What can be learned from these studies, which are largely the story of presidential action and congressional inaction. For instance, what can be learned about the congressional war powers from the declarations of war that the Congress did not write for the Quasi War against France or any of the numerous Indian Wars or the Korean War or the Vietnam War? The controversies that surround these wars teach us much about the presidential war powers, especially
about his power to wage formally undeclared wars. But do these controversies tell us anything about the congressional war powers, except that they are easily circumvented? Hence, while it is true that the standard works cannot be ignored, it is equally true that, "...constitutional exegesis has done little to hold back the presidential juggernaut," and, therefore, that, "Something else is needed" (Draper 1991, 73).

This being the case, instead of beginning with the expected "constitutional exegesis," I propose beginning with a set of four personal experiences that have shaped my ideas and attitudes concerning the congressional war powers. These experiences stretch back over thirty years and are connected, one to the other, by nothing more solid than serendipity; yet, taken together, they add up to an unexpected perspective.

1. The 1973 War Powers Resolution

I initially became interested in the congressional war powers as a result of the controversies that surrounded Commander-in-Chief Ronald Reagan's deployment of Marines to Lebanon in 1982-1983. To recall briefly, on Monday, 20 September 1982, Reagan ordered the Marines afloat with the Sixth Fleet to return to Beirut to help restore civil order. A year later, on Monday, 29 August 1983, the Marines began taking hostile fire from the various factions quarreling in and around the city. The prospect of casualties revived
long dormant calls in the Ninety-Eighth Congress for Reagan to comply with the provisions of the 1973 War Powers Resolution. Reagan of course refused, claiming that the Resolution was unconstitutional, an unwarranted infringement upon his own war powers. After six weeks of negotiations, a compromise solution was worked out. Embodied in Senate Joint Resolution 159, the Multinational Force in Lebanon Resolution (Pub. L. No. 98-119, 97 Stat. 805), Reagan signed this resolution on Wednesday, 12 October 1983. At the same time, he also issued a statement specifically denying the validity of Section 4 (a) (1) and Section 5 (b), the operative sections of the 1973 act (Papers of President Ronald Reagan ... 1985, 2:1444-5).

The "Joint Resolution concerning the war powers of Congress and the President," to use the 1973 act's full title, is a piece of post-Vietnam legislation that was passed over President Richard Nixon's veto on 7 November 1973. It attempts to create a procedure whereby the Commander-in-Chief is forced to report to the Congress the introduction of any United States Armed Forces into a "hostile" situation within forty-eight hours of that introduction. This report, in turn, is supposed to force the Congress either to authorize the operation formally and officially within sixty days or, in the absence of a formal congressional authorization, to terminate the operation. After the veto fight, the Resolution had rested peacefully
on the books for nine years, until Reagan's deployment of the Marines to Beirut created an opportunity for the procedures to be tested. As was to be expected, the procedures failed. Reagan denied their constitutionality; some members of the Congress noisily upheld them, and the stage was set for the year-long controversy that reached its anti-climax during September and October of 1983.

As is often the case, the news accounts shed little light upon the fundamental issues, concentrating instead upon the tit-for-tat posturing of the two sides. Therefore, as the controversy raged and my confusion grew, I decided to go to the library and read the 1973 act. Since then, I have learned of the specific drafting errors that render the War Powers Resolution inoperable. There are several of these, including the problem of defining "hostilities." But the most fatal arises as follows: The War Powers Resolution (Pub. L. No. 93-148, 87 Stat. 555) requires the President to file three different reports, only one of which -- the so-called "hostilities" report (§4 (a) (1)) -- starts the clock ticking (under §5 (b)) that "terminates" any further use of United States Armed Forces at the end of sixty day, unless the Congress has authorized continued use. However, the drafters neglected to require the President to stipulate in his letter which of the three reports he was transmitting to the Congress. Consequently, when Commander-in-Chief Reagan reported on 29 September 1983 that he had deployed 1,200
Marines to Lebanon in September of 1982, he left it up to the Congress to decide whether his letter constituted a "hostilities" report or one of the other reports. Needless to say, the Congress was not able to do so, which meant that the sixty-day clock never started ticking (Cf. Glennon 1984).

These drafting errors aside, what struck me most forcefully as I read the Resolution was its conceptual incoherence. The most fundamental conceptual difficulty is the way the Ninety-Third Congress sought to force the Commander-in-Chief to force the Congress to discharge its duties under Article I, Section 8 of the Constitution. Not knowing the constitutional literature at the time, I found this game of pass-pass bizarre in the extreme. I naively assumed that, when the Framers of the Constitution wrote, "The Congress shall have the power ... To declare war...," they meant that the Congress had the power to declare war. It, therefore, followed that there never was any need for the Congress to attend upon anyone else in order to discharge its constitutional responsibilities. Most especially, there was never any need for the Congress to wait until the Commander-in-Chief "consulted" with or "reported" to it before it "authorize" the "introduction" of United States Armed Forces into a "hostile" situation.

Turning this coin over and phrasing the difficulty negatively, I was struck by the way the Ninety-Third
Congress conceived of the congressional war powers as being completely subordinate to and dependent upon the Commander-in-Chief. This dependency arose because, in both situations envisioned by the Resolution, the Congress is powerless to act unless and until the Commander-in-Chief acts first. Thus, in the first case, the Commander-in-Chief "consult[s] with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" (§3. Emphasis added.). In this case, the Congress may either declare war in due form, or it may do nothing, awaiting the actual introduction of United States Armed Forces into hostilities, at which time the second case becomes operative. In the second case, the Commander-in-Chief introduces United States Armed Forces into a "hostile" situation, first, and, then, "consults" with the Congress, reporting within forty-eight hours (§4 (a) (1)). In this latter case, the Congress has sixty days to authorize continuation of the operation, or, failing to do so, the operation must be "terminated" (§5 (b)).

In fine, the Resolution does not envision the Congress acting independently of the Commander-in-Chief. In all cases, congressional action is dependent upon the Commander-in-Chief taking the initiative. Should the Commander-in-Chief not "consult" beforehand or refuse to "report" after the fact, as Reagan and many other commanders-in-chief have
done, the Congress is left high and dry, sputtering and protesting but unable to do much else. Since first reading the War Powers Resolution, I have learned that this dependence is sanctioned by a long tradition, stretching past Madison at least to Blackstone and Locke and their doctrines of royal prerogative. However, not having read the standard literature at the time, it seemed to me self-evident that, if the Congress possessed any war powers at all, those powers had to be exercised independently of the Commander-in-Chief. For, "powers" that are dependent upon others for their exercise cease to be powers.

Naively, therefore, I imagined that the Congress could discharge its war powers independently. In contrast to the two passive scenarios outlined in the Resolution, I envisioned a more active scenario. For example, I could imagine a member of the Ninety-Eighth Congress taking to the floor and announcing, "This morning, while driving to the Capitol, I overheard on the radio that Commander-in-Chief Reagan had invaded Grenada. In light of this development, I move that all other business be suspended and a declaration of war against Grenada become the pending business of this chamber." Following the adoption of this motion, a debate would ensue. Several weeks later, a declaration would be drafted, the draft would be debated fully over a period of days, if not weeks, and, eventually, it would be voted up or down. Should the Congress find sufficient reasons to
justify the invasion of Grenada, it would pass the declaration, thereby discharging its constitutional responsibilities and, not incidentally, sanctioning the Commander-in-Chief's decision. Should, however, the Congress find insufficient reasons to justify the invasion, it would not pass the declaration and move on to consider a bill of impeachment against the Commander-in-Chief for exceeding his authority.

The principal objections to my scenario of independent congressional action, I now know, are two: First, that there exists no precedent for such independent action, for such a direct attack upon the Commander-in-Chief's royal prerogative. However, a diminution of royal prerogatives does not strike me as an objection that should carry great weight in a democracy. Second, that the "consultations" and "reports" envisioned by the Ninety-Third Congress (and James Madison) are designed to act as checks and balances. However, "consultations" and "reports" are the weakest possible sort of check or balance. Moreover, such a scheme strikes me as both impractical and dangerous: Impractical, because, in two hundred years of American history, these "consultations" have yet to either check or balance the ambitions of a determined commander-in-chief. Dangerous, because the scheme is too easily by-passed -- like the safety on an M-16. By the simple expedient of never switching the selector off "semi" or "auto," the safety is
by-passed and the M-16 functions just as well, some would even say better. By the simple expedient of never "consulting" with or "reporting" to the Congress, these checks and balances are by-passed and the Commander-in-Chief is able to function just as well, some would say even better.

A second conceptual difficulty in the 1973 act is the way in which it envisions the congressional war powers as principally the "statutory authorization" of the Commander-in-Chief's power "to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" (§2 (c)). Not only is the possibility of the Congress declaring war a subordinate concern in the act, but one has the strong impression that it is viewed by the Ninety-Third Congress as but a different statutory form for "authorizing" the introduction United States Armed Forces into hostilities. Yet, given the results of the Ninety-Eight Congress' "compromise" with Reagan, not to mention the past two hundred years of American history, "statutory authorization" appears to be but a euphemism for rubber stamping a fait accompli. Whatever the congressional war powers might be, they must surely constitute something more substantial than "statutory authorization."

And, finally, closely related to the rubber stamp problem, a third conceptual difficulty that troubled me is
the way in which the 1973 act focuses upon time and not substance. Not only is the act full of deadlines -- "within forty-eight hours," "within sixty calendar days," "every six months," "extended for not more than thirty days" -- but the whole purpose of the act is to fix the times at which the Commander-in-Chief will do this and the Congress that. This emphasis upon when and not what, of course, possesses a long and distinguished lineage. I was later able to trace it back as far as James Madison. But, again, my naive reading of the Constitution led me to believe that the timing of the declaration of war -- much less the timing of any "statutory authorization" -- was unimportant. What was important was content. That is, the first question that arose in my untutored mind when I read Article I, Section 8 was not when should the Congress declare war, but rather what should this declaration contain?

This last question troubled me especially. Since nothing in the 1973 act answered it, I returned to the library, and, after several hours with the Congressional Record and its predecessors, gathered a complete collection of American declarations of war -- the declarations of 1776, 1812, 1846, 1898, 1917, and 1941.¹ Once in hand, the first thing I noticed was their lengths. The 1776 Declaration was long, the others, short. The reason for this difference in

¹Except for those cited in the text, all of the formal congressional declarations of war are reproduced in the appendix.
length soon became apparent when I read through them. The declaration of 1776 was long because it contained a lengthy analysis of the grievances that had provoked the war. The declarations of 1812, 1846, 1917, and 1941 were short because they contained no analysis of grievances. Instead, they simply declared, officially and formally, that a state of war now existed between The United States and Great Britain, the Republic of Mexico, Imperial Germany, or the Empire of Japan. The declaration of 1898 was a curious mixture. While it was short, it also contained an analysis of the grievances that had provoked the Spanish-American War. However, this analysis possessed neither the depth nor the detail of Jefferson's Declaration, and it had a suspiciously hollow, rhetorical quality to it.

The conclusion I drew from this reading of the six declarations was that, just as there were well drafted laws and poorly drafted laws, likewise, there were well drafted declarations of war and poorly drafted declarations of war. A well written declaration was a fairly long document that adequately analyzed the grievances that had provoked the war, like Jefferson's Declaration of 1776. A poorly written declaration was a relatively short document that either omitted all analysis of grievances or provided an inadequate analysis, like the five congressional declarations I had collected. By extension, the worst possible declaration of war was either no declaration at all or the "statutory
authorization" of a *fait accompli*. I further concluded that, had the Ninety-Third Congress concerned itself with content, instead of timing, when drafting the 1973 War Powers Resolution, it would have written a completely different resolution, a resolution which required the Congress to model its declarations of war upon Jefferson's *Declaration of 1776*. Specifically, the resolution would have followed Jefferson's dictum that "...a decent Respect to the Opinions of Mankind requires that they should declare the causes that impel them to Separation...." Moreover, should the Congress ever model its declarations of war upon Jefferson's, it would not only avoid the appearance of being little more than a rubber stamp for the Commander-in-Chief but also carve out a domain of action independent of his. That is, the 1973 act stipulates among other things that the Commander-in-Chief will set forth in his initial hostility report, "the circumstances necessitating the introduction of United States Armed Forces [into hostilities]" (§4 (a) (A)). Needless to say, commanders-in-chief are never at a loss for circumstances necessitating their doing that which they have done. However, if the Congress ever took upon itself the responsibility to define and articulate these necessitating circumstances, independently of the Commander-in-Chief, as Jefferson did in 1776, then not only would it have assumed a war power that was more than a rubber stamp; not only would it begin acting as a real check upon the Commander-in-
Chief's propensity to war, but it would, finally, break free of its subordination to and dependence upon the Commander-in-Chief as well.

Years later, I would broaden and deepen my analysis of Jefferson's Declaration. I would also learn that the type of declaration he had written was called a "reasoned" declaration and that, by implication, the declarations of 1812, 1846, 1898, 1917, and 1941 were "unreasoned" declarations. But, in 1983, I had exhausted my interest in these matters. The controversy had died down, and I had satisfied my curiosity concerning the War Powers Resolution. I now understood why its procedures would never work. I put my complete collection of American declarations of war in a folder and filed them away.

The next personal experience that shaped my attitudes and ideas on the congressional war powers occurred on Sunday, 20 January 1991 during height of the Persian Gulf War. This experience added little new, but it served to confirm and clarify the conclusions I had come to in 1983. During December, Rev. Reller, who never missed an opportunity to point out that his name was a palindrome, contacted me and asked for my assistance in organizing a program on the Gulf War for his Adult Education Ministry, which met at nine o'clock Sunday mornings between the early and late services. He was planning to spend two Sundays on this topic and was looking for two different speakers. We
easily identified the first speaker but were unable to think of a second. Finally, I mentioned that I had done some work on the War Powers Resolution and could talk on that. He quickly agreed, no doubt because we had been unable to think of anything better, and the program was set.

At the appointed hour, I passed out copies of my complete set of American declarations of war and explained the difference between Jefferson's fully reasoned declaration and the five unreasoned congressional declarations. I then suggested that, instead of having voted an "authorizing" resolution on 12 January 1991, what the One-Hundred-and-Second Congress should have done was to have written a fully reasoned declaration of war modelled on Jefferson's Declaration of 1776. Such a course of action, I continued, would replace the babble of conflicting justifications emanating from the Administration with a single official explanation of the necessities that justified the war. In addition, since the congressional debate would be public, unlike the private decisions being made within the White House, ordinary citizens would be able to influence its course in the same way they influence all legislation that concerns them.

After a short question period, someone discretely mentioned that it was time for the service to begin, and most of the audience got up and left. A few people stayed back, however, which allowed the discussion to continue for
another hour. One lady in particular was interested in what I had said. She was a fifth grade school teacher who had been struggling for some time with how to explain the war to her class. Several of her students had fathers who were in Saudi Arabia, and the others could not avoid hearing about the war on television. All her students were worried, but she had discovered no good way to explain the war to them. President Bush said this; Secretary of State Baker said that. The United Nations Security Council did this; the Congress did that. She was confused, and, because of her confusion, she was doing nothing to allay the anxieties of her students. Fifth graders, she told us, were not reassured when she told them their daddies were fighting a war for oil or jobs.

Her interest in my talk had been threefold she explained: First, she liked what I had said about Jefferson's declaration. The distinction between reasoned and unreasoned declarations made sense to her. But, more important, it would make her task of explaining the Gulf War to her students very much easier if she had a fully reasoned declaration like Jefferson's. She had taught the Declaration of Independence before, and her fifth grade students had understood it. If she had a similar document, she should be able to use the same lesson plan with the same results. Second, she liked my idea that the Congress would provide a single official voice that would speak with
authority. The voice could have many tongues articulating the pros and the cons, but she needed a single source. She simply did not have the time to ferret out the information she needed. If she could read a competent summary of a congressional debate that was focused upon why it was necessary for us to fight in the Gulf -- the grievances that had caused the war and the remedies that would end it -- she could quickly and efficiently prepare herself to answer her students' questions and concerns. Lastly, as a citizen, she liked the idea that the congressional debate would be open. She was skeptical as to how much influence people could exert, but just being able to follow the debate, hear the reasons for and against the war, and decide for herself which were valid and which were not would be a great improvement from her point of view. She followed the news as closely as she could but was totally confused as to why this war was necessary. She had faith in President Bush, but she would prefer to hear the reasons why and decide for herself.

As I said, this experience did not change my attitudes toward the congressional war powers. However, it did sharpen and clarify them. Before the talk, I had conceived of the congressional war powers vaguely as doing like Jefferson did. After the talk, I came away with a better, clearer, and poignant definition of those duties: The power to declare war is the power to debate and frame a fully
reasoned declaration, that is, a document that articulates the grievances that necessitate and the remedies that will end a war such that a fifth grade teacher can explain to her students why their fathers have left home. Yet, increased clarity did not translate into increased motivation. Strangely in retrospect, I was not motivated to develop my thoughts further. After a most gratifying two hours of discussion, I put my materials back in their folder and occupied myself with other concerns.

My apathy was jarred several months later when I finally read Peter Manicas' *War and Democracy* (1989). It had been sitting on my "must-read" pile for over a year, but it was not until several months after the Sunday talk that I picked it up and started reading. As its title indicates, the book explores the relationship between war and democracy, sweeping from ancient Athens down to the present. It does not address the congressional war powers specifically; rather, it confronts the broader topic of war and democracy, thereby setting the narrow constitutional issue in a larger historical and philosophical context, providing the necessary background that is so often missing from the standard works. Most particularly, *War and Democracy* illuminates the continuing affects of the antidemocratic tradition that stretches from Plato and Aristotle through Madison into the present.
I found the book informative, provocative, and very frustrating. Beginning on page one, it was a "Yes, but..." book. Yes, the book’s purpose was both timely and important, "This book is a historical study of war and democracy. Its main aim is to contribute to an understanding of our present situation" (p. 1). Yes, "...there was a time when no one who had to fight a war was excluded from the decision to go to war. Citizens ruled, and only citizens fought and died" (p. 1). Yes, "It may well be that the problem of 'democracy,' construed as an ideal, cannot be solved until there is a solution to the problem of war...." (p. 1). Yes, the present dilemma was how to deal with "...the Machiavellian imperative of modern politics: Namely, how an executive responsible for the national security was to deal with a recalcitrant, uninformed, and voting public" (p. 157). Yes, in a democracy, "...outcomes requiring conjoint action [such as war] require participation precisely because only the participants can decide whether a particular outcome is good for them" (p. 375). Yes, yes, yes,... but what are the specific modalities by which this increased participation would take place? More democracy is of course always welcome, but, unless this increase creates specific fora and processes that connect the governed to their governors, it will do little to resolve "the Machiavellian imperative of modern politics."
Since I thought I knew what these specific modalities should be, I was very frustrated that Manicas limited himself to suggesting somewhat tentatively that Jeffersonian "ward republics" or some similar arrangement would be the solution. The only remedy for my frustrations, it soon became clear, was to build upon the foundation Manicas had laid and provide what I took to be the answer to the problem of war and democracy.

Thus challenged, I began reading the standard works on executive authority, the presidential war powers, and the constitutional law literature. As my reading progressed, I became more and more skeptical of the value of this standard literature for the questions I was pursuing. To take one of the smaller anomalies, why did settling on a suitable adjective to describe a war for which a formal declaration in due form had not been issued create such confusion? Prior too the seventeenth century, this of course had not been a problem at all. But, towards the end of the seventeenth century, after the Thirty Years War, as formally declared wars became less and less frequent, it became necessary to develop an appropriate set of adjectives to capture this new circumstance. The Supreme Court's decision in the case of the Eliza, one of the earliest cases to address issues surrounding the congressional war powers, is a convenient place to observe these various alternatives. The case turned on whether or not France and the United
States had been at war when the Ganges re-captured the Eliza from a French privateer on 31 March 1799. Justices Washington and Chase both analyzed the case in the same way, differing only in the adjectives they used. For Justice Chase, the substantive issue was one of distinguishing between "a public general war, and a public qualified war."

This led him to argue that:

Congress is empowered to declare a general war, or congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws (4 U.S. (4 Dall. 37) 44, 43. Bold added.).

Justice Washington agreed with Justice Chase on the substantive issue but expressed himself with a greater variety of adjectives:

It may, I believe, be safely laid down, that every contention by force between two nations, in external matters, is not only war, but public war. If it be declared in form, it is called solemn, and is of the perfect kind; because one whole nation is at war with another whole nation.... In such a war all the members act under a general authority, and all the rights and consequences of war attach to their condition.
But hostilities may subsist between two nations more confined in its nature and extent; being limited as to places, persons, and things; and this is more properly termed imperfect war; because not solemn, and because those who are authorized to commit hostilities, act under special authority and, can go no further than to the extent of their commission. Still, however, it is public war, because it is an external contention by force, between some of the members of the two nations, authorized by the legitimate powers (4 U.S. (4 Dall. 37) 40. Bold added.).

In addition to noting the adjectives used, three comments are perhaps appropriate: First, Justice Washington’s basic definition of war as a "contention by force" is the classic definition, handed down from Cicero (De officiis I, xi, 34). Second, the distinctions drawn by the court are yet another example of how the congressional war powers have traditionally been analyzed in terms of formalities, and not in terms of content. The Congress is of course free to wage a war of whatever extent it may desire. But how should this desire be expressed? Through the manipulation of formalities? Or, through the manipulation of content? Should the Congress declare war formally when it desires an extensive war, but refrain from declaring war formally when it desires a more restricted war? Or, should the Congress declare war in every case,
setting expansive war aims when it desires an extensive war and limited war aims when it wants a "partial" war? As we shall argue in the next chapter, the proper method for the Congress to control the extent of the war is by manipulating the content of the declaration. Third, some of the connotations implicit in Justice Washington's adjectives are perhaps too ironic. According to this terminology, the Second World War was not only a "good war," but a "solemnly" "perfect" one as well, while the Vietnam War will forever remain "imperfect" only because it failed to secure a "solemn" declaration from the Congress. One understands why jurists finally settled on "declared" and "undeclared" towards the middle of the twentieth century.

This confused search for a suitable adjective is, in itself, a small matter. However, as I read further, I discovered, first, more fundamental difficulties and, second, that a fourth personal experience, my service in Vietnam, was going to exert a powerful influence upon my ideas and attitudes. In particular, I was amazed to learn that all of the standard works assumed without question, first, that war was violence and, second, that "unsolemn," "imperfect," "undeclared" wars were not only possible but often "desirable." Since my experience in Vietnam had convinced me that war could not be reduced to the violence of combat, I was not prepared to accept the first assumption and was extremely skeptical of the second. Further reading
confirmed my skepticism and made it clear, first, that these two assumptions combined synergistically to vitiate the Congress' power to declare war and, second, that, therefore, the problem lies in our conception of war, not in our conception of democracy, precisely as Manicas had argued. I was also surprised to learn that both misconceptions grew out of changes that had occurred, not during the nineteenth and twentieth centuries, as the conventional wisdom held, but rather during the seventeenth century.

Briefly, assuming that "undeclared" wars are both unavoidable and unexceptional means that, no matter how democratic a polity might be, the specific modalities for achieving enhanced participation are no longer relevant, no longer alive. They have ceased to function. Throughout history, the debates, discussions, rites, and rituals that surrounded a formal declaration of war were the specific means by which the tribe, the assembly, or the great council participated in the decision to war. However, once an archon, a consul, a king, or a president is empowered to wage so-called "imperfect" "undeclared" wars, these modalities become hollow and meaningless. They become hollow because the archon seeks a formal declaration of war only when he is certain that he will obtain it. They become meaningless because, whenever he is not certain, he wages an "unsolemn," "imperfect," "undeclared" war on his own authority, without consultations, restrained only by the
need to ensure that the war is short, successful, and popular, as two hundred years of American history demonstrates.

Hence, the source of our confusion concerning the congressional war powers is not some defect in our constitutional arrangements, but, rather, our unexamined belief that "undeclared" wars are unexceptional. And, this belief, in turn, rests upon an unexamined belief that war is combat. For, when we conceive of war as combat, then a hard edged cynicism forces us to acknowledge that it is absurd to declare our intentions publicly. To do so is to lose all the advantages of surprise. To do so is to better prepare the enemy to resist the violence we wish to inflict upon him, which makes no sense at all, a consequence that I shall return to repeatedly. A reevaluation of Article I, Section 8, therefore, must, first, question whether war can indeed be reduced to the violence of combat and, then, if that investigation prove positive, move on next to investigate in what sense "undeclared" wars must always be considered exceptional, unusual, and suspect. Since my experiences in Vietnam are the primary source for my belief that war cannot be reduced to the violence of combat, an explanation of how and why I came to this conclusion is perhaps appropriate.

2. Vietnam: Combat vs. War

I arrived in Da Nang from Okinawa in December of 1967. Like most freshly minted brown bar Marines, I was sent from
division to regiment to battalion to company and eventually put in command of the Third Platoon, Lima Company, Fifth Marines. During this initial phase of my tour, my platoon and I walked in the sun, slept in the rain, received a few potshots from friendly guerrillas now and again, and ran into serious trouble once or twice. When I returned from the hospital, I was reassigned to division headquarters as a Combat Operations Center watch officer, G-3 (Operations). With this assignment, the second and more significant phase of my tour began.

My duties as a G-3 watch officer were straightforward. I sat in an air conditioned, reinforced bunker at a long desk next to the G-2 (Intelligence) watch officer, answered the telephone to my right whenever it rang, took down the report from whomever called, saw that the incident reported was plotted on a large backlit map directly in front of our desk; and, near the end of each watch, I wrote a report for higher commands summarizing all of the incidents, including the totals for both friendly killed, wounded, and missing and enemy killed, wounded, and captured. In addition, whenever I pulled the midnight to eight o’clock watch, I prepared and delivered the G-3’s portion of the commanding general’s morning briefing. In short, being a watch officer was basically a nine-to-five job that had the advantage of keeping you in the "know," because you heard the reports
first and could see the "big picture" with a glance at the map in front of you.

Another advantage to this billet was that, after my watch was over, I was free to do as I liked. In the afternoons, a friend and I could hitch a ride down the road to the Freedom Hill PX to watch a film. In the evenings, when the headquarter's club became a little stale, we could visit one of the other officer clubs in the area. And, every Sunday, a group of us would head for the Navy Club for their roast beef dinner, a bottle of Mateus, and a film. There was also time to renew old acquaintances. One day, I ran into my freshman dorm counselor, who was in Da Nang as a youth worker for USAID. We got together several times, mostly in the evenings, but, one Sunday, he invited me to join a group USAID people who were planning to spend the day at China Beach. Sitting on a nearly deserted white sand beach, we talked, drank beer, watched the nurses from the German hospital ship, Helgoland, playing volleyball and sunbathing, and ate the enormous grilled prawns that the vendors were selling. Another time, an Air Force nurse I was going with and I took a day off for some sightseeing. A next-door neighbor I had not seen for years flew helicopters for the 101st Airborne out of Phu Bai. This was a convenient staging area for a trip to Hue, so we caught a Chinook at Freedom Hill and flew to Phu Bai. After spending the night in the 101st cantonment, we drove into Hue the
next morning, visited the Palace and some other sights, returned to Phu Bai, and flew back to Da Nang early in the evening in an OH-6.

It was a very nice trip and quite a contrast with my previous excursion to Phu Bai and Hue. That time, I had traveled with Lima Company. We arrived in Phu Bai late one night toward the end of the 1968 Têt offensive, several hours after a rocket attack. I remember how apologetic the mess sergeant was about the twenty foot hole in the roof of his mess hall. This hole was not from the most recent attack; the one that had occurred a couple of hours earlier, he explained, but from two days before. He also apologized for not having any hot food for us, but it was near midnight and no one had told him a hundred and fifty Marines were coming, so he had no time to prepare. After gorging on canned peaches and bologna and processed cheese sandwiches, we were assigned to hooches and slept comfortably in cots, under a roof. The next morning we were trucked into Hue and, about noon, heloed across the Perfume River into the Forbidden City. I also remember, as our convoy left the Phu Bai airport in the morning for Hue, passing a freshly painted billboard erected by the Hue Tourist Authority that said "Welcome to Hue, Enjoy Your Stay" in Vietnamese, French, and English. My radio man and I thought this was somewhat ironic under the circumstances.
Although it was many years before I could articulate it, the lesson I learned from the contrasting parts of my tour was to distinguish combat sharply from war. Clearly, war was not combat any more than combat was war. The two sometimes occurred at the same time in the same general vicinity, but the connection between them was tenuous at best. During the first phase of my tour, while serving as a platoon commander out in the bush, I was frequently involved in combat; there was often a very real prospect of getting seriously killed. However, during this time, the war was distant and remote, a muffled murmur that seldom intruded. Infrequently, we had an opportunity to read about it in the Stars and Stripes or to hear about it when we tuned one of the PRC-25 radios to the Armed Forces FM station to listen to some music and the news. But these infrequent intrusions of that other reality were so incongruous, so surreal, so grossly irrelevant that they made little or no impression. We had other more pressing concerns -- where to set up for the night; how to cross to the far tree line; how to convince short-time med. evac. pilots that the LZ was not hot, that it would be sheltered by the houses and the bamboo from the sniper on the other side of the river if he swooped in low from the west; how to keep the kids from stealing grenades or the odd M-16 magazine, and the like.

In sharp contrast, during the second phase of my tour, while serving as a watch officer in the air-conditioned
comfort and safety of the rear areas, combat was as distant, remote, and muffled as war had been when I was in the bush. The prospects of getting injured, much less killed, were remote. I copied down SPOT reports for eight hours everyday, and I understood what 0 KIA, 2 WIA meant as well as the G-2 watch officer sitting next to me, especially when the report came from an area I had operated in, especially when the report was a carbon copy of a report I had transmitted six months earlier describing what was no doubt the exact same ambush -- the fire coming from Cảm Vạn, the village to the left of the road, during the morning sweep for mines planted during the night. But none of these fire fights had anything to do with either me or the G-2 watch officer. After the morning briefing, breakfast, and a couple of hours sleep, we had plans to see the new flick at Freedom Hill. The combat that was taking place as close as three or four kilometers from our air conditioned bunker was irrelevant. It would not affect our plans, our lives.

In fine, combat happened when you were a platoon commander in the bush, war, when you were a watch officer in the rear. The basic differences between the two was their relative scale and the distance one had to travel to get there from civilian life, from "the real world," to use an old grunt expression. With respect to distance, the distance from "the real world" to combat is immeasurable.
Indeed, the metaphor fails. Like shit, combat happens. It is a peculiarly intense state of affairs in which the overwhelming complexity of life is reduced to its elemental essentials -- thirst, hunger, sleep, dry socks -- punctuated at odd and unexpected moments by a slow-motion freeze-frame action that renders thirst, hunger, sleep, even dry socks unimportant and irrelevant. In contrast, the distance from "the real world" to war is but a skip and a hop, or perhaps a slight stumble. After all, how much difference can there be between answering the telephone for eight hours a day as a watch officer in Da Nang and answering the telephone for eight hours a day as an order clerk at L.L. Bean's in Maine? Still, differences do exist: First, unlike "the real world," an unspoken fear colored our existence, a fear, usually exaggerated, that the distant murmur of combat might move our way and disrupt our settled routine, our plans to see the new John Wayne flick. Second, because of this unspoken fear and the feeling of insecurity it creates, our freedom of movement was sharply circumscribed. We could travel certain roads during the day, but not at night. We could go to China Beach with friends and eat grilled prawns,

The sentence derives from the all-purpose explanation used in Vietnam to explain everything: "Why are the helos late?" "I don't know, man. Shit happens." "Why is a button missing from your jacket?" "Gimmie a break, man. Shit happens." "Why is Boyd dead?" "Shit happens, man; 'uh know what I mean, man?" It is a matter of Zen meditation, but the koan "Shit happens" must be distinguished from the other, nihilistic, koan heard in Vietnam, "It don' mean nut'n, man. It don' mean nut'n."
as long as we stayed within the shadow of Monkey Mountain. But just three kilometers farther to the south, there were no prawn vendors, and we went to the beach, if we went at all, riding atop Amtracs with pre-plotted artillery on call, to recall one operation I was on.

With respect to scale, war is a large, inclusive, all encompassing phenomenon; it embraces entire populations in innumerable ways. Combat is a small, exclusive, discriminating phenomenon; it touches but a small fraction of a population in extremely restricted ways. The Vietnam War touched every American in one way or another, from the anti-war protestor in Washington to the Army captain who won the MACV golf tournament in Saigon in 1968. Combat in Vietnam touched few Americans, slightly above one tenth of one percent. The difference between ninety-nine and nine tenths percent and one tenth of one percent begins to measure the difference in relative scale between war and combat. Indeed, to emphasize how small a fraction of war combat is, it will be recalled that, of the 58,022 Americans

MACV (Military Assistance Command Vietnam) was the command that had responsibility for all American military activities in South Vietnam. I read about the golf tournament on the sports page of the Stars and Stripes. One copy for every five Marines was regularity included in every resupply mission. After one resupply, when everything had been distributed, I sat down, leaned up against the bamboo lining the side of the trail, and was surprised to learn that the people in Saigon not only had a golf course but the time to enjoy it. This was during the first phase of my tour, before I learned about the Freedom Hill theater and the Sunday roast beef buffets at the Navy Club.
who died in the Vietnam War, 10,700 died "non-hostile deaths" from malaria, truck accidents, helo crashes, and the like (Department of Defense 1985, 1). Even among the dead, combat touches many fewer than the dramatic television news clips would lead one to believe. Before the Second World War and the introduction of penicillin, the relation of hostile to non-hostile deaths was even more startling. For example, during the Civil War, there were two non-hostile deaths for every hostile death.

The disorienting experiences of platoon commander and watch officer, however, are not the only way to experience the sharp distinction between war and combat. Noncombatant bystanders experience a similar disorientation. With respect to distance, the distance they travel is not that which separates civilian life from combat, as with soldiers; rather, their journey is a momentary escape from both war and combat to an unnamed place of terror. While in Vietnam, I never thought about the situation of the noncombatants because, like most Americans since 1865, I was never a bystander. This role fell to the Vietnamese. All I remember is that, judging from the expressions on their faces, they experienced great anxiety when the combat was a little distant and great terror when the combat was upon them, when they were caught in the cross fire. Yet, upon reflection, their situation was most curious precisely because they were bystanders. Like all bystanders,
coincidence drew them in without making them a part of. Their experience was not of combat, although it arose out of combat. To be "of" combat, one must be a combatant. One must be active -- or at least potentially so, when the artillery lifts, when dark comes, when the small-arms fire pauses. But noncombatant bystanders are passive, frozen by terror and their lack of training, discipline, leadership and, above all, by their lack of an objective and a plan. Similarly, their experience was not of war, although it arose during a war. To be "of" war, one must also be active -- supporting the war or protesting against it. But noncombatant bystanders are passive. They are simply standing by and praying.

Paradoxically then, during their moments of greatest terror, noncombatant bystanders are simultaneously in the war and in the combat; yet, they are of neither. They participate in neither. Their immediate status is one of suspense. Unable to join the combat and cut off from the war until the bombing stops or the battle moves on, they are removed and separated from both. Their entire existence is momentarily suspended in time and space. If they could protest what was happening to them, they would again be participating in the war. But they cannot protest. If they could join the combat, they would no longer be noncombatant bystanders, but combatants. They would possess an objective and a plan, and the shape and focus of their terror would
change dramatically to that of a soldier's. But they dare not join the combat. In a word, they represent a separate and distinct category, which by its segregation from both war and combat tends to highlight the disconnection among all three. Neither category -- war, combat, nor noncombatancy -- can be reduced to any of the others; the autonomy and suffering of each must be respected.

With respect to scale, even when noncombatants are added to the balance, combat is still much smaller and much more ephemeral than war, which is all-encompassing and persistent. In South Vietnam, for example, while the entire population was caught up in the war, some large fraction of it never endured combat, and, of those who did, most were caught in the cross fire only once or twice. For instance, on the last day of operations in and around Hue during Têt 1968, the day I was wounded, our company was engaged in driving remnant guerrilla forces out of the all but deserted villages that line Route 551 to the east of Hue. About two o'clock in the afternoon, my platoon came upon a charming T'ang-style villa set in a formal garden. As soon as the occupants heard us speaking in English, one of the panels slid open and out stepped a tall slender man who greeted us in English, offered us one of his business cards, and asked if we had any cigarettes, explaining that he had smoked his last one that morning. Having secured a cigarette, he went on to say that he and his family had come up from Saigon,
where he was an executive with IBM, to spend Tết with his father. Needless to say, their celebration had been less than joyful. Instead of a week long family reunion, they had endured six weeks of fear after the North Vietnamese occupied the village.

Living in an occupied village, attending nighttime indoctrination sessions, and digging village defenses were, of course, common experiences during the Vietnam war. They do not, however, constitute combat. As is commonly the case, despite the fact that this holidaying IBM executive and his family had innocently stepped into the vortex of the North Vietnamese Spring Offensive, the gods of topography preserved them from combat: Because his father’s villa was five or six kilometers east of Hue, they had escaped all of the heavy fighting that took place within the city during the previous six weeks. Because his father’s villa was set deep within the village, about two hundred meters from Route 551, next to the irrigation canal, both they and my platoon escaped the fire fight that engaged the first platoon for the better part of the afternoon. Standing in his father’s lovely garden, smoking his newly delivered cigarettes, and chatting with us, this vacationing IBM executive could hear the pop of the small arms, the thud of the artillery, and the scream of the A-4’s as they came in to drop their bombs not three hundred meters away. But neither he nor we were in the line of fire. Deep within the village, we were
protected from all that. And, finally, because his father's villa was five or six hundred meters from the temple with the large polished bronze Buddha, just past the cemetery at the eastern end of the village, he and his family were also protected from the ambush that greeted my platoon as we pushed out of the village in an effort to come up behind the machine gun that was causing the first platoon so much trouble. In sum, combat is such a constricted and ephemeral phenomenon that, in a village of several thousand inescapably afflicted by all the terrors of war, two substantial fire fights could occur in the course of a single afternoon and not more than a dozen noncombatants were actually caught in the cross fire.

But, of course, I am speaking of only one afternoon. There would be, no doubt, other afternoons. On each afternoon, only a handful of villagers would be caught in the narrow and ephemeral cross fire of combat, only two or three houses would be replaced by bomb craters. Significantly though, the emptiness of the craters would remain long after the shock waves of the explosions had dissipated. So that, after not too many afternoons, due to the persistence of the duritis of combat, the village would change its appearance, and the scale of the accumulating devastation would grow and grow. Thus, while combat -- as it ebbs and flows across the contested landscape -- occupies, at any given moment, a relatively limited and
compact terrain, the destruction and devastation that combat leaves in its wake during the course of the war steadily accrues and accumulates until it craters and scars vast areas.

3. Disentangling War from Combat

Once I had articulated my experience and began thinking of war and combat as two distinct and discrete things, I began to notice how loosely we used the two words, treating them as synonyms and using them interchangeably. For example, I would come across articles such as Commander David Hart-Dyke's moving account of his service during the Falkland War, of his psychic journey from peace to war to combat and back again. Although the essay is entitled accurately "HMS Coventry -- The Day of Battle," Commander Hart-Dyke systematically speaks of "war" when he means "battle," as is illustrated in the following passage, chosen because it is one of two in which he also uses the word "battle":

[Upon arriving in the waters off the Falkland Islands, the first few days of war were nervously exciting and cheers erupted throughout the ship when enemy aircraft were shot down. But we had not yet seen real war, we were naive and far from being battle-hardy (1986, 17). To be annoyingly precise, Commander Hart-Dyke is describing, not the first few days of "real war," but rather the first few days of real "combat" or real "battle." The "real war"
had begun several months earlier. Indeed, it was the start of the "real war" that had caused the HMS Coventry to sail from Portsmouth into the South Atlantic in the first place. To speak again with annoying precision, the shift from "peacetime" operations to "wartime" operations came when the Argentineans invaded the Falkland Islands, while the shift from a "wartime" sailing to a "combat patrol" came when the HMS Coventry crossed the line that brought her within the combat operating range of the Argentine Air Force. Having crossed that line but not yet having sustained an attack, the crew of the HMS Coventry was still naive, still far from being "battle-hardy," a condition that would quickly change when she was sunk on Tuesday, 25 May 1982 with the loss of nineteen.

To be sure, I am imposing a standard of precision upon Commander Hart-Dyke that is inappropriate. Whether he was sailing to "war," "combat," or "battle" makes no difference. Everyone understands the emotions he is trying to convey. Still, even though precision is not important in this type of informal essay, one begins to see the shape of the problem. Commander Hart-Dyke tells the story of how he and his crew travelled from peacetime duty in Portsmouth to wartime operations in the South Atlantic to combat in the waters just west of the Falkland Islands to peacetime duty back in England. This cycle is, of course, characteristic of all wars, which means that war is a nested phenomenon --
war being nested inside of peace and combat being nested inside of war. But does it not create unnecessary confusion if two of the three nests are designated by the same word? For the sake of clarity, is it not necessary to speak of "peace" becoming "war," "war" periodically flaring up into "combat," which just as quickly subsides to "war," and "war" eventually returning to "peace," so as to describe accurately the nested quality of the full phenomenon?

Most particularly, is this precision not absolutely necessary when one begins a study of the congressional war powers? If the power to declare war be the power to transform peace into war, but not to initiate combat, then the war powers of the Congress and the Commander-in-Chief are clearly marked out, the Congress deciding that the peace shall be breached and the Commander-in-Chief deciding whether the initiation of combat is the most appropriate way to conduct the war. If, however, war and combat be artificially conflated such that it appears that the power to declare war is also the power to initiate combat and vice versa, then the war powers of the Congress and the Commander-in-Chief are also conflated, which means that it becomes extremely unclear as to who should do what when. In this situation, the resulting confusion is most easily resolved by the Commander-in-Chief assuming the powers of both branches and waging "undeclared" wars, as two hundred years of American history demonstrate.
But it was not just in informal essays such as Commander Hart-Dyke's that I observed the conflation of war and combat. I also began to notice the same confusion in other contexts where precision was important, such as academic studies. In these contexts, the conflation was achieved, not so much by treating war and combat as synonyms, but by reducing war to combat. This reduction was accomplished by defining war as conflict or violence or some variant on this theme, such as armed conflict or organized violence or the destruction of the enemy or, most simply, as killing. For example, the Brookings Institution once published a study entitled *Force without War: U.S. Armed Forces as a Political Instrument* (Blechman et al. 1978). Noting that, since World War II, U.S. Armed Forces had not always been deployed to fight "wars" such as in Korea and Vietnam, the study wished to see how effective the deployed forces had been when they had not fought a "war." The chosen methodology was to examine six cases in which U.S. Armed Forces had been used as "a political instrument," the implication being that U.S. Armed Forces had not been used as "a political instrument" during the Korean and Vietnam Wars. But the operative difference between the Korean and the Vietnam Wars and, for example, the 1958 deployment of the Sixth Fleet Marines to Lebanon or the two Berlin crises is not that the former two were "wars," while the latter two
were "political instrumentalities." Rather, it is that the former two resulted in combat, whereas the latter two did not. The reduction of "war" to "combat" is misleading, to say the least. A more accurate title would have been something on the order of "War without Combat: A Study of Six Cases." A more recent study that is also guilty of reducing war to combat is Alexander George's (1992) *Forceful Persuasion: Coercive Diplomacy as an Alternative to War.* Examining seven cases from Pearl Harbor to the Persian Gulf, George asks why "coercive diplomacy" (principally, economic sanctions) avoided combat in some instances but not in others. A less reductionist title would have been something like "Forceful Persuasion: Economic and Diplomatic Sanctions as an Alternative to Combat" or to better illustrate the complexity of the nested quality of war, "Forceful Persuasion: Economic and Diplomatic Sanctions as a Prelude to Combat, But not Always."

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4I knew a master gunnery sergeant who had been with the Sixth Fleet in 1958 and had stormed the beaches in Beirut. He said that it was the most dangerous landing he had ever made. The landing took place on a warm Sunday afternoon, and the Marines had been briefed to expect the worst. Consequently, when the ramps of the landing craft banged down, they charged out with their weapons cocked and loaded and nervous fingers on the safeties. But, instead of finding barbed wire, mines, and machine guns, they discovered something more dangerous. The beach was full of families out for a Sunday swim. Since many of these families contained young ladies in attractive bikinis, the landing nearly turned into a rout. There are few things more dangerous than a distracted Marine with a loaded weapon stumbling around a beach gawking at the sights.
In fine, war cannot be reduced to its most dramatic fraction, to combat. This is the case because it is a nested phenomenon. Unless one distinguishes clearly between the dramatic violence of combat and the near normality of war, one loses the complex nested quality of the phenomenon. And, once the phenomenon has been stripped of its complexity, great confusion ensues. In particular, the power of the Congress to declare war no longer makes any sense. For, if war be combat, then there is never any good reason for the Congress (or anyone else) ever to declare war, and several excellent reasons not to. As "realists" have argued for millennia, why would anyone ever declare his intention to do another harm? The only purpose of such a public declaration would be to forewarn the enemy so that he could better protect himself from the violence one wishes to inflict upon him, which is absurd given one's intentions. If war be combat, then the only rational course is to follow the advice of Atreus, an unusually violent man, "Attack your enemy without delay, before he can strengthen himself or get forces together" (Seneca, Thyestes II, 201. Cited in Gentilli 1933, 135).

Of course, not all academic studies reduce war to the violence of combat. It is possible to find works written during or before the seventeenth century and discover a more adequate conception. Works from the seventeenth century are often more interesting than earlier works because, caught in
the midst of this transition, they often exhibit both tendencies simultaneously. For example, in his famous chapter "On Man" (Leviathan I, 13), Hobbes not only defines war formally as a condition of insecurity but simultaneously suggests strongly that war can also be viewed as alienated individualism:

Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war, as is of every man, against every man. For WAR, consisteth not in battle only, or the act of fighting; but in a tract of time, wherein the will to contend by battle is sufficiently known: and therefore the notion of time, is to be considered in the nature of war; as it is in the nature of weather. For as the nature of foul weather, lieth not in a shower or two of rain; but in an inclination thereto of many days together: so the nature of war, consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is PEACE (1946, 82).

Hobbes' distinction between battle as "the act of fighting" and war as a condition of insecurity, "a tract of time, wherein the will to contend by battle is sufficiently known" resonate strongly with my service in Vietnam. His analogy to "foul weather" is particularly telling. While a platoon
commander, I had known "actual fighting." While a watch officer, I had known the "foul weather," the subtle psychological affects of the "disposition thereto." More to the point though, having made the connection between my experience in Vietnam and Hobbes' formal definition of war, when I later came to research the juridical aspects of declarations of war, I was prepared to appreciate the implications of Bynkershoek's most fundamental critique of Grotius. Grotius, like Hobbes, was a man of the early seventeenth century. He also conceived of war as a "condition." A hundred years later, however, Bynkershoek denied the validity of this conception and instead argued that, "War is a contest of independent persons carried on by force or fraud for the sake of asserting their rights" (1930, I, i, 2). This eighteenth century shift in how jurists conceived of war laid the foundation for the modern belief that "undeclared" wars were legitimate, that declarations of war were always unnecessary, a quaint anachronism from a by-gone era. Clearly then, the long-forgotten dispute that separates Grotius from Bynkershoek, the sixteenth and seventeenth centuries from the eighteenth and nineteenth centuries is a matter of vital concern for anyone wishing to breath life into the congressional war powers. Indeed, as we shall argue in the next chapter, it is the essential starting point for any analysis. For, if it can be demonstrated that war be a "condition," and not a
"contest," then one could reverse the process that began during the seventeenth century and lay the foundations for arguing that declarations of war are always necessary.

Turning to Hobbes' informal conception of war as alienated and atomized individualism, his war "of every man, against every man," I find this image most troubling, notwithstanding the fact that it is essential to his larger project in the *Leviathan*. On the one hand, his formal definition of war as a condition of insecurity should have led him to propose a hierarchical state of nature in which unit commanders (tribal leaders?) would sign a "contract" subordinating themselves and their subordinates to a supreme commander. This is the case because both "the act of fighting [a battle]" and "the will to contend by battle" presuppose the existence of well organized military formations, not atomized, alienated, insecure individuals. On the other hand, a state of nature that was already organized into self-governing social groupings capable of fielding well organized military formations would not have served Hobbes' purposes. In order to make it possible for individuals to sign the social contract, he had, first, to atomize society, which is the purpose of his informal conception of war. Unfortunately, a "war" of all against all is a misleading trope.

In order to develop a more accurate image of this type of radical alienation and atomization, Hobbes needed a
Kierkegaard, an Eliot, a Brecht, or, perhaps, a Beckett. Those who are waiting for Godot are perhaps able to sign a social contract and bring forth a Leviathan, but not men under arms. The image of "war, as ... every man, against every man" simply does not work for me, except perhaps at the level of drama. In part, it does not work for me because it anticipates Bynkershoek's individualism, his "contest of individual persons," which then leads the way to legitimizing so-called "undeclared" wars. In part also, it does not work for me because it fails to resonate with my experience in Vietnam. For, clearly, to my mind at least, individuals do not and cannot fight wars. Individuals can create chaos and do mayhem. They can engage in acts of mindless terrorism. But individuals do not and cannot wage war. Wars are waged by large social groupings -- nations, tribes, and the like -- while combat is fought by small, specially selected, and trained units drawn from the larger social grouping, not individuals. In combat especially, to be effective, an individual's conduct must be integrated into and directed by the needs and purposes of the unit. Whenever an individual acts for his own account, the result may well produce a primordial chaos, such as Hobbes envisioned as the state of nature, but mayhem contributes nothing to either war or combat.

For example, I recall two incidents of gratuitous terrorism that happened, by coincidence, in the same
village. The village, Thanh Quit, was a large village that stretched out to the west from Route 1 about fifteen kilometers south of Da Nang. It was unique in our area of operation because it had a CAP unit. A CAP unit (Combined Action Platoon) combined a squad of Marines with a platoon of South Vietnamese Regional Forces (RFs) for the purpose of increasing government control in the village in which it was stationed. This CAP unit, like all the others, provided security for Thanh Quit and engaged in various civic action projects. For example, several of the Marines "taught" English in the village school. How much English was taught or learnt is problematic, but a good time was usually had be all.

Early one afternoon, as we entered Thanh Quit, we heard a helo taking off from the CAP unit's compound and saw a dozen or so wounded children being loaded onto trucks. One of the CAP Marines told us that someone had tossed an American grenade into one of the village school's classrooms. Three children had been killed and twenty or so wounded. The most seriously injured had been med. evac'ed out and the rest were being trucked to Da Nang. One of the CAP Marines had been in the classroom at the time teaching English to the forty or so students, but the Marine I was talking to did not think that this Marine was the target of the attack, because the grenade had been tossed into the back of the classroom. Whether the attack was meant to
intimidate the students' parents or some kid had just found a grenade and was playing a "neat trick," I never learned. There was nothing we could do so we continued on our patrol. We were seeking the enemy. A lone individual who tossed a single grenade into a primary school classroom was not the enemy. The police, not the Marines, would have to track him down.

The second incident occurred about a month later. During Têt 1968, a large North Vietnamese force had occupied Thanh Quit enroute to Da Nang. When the attack on Da Nang failed, this force disappeared from the village as suddenly as it had appeared. Our mission that day was to reclaim the village and make sure that all of the North Vietnamese had withdrawn. In the evening, when we reached the far western edge of the village, we established a company perimeter. Around ten o'clock, one of my people near where the machine gun was set up fired a single shot. I was extremely annoyed at this not only because it tended to give away the machine gun's position, but, more so, because nervous, trigger-happy troopers are extremely dangerous, especially, when you are out checking the perimeter late at night. I called the second squad leader over and told him to straighten out whoever had fired the shot. He returned a moment later very agitated and excited to inform us that the sentry was not trigger-happy. He had heard some one sneaking up on his position and had drilled the shadowy figure when it was
about ten feet in front of him. I ordered the body brought within the perimeter, and, the next morning, we discovered that he was unarmed except for a single Chinese grenade and, from his uniform and the papers he was carrying, that he was a North Vietnamese cadre. Either he had been left behind by the unit that had just left, or, more likely, he had been on some kind of a liaison mission; the villagers had told him where we had set up for the night, and he had decided to "attack ruthlessly the imperialist warmongers," as the propaganda advised. Some might characterize his attempt as brave, but it was worse than foolhardy. It was pointless. Had he been the point man for a unit as small as ten or twelve men and had he been armed with an AK-47 and several grenades, his effort might have made some sense. His mission would have been to locate the machine gun and knock it out, thereby creating a hole in the perimeter through which the rest of the unit could rush. Such a plan had little chance for success, but, at least, it made some sense. What made no sense at all was for a single individual with a single Chinese grenade to probe a company perimeter. Even if he had tossed the grenade, it is unlikely that it would have wounded any Marines, and anyone who might have been nicked would most probably have been back on duty within weeks, if not days.

Both of these incidents are, I imagine, of the type that should occur in a "war" of all against all. Both also
took place during a war; the second might even be said to have taken place during combat. But this is pure coincidence. Neither incident, nor the chaos they were intended to promote, had anything to do with either war or combat. Both war and combat are different. A simple coincidence in time and place does not transmute random acts of violence into either.

After I started to separate combat from war, I also began reading Carl von Clausewitz's great book, *On War*, with greater confidence. The book is demanding for a number of reasons. As Bernard Brodie points out in his reader's guide, while the ideas discussed are not at all difficult, the text itself is. Many long sections are of historical interest only; other sections deal with outmoded technologies or tactics, while faulty organization and a disturbing tendency for "metaphysical" reflection distracts readers as well (Clausewitz 1976, 641). Compounding these short-comings, however, is the fact that the manuscript was unfinished at the time of Clausewitz's unexpected death in 1831. Inasmuch as the text is plagued by so many flaws and imperfections, normally, no one would bother to read it. Yet, compensating for all of its defects and deficiencies is Clausewitz's common sense, sparkling like diamonds in a mine. Clausewitz's insights on matters tactical and strategical are often brilliant. But his store of just plain common sense is breath-taking. Consequently, the best way to read
On War is as a treasure hunt, looking to scoop up another nugget of common sense. Likewise, the best way to use Clausewitz as a mine from which aphorisms and dicta may be extracted to introduce, criticize, or conclude some common sense point one wishes to make. One of the best examples of this aphoristic use of On War is Colonel Harry G. Summers’ 1982 book On Strategy: A Critical Analysis of the Vietnam War. In this book, Colonel Summers’ method is to cite an appropriate passage from On War and, then, use it a foil to criticize some aspect of the Vietnam War. For example, taking aim at the Pentagon bureaucracy, Summers begins:

The problem was that Secretary McNamara’s Planning, Programming, and Budgeting System (PPBS) approach was only half the equation [needed to conduct the war in Vietnam]. To return again to Clausewitz:

... We see clearly that the activities characteristic of war may be split into two main categories: those that are merely preparation for war, and war proper. The same distinction must be made in theory as well [1976, 131].

... PPBS -- did an excellent job in "getting control of the lines of supply." It was and is a useful system for "preparing for war" [but not for fighting a war, as McNamara attempted to do] (p. 44-45).

But, if this 'returning again to Clausewitz' in search of common sense is the best way to use On War, one cannot
accept everything Clausewitz says uncritically. This is especially true in regards to his most famous dictum — namely, that, "War is merely the continuation of policy by other means" (1976, 87). Its undeniable truth notwithstanding, the dictum is profoundly ambiguous. What other means? If the "other means" are taken to be "violent means," as is always the case, then the dictum struggles to describe, not war, but combat (or battle, as Clausewitz would no doubt prefer to say). I say "struggles to describe" because to describe combat as "violence," or even as "violent," is to misread the phenomenon, to fail to appreciate the plans and objectives that undergird the chaos of combat, and which, in turn, depend upon extensive training, discipline, and leadership for their execution. However, if the "other means" is taken to include means other than combat, then one begins to see how the dictum might serve to define war. Specifically, if the "other means" is interpreted as the means made available by a formal declaration of war, then new horizons begin to open. For, a formal declaration of war creates the "condition" of war, putting certain legal, economic and diplomatic sanctions into place, in addition to threatening the possibility of combat. Interestingly, when one combines Grotius with Clausewitz in this way, an useful division of labor develops: As prescribed by the Constitution, the Congress creates the legal, economic, diplomatic, and
military "condition" of war through a formal declaration. From this menu of various means, the Commander-in-Chief then chooses those most appropriate for securing the policy objectives defined in the declaration. In some cases, condemnation in the United Nations coupled with intensified negotiations may suffice. In other cases, economic sanctions of one sort or another may be needed to supplement the diplomacy, while, for the recalcitrant, it may be necessary to go a step further and initiate combat. In short, war is a matter of policy. But, if so, then there exists an absolute need to articulate that policy, a war without a clearly articulated policy being like a play without a script or a book without a text. Furthermore, since it is the function of a fully reasoned declaration of war to articulate that policy, as Jefferson's Declaration demonstrates, then there also exists an absolute need to make a fully reasoned declaration of war, which, not incidentally, would fulfill requirements of Article I, Section 8 of the Constitution.

To summarize then, because of my service in Vietnam, I am unable to accept either of the two unexamined presumptions that undergird our current misunderstanding of the congressional war powers. At the most fundamental level, I am unable to accept that war can be reduced to its most violent fraction, to combat. Combat may or may not be violent, but war surely is not. War is policy. And, having
defined war as policy, I subsequently have great difficulty imagining how the congressional power to declare war could ever conflict with the Commander-in-Chief's power to conduct a war once declared. Rather, these two powers appear fully complementary -- the Congress' power to create the "condition" of war by articulating the grievances that have provoked it and the remedies that will end it providing the necessary policy guidance to the Commander-in-Chief as he decides which of the means at his disposal -- diplomatic, economic, or military -- is best calculated to restore peace. But, if the Commander-in-Chief requires the policy guidance that can be found only in a fully reasoned declaration of war, then I am also unable to accept the second unexamined presumption, i.e., that so-called "undeclared" wars are unexceptional. In other words, the key to understanding the power to declare war is content, not timing, as the 1973 War Powers Resolution suggests. Within reason, the timing of a declaration is irrelevant. What is important is substance. For, it is the actual text of the document that creates the "condition" of war by creating a policy of war, articulating that policy and providing the necessary guidance to the Commander-in-Chief, which, not incidently, is precisely what fully reasoned declarations of war do. And, finally, it is crucial to understand that our current attitudes towards both war and declarations of war are a recent innovation. Before the
seventeenth century, fully reasoned declaration of war were
the norm, not the exception. Consequently, any discussion
of the power to declare war must begin with the seventeenth
century, which is one of the main foci of the next chapter.
Chapter 2

Ignoring Democracy
and
the Constitution

The power to create the condition and state of war is one of the enumerated powers assigned to the Congress in Article I, Section 8 of the Constitution. This section begins, "The Congress shall have the power...," and continues in its eleventh clause, "...to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;...." The power to grant letters of marque and reprisal is now an antiquated power. The practice was outlawed by the 1856 Declaration of Paris. The United States has never signed this declaration; however, she has observed it, and privateers were not commissioned by the North during the Civil War, although they were by the South. Since the Civil War, with the advent of iron bottoms and stream engines, the design and equipage of merchant and naval ships has become so radically different that it is no longer technically or financially possible to convert merchant ships into ships of war.
The power to declare war, however, has not been outlawed by international convention, quite the contrary. It has been mandated in Article I of Convention III of the 18 October 1907 Hague Peace Conference, Relative to the Opening of Hostilities, which was ratified by the Senate on 10 March 1908 and approved by President William Taft on 23 February 1909 (36 Stat. 2259). More to the point, vesting the power to declare war in the hands of the Congress was and still is of incalculable philosophical importance. This is the case because the locus of the power to declare war is one of the principal defining characteristics of any regime: a direct democracy being a regime in which this power is located in an assembly of all citizens; an indirect or representative democracy being a regime in which this power is located in a representative assembly, while a monarchy or despotism is a regime in which it is lodged with one man, with the king or despot. Consequently, had the Federal Convention placed this power anywhere else, an intolerable conceptual and logical inconsistency would have been created in which the newly established regime was a representative democracy during times of peace, but something else entirely during times of war.

Considered as an abstract problem in democratic theory then, the war powers debate is not so much a dispute over the respective war powers of the Congress and the Commander-in-Chief as one of ensuring the consistency and stability of
the Constitution: Does America possess a mixed constitution or does she not? On paper, she clearly does not; in practice, however, she clearly does. Surprisingly, this chasm between theory and practice -- this ability to ignore both the Constitution and our democratic pretension during wartime -- has never been the main focus of the war powers debate, although it has been a constant background factor, coloring much of the rhetoric and motivating many of the disputants. Indeed, the weakest possible argument has always been the theoretical one. No one has ever taken seriously the observation that the Congress could, if it so chose, end the dispute and close the chasm between theory and practice neatly, quickly, and definitively by simply doing what the Constitution says -- by simply declaring war. Such a startling intrusion of democratic theory into practical politics has seldom been considered, much less proposed. For example, Justice Robert Jackson may observe sagely that:

But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems... only Congress itself can prevent power from slipping through its fingers" (Youngstown Sheet & Tube Co, v. Sawyer, 343 U.S. 579, 654 (1952)).
This is true, but, before the Congress can grasp the power to declare war, it must know how and what to grab. Knowledge, not will, it the foremost problem.

To be sure, the congressional will (or lack thereof) is a problem. But it is not the foremost problem. For example, on one occasion, the Spanish-American War, it was the Fifty-Fifth Congress that pushed a reluctant Commander-in-Chief McKinley into war, voting not one but two declarations of war. Still, this is the exception. More normally, the Congress exhibits a marked reluctance to take on the enormous responsibilities -- and, hence, the enormous political liabilities -- that come with declaring war. Torn by conflicting interests, worried about getting re-elected, few members can see any benefits in standing up and being counted on such a controversial issue. Far better -- far safer -- to let the Commander-in-Chief assume all of the risks. And, besides, is the Commander-in-Chief not in a better position to make a decision for or against war? Does he not possess both the staff and the often secret intelligence need to make these decisions? Does the Constitution not make him the Commander-in-Chief? Does the Constitution not make him preeminent in foreign policy? Therefore, is it not logical for him, and not the Congress, to make this important decision? And so, echoing arguments such as these, most members evade their responsibilities most of the time.
But, if the desire to declare war be weak, it has not yet been completely extinguished. The 1973 War Powers Resolution is evidence of that. Moreover, since 1789, whenever war has broken out, the Congress has almost always debated and passed a resolution of some sort. True, the debates are usually defuse and seldom touch upon the heart of the matter, and the texts of the resulting resolutions are almost always irrelevant, often comical. Still, the mere fact that the members go through the motions is evidence of a certain minimal, residual desire on their part. More to the point though, the extremely poor quality of the debates and the resulting resolutions points the way to the real problem -- knowledge. The members simply do not know what to do. They do not know how to write a good declaration of war. As the examples that are to follow, especially in chapter 5, will illustrate, in the absence of a good, well-written text, the debates have never crystallized, and the resulting resolutions have never had any impact, at least, not the impact of Jefferson’s 1776 Declaration, which is the only well-written declaration of war in American history.

In fine, the foremost problem is knowledge, not will. And, the tragedy is that neither the members of the Federal Convention of 1787 nor the members of any of the subsequent Congresses has ever possessed this knowledge, which was lost before the settlement of North America. And, having been
lost long since, the proper image is not that of a power once possessed slipping through the fingers of the Congress, nor even of an Imperial President snatching the power to declare war out of the hands of a defenseless Congress, but rather of an inactive Congress unsure about how it should organize itself and uncertain about what it should debate.

Moreover, this is not only an American shortcoming. No representative democracy has yet solved it. We shall focus narrowly upon the American Constitution and American history, but it is important to note that the problem of mixed regimes is not exclusively an American dilemma. For example, on Monday, 8 December 1941, at the same time that Commander-in-Chief Roosevelt was delivering his famous "A Date Which Will Live in Infamy" speech requesting a congressional declaration of war against Japan, Prime Minister Churchill was addressing Parliament, prefacing his remarks with admirably democratic sentiments:

As soon as I heard last night that Japan had attacked the United States I felt it necessary that Parliament should be immediately summoned. It is indispensable to our system of government that Parliament should play a full part in all the important acts of state, and at all crucial moments in the conduct of the war, and I am glad to see so many members have been able to be in their places in spite of the shortness of notice.
However, a little further on in his address, we learn that the indispensable part that Parliament is to play in this important act of state consists entirely of forgathering to listen to the prime minister tell it what he has already done:

The Cabinet, which met at 12:30 today, therefore authorized an immediate declaration of war upon Japan. Instructions to this effect were sent to His Majesty's Ambassador in Tokyo, and a communication was dispatched to the Japanese Chargé d'Affaires at 1 o'clock today to this effect (Churchill 1941, 14).

By "Cabinet," one assumes Churchill means the War Cabinet, and not the full Cabinet. To be sure, in a parliamentary system, where the threat of a vote of no-confidence always hangs over a government, a war cabinet is more directly accountable to the entire parliament than an American president is to the Congress. But there is more nuance than substance in this systemic difference. In both systems, executive control is effectively complete. In both systems, the executive never requests or promulgates a declaration of war unless it is absolutely certain that the Congress or Parliament will endorse it. As a result, representative democracies, in general, and American democracy, in particular, have never lived up to their democratic

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For a more recent perspective on this issue, see Colin Seymour-Ure's (1984) "British 'War Cabinets' in Limited Wars: Korea, Suez and Falklands."
pretensions, and, unlike a direct democracy or a monarchy, representative democracy has always been a sometimes thing, functioning tolerably well during peacetime, but reverting to previous feudal forms during wartime.

1. Locating the Problem: Before 1789 or After?

This reversion to feudal forms in times of crisis is perhaps not so surprising after all. For, representative democracy did not evolve out of direct democracy in some natural and organic way. Rather, it evolved out of the polar opposites of democracy, feudalism and Absolutism as filtered through Britain's unique "mixed constitution."

Under Absolutism, according to its great theorist, Jean Bodin, the power to denounce war was the sovereign's second "mark of sovereignty," just after the right to ordain law and just before the right to appoint the higher magistrates (1962, 163 [162]). To be sure, there was some confusion as to the exact position of the power to denounce war. Earlier, Bodin had listed it as the sovereign's third mark, behind 1) appointing the higher magistrates and 2) propagating law (1951, 174-5). But, whatever its exact rank order, Bodin and his contemporaries were certain that denouncing war was one of the sovereign's, and not the legislature's, powers. In England, identical views prevailed, although the term "mark of sovereignty" never took hold. In its place, the English spoke of "royal prerogatives," which John Locke (1963) defined in Chapter 14.
of his Second Treatise as, "This power to act according to
discretion for the public good, without the prescription of
the law, and sometimes even against it, is that which is
called prerogative...," a definition which neatly describes
the manner in which American commanders-in-chief have
declared war since 1789. In the Second Treatise, Locke did
not specifically list the declaring of war as one of the
king's prerogatives (the calling of Parliament is the only
prerogative mentioned), but Blackstone (1969, I, 7) did,
listing it as the king's third prerogative.

This royal legacy, which the members of the Federal
Convention were both fully aware of and philosophically
opposed to, led, after 1789, to one of the earliest ways of
framing the war powers debate as a dispute over the
"essence" or "nature" of "inherently" executive powers
versus the "essence" or "nature" of "inherently" legislative
powers. First formulated in this way by Alexander Hamilton
and James Madison during their 1793 Pacificus/Helvidius
exchange, Hamilton argued in his "First Letter of Pacificus"
that:

If the Legislature have a right to make war on the
one hand -- it is on the other the duty of the
Executive to preserve Peace till war is declared....

It deserves to be remarked, that as the
participation of the senate in the making of Treaties
and the power of the Legislature to declare war are exceptions out of the general "Executive Power" vested in the President, they are to be construed strictly -- and ought to be extended no further than is essential to their execution (1969, 15:40, 42).

to which Madison responded in his "First Letter of Helvidius" that:

Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws (1906, 6:148).

While the consensus is that Hamilton's views have by and large prevailed (e.g., Congress, the President,... 1968, 1777), this belief is based less upon Hamilton's views than upon the practical reality that the Congress so seldom declares war. When one takes Hamilton's views into account however, what is most remarkable is that neither he nor anyone since has ever denied that the Congress and only the Congress possesses the right to declare war. Thus, the argument is not really about who has which powers. Everyone, even sitting Commanders-in-Chief, agree that only the Congress can and should declare war. Rather, when framed in this way, the dispute turns on whether "the duty
of the Executive to preserve peace *till war is declared* means that the Congress never (or, at best, seldom) need declare war, the "till" never arriving, presumably, because the Commander-in-Chief is doing such a fine job of preserving the peace.

Another popular and traditional way in which the dispute has been framed since 1789 is to try to divine the Framers' "original intentions." Although the intentions of the members of the Federal Convention were many and mixed, there is general agreement that their primary intention was to avoid placing too much power in the hands of one person. This point was perhaps best captured by Abraham Lincoln in a letter dated 15 February 1848 to his law partner, William H. Herndon:

The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us. But your view [i.e., ... that ... the President [Polk] may, without violation of the Constitution, cross the line and
invade the territory of another country [Mexico], and that whether such necessity exists in any given case the President is the sole judge.] destroys the whole matter, and places our President where kings have always stood (Lincoln 1907, 1:111-2).

The great irony of Representative Lincoln's critic of Commander-in-Chief James Polk's war against Mexico is that, thirteen years later, after he had become Commander-in-Chief in his turn, he would inflict this "most oppressive of all kingly oppressions" upon America himself. The Civil War is not only America's largest undeclared war but also her most costly war in terms of casualties suffered. Lincoln's letter is also of great interest because James Wilson, a delegate to the Federal Convention from Pennsylvania, had previously used strikingly similar language in the Pennsylvania ratifying convention:

This [new] system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large: ...from this circumstance we may draw a certain conclusion that nothing but our national interest can draw us into a war (Cited in Lofgren 1972, 685).
More important than the fact of similar language, both passages speak to the question of intent, as Arthur Schlesinger, Jr. has pointed out:

Lincoln’s doctrine of "no one man" -- an unconscious restatement of James Wilson’s view that it should not be in the power of "a single man" to bring the country into war -- unquestionably expressed the original intent [of the Federal Convention] (1973, 43).

Without denying for a moment that this was indeed the "original intent" of the Federal Convention, on closer examination, this intention, original or otherwise, is also seen to be tangential to the questions we are pursuing. Both Lincoln’s "one man" and Wilson’s "single man" doctrines speak more directly to the questions of how to organize the executive power and how to maximize accountability than to anything else. As Schlesinger also makes clear (1973, 5, 382-3), it was in this context, not a discussion of the power to declare war, that this ‘doctrine’ was first raised and most frequently discussed. Most of the delegates to the Federal Convention desired a plural executive, agreeing with Edmund Randolph of Virginia that a singular executive would be "the fetus of monarchy." As a result, when James Wilson first proposed and Charles Pinckney seconded a singular executive on Friday, 1 June 1787, the proposal produced a shocked silence. Nonetheless, Wilson’s views eventually won out, and the executive power was vested in one person,
creating thereby a "vigorous" executive without sacrificing accountability.

With respect to the power to declare war, however, the crux of the matter lies elsewhere. It is the mixing of regimes that causes the problems, not the fact that the executive power rests in the hands of "one man" as in a monarchy. Through the accidents of history, including Wilson's power of persuasion, the actual mixture that precedent and practice has produced consists of a representative democracy during times of peace and an Imperial Presidency during times of war. Yet, recalling the fundamental philosophical problem, a mixed regime is not produced only by allowing a "one man" executive to usurp the power to declare war. Placing this power anywhere but in the Congress also creates the same problem -- a representative democracy during times of peace and something else during times of war, which, as Lincoln says "destroys the whole matter." For example, placing a Supreme Court, a Council of State, a Cabinet, a conclave of state governors, or even the entire citizenry where kings have always stood "destroys the whole matter" equally well. It creates an unstable and inconsistent regime -- a representative democracy during peacetime and an Imperial Judiciary or an Imperial Council or an Imperial Cabinet or a gubernatorial oligarchy or, most strangely of all, a direct democracy during wartime.
In fine, however a regime is constituted, it should maintain that constitution during both peace and war -- not switching back and forth, not oscillating between two incompatible types. This claim is not be confused with the more conventional claim that a "mixed constitution" is the best type of constitution, a claim which highlights the obvious fact that a representative democracy is conceptually very messy, lacking much of the simplicity and elegance of either a direct democracy or a monarchy, or, even, an oligarchy, for that matter. But, if a "mixed constitution" is best way to institute a representative democracy, then it is best during both times of war and peace; it should not oscillate between representative democracy during times of peace and monarchy during times of war.

A variation on or extension of the "one man" doctrine that also figured among the Framer's "original intent" is the presumption that the executive branch possesses a special "propensity" for war. This being the case, Article I, section 8 is prescribed as the antidote. This line of argumentation was taken up by Madison in his "Fourth Letter of Helvidius":

In no part of the Constitution is more wisdom to be found, than in the clause [Article I, Section 8] which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture to heterogeneous
powers, the trust and the temptation would be too great for any one man;.... War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace.

Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war; hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence (Madison 1906, 6:174). Since 1793, this passage has been much quoted by those opposing this or that "Presidential War." One of the earliest recitations of it was by Rep Robert Winthrop of Massachusetts on 8 January 1847, during a debate on the House floor to raise ten additional regiments for the Mexican War (Cong. Globe 1847, 144). Like those members of
Congress who voted for the Gulf of Tonkin Resolution only to find out later that President Lyndon Johnson had stampeded them by providing less than accurate information, Rep Winthrop had also voted for the resolution declaring war against Mexico on 13 May 1846 based upon President Polk's less than accurate information concerning General Zachary Taylor's march on Matamoros. Once deceived, Winthrop now opposed the war. To bolster his attack, he denounced the way in which President Polk had obtained his declaration of war, citing Madison to dramatize the dangers of such methods. More recently, Theodore Draper has used the passage to warn of the dangers of Executive aggrandizement (Draper 1990, 42). But, the argument, while plausible and comforting, is both tangential and suspect. It is suspect because its axiom cannot be accepted. If nothing else, the proclivities of the Athenian Assembly during the Peloponnesian War would cast considerable doubt upon Madison's axiom. It is tangential because it is the theoretical need for consistency and stability that drives Article I, section 8. Even if the executive department were the most pacific of all the departments of government, a representative democracy could still not confide the power to declare war to it. To do so would create a mixed regime.

Another argument for vesting the power to declare war in the legislature is found in Part I of Thomas Paine's The
Rights of Man. Paine appears to be the only one to have framed the question in this way:

On the question of war, three things are to be considered; 1st, the right of declaring it; 2d, the expense of supporting it; 3d, the mode of conducting it after it is declared. The French constitution places the right where the expense must fall, and this union can be only in the nation. The mode of conducting it, after it is declared, it consigns to the executive department. Were this the case in all countries, we should hear but little more of wars (1989, 88).

Perhaps, however, it is not necessary to catalogue further the shortcomings of the various ways in which the war powers debate has been framed since 1789. Whichever of the many perspectives one examines, their most striking characteristic is their sterility, their endlessly repetitive sterility. For over two hundred years, the same arguments have been recycled again and again, the dispute never approaching a resolution. Part of the reason, a minor part it must be said, for this unproductive churning is that the congressional war powers have been so seldom debated. Beginning with Hamilton and Madison, the issue has become a matter of public concern and debate only on those few occasions when a vocal minority has opposed American participation in some war then in progress. Had this issue been more consistently studied and debated at times when
opposition to a war was not forcing the debate, one could hope that greater progress towards a resolution might have been made.

A second and equally minor reason for the sterility of the debate is that, precisely because the issue is debated only after opposition to some war has forced the question, the motives of the disputants on both sides are more than a little suspect. Indeed, the sad fact of the matter is that both sides have always sought to advance their political interests by repackaging their support for or opposition to the war then in progress as a disagreement over constitutional principles. Needless to say, Hamilton and Madison were the first to employ this repackaging strategy, a strategy which was greatly facilitated in the years after 1793 by the fact that both sides were able to draw upon an equal number of equally impressive authorities and precedents, as Abraham Sofaer has observed:

_Virtually every conceivable constitutional argument was advanced repeatedly, at times one feels almost ritualistically [during the first forty years of the republic from 1789 to 1829]. Even the statements of the most important and influential leaders provide little definitive guidance. Most are offset by equally significant statements of opposing spokesmen. Other statements must be discounted as the product as much of party politics as of principle, or because the_
spokesman acted inconsistently with his pronouncement. The actions of early leaders [and later leaders as well] reflect their positions on issues more reliably than their constitutional rhetoric.... Actions may speak "louder" than words, but not necessarily as clearly or as authoritatively. And the acts of this nation's early [and later] leaders were at times as inconsistent and politically motivated as their words (1976, xiv. Cp. Lehman 1976, 38-9).

A recent illustration of Sofaer's frustrations is found in Eugene Rostow's 1972 attack against the then pending War Powers bill, "Great Cases Make Bad Law." Rostow prefaces his polemic with quotations from Justice Oliver Wendell Holmes, Alexander Hamilton, and James Madison. The Holmes quote gives him his title, "Great cases like hard cases make bad law...." The Hamilton quote from The Federalist No. 23 is what one would expect:

The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed.

But it is the Madison quote from The Federalist No. 48 that surprises:

The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex... it is against the enterprising
ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions (1972, 833).

Shoring up one's position with quotations and precedents taken out of context is one of the principal characteristics of the war powers debate on both sides.

However, the largest part of the reason for this endless sterility is the simple fact that the custom of formally declaring war had gone out of fashion at least a hundred years before the Federal Convention met in Philadelphia. By 1789, no nation was regularly and consistently declaring war formally. By 1789, the realities of international practice and custom had already rendered the power to declare war with due ceremony vacuous.

Alexander Hamilton recognized this vacuity in The Federalist No. 25, when he observed that "the ceremony of a formal denunciation of war has of late fallen into disuse." Just how far "the ceremony" had fallen was documented a hundred years later by Brevet Lieutenant Colonel J. F. Maurice in an influential and much quoted 1883 study of European and American wars for the British Board of Trade. In his study, Colonel Maurice found that, between 1700 and 1870, there had been not less that one hundred and seven undeclared wars, and not more than ten declared wars (Maurice 1883, 4).²

²The importance of Colonel (later General Sir Frederick) Maurice's study is difficult to underestimate. It is the definitive empirical study in English. It is cited whenever
These findings shocked a good number of people, beginning with Colonel Maurice:

The result of the investigation, as the work has gone on, has been to completely change its character. It was commenced under the impression that here and there a casual case might be discovered in which the ambition of a Napoleon or of a Frederick had led to some breach of established usage. The result is to show conclusively that there has not been, unless in mere theory, and in the tone adopted by historians as to what ought to have been, any established usage whatever on the subject (Cited in Takahashi 1908, 3-4).

Since 1870, the disproportion of undeclared wars to declared wars has not changed. Indeed, between 1945 and 1970, only one war was formally declared and, then, only by a few of the belligerents involved. On 5 June 1967, Algeria, Iraq, Kuwait, Sudan, and Syria appear to have made formal

one wishes to demonstrate empirically that formal declarations of war no longer served any useful function after the seventeenth century. For example, one finds it cited in Takahashi (1908, 2-5, who reproduces the report's "executive summary"); de Louter (1920, 236); Hall (1924, 448, n. 1, who adds "Most of the wars of the seventeenth century began without declaration, though in some cases declarations were issued during their continuance (p. 447 n. 1)); Wright (1932, 365); Eagleton (1938, 20); Department of State (1971, 12 n. 58); and Schlesinger (1972, 83). Colonel Maurice's list of declared and undeclared wars is reproduced in the January 1908 issue of The American Journal of International Law 2 (1), 57-62, which refers the reader to "House Report 754, p. 9, 52d Congress, 1st session."
declarations of war against Israel (Committee on Foreign Affairs 1970, 24 n. 2).

But what are the consequences of this uncontestable fact? The primary consequence is the need to relocate the problem, displacing it from its traditional locus in the changing circumstances of nineteenth and twentieth century America and situating it in the ill-explored mists of the seventeenth century. Indeed, once the problem has been relocated to the seventeenth century, the failure of the Congress to declare war more frequently than it actually has is readily explained: Philosophical and constitutional inhibitions notwithstanding, the United States is a country that respects and upholds the rules and customs that govern international relations. Since her inception in 1607, those rules and customs have dictated that wars be declared formally only on the rarest of occasions, which is precisely what the United States has done throughout her history. Talk of executive prerogative, of an Imperial Presidency, and such like take on a new perspective as soon as one recognizes that, had the Congress declared war more frequently than two or three times a century, the United States would have been seen as an oddity, possibly a disruptive oddity, in the eyes of the world community.

Therefore, the problem or, more precisely, the primary problem is not located in what the Constitution says or does not say. It is not located in what the Founding Fathers
intended or did not intend. Neither is it located in the precedents and opinions, the disputes and squabbles of the nineteenth and twentieth centuries. Rather, the foremost problem or, better, the foremost mystery is located in the seventeenth century: Since before the dawn of history, in all cultures, it had been a sacred custom, infrequently violated, to begin every war with a formal declaration. Then, "suddenly," the European powers stopped issuing formal declarations of war during the course of the seventeenth century. Herein lies the challenge. For, as soon as one can explain why all nations stopped declaring their wars formally during the seventeenth century, it then becomes an easy matter to explain why any one of them did so. But, more important, once one can explain this phenomenon, it then becomes possible to explore how the Congress might break away from this four-hundred-year-old internationally imposed norm. In other words, by relocating the problem to the seventeenth century, one takes the first steps towards exploring how American democracy might transformed itself into an always thing, a system of representation that functions not only in times of peace, but in times of war as well.

2. A Mere Formality?

As I have already indicated in the last chapter, I believe that the root cause of this change in attitudes towards formal declarations of war was a change in attitudes
towards war. As soon as people began reducing war to the violence of combat during the seventeenth century, formal declarations of war no longer made any sense. The trajectory of this change in attitudes will be taken up in the next chapter, while Chapter 4 will argue again the case for believing that war cannot be reduced to the violence of combat. However, for the present, I shall largely ignore the question of why and simply accept as an empirical fact that formal declarations of war had gone out of fashion a hundred years or more before the Federal Convention met in Philadelphia, developing the argument from there.

As a preliminary, it is important to note that one is dealing with two entirely different issues: On the one hand, there is the relationship between declarations of war and regime-types. On the other hand, there is the relationship between declarations of war and war. With respect to war, the character of war determines that all regimes must and will make fully reasoned declarations, even when they fail to do so formally. With respect to regime-type, the character of a regime determines who shall make the fully reasoned declaration. In a monarchy, it is the monarch. In a direct democracy, it is the assembly, and in a representative democracy, it is (or, at least, should be) the peoples representatives. Since 1789, however, these two distinct issues have become entangled, not only with each
other, but also with a third issue -- with the issue of when the Congress should declare war.

In order to disentangle these three issues, it is perhaps easiest to begin with is a paradox: Whereas it is incontestable that all nations stopped making formal declarations of war regularly and consistently during the seventeenth century, this of course does not mean that they stopped making declarations of war. Quite the contrary. Instead, they began resorting to "functional equivalents." We shall discuss the infinite variety of "functional equivalents," which may be literally any hostile act or word, toward the end of the next chapter. But, for now, it is their simple existence that intrigues us. In particular, we are intrigued by the circularity of the resulting situation: The moment one admits the existence of "functional equivalents," such as a presidential address to the Congress, one must also acknowledge that all wars are "declared" wars, some formally, others informally. Consequently, the term "undeclared war" is cruelly misleading. It does not mean that the war in question is actually "undeclared," but rather that no formal declaration has been made with due solemnity and ceremony, the declaration having been contained in some "functional equivalent," such as a proclamation.

As we shall argue shortly, the principal reason all wars are "declared" is that war is a political phenomenon
that engages entire societies. One consequence of this is that war cannot be conducted secretly. At some point, some public official must publicly announce 1) the existence of the war, 2) its causes, and 3) its objectives. Which is to say, at some point, some public official must make a fully reasoned declaration of war, be it made formally or informally. Furthermore, this public announcement is not a matter of religious dogma, legal convenience, or constitutional theory. It is a purely pragmatic response to the social and political character of war. For, without this public declaration, it is impossible i) to gather the army together, ii) motivate it, or iii) develop a strategy for its employment.

From the social and political character of war, it follows that an unreasoned declaration of war is always inadequate precisely because it is a mere formality, precisely because it only announces the existence of a state of war, thereby making it possible to mobilize the army. A fully reasoned declaration is the only adequate declaration -- whether "formally" made with due solemnity or informally made in a "functional equivalent" -- precisely because it moves beyond simply announcing the existence of a state of war. In addition, it not only articulates the grievances that have caused the war, thereby motivating those who will fight, but it also articulates the objectives that will end
it, thereby fixing the goals towards which the war's strategy will be directed.

But, if all wars are "declared" wars, then why would anyone accept a "functional equivalent" when the real thing was so easily had? Since at least the seventeenth century, the conventional response has been that formal declarations of war can and should be dispensed with whenever expediency or circumstances so dictates because they add nothing of substance to the hostilities, because they are nothing but meaningless ceremonies, cynical solemnities, and empty formalities. In addition, since 1789, the conventional response has been that substituting "functional equivalents" for the meaningless formalities of a formal declaration of war is the only or, at least, the best way to resolve what Manicas called "the Machiavellian imperative of modern politics." Namely, that an elected executive charged with the responsibility for national security can best deal with a recalcitrant, uninformed, and voting public by ignoring it. Confronted with this conventional wisdom, the obvious counter is to point out that formal declarations of war need not be mere formalities, that they can and have been substantive and essential parts of war that could not and were not dispensed with, even when expedient.

The task, then, is to chip away at the conventional wisdom, while adding weight to the contrary opinion, thereby tipping the balance in favor of a new appreciation of the
character and content of declarations of war. To accomplish this, we shall argue, first, that declarations of war are not mere formalities and, second, that they serve an essential and substantive function. Specifically, they function to inform a war by defining its causes and fixing its objectives, a function that is captured by the adjective "reasoned," or "fully reasoned." To oversimplify, then, our entire argument is an attempt to substitute "fully reasoned" for "formal" before the phrase "declaration of war" whenever it appears. In other words, the resolution of the war power debate turns upon interpreting Article I, Section 8 as reading, "The Congress shall have the power... to declare war by means of fully reasoned declarations only...."

For the sake of completeness however, we should note in passing that those upholding the conventional wisdom supplement the empirical evidence that formal declarations of war are unnecessary by offering a number of policy reasons. John Adams was of course the first President to wage an undeclared war as a matter of conscious policy, in his case against revolutionary France (Cf. Sofaer 1976, Ch. 3). But whether one talks about 1793 or 1973, the policy reasons given are essentially the same. A summary of them can be elicited by recalling the controversies that surrounded the repeal of the Gulf of Tonkin Resolution. For example, the State Department argued that:
Formal declarations of war are often deliberately avoided because they tend to indicate both at home and abroad a commitment to total victory and may impede settlement possibilities. The issuance of a formal declaration can also have certain legal results: Some treaties may be canceled or suspended; trading, contracts, and debts with the enemy are suspended; vast emergency powers become operative domestically; and the legal relations between neutral states and belligerents can be altered (Department of State 1971, 12 n. 58).

In addition to this unnecessary disruption and inconvenience, John Moore has summarized several other considerations, beginning with the assertion that the constitutional requirement for the Congress to declare war is not really a requirement:

...as Under Secretary Katzenbach puts it "[a joint resolution is] a functional equivalent of a declaration of war."

There are also numerous policy arguments why the formal declaration of war is undesirable.... Arguments made include increased danger of misunderstanding of limited objectives, diplomatic embarrassment in recognition of nonrecognized guerrilla opponents, inhibitions of settlement possibilities, the danger of widening the war [e.g., by activating secret treaties between North Vietnam and the Soviet Union or China],
and unnecessarily increasing the President's domestic authority [e.g., by authorizing wartime censorship to curb dissent]. Although each of these arguments has some merit, probably the most compelling reason for not using the formal declaration of war is that there is no reason to do so. As Former Secretary of Defense McNamara has pointed out "[T]here has not been a formal declaration of war -- anywhere in the world -- since World War II" (Moore 1969, 33).\(^1\)

As John Moore indicates, the policy reasons for not formally declaring war have always formed a secondary line of defense. Based mainly upon expediency and convenience, they lack the hard edge of the incontestable empirical evidence that "there is no reason" ever to declare war formally. As a result, since the seventeenth century, "the most compelling reason for not using the formal declaration of war" has always been the empirical one. Yet, the problem lies not in the fact, but in the reasons that created this fact, for, it was not always thus.

To begin with, one must recognize that the traditional beliefs that had sustained the custom for millennia lost all credibility during the sixteenth century. Before then, whenever there was a lapse in the custom, the gods,

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\(^1\)Secretary McNamara was speaking in May 1966, which means that the 5 June 1967 formal declarations of war by Algeria, Iraq, Kuwait, Sudan, and Syria against Israel noted above were yet to occur.
tradition, and honor had all conspired to reaffirm the belief that formal declarations were a necessary part of war. And, indeed, while this sustaining trinity might have survived the disenchancing fury of the Thirty Years War, it could not, however, survive the implacable rise of the modern scientific spirit. The combination proved fatal. Thus, when the extremes of religious animosity destroyed the gods, the unimaginable devastation of the countryside destroyed tradition, and, above all, the cynical calculations of Cardinal Richelieu's *raisons d'état* destroyed honor, the sustaining trinity were unable to reassert themselves, as they had always done in the past. For, to the nascent scientific spirit of the seventeenth century, the newly rediscovered empirical reality that formal declarations were not in fact necessary could not be ignored, as it always had in the past. It constituted, in fact, an irrefutable argument. As a result, by the end of the eighteenth century, in the absence of any perceived reason to declare war formally, Montesquieu's abstract doctrine of checks and balance collided with the new hundred year old international norm. Instead of dividing the sovereign's war powers between executive and legislative branches so as to satisfy the philosophical demands of representative democracy, the realities of war -- the empirical evidence suggested -- demanded that they remain united in the executive branch.
With the new democratic theory conflicting so openly and directly with well-established international custom and practice, one or the other obviously had to give. Unfortunately, no matter how obvious, neither option was palatable: Who, after all, would dare to advocate openly that representative democracy must be sacrificed to international custom during times of war? Alternatively, who would dare to state frankly that the United States must violate the norms of international relations merely to abide by the legal dictates of her Constitution and the philosophical requirements of representative democracy? As a consequence, the principal method for resolving this conflict since 1789 has been to ignore it. When the abstract philosophical demands of the Constitution conflict with the well-established principles and conventions of international relations, pragmatic people prefer settled practices to unsettling philosophies -- and change the topic. A recent example of this question-begging approach is Eugene Rostow's 1972 attack upon the then-pending War Powers Bill. Following the three prefatory quotations cited above, Rostow redefines the problem. The problem, according to him, is not found among the philosophical demands of representative democracy, but rather in the overriding need to maintain long established methods for the conduct of foreign affairs:
Responding to the bitterness and tragedy of Vietnam, a group of Senators led by Jacob K. Javits of New York proposes fundamentally to change the constitutional relationship between President and Congress in the field of foreign affairs.... These men have offered a Bill which in their view would correct nearly two hundred years of error, strip the Presidency of many of its most essential powers, and restore what they fondly imagine was the constitutional model of 1789 (1972, 833-4).

But, if the "constitutional relationship between the President and the Congress in the field of foreign affairs" be sound and not in need of realignment, then it follows that the "real" problem lies elsewhere:

The relevant Congressional Committees, and the Congress as a whole, should be leading the nation in a courteous and sustained debate, through which we could hope to achieve a new consensus about foreign policy, as vital, and creative, as that which sustained the line of policy which started with the Truman Doctrine, the Marshall Plan, NATO and its progeny, and the Four Point Program.

Instead, the Senate Foreign Relations Committee has chosen to escape from the demanding but manageable task of reality by retreating into the insoluble and dangerous realm of constitutional myth.... The Javits
Bill would turn the clock back to the Articles of Confederation, and destroy the Presidency which was one of the chief aims of the men of Annapolis and Philadelphia to create (1972, 900).

In sum, the Vietnam War created, not a constitutional crisis, but rather a crisis of consensus. As soon as consensus is restored, the "imagined" constitutional crisis will recede into the background, where it belongs.

However, Senator Javits and his group were not the first people who could not ignore "the insoluble and dangerous realm of constitutional myth." Since 1789, the alternative to ignoring the conflict between democratic theory and international practice has been to suggest that Article I, Section 8 was never meant to require that the Congress actually "declare" war. Rather, the requirement was for full and frequent "consultation." With suitable "consultations" between the Commander-in-Chief and the congressional leadership, one should be able to bridge the gap between democratic theory and international practice, shouldn't one? After all, "consultations" not only avoid the dangers of "executive aggrandizement" but also accommodate the various policy considerations that are often said to militate against a formal declaration of war, don't they?

This conception of the congressional war powers as "consultations" has always been particularly appealing
because it appears to work so well. Beginning with John Adams, most Commanders-in-Chief have assiduously "consulted" with the Congress. And, even on those few occasions when they were less than forthcoming, such as James Polk's manipulation of the Congress in 1846, the damage to democracy has not been excessive. Indeed, so strong is the appeal of this conception of the congressional war powers that Senator Javits and his group enshrined it in law, the 1973 War Powers Resolution being no more than an attempt to force the Commander-in-Chief to "consult" with the Congress at thirty, sixty, and ninety day intervals. Yet, in the final analysis, conceiving of the power to declare war as an injunction for "consultations" about the war is unsatisfactory because the problem is not located here. However, for the sake of argument, let us assume for a moment that "consultations" might resolve the conflict between representative democracy and international practice.

To begin with, there is the Constitution, which does not say that the Commander-in-Chief shall "consult" with or even "report" to the Congress in times of war but quite explicitly states that "The Congress shall have the power ... To declare war...." To be sure, the rough and tumble of practical politics may make a reinterpretation of "declare" as "consult" eminently reasonable, perhaps, even necessary; nonetheless, the gap between the text and the interpretation is remarkable. Just how remarkable is perhaps best
exemplified by the fate of the War Powers Resolution. On 7 November 1973, during the debate before the Congress overrode President Nixon's veto, Senator Javits, reflecting the sentiment of his colleagues, proclaimed that the Congress was "determined to recapture ... the awesome power to make war" (Cong. Rec. 1973, 36187). But what exactly did Senator Javits mean? What exactly was the Congress "determined" to "recapture?" Did he mean that the Congress should actually declare war, as the Constitution would leave one to believe? If so, the Congress has yet to redeem its pledge. Or, as is more probably, did he simply mean increased "consultations?" In this case, the Resolution has been quite successful. Beyond question, it has forced Commanders-in-Chief Reagan, Bush, and Clinton to pay greater attention to the Congress, "consulting" with the leadership frequently so as to circumvent amicably the thirty, sixty, and ninety day reporting requirements of the Resolution. However, whatever success the War Powers Resolution might have had in increasing "consultations," this success has been purchased at the expense of nullifying Article I, Section 8: Since it is the Commander-in-Chief who deigns to "consult" with the congressional leadership, not the other way around, can such "consultations" be construed as a congressional power, much less an autonomous war power?

This dilemma was first hinted at in the Spring of 1793, when the congressional war powers first became a matter of
public concern. At that time, the French Minister, Genêt, was publicly demanding that the fledgling American Government honor articles 17 and 22 of the Franco-American Treaty of Amity and Commerce of 1778 and support the French Revolution militarily. President Washington, fearing British retaliation, responded by issuing a Proclamation of Neutrality on 22 April 1793. To defend Washington's widely unpopular actions, Hamilton wrote a number of newspaper articles known as the Letters of Pacificus. At Jefferson's urging, Madison took up the challenge, responding to Hamilton under the name of Helvidius. Traditionally, it has been held that Hamilton "won" the exchange and, hence, that his views on the need for a "strong" executive who did not have to "consult" with the Congress carried the day. However, Hamilton was never elected President. Madison was. Moreover, in 1812, Madison was the President who made the very first request for a declaration of war. Letters and opinions are one thing; actual precedents are another. Consequently, what Madison thought and did is of more than passing interest.

And, what did Madison think? In his second Letter of Helvidius, we learn that, with respect to the congressional power to declare war, "The executive has no other discretion than to convene and give information to the legislature..." (Madison 1906, 6:160). Two comments are called for: First, in 1812, this is precisely what Madison did, thereby giving
the weight of precedent to his words. After "consulting" with key members secretly, he then "consulted" with the Twelfth Congress publicly, initiating the process by sending a long message to the Congress on 1 June 1812 informing it of his reasons for requesting the declaration of war. Seventeen days later, the Congress gave him the following unreasoned declaration of war on 18 June 1812:

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their Territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects, of the Government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof (Pub. L. No. 12-102, 2 Stat. 755).*

Since all wars require a public statement of their causes and goals, Madison's message constitutes the fully reasoned declaration of war. That is, the declaration that
makes the unreasoned declaration of the Congress nothing but a mere formality. Still, it is not this that concerns us here. Rather, it is the importance of Madison's precedent, which cannot be overemphasized. John Adams had previously established the necessity of close "consultation" with the Congress for formally undeclared war, for wars in which the Commander-in-Chief did not want the Congress to exercise its war powers. The need for this was obvious. How else was Adams to persuade the Congress not to exercise its constitutional mandate, except by close "consultation?"

Yet, crucially, "consultations" in this case do not compromise the autonomy of the congressional war powers. In theory at least, the Congress could have rejected Adams' advice and formally declared war against France. Now, however, Madison extended the practice to formally declared wars, to wars in which the Commander-in-Chief desired the Congress to exercise its war powers. In all cases, the Congress was now dependent on and subordinate to the Commander-in-Chief. By custom and precedent, the Congress could not act, except at the request and with the permission of the Commander-in-Chief.

Just how dependent is well understood by any one who has served on a board of directors. One does not need very much experience to know that, when the executive officer controls the timing of a debate and the information used in a debate, he controls the debate. Timing is especially
important. All the executive has to do is to delay the debate until the crisis has reached its peak and then stampede the board into doing whatever he desires done. In effect, then, conceiving of the congressional war powers as an injunction for "consultation," places control of the congressional war powers in the hands of the Commander-in-Chief. This subversive dependency of the Congress upon the Commander-in-Chief is best illustrated by the joint resolution of 2 June 1858 against Paraguay, a resolution that did not eventuate in combat. In response to a request made by Commander-in-Chief James Buchanan in his Annual Address of 8 December 1857, on 21 April 1858, the Thirty-Fifth Congress began debate on the following resolution:

A Resolution for the Adjustment of Difficulties with the Republic of Paraguay.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of adjusting the differences between the United States and the republic of Paraguay, in connexion (sic) with the attack on the United States steamer Water Witch, and with other matters referred to in the annual message of the President [Buchanan], he be, and is hereby, authorized to adopt such measures and use such force as, in his judgment, may be necessary and advisable, in the event of a refusal of just satisfaction by the

"And with other matters referred to in the annual message of the President." The Congress is clearly acting as the Commander-in-Chief's handmaiden. Buchanan, not the Congress, has determined when and why a declaration of war is required and is now simply asking for congressional approval of his decision. There is no thought that the Congress might possess an autonomous role to play in the drama, that the congressional war powers could or, even, should be exercised by the Congress at its sole discretion. Instead, following Madison's words and precedents, the Commander-in-Chief controls both the timing of the request and the information used in the congressional deliberations, such as they are.

The problem, as can be seen from the 1812 and 1858 declarations just cited, lies within the text itself. Clearly, if declarations of war contain no more substance than these two examples, and none of the five congressional declarations have contained more, then they are nothing but mere formalities, unreasoned formalities. Lacking all substance, they can and should be ignored, as the seventeenth century had long since come to realize. However, it was not always thus. As we shall describe in the next chapter, from before the dawn of history until the seventeenth century, declarations of war were fully
reasoned. In particular, this older tradition made a distinction between an absolute and a conditional declaration, which, in turn, may be either reasoned or unreasoned. An absolute declaration of war, such as the 1812 declaration, proclaims absolutely, as a matter of uncontested fact, that a state of war now exists between two parties. In contrast, a conditional declaration argues that certain grievances have caused a breach of the peace, which can be mended only if certain "conditions" are met. It then concludes that war is unavoidable should the other side fail to acknowledge the injustice of the grievances and the justice of the suggested amends. When a time limit is attached to the fulfillment of the "conditions," the conditional declaration becomes an "ultimatum." The distinction between absolute and conditional declarations is an ancient one, stretching beyond Cicero, who tells his son in De Officiis that, "All the rights and duties of war have been rigorously established by the Roman Fetial Laws, from which it is abundantly clear that no war is just unless preceded by an absolute or conditional declaration" (I, xi, 36). Both the distinction and this passage from Cicero were well-known before the twentieth century. For example, Grotius (1925, 2:633) and other seventeenth century jurists quoted this passage frequently with approval.

Cicero neglects to mention that declarations of war also need to be reasoned. He does this for the simple
reason that unreasoned declarations were completely beyond his experience. He could not imagine anyone writing one. After all, why would anyone simply proclaim that a state of war now existed between countries X and Y? Since wars announce themselves loudly and clearly, such declarations are always unnecessary and frequently undesirable, as the State Department has already argued above. They are, for all practical purposes, without consequence or effect. More recently then, the terms "motivated" or "reasoned" have been introduced. For example, in Article I of Convention III of the 18 October 1907 Hague Peace Conference, Relative to the Opening of Hostilities, one reads:

Les Puissances contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'une ultimatum avec déclaration de guerre conditionelle. (The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.) (Italic added.).

Ignoring several colonial declarations of war against Indian tribes, the only example of a reasoned declaration in American history is the Declaration of Independence, which
we shall analyze in detail subsequently. However, for the moment, what interests us is the fact that this earlier tradition of reasoned declarations of war -- that is, declarations that do more than merely declare war formally -- opens up the possibility that not all declarations of war are vacuous, that the Congress might possess a realm of autonomous activity, separate and independent from the Commander-in-Chief’s power to conduct war. To recover this lost tradition, it is perhaps best to return to the beginning -- to Friday, 17 August 1787 -- and see whether a fresh look at those seminal events in Philadelphia might not lead in new directions.

3. Searching for Substance

Unlike their subsequent history, the birth of the congressional war powers was not controversial. The clause -- originally framed as the power "To make war" -- was discussed in the Federal Convention on Friday, 17 August 1787 at the end of a busy day filled with other matters. The discussion was neither very long nor very contentious. Charles Pinckney of South Carolina began by urging that this power be vested in the Senate alone so as to consolidate in that body the powers to make both war and peace. This suggestion was countered by Mr Pinckney’s colleague from South Carolina, Pierce Butler, who argued "for vesting the power in the President, who will have all the requisite
qualities, and will not make war but when the Nation will support it" (Farrand 1911, 2:318).

Neither of these suggestions provoked any interest, and the discussion soon focused upon a motion by James Madison of Virginia and Elbridge Gerry of Massachusetts that "declare" be substituted for "make." Supported by Rufus King of Massachusetts, Oliver Ellsworth of Connecticut, and George Mason of Virginia, the delegates finally approved the motion on a second vote (Ayes -- 8; noes -- 1; absent -- 1) for the following reasons: First, they believed that "The Executive shd. be able to repel and not to commence war" and, second, they wanted to forestall any misunderstanding "that 'make' war might be understood [as] to 'conduct' it which is an Executive function" (Farrand 1911, 2:318, 319). The Madison/Gerry amendment having passed, Charles Pinckney next moved to delete the whole clause. However, the delegates rejected the idea without even taking a vote. Pierce Butler also moved to add "and peace" after "war," a suggestion which was voted down unanimously. With this the delegates adjourned for the day, and the matter was settled as far as they were concerned.

Given the simplicity of its birth, one can only wonder at the controversy and complexity that has surrounded the congressional war powers since. On the face of it, the Federal Convention clearly envisioned a separation of the sovereign's war powers; the Commander-in-Chief was to repel
sudden attacks and to conduct all wars, while the Congress was to deliberate and write the declarations of war, it being -- to all appearance -- self-evident that one cannot "declare" war until after the declaration has been written and the declaration cannot be written until after suitable deliberations. We say "to all appearance" because, for two hundred years, the need for the Congress to write its own declarations, or even to deliberate, has not been self-evident at all. For example, the two twentieth century declarations, those of 1917 and 1941, were both written by functionaries in the State Department and the 1941 declaration passed without any deliberations whatsoever.

Needless to say, relieving the Congress of the burden of actually writing its own declarations of war does make sense when one misconceives of the congressional war powers as an injunction for the Commander-in-Chief to "consult." Since it is the Commander-in-Chief who initiates the process and controls the information given to the Congress, it makes sense for him also to provide the text of the declaration. Not surprisingly, under this inadequate conception, the Commanders-in-Chief has always submitted an unreasoned absolute declaration for congressional approval because, by doing nothing more than declaring war, it gives him the widest latitude in conducting the war.

But, what if one conceived of the congressional war powers as an autonomous congressional power to deliberate
and write its own declarations of war, independently of the Commander-in-Chief? Furthermore, what if the Congress deliberated on and wrote only conditional or reasoned declarations of war? That is, what if the Congress did not simply declare the brute fact of war with an unreasoned absolute declaration, as it has done for the last two hundred years, but instead devoted itself to analyzing the grievances that called for the resort to arms and, more important still, the conditions that would restore peace, as the Second Continental Congress did in 1776? In other words, what if the Congress ignored the last four hundred years of international custom and practice and, instead, revived the practices and customs that governed the declaring of war before the seventeenth century?

In such a case, it would be possible to move beyond our modern conception of the power to declare war as a mere formality to identify the two primary military functions that fully reasoned declarations serve: 1) to justify cogently the resort to war and 2) to establish the meaning of peace and victory -- the war aims. That is, in a more military language, the purpose of a fully reasoned declaration of war is to articulate the grand strategy for the war. And, finally, under such a renewed conception of the congressional war powers, it would be possible to distinguish between a good and a bad declaration: A good declaration being a cogently argued grand strategy, one
which provided not only persuasive grievances justifying the resort to war but also sensible remedies or peace terms to end the war. A bad declaration being either an unreasoned declaration, i.e., a declaration providing neither grievances to justify nor war aims to end the war, or a poorly argued set of grievances and aims.

In addition, when the congressional war powers are understood in this way, one soon discovers that war, not democratic theory, that Clausewitz, not Montesquieu, provides the rational for dividing the sovereign's war powers. As the seventeenth century came to recognize, because an unreasoned absolute declaration of war does no more than declare war formally, there is no compelling reason ever to issue one. In contrast, a reasoned declaration of war, or its functional equivalent, is absolutely essential to the proper conduct of all wars. This is so because, as Clausewitz advises, a well articulated grand strategy is absolutely essential:

No one starts a war -- or rather, no one in his senses ought to do so -- without first being clear in his mind what he intends to achieve by that war and how he intends to conduct it. The former is its political purpose; the latter its operational objective (1976, 579).

But how is one's grand strategy to become "clear in his mind" unless one articulates cogently the grievances that
have provoked the war, on the one hand, and the conditions that will restore peace, on the other hand, that is, unless one makes a reasoned declaration of war? Indeed, the absolute need to become "clear in his mind" is the primary "lesson learned" from the Vietnam war. Without clearly articulated political purposes from which precise military objectives can be derived, America should never again go to war.

Of even greater interest, though, is the fact that grand strategy guides and directs strategy. That is, the political purposes articulated in a reasoned declaration guide and direct the operational objectives, with the result that, "War is merely the continuation of policy by other means" (p. 87), to repeat Clausewitz's famous dictum. But, if the political purposes control the operational objectives, then he who articulates these war aims controls the conduct of the war "down to smallest operational detail" (p. 579), which would seem to be precisely the sort of control a legislature would want to exercise over a commander-in-chief, controlling the means used by dictating the ends sought.

To avoid confusion, however, we must distinguish between the micro-management of a war and the manner in which the political purposes of a war "control" the conduct of the war "down to the smallest operational detail." Clausewitz would be the last person in the world to
recommend that the political authorities attempt to micro-manage a war. Micro-management for him would just be an unwarranted interference in the professional conduct of the war. However, Clausewitz also understood the subtle way in which the ends always direct the means. For example, to use the confusion over the goals of the Vietnam War as an illustration, if the purpose of American involvement was to defeat a North Vietnamese invasion, then American forces had to be deployed in large units along or just over South Vietnam's frontiers, with all of the operational consequences that that entails. If, however, the purpose of American involvement was to stop an insurgent guerrilla movement, then American forces had to be deployed in small patrolling units, stalking the villages by night and day so as to beat the guerrilla at his own game, with all of the operational consequences that that entails. And, if American involvement had other purposes, then American forces would have had to be deployed in other ways, which again would have entailed completely different operational consequences. The point is that this is type of grand strategic decision that Clausewitz is talking about, not unwarranted micro-management such as a congressional edict that all units deployed to Vietnam will be of size X or size Y. By simply articulating the purpose, the Congress thereby fixes the optimal size of the deployed units. It need do no
more. The professional military will unfurl the operational consequences of the congressionally articulated purpose.

And, finally, Clausewitz also believed that the conduct of war "...depends on the particular character of the commander and the army; but the political aims are the business of the government alone" (p. 89). The implication here is that the business of war divides naturally into strategy, i.e., the power to conduct war, and grand strategy, i.e., the power to declare the political purposes of the war. That is, he believed that articulating the purposes of a war (i.e., grand strategy) was a different and distinct function from the conduct of a war (i.e., strategy), calling upon different qualities and requiring different agencies. Even when the head of government and the commander-in-chief were one and the same person, this functional division was still crucial. Indeed, it was precisely because Frederick the Great understood this difference that he died with honor after a long reign, while Bonaparte, who allowed the strategically possible to determine the politically desirable, died in ignominious exile. Frederick formulated his political objectives first and, then, sought a successful strategy; Bonaparte formulated a successful strategy and, then, imposed an ephemeral victor's peace upon the vanquished.

In short, it is the demands of war itself, not the philosophical demands of democratic theory, that require a
division of sovereign’s power to make war. It is Clausewitz, not Montesquieu, who provides the most cogent reasons for reserving the power to declare war to the Congress. Indeed, were the Congress ever to conceive of its war powers as the power to articulate grand strategy by writing only reasoned declarations of war, then it could move beyond both the requirements of democratic theory and the four hundred year old customs of international relations. It could begin controlling the actual conduct of war, "down to the smallest operational detail," for, he who dictates grand strategy, by that very act, guides and directs strategy.

A problem now arises: The delegates to the Federal Convention, although well versed in Montesquieu, were innocent of Clausewitz, who was but seven years old in 1787. Neither did they recognize the distinction between an unreasoned and a reasoned declaration of war. They were, in fine, incapable of imagining the possibility of the Congress controlling the Commander-in-Chief by controlling the articulation of the political purposes of the war. Consequently, when we conceive of the congressional war powers as the power to deliberate and write reasoned, and only reasoned, declarations, we cannot claim the sanction of the Founding Fathers. They spent only a short time on the matter and never thought through the implications of their decision.
But, if the constitutional arguments are nonexistent, the military and moral arguments are overwhelming. Just how overwhelming can perhaps best be demonstrated by moving from the abstract to the concrete, by turning our attention to actual texts, for example, the alpha and the omega of formal American declarations of war — the Declaration of Independence and the declarations of 1941. Including the Declaration of Independence may strike many as an odd choice, since we never think of it as a declaration of war. Indeed, ever since Lincoln transformed its preamble into the "proposition" upon which the American experiment is founded in his Gettysburg Address, it has been "the electric cord ... that links the hearts of patriotic and liberty-loving men together" (Cited in Wills 1992, 86). Still, in both form and function, it remains a fully reasoned declaration of war, America's lettre de défí to George III. Therefore, our purpose in comparing it to the 1941 declarations is not to ignore or minimize its other historical and philosophical dimensions. Rather, our purpose is to return it to its original pragmatic function, which, then, allows us to build our comparison upon the fact that, because there is always a need to articulate the war's grand strategy, a reasoned declaration was made in both 1776 and 1941. The "only" differences between the two are, first, who articulated the war's grand strategy and, second, the quality of the reasoning used. The question of who fixes grand strategy
goes to the heart of the military functions of a declaration of war. The question of quality, to the moral functions, as a comparison of the 1941 and 1776 declarations will illustrate.

4. The 1941 Declaration

Pearl Harbor was attacked on Sunday, 7 December 1941. The next day, Commander-in-Chief Roosevelt convened the Congress for the purpose of giving it information. As the New York Times breathlessly reported:

Congress, with only one dissenting vote, approved the resolution [declaring war] in the record time of 33 minutes after President Roosevelt denounced Japanese aggression in ringing tones.... There was no debate like that between April 2, 1917, when President Wilson requested war against Germany, and April 6, when the declaration of war was approved by Congress.

President Roosevelt spoke only 6 minutes and 30 seconds today, compared with Woodrow Wilson's 29 minutes and 34 seconds.

The vote today against Japan was 82 to 0 in the Senate and 385 to 1 in the House. The lone vote against the resolution in the House was that of Miss Jannette Rankin, Republican, of Montana. Her "No" was greeted with boos and hisses. In 1917 she voted against the resolution for war against Germany.

(Kluckhohn, 1941, 1)
There are two ways to regard this report. On the one hand, the report is remarkable for how well it conforms to the conception of the congressional war powers as "consultation." Roosevelt and many other Americans had, of course, known for over a year that the United States would have to enter the war against Germany sooner or later. However, isolationist sentiment was ferociously against another large-scale war in Europe. In the face of this opposition, Roosevelt did what he could around the margins in the way of Lend-Lease, a new conscription law, an undeclared naval war against German U-boats in the Atlantic, and so on, biding his time until the inevitable crisis broke and he would be able to stampede the Seventy-Seventh Congress. This happened on 7 December 1941 in the Pacific, and not the Atlantic as was expected. Then, like Commanders-in-Chief Madison, Polk, and Wilson before him, he "consulted" the Congress, convening it and giving it information.

On the other hand, to a Clausewitz, this report would be of little or no interest, its description of procedure, who "consulted" with whom when, being unimportant. Since "war is nothing but the continuation of policy with other means" (p. 69), a Clausewitz would be much more interested in hearing a clear articulation of the nation's grand strategy. What were the grievances that justified the resort to war? What were the terms that would restore
peace? In fine, he would want to hear a reasoned declaration of war. Who, therefore, was taking responsibility for articulating grand strategy? Commander-in-Chief Roosevelt or the Seventy-Seventh Congress?

Roosevelt spoke first, addressing a joint session at 12:30pm:

Mr. Vice President, Mr. Speaker, members of the Senate and the House of Representatives:

Yesterday, December 7, 1941 -- a date which will live in infamy -- the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan.

The United States was at peace with that Nation and, at the solicitation of Japan, was still in conversation with its Government and its Emperor looking toward the maintenance of peace in the Pacific. Indeed, one hour after Japanese air squadrons had commenced bombing in the American island of Oahu, the Japanese Ambassador to the United States and his colleague delivered to our Secretary of State a formal reply to a recent American message. And while this reply stated that it seemed useless to continue the existing diplomatic negotiations, it contained no threat or hint of war or of armed attack.

It will be recorded that the distance of Hawaii from Japan makes it obvious that the attack was
deliberately planned many days or even weeks ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace.

The attack yesterday on the Hawaiian Islands has caused severe damage to American naval and military forces. I regret to tell you that very many American lives have been lost. In addition, American ships have been reported torpedoed on the high seas between San Francisco and Honolulu.

Yesterday the Japanese Government also launched an attack against Malaya.

Last night Japanese forces attacked Hong Kong.

Last night Japanese forces attacked Guam.

Last night Japanese forces attacked the Philippine Islands.

Last night the Japanese forces attacked Wake Island.

And this morning the Japanese attacked Midway Island.

Japan has, therefore, undertaken a surprise offensive extending throughout the Pacific area. The facts of yesterday and today speak for themselves. The people of the United States have already formed their
opinions and well understand the implications to the very life and safety of our Nation.

As Commander in Chief of the Army and Navy I have directed that all measures be taken for our defense.

But always will our whole nation remember the character of the onslaught against us.

No matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to absolute victory.

I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make it very certain that this form of treachery shall never again endanger us.

Hostilities exist. There is no blinking at the fact that our people, our territory, and our interests are in grave danger.

With confidence in our armed forces -- with the unbounding determination of our people -- we will gain the inevitable triumph -- so help us God.

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese Empire (Public Papers... Franklin D. Roosevelt 1950, 10:514-5).
After this address, the Senate returned to its chambers, where it passed an unreasoned absolute declaration of war drafted by the State Department in fifteen minutes. The House took a little longer, not passing it until 1:10pm. Typing and other paper work meant that Vice-President Henry Wallace could not sign the resolution until 3:23pm, and it took another forty-seven minutes to organize the small ceremony at which Commander-in-Chief Roosevelt affixed his signature in the presence of congressional leaders at 4:10pm:

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same:

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America; therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources
of the Government to carry on the war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States (Pub. L. No. 77-328, 55 Stat. 795).

Clearly, it is Commander-in-Chief Roosevelt who has fixed the nation's grand strategy by making the functional equivalent of a reasoned declaration of war. Anyone, such as a subordinate military commander, seeking an authoritative, official statement of the war's causes and goals must turn to his statement. Little or nothing can be learned from the congressional declaration, which was, indeed, nothing but a mere formality. At each and every point, the Commander-in-Chief has provided more precision, more specificity, and more detail. Where the Seventy-Seventh Congress speaks of "unprovoked acts of war," Roosevelt provides not only a detailed list but also mentions the failed diplomatic negotiations that form the essential background for the attacks. Where the Seventy-Seventh Congress speaks thinly of bringing "the conflict to a successful termination," Roosevelt speaks forthrightly of winning "through to absolute victory." Consequently, it is the Commander-in-Chief, and not the Seventy-Seventh Congress, who will guide the conduct of the war "down to the smallest operational detail." When subordinate commanders
draft their battle plans, they will take no notice of the vague and empty congressional sentiments. Instead, they will base their plans upon the Commander-in-Chief's grand strategy of winning "through to absolute victory."

In defense of the Seventy-Seventh Congress, one must acknowledge that, on this occasion at least, it did meet the absolute minimal constitutional requirement for the Congress to declare war. Yet, its unreasoned absolute declaration is both redundant and superfluous. It lacks all substance. It confuses more than it clarifies. Instead of reinforcing the natural division between the "government" and the "commander," that is, between those who articulate the grand strategic purposes of the war and those who derive the strategic objectives from those purposes, this division has been erased, both functions being consolidated in the hands of the Commander-in-Chief. Indeed, had Roosevelt deleted "ask the Congress that" from his last sentence, he could have reduced the confusion and declared war on his own authority, as kings have always done and Presidents usually do. In the final analysis, therefore, Roosevelt made the only declaration that counted. The Seventy-Seventh Congress, unlike most other Congresses, was not completely silent, but its words were unheard. The headlines roared with Roosevelt's dramatic, "A Date Which Will Live In Infamy," not with the Congress' tepid, "Declaring that a state of war exists between...."
5. The 1776 Declaration

In 1776, needless to say, the situation was different. The Second Continental Congress spoke and Commander-in-Chief Washington listened. The world has long forgotten anything Washington may have said; it still rings with Jefferson's words. But, more important than its incomparable rhetoric, by adopting a fully reasoned declaration of war, the Second Continental Congress created a properly subordinate relationship between itself and Commander-in-Chief Washington, between the "government," and the "commander," between grand strategy and strategy. In the subtle way in which the ends sought always direct the means employed, the Second Continental Congress had asserted its authority over the conduct of the war "down to the smallest operational detail."

Politically, the Declaration justified officially and authoritatively a war that heretofore had been largely a spontaneous reaction against certain undefined aspects of British policy in North America. Out of the babble of large and small grievances, out of the plethora of possible purposes an authoritative voice -- "the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled" -- had spoken. Closure had been achieved. All those who denounced the grievances enumerated and believed in the declared political object were now unified in a way that was impossible before. Now, General Washington, his
soldiers, and every citizen knew why they were fighting and when peace shall return. Before 4 July 1776, they were just fighting, just destroying the enemy for no particular purpose; now they were fighting for well articulated reasons to achieve a well articulated purpose -- independence.

Militarily, the Declaration of Independence allowed Commander-in-Chief Washington to develop a strategy "down to the smallest operational detail." Before 4 July 1776, his mission had been vague and undefined. He was to end the occupation of Boston and, then, more or less, to counter whatever moves the British Army made. Merely reacting to the enemy's initiatives, however, is not the way to win a war, as General William Westmoreland will testify. In order to win, one must take the initiative; one must put the enemy in a position of extreme disadvantage. But the initiative can be taken only after the commander-in-chief knows what the political object of the war is. Only with a clear goal in mind, can he deploy his forces so as to secure it. Needless to say, it was not until 4 July 1776 that General Washington learned authoritatively of his goal. Now, he was able to devise an eminently suitable strategy to achieve it -- trading space for time without allowing the British either to split the colonies or to occupy any significant expanse of territory.

The military level is particularly interesting from the constitutional point of view. Lacking guidance from the
Second Continental Congress, Commander-in-Chief Washington might very well have selected independence as his personal war aim and, then, gone on to develop his war-winning strategy on his own initiative. However, in this case, he would have become an American Caesar, instead of an American Cincinnatus. Who articulates the war’s political object is crucial for the health of democracy.

Equally crucial is the quality of Jefferson's reasoning. In form, it follows the plan of the just-war criteria; in content, it combines solid philosophy with detailed specificity. With respect to form, an interesting coincidence is observed. Although Jefferson was no doubt familiar with the just-war criteria from his studies in international law, it is unlikely that he had them consciously in mind when he drafted the Declaration of Independence. Yet, the Declaration addresses six of the seven jus ad bellum criteria. The principal reason for this is that his assignment -- to justify the war then in progress -- is precisely the task for which the just-war criteria were developed, which meant that he had to address the same concerns that are codified in the ad bellum criteria: For, how else is one to justify a resort to war except by demonstrating 1) that one possesses a just cause, 2) that the justice of that cause is significantly greater than the justice of the opponent’s cause, 3) that one possesses a legitimate authority to wage war, 4) that one’s
intentions are right, the war not having been commenced for self-serving motives, 5) that there exists a high probability of success without a resort to excessive means, it being axiomatic that excessive means destroy the justice of any cause, while a war without hope of success is futile and pointless, 6) that a due proportionality exists between the inevitable destruction caused in the war and the good that one hopes to achieve, and 7) that the war is truly a last resort, an honest effort to exhaust all other means having been made? In fine, the jus ad bellum criteria are inescapable; they must be raised and responded to, as Jefferson did.¹

With respect to content, first and foremost, Jefferson was concerned with demonstrating the justice of the Colonists' cause. He devoted over half of his composition to doing so, presenting both philosophical and practical reasons. In terms of philosophy, the rebellion was justified because the Crown had frustrated the basic purpose of all government, denied the Colonists their "inalienable rights," and thereby lost all legitimacy. In terms of practical politics, Jefferson listed twenty-seven specific grievances, ranging for "He has refused his Assent to Laws,

¹Since its publication in 1977, Michael Walzer’s Just and Unjust Wars: A Moral Argument with Historical Illustrations has been the most popular work on the topic. However, for most purposes, James T. Johnson’s (1981) Just War Tradition and the Restraint of War: A Moral and Historical Inquiry is the more useful text.
..." to "He has excited domestic insurrections amongst us, ..."). Consequently, the document argues, the American cause was just, not only in general philosophical terms, but in terms of specific grievances as well.

His second concern was to demonstrate that the colonies possessed the authority to wage war. For well established governments, the competence of their authority is not usually called into question. It is already one of the principle marks of their sovereignty. In the case of rebellious colonies, however, it is a great problem, since colonies are not recognized sovereigns. To establish their competence, Jefferson used three approaches: First, he made a formal assertion of competence by making the Declaration of Independence in the name of the Congress "of the thirteen united States of America." Second, in the very first sentence, he asserted competence under the natural law:

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, ...

And, finally, in the concluding paragraph, he based their competence upon the rock of representative democracy:

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing
to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; ...

Jefferson's third concern was to compare the relative justice of each side. He makes this comparison implicitly throughout, but, in his transition from the philosophical to the practical reasons for independence, he explicitly emphasizes the gross imbalance in comparative justice. While the Americans are seeking "Life, Liberty, and the pursuit of Happiness":

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

His fourth concern was to demonstrate the right intentions of the colonists, the rectitude of which Jefferson not only asserts formally in his concluding paragraph (cited above) but also demonstrates by means of the Colonists' prudence and long-suffering:

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while
evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But ...

"But ..." prudence and long-suffering must eventually give way before a radical imbalance in the relative justice that separates each side's cause. Hence, Jefferson continues:

... when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards of their future security. --

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government.

Jefferson's fifth concern was to show that the war was truly a last resort, a point that he had no difficulty documenting. In addition to the "prudence" shown by the Colonists:

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to
time .... We have reminded them .... We have appealed to their native justice and magnanimity, and we have conjured them ....

But to no avail:

They too have been deaf to the Voice of Justice and of Consanguinity.

Consequently, as a last painful resort:

We must, therefore, acquiesce in the Necessity, which denounces our Separation, and hold them, as we hold the rest of Mankind, Enemies in War, in Peace, Friends.

Jefferson’s sixth concern was to demonstrate that the great evil of war would be outweighed by a greater good to be accomplished after the war be won. His handling of this point is quite weak. His only explicit reference allows:

that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

However, the entire Declaration is also suffused with a feeling that royal tyranny has become entirely unacceptable and, hence, that a return to good government is well worth the evils of war. Perhaps this is enough.

The only jus ad bellum criterion that Jefferson omits from his text is the calculation that success was probable. As it must be for any government embarking upon a war, the chances for success must have weighed heavily on Jefferson’s mind; yet, he makes no mention of it. The reasons for this
omissions appear to be three: Partly, as a simple rhetorical matter, a declaration of war is not the place to analyze the probability of success. In the declaration one must always assume success. Partly, too, a declaration of war is itself an assertion that its authors believe that success is most probable. Otherwise, they would not wage war. And, finally, one must assume that the Second Continental Congress had already calculated their chances for success the previous year when they appointed George Washington as Commander-in-Chief on 15 June 1775 and authorized the raising of an army and a navy. In 1776, the question of the probability of success was moot.

To summarize then, the 1776 Declaration cogently addresses six critical concerns. It argues that, 1) if the Second Continental Congress' cause be just, and 2) if that Congress be competent to wage war, and 3) if the weight of justice be comparatively on its side, and 4) if its intentions be right, and 5) if the war be waged truly as a last resort, and 6) if the justice to be gained from the independence sought in the war be proportionally greater than the injustices inflicted by the war, then both the war and its declared purpose are justified. Therefore, in addition to the general rule of articulating the grievances that call for a resort to arms and terms that will restore peace, Jefferson's declaration provides six specific criteria for distinguishing good from bad declarations of
war. Those declarations that address each of these six concerns in a persuasive manner, as Jefferson did, are useful declarations. Those that do not, are not. Applying this standard to the five congressional declarations, one discovers to no great surprise that, as unreasoned absolute declarations, they are neither good, adequate, nor useful. They address no concern; they fix no grand strategic objectives. They simply declare the brute fact of war. They are nothing but mere formalities.

Equally unsurprising, these six criteria do provide an excellent measure of the quality of the messages by which Commanders-in-Chief Madison, Polk, Wilson, and Roosevelt "consulted" with the Congress, since those messages are, in effect, the reasoned declarations that articulated the grand strategic purposes of the relevant war. For example, Roosevelt's declaration was strong on articulating the causes for warring against Japan (but not against Nazi Germany or Italy), the purity of our intentions, and how this war was well and truly a last resort. However, he failed to mention the competence of our authority to wage the war, to compare the relative justice of each side, and to weigh the ends for which each side was fighting. In addition, his call for "absolute victory" is more than a little problematic.
6. Denouncing War and Declaring Peace

In assessing just how problematic, one must shift from the military function of a declaration of war to its moral functions. If, in strictly military terms, the power to declare war is the power to articulate grand strategy -- controlling the military means used by dictating the political ends sought -- then does a declaration's moral significance not lie in the power to declare peace and denounce the necessity that forces war upon us? For, unlike Roosevelt and the Seventy-Seventh Congress, the Second Continental Congress did not simply declare war. Thus, whereas Roosevelt asked simply:

...that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, Dec. 7, 1941, a state of war has existed between the United States and the Japanese Empire.

and the Seventy-Seventh Congress responded simply by:

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the People of the United States and making provisions to prosecute the same,....

the Second Continental Congress took a slightly more complex approach. First, it articulated the many causes that justified the war. Then, it acquiesced in the necessity that denounced a separation of America from Great Britain:
We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace, Friends. And, finally, it declared its preferred peace terms — independence:

We, therefore, ... solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States;....

The difference between denouncing one's acquiescence in the necessity for a war before declaring and simply declaring war is not merely procedural. It is also transformative, turning Roosevelt's angry call for "absolute victory" and the Congress' thoughtless and unreasoned declaration into a reasoned plea for peace. How, therefore, should we conceive of the moral purpose of the congressional power to declare war? Should we not conceive of it as the power to denounce war and declare peace? Should we not conceive of it as the power to denounce the necessity that justifies a breach of the peace, but, more important still, as the power to publish and declare the conditions that will restore peace?

For the moment, we shall leave the question hanging in order to pick it up again in Chapter 5, section 3.1, where an analysis of Woodrow Wilson's Fourteen points and Franklin Roosevelt's Atlantic Charter present an opportunity to explore it more fully.
Chapter 3

Changing Attitudes Towards Declarations of War:
A Brief Historical Sketch

In the last chapter, we argued that one should not look to Montesquieu or Madison in order to understand the meaning of the congressional war powers, but rather to Clausewitz and Jefferson. In particular, one should pay attention to the military functions of a fully reasoned declaration of war, to Clausewitz's observation that, no one in his senses ought to begin a war "without first being clear in his mind what he intends to achieve by that war and how he intends to conduct it." In order for everyone to get 'clear in his mind,' some authority must articulate those intentions in a fully reasoned formal declaration of war or its functional equivalent.

In this chapter, we shall puzzle over the fact that, until the seventeenth century, fully reasoned denunciations of war were the rule and not the exception. Kings and potentates were neither shy nor ashamed to state their grievances and declare their aims in due form, although cynicism, hypocrisy, and crass opportunism often made their
denunciations less than candid. Subsequently however, attitudes changed and formal reasoned declarations of war as the mode for articulating grand strategy gradually went out of style, to be replaced by their functional equivalents. In America, after the adoption of the Constitution, this meant a public message from the Commander-in-Chief, which, on infrequent occasions, ended with a request to the Congress for an unreasoned absolute declaration.

The problem, then, is to understand this shift in attitudes. Why, in the course of the last four hundred years, have formal reasoned declarations of war gone out of fashion? In response, there appear to be both historical and conceptual reasons. The conceptual reasons involve an inability to accept, much less articulate, the ambiguity inherent in the word "war." The historical reasons revolve around two processes: First, a radical simplification of the complex processes that had previously been a prelude to war and, second, the disappearance with the rise of Absolutism of the councils, assemblies, and parliaments in which declarations of war had previously been debated. The disappearance of councils and assemblies meant that, by the end of the seventeenth century, there no longer existed even a place in which fully reasoned declarations of war could be debated. The simplification of the prelude to war meant that declarations of wars seemed to have lost all of their political and diplomatic functions, without anyone
appreciating that they still possessed military and moral functions.

Further aggravating this lack of venue and apparent lack of function was the inability of jurists and others to come to terms with the conceptual complexity of the word "war." After the end of the seventeenth century, with the growth of the new scientific spirit, it was no longer considered respectable to permit the word "war" to represent simultaneously and ambiguously both a "condition" and a "contest," two terms which derive from Grotius, as we shall see in a moment. Instead, the empirical spirit of the age deemed it necessary to end the ambiguity decisively by conceiving of war as a "contest" only, the "condition" of war being regarded either as a legal fiction or as derivative of the "contest." Having resolved the ambiguity in this way, from the beginning of the eighteenth century, two juridical tendencies then developed, both of which led to dead ends. The first tendency consisted of a diminishing band of traditionalists who, citing Grotius and Cicero, insisted that declarations of war were still a necessity, despite their apparent lack of function. The second tendency consisted of modern, instrumentally rational, empirically minded jurists who, citing the undeniable facts of eighteenth, nineteenth, and twentieth century diplomatic usage, insisted that declarations of war were never necessary and, hence, outmoded relics of the past.
In fine, we wish to tell a story of inattention and reduction to absurdity: Inattention both to the need to justify the war in governing fora and to the possibility that fully reasoned declarations of war might serve indispensable military, moral, and even democratic functions. Reduction to absurdity because conceiving of war solely as a "contest" produces nothing but murderous nonsense. Only when the complex ambiguity of the word "war" is restored is it possible to make sense of war. By telling this confused and disappointing story, we hope to arrive at an appreciation of the attitudes and concepts that animate reasoned declarations of war, that lead men to believe they are always necessary. For, clearly, something has been lost over the last four hundred years, something which rendered the congressional war powers hollow and ineffective a hundred years or more before the Federal Convention even met in Philadelphia, something which must be recovered if we are ever again to breathe life into the power to denounce war and declare peace.

1. Simplifying a Complex Negotiating Strategy

Until roughly the seventeenth century, initiating war was an elaborate, complex, and lengthy process cloaked in religious formulae and legalistic jargon. However, hiding beneath these sacred rites and judicial forms were exceedingly pragmatic political and diplomatic processes, in which the formal declaration of war was an integral and
crucial element. Politically, the rites for declaring war usually required extensive public debate in governing fora that culminated in the writing of a fully reasoned declaration of war. The practical reality sustaining these public debates was the fact that the war chief held relatively little political power and had, therefore, to defer to the council of elders, the assembly, the senate, or the great council before he could take up his spear. Diplomatically, these ceremonies involved dispatching a special emissary to the potential adversary empowered to negotiate over the grievances and remedies articulated in the declaration he carried with him. The practical reality undergirding this negotiating mission was the essential autonomy of each tribe, city, or kingdom, on the one hand, and the difficulties in transportation and communication, on the other hand, that made contacts between potential adversaries sporadic. Indeed, war was, for all practical purposes, the only question important enough to force diplomats to break this isolation and risk the dangers of travelling to distant lands.

However, as the seventeenth century approached, both the political and diplomatic realities changed remarkably. Improvements in transportation and communications led to the development of permanent diplomatic representation in foreign courts and, hence, to continuous interchanges between monarchs. This meant that it was no longer
necessary to send a special emissary with full panoply to explain the grievances and negotiate over remedies articulated in a formal denunciation of war. The permanently resident ambassador could now whisper these concerns into the adversary’s ear daily during intimate tete-à-tete. But, if the adversary already knew of the grievances from the resident ambassador and had already rejected the proposed remedies also through him, then what was the point of dispatching a special envoy with a formal declaration? Improved communications and a more intensive diplomacy rendered the old ways redundant and irrelevant in the eyes of most. Likewise, as the power of the monarch gradually increased and that of governing councils decreased over the centuries, the need for extensive public debate in official fora also diminished. This trend reached its nadir with the development of an absolutist theory of monarchy, which eliminated public debate completely, decisions for war and peace now being made in secret in the king’s privy council. And so, again, insofar as there no longer existed a need to reach closure in a public debate by formally voting on a declaration of war, what was the purpose of a fully reasoned declaration? Wouldn’t some functional equivalent serve just as well to announce the monarch’s private decision to his subjects and the world?

In fine, the disappearance of parliaments and changes in diplomatic and political practices meant that the
practical realities underpinning this complex process appeared to lose all meaning and function. Lacking all meaning and function -- to all appearances, at least -- declarations of war soon came to be viewed as irrelevant to the important business of war. Of the two factors, however, the elimination of the need to send special envoys to the adversary was, by far, the more decisive factor. There had always been tyrants of one sort or another who had declared war on their own authority without reference to a ruling council. Yet, until improved communications made permanent diplomatic representation possible, these tyrants seldom failed to dispatch heralds with reasoned declarations of war, the hypocrisy of the reasoning notwithstanding. Interestingly, one of the reasons tyrants were so punctual in declaring war formally is that observing the diplomatic formalities that proceed war is what distinguishes tyrants from pirates, war from brigandage. For, war requires policy, brigandage does not. Consequently, pirates -- those "powerful men" motivated by "their own cupidity and to support the needy" (Thucydides I, 5), lacking policy, never wage war. Instead, they raid, pillage, and plunder, descending upon a town without warning and making off with whatever they can carry. Tyrants, possessing a policy, wage war -- but, first, they negotiate. After all, as Hitler's advisers no doubt argued during the 1938 Munich
negotiations, if Czechoslovakia will fall without a shot, why not save the army for Poland?

And, finally, we must comment upon the narrow scope and bias of the documents we shall be examining. With one exception, they come from judicial and religious authors. Military authors are conspicuously absent. The complete absence of military authors highlights one of the greatest weaknesses in traditional discussions of declarations of war -- if only the priests and the lawyers see a need to declare war formally, then, obviously, there can be no good reason ever to do so. In the fifth century BC or, again, in the fourteenth century AD, priestly or juridical reasons might have persuaded, but not in the seventeenth century or later. Today, it would take a hearty priest to cite Deuteronomy 20:10 or a very nostalgic lawyer to cite the *jus fetiale* in defense of the congressional power to declare war.

Consequently, the purpose of the texts discussed below is not to adduce religious or legal reasons for the congressional war powers. After having argued in the last chapter that only solid military and moral functions can justify splitting the sovereign's personality and granting the power to declare war to the Congress, such a course is not possible. Rather, our purpose is, first, to document the ubiquity, the persistence, and the complexity of the political and diplomatic processes that sustained a belief in the necessity of writing fully reasoned declarations of
war until the seventeenth century and, then, to trace the rapid disintegration of all conviction in the need to denounce war after that. Incidentally, because of the religious and legal sources of in the texts cited, we shall not see any evidence of the technological changes that undermined the diplomatic need for formal declarations of war, although we shall see traces of the political changes.

2. To Proclaim Peace

From the earliest times, in all cultures, declarations of war were an integral part of an elaborate system of negotiations characterized by three formal elements: First, the decision to war was taken only after extensive public debate in governing councils. Second, the declaration itself promised peace to the enemy if the grievances detailed were remedied. And, third, battle was joined only after this formal, reasoned declaration was carried to the enemy by heralds and they had returned with a counterdeclaration denying the justice of those grievances. All three of these elements can be found in the five thousand year old Sumarian epic, Agga and Gilgamesh, which begins with the arrival of heralds from Agga of Kish informing Gilgamesh in Erech of the casus belli. Before he can respond however, Gilgamesh must first go before, not one, but two councils -- a council of elders and a council of "men," probably meaning "armed men." His initial attempt to convince the council elders to declare war is
unsuccessful. Desiring peace, they resolve to "...submit to the house of Kish, let us not smite it with weapons" (1.14). However, the council of "men" is more receptive. After a second debate in that council, Gilgamesh secures a decision for war, "Do not submit to the house of Kish, let us smite it with weapons" (1.29). His heralds having returned with this defiant counterdeclaration, "Agga, son of Enmebaraggesi besieged Erech" shortly thereafter (1.49). Unfortunately though, the fighting went against Erech, and the city was saved only through the kindness and mercy of Agga (Pritchard 1955, 44-7).

A second and fuller source for the functioning of this complex process is the Old Testament. With the greater detail available there, one can also see the reasons that the ancient cultures gave for employing this complex negotiating process -- the gods demanded it. For example, among the Hebrew, Yahweh commanded:

When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And it shall be, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee. And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it (Deu 20:10-12).
Not only did this injunction to "proclaim peace" result in a fairly complete *jus belli* (vv. 13-20), detailing the treatment of the vanquished, plunder, and so forth, but it also resulted in elaborate negotiations and fully reasoned declarations of war, as is seen in Judges 11 when the Ammonites threaten war against Israel. In response to this threat, the elders of Gilead recall Jephthah, the son of a harlot, to "be our captain, that we may fight with the children of Ammon" (v. 6). Having assumed command:

And Jephthah sent messengers unto the king of the children of Ammon, saying, What hast thou to do with me, that thou art come against me to fight in my land?

And the king of the children of Ammon answered unto the messengers of Jephthah, Because Israel took away my land, when they came up out of Egypt, from Arnon even unto Jabbok, and unto Jordan: now therefore restore those lands again peaceably.

And Jephthah sent messengers again unto the king of the children of Ammon: And said unto him, Thus saith Jephthah, Israel took not away the land of Moab, nor the land of the children of Ammon: But when Israel came up from Egypt, and walked through the wilderness unto the Red sea, and came to Kadesh; Then Israel sent messengers unto the king of Edom, saying, Let me, I pray thee, pass through thy land: but the king of Edom would not hearken thereto. And in like manner they
sent unto the king of Moab: but he would not consent: and Israel abode in Kadesh.

Then they went along through the wilderness, and compassed the land of Edom, and the land of Moab, and came by the east side of the land of Moab, and pitched on the other side of Arnon, but came not within the border of Moab: for Arnon was the border of Moab. And Israel sent messengers unto Sihon king of the Amorites, the king of Heshbon; and Israel said unto him, Let us pass, we pray thee, through thy land into my place. But Sihon trusted not Israel to pass through his coast: but Sihon gathered all his people together, and pitched in Jahaz, and fought against Israel.

And the Lord God of Israel delivered Sihon and all his people into the hand of Israel, and they smote them: so Israel possessed all the land of the Amorites, the inhabitants of that country. And they possessed all the coasts of the Amorites, from Arnon even unto Jabbok, and from the wilderness even unto Jordan. So now the Lord God of Israel hath dispossessed the Amorites from before his people Israel, and shouldest thou possess it?

Wilt not thou possess that which Chemosh thy god giveth thee to possess? So whomsoever the Lord our God shall drive out from before us, them will we possess. And now art thou any thing better than Balak the son of
Zippor, king of Moab? did he ever strive against Israel, or did he ever fight against them, While Israel dwelt in Heshbon and her towns, and in Aroer and her towns, and in all the cities that be along the coasts of Arnon, three hundred years? Why therefore did ye not recover them within that time?

Wherefore I have not sinned against thee, but thou doest me wrong to war against me: the Lord the Judge be judge this day between the children of Israel and the children of Ammon (vv. 12-27).

Among the Romans, the gods were just as insistent that war be for the purpose of peace. For example, in De Officiis, Cicero began with what became the standard definition of war until well into the eighteenth century:

...there are two ways of contending [decertandi] an issue -- one is by force [vim], and the other is by reason[ed debate, discussion, or controversy (disceptationem)]. The former is the prerogative of beasts, the latter of men, so that we should only have recourse to the former when the latter is no avail (De Officiis I, xi, 34).

and, then, concludes:

Therefore the only justification for war is that peace and justice should afterwards prevail.... All the rights and duties of war have been rigorously established by the Roman Fetial Laws, from which it is
abundantly clear that no war is just unless preceded by an absolute or conditional declaration. (De Officiis I, xi, 35, 36)

Needless to say, the thought that the purpose of war is that peace and justice should afterwards prevail was not original with Cicero. Both Plato (Laws 628,) and Aristotle (Politics 1333'35), among many others, had said the same thing. Augustine also held that the purpose of war was peace (City of God XV, 4; XIX, 12). In contrast, the jus fetiale was a uniquely Roman institution. True, there is some doubt as to whether the collegium fetialis actually performed the rituals described by Livy (Wiedemann 1986. But see Watson 1993, 56-8 for a convincing rebuttal.). What is not in doubt, however, is the influence that these accounts had upon jurists during both the middle ages and the early modern period. For example, Grotius (1925) quotes Livy at III, iii, V. As with the Deuteronomic law, the jus fetiale decreed elaborate negotiations and fully reasoned declarations of war. Livy, our principal source, explains that, when some controversy arose, one or more legati would be sent to the offending people. Arriving at the frontier, the envoy:

...covers his head with a bonnet -- the covering is of wool -- and says: "Hear, Jupiter; hear ye boundaries of" -- naming whatever nation they belong to; -- "let righteousness hear! I am the public herald of the
Roman People; I have come duly and religiously commissioned; let my words be credited." Then he recites his demand, [e.g., ... whereas Perseus, son of Philip, King of Macedonia, contrary to the treaty made with his father Philip and renewed with himself after the death of his father, had invaded allies of the Roman people, had devastated their land and seized their cities, and whereas he had entered on plans for preparing war against the Roman people, and had assembled arms, soldiers and fleet for the said purpose, resolved that, unless he offered satisfaction in these matters, war against him be undertaken (XLII, xxx, 10-11).] after which he takes Jupiter to witness: "If I demand unduly and against religion that these men and these things be surrendered to me, then let me never enjoy my native land" (I, xxxii, 6).

The legati repeat this demand several times in the principal towns until they arrive in the capital city where they again repeat it. Remaining in the enemy's capital for thirty-three days, the envoys negotiate for satisfaction. If the negotiations fail, they, then, declare war conditionally:

"Hear, Jupiter, and thou, Janus Quirinus, and hear all heavenly gods, and ye, gods of earth, and ye of the lower world; I call you to witness that this people" -- naming whatever people it is -- "is unjust, and does not make reparation. But of these matters we will take
counsel of the elders in our country, how we may obtain our right" (I, xxxii, 10).

Upon their return to Rome, they denounce the enemy and the question of war or peace was immediately put to the vote. When the decision went for war:

It was customary for the fetial to carry to the bounds of the other nation a cornetwood spear, iron-pointed or hardened in the fire, and in the presence of not less than three grown men to say: "Whereas the tribes of the Ancient Latins and men of the Ancient Latins have been guilty of acts and offenses against the Roman People of the Quirites; and whereas the Roman People of the Quirites has commanded that war be made on the Ancient Latins, and the Senate of the Roman People has approved, agreed, and voted a war with the Ancient Latins; I therefore and the Roman People declare and make war on the tribes of the Ancient Latins and the men of the Ancient Latins." Having said this, he would hurl his spear into their territory. This is the manner in which at the time redress was sought from the Latins and war was declared, and the custom has been received by later generations (I, xxxii, 13-14).

During the Middle Ages, this elaborate negotiating tradition continued unbroken, no chivalrous knight ever thinking of participating in an undeclared war. The form however changed slightly. Instead of reading a clarigato
such as Livy described, now the herald read *lettres de défi* (diffidato). But continuity was the hallmark. For example, Honoré Bonet begins his c. 1387 *The Tree of Battles* by echoing Cicero:

...war is nothing other than discord or conflict that has arisen on account of certain things displeasing to the human will, to the end that such conflicts should be turned into agreement and reason, and there is a law which provides this (I, i).

He, then, assumes without discussion or question that "a general war [i.e., a public war] is declared after great council, and decreed by the lord" (IV, cxiv). While Bonet does not trouble to describe the functions of a "great council," Christine de Pisan does in great detail in her c. 1434 *The Book of Fayttes of Armes and of Chyualrye*:

he [a prince] shall assemble grete counseyl of wysemen in his parliament / or in the counseil of his souerayn yf he be subgette / ... [and] shal purpose or doo be purposed all the truth & without ony fauour for god may not be deceyued all suche right & suche wronge that he may haue / & in concludying shal saye þe of all he wyll reporte hym & holde to the determinacion of ryght / shortly for to saie by this manere / this thynge put in right wel seen & discuted so & by suche waye that it appere by true iugement that he hath iuste cause / Thenne he shal doo sommone his aduersarye for to haue
of hym restytucion & amendes of thyniures & wronges by hym receyued / Thenne yf it happene / that p' said aduersarye delyuer defences & wyll gaynsaye it / that he be entirely herd without fauour to hym self in ony wise ne propre wyll ne haynous courage / These thynges & that whiche apperteyneth duely made / in caas that the said aduersarie be founde refusying to come to right & lawe / the prync may Iustely & surely entrepyrse warre / the whiche ought not be called vengeance / but pure execution of rightful Iustyce/ (I, iiiij)

Christine's account is of particular interest because she goes on to say that the blessing of the prince's privy council is insufficient for undertaking war. Instead, a wise prince should follow the example of the Romans and "assemble to counseil the four estates of his countree whiche ought to be called or he emprise so chargeable a thyng [as war]" (I, v). According to Christine, the principle reason for this is to ensure the loyalty of his people by involving them in the decision, for, "O how is that a proffitable thynge in seygnourye / Royame / or Cyte to haue true subgettis / & of grete loue" (I, v). As a modern illustration of this principle, she cites the "wel gaaf ensample the good wyse kyng charles the fythe of that name" who, in 1369:
assembled at parys [Paris] at his parliament the
forsaid foure estates / ... / and to theym purposed his
reasons ayenst thenglyssh men demaundyng theyr aduys /
yf he had cause to bygynne warre / for without iuste
cause / the regarde & deliberacion emonge theym / and
the consente & wylle of his good subgetts in no wyse he
wold doo it at whiche counseyl by long deliberacion was
concluded that he had good & iuste cause to begynne
agayn the warre & thus the good wise kynge entreprysed
it / (I,v)

Needless to say, Christine's "ensample" is remarkable
primarily because it is exceptional. Few were the wars to
which the four estates gave their assent during the middle
ages. Nonetheless, it is of more than passing interest that
even during the middle ages -- a time not noted for its
adherence to democratic values -- informed commentators
believed that the legislature, and not the executive, should
have the final say in deciding the questions of war and
peace.

During the early modern period, as one would expect,
this antique tradition quickly weakened, its complex
political and diplomatic functions gradually simplified to
the point where they no longer possessed purpose or meaning.
First, the governing councils themselves disappeared, which
meant that there no longer existed even a place to debate a
denunciation of war. Thus, as Christine de Pisan's example
of Charles V illustrates, during the twelfth, thirteenth, and fourteenth centuries, as the kingdoms of western Europe slowly began to evolve into modern nation-states, their medieval curia regis had haltingly transformed themselves into parliaments, estates-general, and cortes. During the fifteenth, sixteenth, and seventeenth centuries, however, this evolution was reversed, and kings began to claim a divine right to exercise an absolute power over their subjects. As a result, after the unification of the Spanish crown in the fifteenth century, the Cortes met infrequently and, then, only to pay homage to the king, while, in France, the Estates-General did not assemble for a hundred and seventy-five years, between 1614 and 1789. England was of course the great exception. Unlike her continental analogues, the English Parliament had gained firm control over the raising of non-feudal revenues by the reign of Edward III in 1377. This "power of the purse" meant that an English king could not ignore his parliament as the Spanish and French kings could. But, if the English kings' constant need for increased revenues meant that Parliament was frequently called into session, it did not mean that the Parliament thereby possessed the power to declare war. Quite the contrary. The power to declare war was well established as a royal prerogative. In addition, the army and navy were also the king's, thereby further removing Parliament from matters military. As a result, while the
king often had to request increased taxes from Parliament in order to continue a war, he had no need whatsoever to consult Parliament before he started one.

The crucial example of course is the Bishops War of 1639-40. For a number of personal, political, and ideological reasons, including his belief in the divine right of kings, Charles I initiated a period of Personal Rule after the contentious parliamentary session of 1629. He did this by the simple expedient of refusing to summon Parliament for the next eleven years. Towards the end of this period, in an effort to achieve religious uniformity within his two realms, Charles I decided to impose the Church of England’s ecclesiastical hierarchy (which is why the war was called the "Bishops" War) and its Book of Common Prayer upon the Presbyterian Scots. When the Scots objected vigorously, Charles I declared war upon them in 1639. To finance this invasion, the king resorted to a number of dubious devices, including a feudal levy, which much displeased the "militarily (though not politically) impotent" nobility (Fissel 1994, 153). This first campaign was indecisive, ending with the Pacification of Berwick, which stipulated that a free assembly of Scots would meet to decide whether Presbyterian Scotland would adopt the Church of England’s hierarchy and Book of Common Prayer. When this assembly rejected both ideas, Charles I summoned Parliament for the first time in over a decade in order to obtain
supplementary revenues to finance a second invasion of Scotland. Not having met for ten years, Parliament was more interested in obtaining redress for a long list of grievances that voting new taxes for the king’s unpopular war. Desiring only money and not wanting to hear grievances, Charles I soon dismissed this Parliament, which came to be known as the "Short" Parliament. Denied parliamentary revenues, the king nonetheless undertook a second campaign in 1640, relying again upon his own resources. This second campaign was even less successful than the first.\footnote{Since 1640, two schools of thought have developed to explain the English defeats in the Bishops War. Some, such as Mark Fissel (1994), place the blame squarely upon Charles’ incompetent shoulders; others, such as Kevin Sharpe (1992), are less inclined to blame Charles I, emphasizing instead the enormous difficulties – both domestic and foreign -- that Charles I faced and the shortcoming of his advisors and commanders.} By the Treaty of Ripon, Charles was forced to pay the Scots an indemnity. Having exhausted his own resources in these two ill-fated excursions into Scotland, Charles I was forced to recall Parliament to vote the additional taxes needed to pay the indemnity. Once recalled, this "Long" Parliament immediately demanded redress for a long list of grievances before voting the additional revenues demanded by Charles I. Charles’ refusal, of course, led to the English Civil Wars. Parliament, having now declared war against the king, was suddenly faced with the realization that it possessed no
army with which to oppose the king, who still commanded the Royal Army. In the short run, Parliament solved this problem by raising its own army. In the long run, however, this proved to be Parliament’s undoing. In 1653, Oliver Cromwell dissolved the Rump Parliament, accepted the Instrument of Government from the Parliamentary Army, and ruled until his death in 1658 as Lord Protector. In 1660, Parliament was restored under Charles II, but the power to declare war remained a royal prerogative and the army and navy continued to pledge allegiance to the person of the king, not to Parliament. Thus, by the end of the seventeenth, even in England where Absolutism did not triumph, both the army and the power to declare war remained in the hands of the king.

The eclipse of parliaments and estates-general in practice was also accompanied by a parallel rise in political theories that justified the imposition of Absolutism. Machiavelli’s Prince (1532) declared and fought wars, but never consulted with a great council, if perchance he had one to consult. Likewise, Jean Bodin (1530-1596) saw no need for an assembly. He listed the first three marks of sovereignty as 1) the right to ordain law, 2) the right to denounce war, and 3) the right to appoint the higher magistrates, but these marks established the personality of the sovereign, who necessarily was an absolute monarch and who could not derogated his marks of sovereignty to a
council or parliament without thereby ceasing to be sovereign. Thomas Hobbes' *Leviathan* (1651) was also absolute in his sovereignty and certainly would never allow a Parliament to usurp his prerogative to declare war and command the army and navy. Thus, for the leading political thinkers of time, a legislative assembly, much less an assembly that declared war, ceased to exist. It is not that Machiavelli, Bodin, or Hobbes argued against the estates, but rather that they completely ignored them. Legislative assemblies simply had no function in their theories. Consequently, even without the diplomatic and conceptual changes that were taking place at the same time, by the end of the seventeenth century, there simply was no place in which to debate a declaration of war. Even in those countries that possessed an active parliament or assembly, kings no longer felt obliged to bring forward a declaration for consideration as Charles V had in 1369.

Nonetheless, in the face of this triumph of Absolutism, during the seventeenth century, Grotius began his revival of the *jus gentium*, including the traditional belief in the necessity to declare war formally. Because of this, Grotius marks the turning point, being simultaneously the apex of the antique tradition that held that declarations of war were always necessary and one of the principal sources for its disintegration. Ostensibly, affirming the tradition,
Grotius began his great work, *On the Law of War and Peace*, in the usual way by citing Cicero:

Cicero defined war as a contending by force. A usage has gained currency, however, which designates by the word not a contest but a condition; thus war is the condition of those contending by force, viewed simply as such. This general definition includes all the classes of wars which it will hereafter be necessary to discuss. For I do not exclude private war, since in fact it is more ancient than public war and has, incontestably, the same nature as public war; wherefore both should be designated by one and the same term (I, i, 2, 1).

And, again in the usual way, he concluded that:

Declarations of war, ..., were wont to be made publicly [ex dicto], with a statement of the cause, in order that the whole human race as it were might judge of the justness of it (II, xxvi, 7).²

However, at the same time that he was affirming the tradition, Grotius was simultaneously undermining it, not intentionally of course, but most effectively nonetheless. His first mine was laid in his definition of war. By making

²Grotius’ final clause is striking in that it echoes so closely Jefferson’s, "...a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation." One wonders if Jefferson had Grotius in mind when he wrote his preamble.
explicit an ambiguity inherent in the word "war," Grotius had drawn out a distinction that later generations would, first, transform into an ill-considered bifurcation and, then, harden into an artificial difference, thereby oversimplifying and misrepresenting war greatly. For, despite the demands of later jurists, "war" cannot be considered either a "contest" or a "condition"; rather, as Grotius saw, it must be seen as both a "contest," often a violent "contest," and a social, psychological, economic, and legal "condition." When allowed to rest conjoined, the distinction between "contest" and "condition" represents but a convenient academic abstraction that allows Grotius to focus upon the legal "conditions" of war and an author such as Vegetius to focus upon the "contest," without either author denying the value or relevance of the other's work. However, when later jurists recast this convenient abstraction as an empirical question -- Is war a "condition" or a "contest?" -- a bogus dilemma is created that, inevitably, produces a misbegotten response. Inevitably, the "contest" will be seen as the only valid empirical reality, while the social, psychological, economic, and legal "conditions" will be viewed as derivative of and contingent upon the empirically more real "contest."

But this first mine is a conceptual matter that was not set to explode until the eighteenth century. We should, therefore, leave it undisturbed, hidden within Grotius'
definition of war, and turn our attention to his second
mine, which is found in his third book and constitutes an
obvious departure from the traditional norms: In addition
to the customary appeal to ancient custom, are there any
"reasons" for always declaring war in due form? Yes, there
are. According to Grotius, declarations were also necessary
on order that:

...the fact might be established with certainty that
war was being waged not by private initiative but by
the will of each of the two peoples or of their heads
(III, iii, 11).

The break with the ancients is signalled by the
disjunct -- "or of their heads!" The point is not that the
ancients would have immediately recognized this as outright
tyrranny. The point is that, by accepting without comment
what had indeed become common practice by the seventeenth
century, Grotius was promoting the foreshortening and
simplification of the political component of the complex
negotiating strategy that had heretofore sustained the need
for fully reasoned declarations of war. If public wars
could now be lawfully declared by monarchs without public
debate in governing fora, then declarations of war appeared
to have lost half of their function and meaning.

More precisely, Grotius is caught in a cleft,
straddling uncomfortably the ancient and the modern worlds.
On the one side, he still believed in Cicero's ancient
definition of war as a type of contending that peace and justice might thereafter prevail. Consequently, he still defended the need for declarations of war, recognizing the moral, if not the military, need for a formal, reasoned declaration that offered peace and justice to the enemy. Yet, on the other side, like any good modern, he saw no need whatsoever for extensive public debate in governing fora before declaring war. The only requirement was that, after the monarch had decided for war, he should publish his reasons for doing so, "in order that the whole human race as it were might judge of the justness of it." In a word, Grotius accepted at face value the religious and legal arguments he found in the ancient texts, while ignoring the political functions and practices that gave those arguments utility and meaning.

Needless to say, herein lies one of the taproots of the endless controversies that have surrounded the congressional war powers since 1789. The political component of declaring war has now been transformed from an exercise in consultation to a royal prerogative. No longer is it seen as a complex political process that encompassed a significant proportion of the citizenry. Neither Grotius nor anyone else -- least of all nineteenth or twentieth century members of the Congress -- could imagine a decision for war being taken democratically in a public assembly after extensive debates such as those described by
Thucydides. Now, the number of participants would be extremely limited, the debates, secret, and the declaration, reduced to a press release by which the sovereign told his subjects what he had decided for them and what was expected of them.

This same failure of imagination also affected the diplomatic component of declaring war. No longer was a declaration seen as a crucial part in a complex negotiating strategy, such as Livy described. By approximately the time of Grotius' death in 1645, it had become merely the public announcement signalling the end of diplomacy and the beginning of war. For example, the last time a British sovereign made use of heralds was in 1557, when Mary Tudor sent a roi d'armes to Henry II of France. For the French, heralds were last employed in 1635, when Louis XIII sent them to Brussels to declare war against Spain with trumpets and all possible fanfare, while the last occurrence of this ancient tradition in Europe was in 1657 when Sweden declared war against Denmark. The final degeneration of declarations of war from international negotiating instruments to domestic propaganda was sealed by 1778, when the British made a mockery of the antique tradition by having a herald declare war against France without ever leaving London. Instead of travelling to the enemy and spending thirty-three days in negotiations, this last of the heralds made his declaration in the middle of his home town and, then, went
home to a warm dinner (de Louter 1920, 235). Soon however, declarations of war lost even their value as propaganda. Without the heralds to sustain the formalities of this elaborate negotiating process -- the job having been taken over by that new innovation in international relations, the permanently resident ambassador -- the use of formal declarations of war soon became extinct for all practical purposes, as both Ward (1805. Cited in de Louter 1920, 235-6) and Maurice (1883) demonstrated in their extensive studies of the question.

In sum, the substance of this five-thousand-year-old tradition died with the rise of absolutism and the decline of the heralds during the course of the seventeenth century. Yet, perversely, its spirit lingered on. For example, the political component of these ancient rites found expression in Article I, Section 8 of the Constitution, while the diplomatic component eventually found expression in the words of Convention III of the Second Hague Conference of 1907 Relative to the Opening of Hostilities. In addition, with considerable effort, fairly recent examples of both the political and diplomatic functions can be found. For instance, the extensive media and congressional debates that preceded the Spanish-American War of 1898 were certainly democratic in character, if imperialistic in result. Likewise, the elaborate, if hypocritical, exchange of ultimata, notes, and comments between the Austrians and the
Serbians in 1914 represented the sort of complex negotiating process that heralds traditionally carried back and forth between enemies. But these are flawed examples and far too few in number. The tradition did not die with Grotius, but it soon became moribund, its heirs gradually diminishing in number and stature during the next three hundred years, before all but disappearing by the end of the twentieth century. Consequently, the wonder of the last two centuries is how frequently the nations of the world, including the United States, have declared war, not how infrequently. In the face of an ever more powerful international consensus that declarations of war were archaic relics of the past and unable to discern any political, diplomatic, military, or moral reasons for formally declaring war, one must express surprise that the Congress discharged its constitutional duty on even five occasions. Be that as it may, it is time to turn from the story of the forlorn defenders of the ancient tradition to the story of the triumphantly modern, instrumentally rational jurists who, intoxicated by the spirit of modern science and citing the undeniable facts of eighteenth, nineteenth, and twentieth century diplomatic

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3See Naval War College (1918) for the Austrian ultimatum to Serbia, 22 July 1914 (p. 38-41), [Austrian] Comments on Serbian reply to ultimatum, 27 July 1914 (p. 42-49), [Austrian] Notice breaking Diplomatic relations with Serbia, 25 July 1914 (p. 49), [Austrian] Declaration of war against Serbia, noon, 28 July 1914 (p. 49).
usage, insist that declarations of war, never necessary, are but outmoded relics of the past.

3. By Force or Fraud

The first cracks in the traditional attitudes towards war appeared as the fifteenth century turned into the sixteenth century with a concatenation of three factors, each of which struck at the heart of the traditional conception of war as a forceful contending for the sake of peace and justice: First, a number of conspicuously cynical petty princes appeared on the scene, second, an author appeared prepared to break the taboos and shock the conventional piety of the age, and, third, other authors subsequently took up the call, moving beyond shock to ridicule -- satire being even more damaging than candor. For, the soft spot in the antique tradition is the fact that the credibility of a fully reasoned declaration of war depends crucially upon honesty and sincerity. When a declaration is infected with the slightest cynicism, the effect is devastating; reasons turn into rationales and causes into provocations.

Needless to say, during the fifteenth century, when princes "prefer[ed] to occupy themselves in the pursuits of war ... rather than in the honorable activities of peace" (More 1965, 57), honesty and sincerity were commodities in extremely short supply. Still, there had never been an oversupply of honest and sincere kings and princes, so this
factor by itself was never a challenge to the prevailing
conception of war being for the sake of peace. More of a
challenge, therefore, was the audacity of Machiavelli who
appeared willing not only to condone, but even to encourage,
the natural cynicism of princes. Thus, while Thomas More
was satirizing kings for not practicing the arts of peace,
at approximately the same time, Machiavelli was warning
ominously, "it is seen that when princes have thought more
of peace [delicatezze] than of arms, they have lost their
states..." (Cited in Wright 1965, 427).

Machiavelli's words were of course stunning, shocking.
They mark a clear break with the conventions that had
governed previous authors. Clearly, a new candor had been
born. Before fifteenth century, princes were no more honest
or sincere than during the fifteenth century. The
difference was that, before Machiavelli, few authors had
dared to describe the practices of their princes so
candidly. However, Machiavelli was perhaps less important
for destroying the old conception of war than were others.
Shocking as Machiavelli's words were, he still found war to
be a necessary and noble pursuit of policy, the violence of
war being of little or no concern to him. All he wished to
do was to strip away the illusions of the idealists and the
hypocrisy of the pious so as to look at war and politics as
they "really" were, i.e., to look at them instrumentally.
Consequently, another group of writers were perhaps more
important in changing attitudes towards war. For, writers such as Erasmus, Thomas More, John Colet not only wanted to look at war and politics as they "really" were, but, more devastating, they used the lens of ridicule. As a result, war was turned on its head. The hypocritical policies of cynical princes now became the barbs upon which a ruinous ridicule turned, exposing a senseless violence that no one could fail to mock.¹

But, these authors did not satirize only the hypocritical princes. They also took direct aim at the scholastic prelates who advised the kings and wrote the declarations of war. For example, when a prelate like Honoré Bonet poses the question, "IF A KNIGHT HAPPEN TO DIE IN BATTLE DO WE SAY THAT HIS SOUL IS SAVED?" and then answers it by saying, yes, as long as the war was either ordained by the Church or just "and [the knight] is not otherwise in mortal sin" (1949, IV, lii), Erasmus cannot resist such an easy target. Putting his tongue firmly in

¹The importance of Colet, More, and Erasmus in changing the attitudes of European intellectuals towards war is documented in Robert Adams' (1962) The Better Part of Valor: More, Erasmus, Colet and Vives on Humanism, War and Peace, 1496 - 1535. Although the coming of Luther and the early wars of the Reformation forced Erasmus to amend, if not recant, his anti-war views, this fact has done little to diminish the influence of his earlier writings against war. Indeed, most nineteenth and twentieth century pacifists trace their intellectual roots back to Erasmus and his biting ridicule of war.
his cheek, he pens a colloquy during which Alastor tells Charon, the ferryman over the River Styx, about:

Certain creatures [the friars] ... never leave the courts of princes. They [these friars] instill into their [princes’] ears a love of war; ...; they proclaim in their evangelical sermons that war is just, holy, and right. And -- to make you marvel more at the audacity of the fellows -- they proclaim the very same thing on both sides. ... [And] none of those who die in a just war come to you [Charon], I believe. For these, they [the friars] say, fly straight to heaven (1957, 115, 117).

Thus began a sea change in our thinking about war. Erasmus in Julius II and other writings, Thomas More in Utopia, John Colet in his sermons and a long succession of other writers, mercilessly ridiculed such consummate cynics as Pope Julius II and Henry VIII who loudly proclaimed the justice of their obviously unjust wars. Attacks on the violence and idiocy of war were, of course, not unknown in the past. For example, Virgil could lament in the Aeneid, War, I see,/Terrible War, and the river Tiber foaming/With streams of blood (VI, 86-8), while Cicero could opine, when the occasion called for it, "I cease not to advocate peace; even though unjust it is better than the justest war" (Epistolæ ad Atticum VII, esp. 14). Yet previously, such laments had been almost perfunctory and, in any case, always
balanced, if not overwhelmed, by the view that war was often justified in order "that peace and justice should afterwards prevail," to repeat Cicero's words.

Now however, in the crucible of modernity, as innumerable senseless wars swirled around them, a small group of influential writers not only upended the balance, but did so with a sustained, unrelenting, and devastating ridicule. As one of his Adagia, Erasmus repeated Cicero's anti-war sentiment -- "The most disadvantageous peace is better than the most just war" -- and left it at that. Thomas More, also echoing Cicero, repeated a common enough sentiment, that war was "an activity fit only for beasts and yet practiced by no kind of beast so constantly as by man"\(^5\) (4:1965, 199. Cp. Erasmus 1986, 27:139, 306), but now he left it dangling without counterpoise. The conception of war as senseless brutality was not new; the lack of balancing sentiment was. Still, this change had little immediate affect upon jurists. As we have already seen, in the next century, Grotius and his colleagues moved forward with their project to revive the jus gentium unaffected by the humanists ridicule and still believing that the purpose of war was peace.

It was not until the dawn of the eighteenth century, therefore, that the full affects of Machiavelli's raison

\(^5\)More's pun, which cannot be translated, is, "Bellum utpote rem plane beluinam, nec uilli tamen beluarum formae in tam assiduo, atque homini est usu..." (1965, p. 198).
d'état, Erasmus' ridicule, and the savagery of the Thirty Years War penetrated the hushed chambers of the jurists and detonated the mine buried in Grotius' refinement of Cicero's definition of war. In 1737, Grotius' fellow-country man, Cornelius van Bynkershoek, published his *Questionum Juris Publici Libri Duo*, which he began by sharply criticizing Grotius' definition of war:

> When Cicero said that there are 'two kinds of contests, one by means of discussion, the other by means of force', he had reference in the latter case to 'war'. However, he did not in this way intend to define war, as Grotius thought, for such a definition would be incomplete.... I add, a definition which, if I mistake not, embraces all the conditions of war: 'War is a contest of independent persons carried on by force or fraud for the sake of asserting their rights' (I, i, 1).

Bynkershoek has made a stunning break with the then accepted conventions. None of this antique "that peace and justice should afterwards prevail" for him. He has even broken with Machiavelli's apparent cynicism. There is nothing devious or cunning about his approach. No, Bynkershoek is a thoroughly modern "realist." He looks at war with a cold empirical eye and tells exactly what he sees -- a contest carried on by force or fraud to assert one's rights. Indeed, so modern is Bynkershoek's instrumental conception of war that he has no difficulty justifying what he calls
"the war of extermination" (I, ii, 10) and what the twentieth century will come call Total War:

...but in war all social obligations are in a measure severed. We attempt therefore to subjugate the enemy and all that he has by seizing all the power that the sovereign has over the state, that is to say, by exercising complete dominion over all persons and all things contained in that state. Indeed war is by its very nature so general that it cannot be waged within set limits.... In defining war as a contest 'by force', I did not say 'lawful force'; for in my opinion every force is lawful in war. So true is this that we may destroy the enemy though he be unarmed, and for this purpose we may employ poison, an assassin, or incendiary bombs [only atomic bombs are missing from this list], though he is not provided with such things: in short everything is legitimate against the enemy. I know that Grotius is opposed to the use of poison.... But if we follow reason, who is the teacher of the law of nations, we must grant that everything is lawful against enemies as such. We make war because we think that our enemy, by the injury done us, has merited the destruction of himself and his people. As this is the object of our welfare, does it matter what means we employ to accomplish it?... I am not even willing to omit 'fraud', since it is immaterial whether we employ
strategy or courage against the enemy.... I would permit every kind of deceit with the sole exception of perfidy, and I make this exception not because anything is illegitimate against an enemy, but because when an engagement has been made the enemy ceases to be an enemy as far as regards the engagement (I, i, 2-4).

Bynkershoek was of course well aware of his audacity, and he had what might be called a "charming" way of explaining his cold-blooded instrumental conception:

And indeed, since the reason that justifies war justifies every method of destroying the enemy, I find but one way of explaining why so many authorities and precedents oppose the employment of deceit. This opposition is clearly due to the fact that writers, as well as military leaders, improperly confuse justice, which is the subject of our present inquiry, with generosity, a sentiment that often appears in warfare. Justice is indispensable in war, while generosity is wholly voluntary. The former permits the destruction of the enemy by whatsoever means, the latter grants to the enemy whatever we should like to claim for ourselves in our own misfortune, and it desires that wars be waged according to the rules of the duel which was formerly admissible in some states (I, i, 4).

Justice, like war, knows no mercy. It is only the "confusion" of generosity with justice that has permitted
the unenlightened to think that wars could and should be waged within limits. Any limits that might be set come, not from the nature of war, which is violence pure and simple, nor from reason, nor from justice, but only from a prudential calculus of personal interest and advantage, as Bynkershoek explains in Chapter II when he considers whether "Wars May Be Lawful Without A Formal Declaration":

My opinion, then, is that a declaration is not demanded by any exigency of reason, that while it is a thing which may properly be done, it cannot be required as a matter of right. War may begin by a declaration, but it may also begin by mutual hostilities.... However, nations and princes endowed with some pride are not generally willing to wage war without a previous declaration, for they wish by an open attack to render victory more honourable and glorious. But here I must repeat the distinction between generosity and justice.... The latter permits the use of force without a declaration of war, the former considers everything in a nobler manner, deems it far from glorious to overcome an unarmed and unprepared enemy, and considers it base to attack those who may have come to us in reliance upon public amity and to despoil them when such amity has suddenly been broken through no fault of theirs (I, ii, 7-8).
No longer do the gods command formal, fully reasoned declarations of war; now, the best argument that can be found is the vanity of princes. Even more curious, however, is the strained "rationality" of Bynkershoek's instrumental "reasoning." He presents his argument in terms that sound as if they were simple prudential calculi -- in order to "render victory more honourable and glorious" a noble and proud prince will issue declarations of war. Yet, the very generosity that motivates this nobility partakes of a certain self-indulgent irrationality: Glory and honor are all well and good, but to sacrifice victory to either is simply foolish.

Conceptually, the source of Bynkershoek's foolishness is his rejection of Grotius' definition of war as a "condition." By marking out clearly the abstract distinction between "condition" and "contest," Grotius opened up the topic of "war," creating a space wherein jurists could legitimately claim a competence that was separate and distinct for the competence of tacticians and strategists: Jurists were experts on the legal "conditions" of war, military authors, on the "contest" of war. Bynkershoek, by erasing this crucial, if abstract, distinction, inadvertently deprived jurist of all competence concerning war: If "war" be a "contest" carried on by force or fraud, then clearly jurists possess no competence. Being neither expert in the use of force nor in the use of fraud,
at least, not of the types of fraud used in war, what could a jurist possibly say about war?

But let us defer our analysis of the conceptual flaws in Bynkershoek's "reasoning" for a moment so as to complete our story, so as to draw out the nonsense that Bynkershoek's completely modern conception of war inevitably produces. Accordingly, let us emphasize Bynkershoek's kinship with Erasmus and Machiavelli. Although the three are completely different in many other respects, what unites the three is their devotion to overturning the pious prescriptions of the past in favor of a modern, "realistic," and empirical view of the world. For Bynkershoek, this meant replacing custom with "reason" as the sole basis for the law of nations, as is seen most clearly in his continuing criticism of Grotius:

...for he [Grotius] knew well that custom does not constitute the law of nations. Reason, I repeat, is therefore the soul of the law of nations, and if we refer to reason, we shall find no argument to support the need of a declaration, but many, which I have mentioned, to the contrary (I, ii, 10. cf. 8 and 9).

And, so the modern world repudiates the ancient. The break with tradition and custom is made; an alternate conception of war is articulated. Enlightenment had been achieved. A combination of crippling cynicism, stinging ridicule, and a fatal "rationality" produces a modern "scientific" view of war as violence perpetrated by force or fraud.
However, and the point cannot be overemphasized, the modernity of an Erasmus or a Bynkershoek consists, not in any novel discovery, but rather in a failure to take the antique traditions seriously, a failure to seek out the political and diplomatic functions that had once animated declarations of war, which led, inevitably, to a loss of all balance. For, what is new in Bynkershoek's gimlet-eyed conception of war is not his observation that wars are often fought with unrestrained force and fraud. That is hardly new. One has only to recall the fate of Troy or Melos or Carthage or the Deuteronomic command:

But of the cities of these people, which the Lord thy God doth give thee for an inheritance, thou shalt save alive nothing that breatheth: But thou shalt utterly destroy them;... (Deu 20:16-17)

What was new was the onesidedness, the lack of balance. Previously, the empirical reality had been recognized by all as a given, as a steady-state background that needed no mention. The best of the ancient authors in the Iliad, the Aeneid, the Song of Roland, for example, always depicted battle as brutal. But, they also maintained that war was not merely brutality. It was not purposeless slaughter. War had, or at least should have, a purpose, and that purpose was "that peace and justice should afterwards prevail." Indeed, precisely because the purpose of war was not a given, it had to be insisted upon, which is why
declarations of war were so crucial -- to articulate that purpose. In a word, the ancients seldom forgot the difference between Ares, the hateful and unrestrained god of battle, and Athene, the thoughtful goddess of war, wisdom, and the gentle arts and crafts of peace.

In contrast, by drawing the empirical reality of war out of the background and foregrounding it, Bynkershoek created the impression that war had no purpose, except the destruction of the enemy by fair means or foul, which is the same thing. But if war had no purpose, then there was no need for a declaration of war to articulate its non-purpose, which, of course, is precisely the conclusion Bynkershoek came to. Tellingly, Bynkershoek and those who followed him never considered the now outmoded diplomatic and political functions of declarations of war. Nor did they ever consider that the primary function of a declaration of war is to articulate grand strategy -- the causes and goals of the war. For them, as for Erasmus, any such statement was but pure rhetoric, cynical posturing. Indeed, according to Bynkershoek, the primary function of a declaration of war was to puff up the vanity of princes by increasing the glory and honor of their subsequent victories.

Consequently, Bynkershoek’s "complete" definition of war creates the dilemma with which we shall wrestle for the remainder of this chapter: Formal declarations of war make sense only when one assumes: 1) that war, like all other
human activities, must have a purpose, 2) that that purpose can only be articulated through public debates, and 3) that, once articulated, this purpose must not be kept a secret, but rather it must be made public, indeed, carried to the enemy as the basis for ongoing negotiations. Under these circumstances, a fully reasoned declaration of war becomes an essential and integral part of war, as the ancients maintained, their pseudo-religious explanations notwithstanding. In contrast, there is absolutely no need for a formal declaration of war of any sort when one assumes that war has no purpose but the destruction of the enemy by force or fraud, as Bynkershoek and other enlightened instrumental rationalists maintain.

For example, a hundred years after Bynkershoek, in 1836, the American jurist, Henry Wheaton, was willing to confirm Bynkershoek's conclusion that declarations of war were not necessary, but for much more practical reasons. Thus, Wheaton developed a carefully nuanced view of declarations of war based upon changes in both form and function: With respect to form, Wheaton made a distinction between a declaration of war to the enemy, which was no longer necessary, and a manifesto to one's own people, which, while not absolutely necessary, was most prudent as a practical matter:

A formal declaration of war to the enemy was once considered necessary to legalize hostilities.... The
present usage is to publish a manifesto, within the territory of the State declaring war, announcing the existence of hostilities, and the motives for commencing them (IV, §297).

With respect to function, the domestically issued manifesto served three very down to earth purposes: First and foremost, a manifesto was recommended as a courtesy to merchants, so that they could protect their cargos at sea and take suitable precautions to amend or cancel their various contracts. Manifestos also functioned as useful pedagogical instrument for one’s own population:

This publication may be necessary for the instruction and direction of the subjects of the belligerent State in respect to their intercourse with the enemy, and regarding certain effects which the voluntary law of nations attributes to war in form (IV, §297).

And, finally, they avoided unnecessary difficulties at a subsequent peace conference:

Without such a declaration, it might be difficult to distinguish in a treaty of peace those acts which are to be accounted lawful effects of war, from those which either nation may consider as naked wrongs, and for which they may, under certain circumstances, claim reparations (IV, §297).

In a word, Wheaton had eschewed Bynkershoek’s Dutch romanticism in favor of good, solid, New England pragmatism.
Nevertheless, the results are the same -- a conditional acceptance of the need for a declaration of war "in form."

By the end of the nineteenth century, however, even Wheaton looked romantic to those jurists schooled in the new instrumentalism. For example, William Edward Hall, writing in 1880, concluded that:

An act of hostility, unless it be done in the urgency of self-preservation or by way of reprisal, is in itself a full declaration of intention; any sort of previous declaration therefore is an empty formality unless an enemy must be given time and opportunity to put himself in a state of defence, and it is needless to say that no one asserts such quixotism to be obligatory (p. 444).

Obviously, Victorian England was not one of those nations described by Bynkershoek as "endowed with some pride" and, therefore, "wish[ing] by an open attack to render victory more honourable and glorious." However, both Hall and Bynkershoek knew that custom, not reason, drove this "quixotic" desire for a formal declaration of war:

It may be suspected that the writers who in recent times have maintained the necessity of notification of some kind have been unconsciously influenced by the merely traditional force of ideas which belong to a period anterior to international law, and which are of
little value under the conditions of modern war (p. 445).

Moreover, Hall informed his readers, even in that "anterior period," the only significant function performed by a declaration of war was to fix the date at which lawyers switched from municipal law to the laws of nations. Yet, Hall asserted with great assurance, a formal declaration was not needed even for this purpose, because, "The date of the commencement of a war can be perfectly defined by the first act of hostility" (p. 444).

Hall is of course wrong. The first act of hostility often defines the commencement of a war less than perfectly. For example, how does one determine which act of hostility is the first act? And, just what is an act of hostility? A threatening diplomatic note? A sudden mobilization? Unexpected troop movements? An army crossing a frontier? Still, this is one of the less curious inconsistencies in his thinking. More curious still is that Hall, like Wheaton, insists that no declaration of war need be made to the enemy:

Looking at the foregoing facts as a whole it is evident that it is not necessary to adopt the artificial doctrine that notice must be given to an enemy before entering upon war.... Since the middle of the eighteenth century it has had no sensible influence upon practice. In its bare form it meets now with
little support,... In the form of an assertion that a manifesto must be published it is so enfeebled as to be meaningless. To regard a manifesto as the equivalent of a declaration is to be satisfied with a fiction,... (p. 451).

Yet, at the same time, he also asserts that:

As a matter of courtesy it is due to the latter [to neutrals] as friends that a belligerent shall not if possible allow them to find out incidentally and perhaps with uncertainty that war has commenced, but that they shall be individually informed of its existence.... Hence it is in part that it has long been a common practice to address a manifesto to neutral states, the date of which serves to fix the moment at which war begins;... (p. 689).

But, if a manifesto is due to neutrals as a matter of courtesy, then why should the same document not be addressed to the enemy? More to the point, since a manifesto is but a fictitious declaration, according to Hall, why should a belligerent not issue the "real" thing, addressing the whole world -- neutrals, the enemy, and his own people -- with a formal declaration of war? Would that not show an even greater courtesy toward neutrals, not to mention toward a state's own people, as Wheaton suggests?

But these are trivial inconsistencies for which there are no answers, and we shall pass over them so as to focus
upon a much more important point. From our perspective, the most interesting aspect of Hall’s exposition is an off-hand passage that appears as part of his attempt to discredit the traditional view that formal declarations of war are always necessary:

Thus in the seventeenth century the theoretical assertion of the necessity of declaration was continuous and nearly universal; but the views and habits of men of action are better represented in a passage of Molloy than in the pages of Grotius or Pufendorf. ‘A general war’, he says, ‘is either solemnly denounced or not solemnly denounced; the former is when war is solemnly declared or proclaimed by our king against another state. Such as the Dutch war, 1671. An unsolemn war is when two nations slip into a war without any solemnity; and ordinarily happeneth among us. Again, if a foreign prince invades our coasts, or sets upon the king’s navy at sea, hereupon a real, though not solemn war may, and hath formerly, arisen. Such was the Spanish invasion in 1588. So that a state of war may be between two kingdoms without any proclamation or indication thereof, or other matter of record to prove it’ [De Jure Maritimo 1672, I, c, l]. The distinction which is here drawn between solemn and unsolemn war is indicative of the tenacity of life, which is shown by
forms; and the history of the eighteenth century shows how powerless in this case they really were (p. 446-7).

Three comments are perhaps appropriate: First, Hall is mistaken. It is not "the merely traditional force of ideas" that divides 'men of theory' and 'men of action' on the necessity of a formal declaration of war. Rather, it is the ambiguity inherent in the word "war." It is the failure to treat seriously Grotius' distinction between war as a "condition" and war as a "contest." Second, as if to confirm Hall's belief in the unconscious influence of "the merely traditional force of ideas," especially, his own, it is instructive, if not ironic, to observe Philip Brown (1939, 539) approvingly citing Hall quoting Molloy fifty years later, thereby propelling this traditional idea forward. But the momentum could not be maintained. At approximately the same time, Quincy Wright had secularized Molloy's "solemn" and "unsolemn" wars by speaking of "war in the legal sense" and "war in the material sense" without lessening in the least 'the merely traditional force of the received idea' (Wright 1932, 362). After the Second World War, as we shall note shortly, the burden will be shifted from the adjectives to the nouns. No longer will the jurists speak of a contrast between adjectives such as "solemn" and "unsolemn"; now, they will speak of declared "wars" versus undeclared "armed conflicts."
Third, the most significant aspect of this passage is that the distinction between a "solemn" and an "unsolemn" declaration of war causes neither Molloy nor Hall any difficulties. Both assume that the expression is but a simple, perhaps more colorful, synonym for declared and undeclared war. The reason no difficulties arise is that neither Molloy nor Hall could imagine an unsolemn war as being declared illegal. It was incontestably a "real" war, and that was what mattered. That the king had neglected to perform the customary solemnities was of no importance whatsoever, and certainly no cause to label the war illegitimate. Cicero of course would have disagreed. As would have Grotius, but, by 1880, after more than two hundred years during which unsolemn wars had become the norm, not even the most fervent descendent of Grotius could plausibly label an undeclared war as illegal.

But, herein lies the nub of the pseudo-problem that will eventually discredit the traditionalists' position entirely. In all logic, it is inconsistent for the descendants of Grotius to assert that a formal declaration of war is necessary but, then, to acknowledge that the failure to issue one does not produce any negative consequences. Unless the traditionalists can devise some way to stigmatize undeclared wars as, not only unsolemn, but also illegal, their position reduces to the making of a grand distinction where there is no real or practical
difference. It is, indeed, to confirm the validity of the "realists'" most forceful argument: "Look," the instrumental rationalists say, "you insist that formal declarations are necessary, but what are the consequences when the king fails to make a formal declaration? None whatsoever. So what is the point of your assertion?"

In response, the traditionalists should have pointed out that, from the legal perspective, declarations of war effect primarily the "condition," not the "contest" of war, the declaration's specific juridical function being to establish the legal "condition" of war by voiding contracts and treaties, triggering the rights of neutrals, and activating the other provisions of the law of war. Only when one defines "war" as uniquely a "contest" do declarations of war loose their effects. In a word, the traditionalists should have thrown the argument back upon Bynkershoek's criticism of Grotius and fought it out there. However, with the triumph of empirical science and instrumental rationalism by the end of the nineteenth century, any such a course was not possible.

Unable to argue that Grotius was right and Bynkershoek wrong, the traditionalists instead tried to make the strictures of the tradition look more like "real" laws. With the adoption of the Hague, Geneva, and a number of other conventions, the laws of war seemed to move beyond mere custom by creating the appearance of positive law and,
hence, giving the impression of establishing firm criteria for determining whether any given war was legal or illegal. Of special interest to us, of course, is the 1907 Hague Convention III, Relative to the Opening of Hostilities. This convention was one of the pet projects of the traditionalists in the Institut de droit international. Their campaign to have it adopted was greatly assisted by the general perplexity and outrage that resulted from the excessively vague 1904 Japanese ultimatum to the Russians, which, it was argued, demonstrated the necessity for "legislation" on this matter. The incident unfolded as follows: At 4 p.m. on 6 February 1904, Mr Kurino, the Japanese Minister Plenipotentiary, handed Count Lambsdorff, the Russian Foreign Minister, two notes. The shorter note severed diplomatic relations between the two countries, Mr Kurino being ordered to leave St Petersburg immediately. The longer note explained the reasons for severing relations:

The obstinate rejections by the Russian Government, by means of amendments impossible of agreement, of Japan's proposals ... -- have made it necessary for the Imperial Government seriously to consider what measures of self-defense they are called upon to take.... [And, finally, i]n adopting this course [of terminating the present futile negotiations], the Imperial Government reserves to themselves the right to take such
independent action as they may deem best to consolidate and defend their menaced position, as well as to protect the acquired rights and legitimate interests of the Empire (Asakawa 1904, 343-4).

Although both Japan and Russia subsequently issued formal declarations of war on 10 February 1904, in the eyes of many at the time, the ambiguity of the longer note amounted to an extremely sharp brand of diplomacy, at best, and downright deception, at worst. For, by the time the notes were delivered the Japanese naval and military establishments had already deployed from their home bases; with the result that the first naval engagements took place during the day of 8 February, while Port Arthur was attacked during the night of 8-9 February 1904. Convention III was, consequently, seen as a remedy for such practices in the eyes of its promoters in the *Institut de droit international*, although it provided no sanctions and applied only to those states that were party to it. Still, the assumption was that its mere adoption by the international community would codify the ancient custom and, therefore, provided a firm, or, at least, a firmer, basis for stigmatizing undeclared wars as illegal, in some sense.

Unfortunately though, this effort was for nought; its inevitable outcome being only greater confusion and even stronger confirmation that the modern instrumentally rational jurists were correct all along. For, once the
traditionalists had "codified" in a manner of speaking the requirement to declare war, the next step was to flesh out Convention III by specifying the forms and functions of legally adequate declarations, since, obviously, not every piece of paper that said "declaration of war" could qualify as a valid declaration of war. In an effort to do this, Clyde Eagleton wrote an intriguing article in 1938 optimistically entitled *The Form and Function of the Declaration of War*. We say "optimistically" because, in the end, despite his sincere efforts to support and defend Convention III, Eagleton is forced to confess that declarations of war -- as he understood them, at least -- possessed neither form nor function.

Eagleton begins his analysis by putting forward two very inauspicious ideas: First, he asserts that, "The idea of the declaration of war seems to have originated in the sportsmanlike belief that one should give fair warning in advance of an attack to follow" (p. 19-20. This assertion is repeated on p. 29.). Clearly, Eagleton lacks training as an anthropologist, or he would have recognized this "fair warning" rationale as the type of pseudo-reason with which ancient customs are usually clothed. It therefore did not occur to him to look beneath the surface to see if there might not exist substantial political and diplomatic functions breathing life into the ancient custom of declaring war. Second, he, cautiously and without much
conviction, maintains the law-like character of the requirement to declare war:

Thus, adding recent practice to the Hague Convention [III], it may be possible to aver that there is a rule of customary international law to the effect that war must be declared. What this signifies, it is difficult to say: whether war without a declaration is illegal, or, since it is not declared, it is not war (p. 21).

"What this signifies" is a monstrous legal loophole, a hydra-headed legal tangle, a constant and repeated incongruity that plagues both Eagleton's exposition and the traditionalist defense of declarations of war at every turn. He continues:

War has been declared illegal, to a varying extent, in a number of modern treaties; it therefore becomes highly important to know what war is. If these prohibitions are to apply only to declared wars (others not being wars under the convention because not declared), they would have little effect upon war; for it would be absurd for a state to declare war when by this mere failure to do so it would be absolved from the guilt of having carried on illegal war (p. 21).

Needless to say, Eagleton can neither resolve nor avoid this legal tangle because he possesses no means to parse the ambiguity inherent in the word "war." He is unable to separate "war" from "not war," "legal wars" from "illegal
wars." He has accepted Bynkershoek's empirical definition of war as an act of force, which erases all distinctions. Eagleton was of course familiar with Grotius' definition, having quoted it on page 258 of his 1933 article, "The Attempt to Define War." But he considered it as only part of the background noise that left "one with a great deal of uncertainty as to the meaning of war" (1933, p. 282). Still, had he recognized the importance of Grotius' distinction between war as a "condition" and war as a "contest," he would have possessed a tool for coming to grips with the ambiguity of the word "war." But several hundred years have passed since anyone took Grotius' refinement of Cicero seriously. In consequence, Eagleton's exposition repeatedly flounders.

For example, he begins his discussion of form by asserting that, "A declaration of war is usually a formal proclamation issued on behalf of a state" (1938, 22). However, this "usual" form is not the only form. In addition, ultimata (p. 23), "other acts of a minatory or warning nature" (p. 24), the rupture of diplomatic relations (p. 24-5), "certain acts of a hostile nature" such as the American ratification of the treaty annexing Texas (p. 25), a proclamation of blockade (p. 25), or a proclamation by a field commander (p. 28) can and have served as the functional equivalents of a formal declaration of war. Eagleton even speculates that, since a proclamation by a
third-party government declaring its neutrality or a court in a third-party country ruling on some war-related case also establishes the existence of war, such a third-party proclamation might in some sense be viewed as functionally equivalent to a declaration of war, even though such a proclamation would not be binding upon the belligerents (p. 26–7).

In a word, almost any announcement or action can and probably has been taken as functionally equivalent to a declaration of war, which means that the declaration of war -- at least as understood by Eagleton -- has no form whatsoever, an observation that leads yet again directly to Eagleton's unresolvable "difficulty":

Such acts [as those listed above] may be interpreted, not as substitutes for declarations, but as evidence of a state of undeclared war. It nevertheless remains true that if certain announcements or acts may be regarded as preforming the same functions as a declaration, it would be very difficult to say which is a declared war and which is not. Any act of hostility accepted as creating the status of war could then be called a declaration (p. 25).

This same legal "difficulty" also plagues the first and most "certain" of the five functions that Eagleton identifies, namely, that, "The declaration of war creates the legal status of war. This much seems sure, amid many
uncertainties" (p. 21). Eagleton, however, bases his confidence in this function upon four troubling characteristics:

1. "It is not intended thereby to say that war can exist only after a declaration; the contrary undoubtedly is true,..." (p. 21).
2. "This [the legal status of war] may be accomplished by the declaration of one state alone" (p. 21).
3. "The magic of the declaration seems enough also to establish the legal status of war even in the absence of any actual exercise of physical power" (p. 22).
4. "...the declaration of war may be issued after the war is ended and the treaty of peace signed" (p. 29).

As the backing and filling of his four characteristics indicate, this first and most "certain" function possesses an aura of great uncertainty. However, perhaps, we should let Eagleton summarize the confusion:

We may say, then, with confidence, only one thing: that a declaration establishes the legal status of war. It is not always clear what is to be regarded as a declaration, nor what authority can issue it, nor when it is to be regarded as in effect. Consequently, even though there has been what purported to be a declaration of war, the attacked state -- and other states -- may not realize that their placid situation
of peace has been shattered, or when it occurred, or whether it was legitimately done (p. 29).

With such "confidence," is it any wonder that no one can see any need to issue formal declarations of war? And, remember, Eagleton is writing a brief in defense of Convention III!

The sources of Eagleton's confusion are two: On the one hand, he has lost all sight of Grotius' distinction between war as a "condition" and war as a "contest." As a result, he is unable to sense the equivocation hiding within his odd numbered characteristics: Yes, of course, the "contest" of war is not the only means for establishing the "condition" of war. An alternative manner is to employ the "magic" of a declaration. And, of course, when one employs this "magical" alternative, the "condition" of war (especially, its legal "conditions") can thereby be established without ever triggering the "contest" of war. On the other hand, Eagleton is so entrapped in the narrow juridical concerns of the tradition that he cannot imagine that the first, foremost, and most certain functions of a declaration of war might be military and moral, and not juridical. As a result, what strikes the reader most about Eagleton's most "certain" function is its irreality, its concern with the peripheral, while ignoring the essential. In defense of Eagleton, it must be admitted that the "legal status" of war does touch on a number of important matters -
insurance claims, commercial contracts, tourism and other types of travel, compliance with treaties, and the like -- nonetheless, while important, these matters are distinctly peripheral, hardly matters that would compel one to think that formal declarations of war were always required. Consequently, once again one is forced to conclude that, if establishing the "legal status" of a war so as to regulate these peripheral matters constituted the first and foremost function of declarations of war, then there is not much to be said in the defense of formally declaring war.

But what of Eagleton's four other functions, the "less certain" ones? He begins by asking again the seminal question:

What, then, is the function of the declaration of war?
The most obvious answer to this question is that it is very important to establish a date upon which the metamorphosis from peace to war takes place (p. 29). However, he immediately points out that, "Yet the cases reveal no certainty whatever as to when war begins, even where a declaration of war is issued;..." (p. 29). Then, after demonstrating this point with numerous cases, he ends his discussion of this second function by concluding that, "On the whole, then, it is difficult to maintain that the declaration of war serves the purpose of fixing the time at which war begins" (p. 33).
The third possible function suggested by Eagleton concerns the need to distinguish between public and private war, a function that traces back to Grotius. However, yet again, he is forced to conclude, "If this explanation of the declaration of war were ever justified, it is not so now, for the distinction between public and private war has been abandoned, and letters of marque and reprisal are no longer legitimate" (p. 33).

The fourth possible function is to "serve internal purposes, such as calling citizens to arms, furnishing a guide for the courts, et cetera" (p. 34). Unfortunately though, Eagleton merely documents the fact that many recent declarations have had this internal purpose and does not elaborate or develop the idea any further.

And, finally, Eagleton's fifth function is "to furnish a vehicle for the statement of the reasons why the war is being waged" (p. 34). This function, of course, is the one specifically mentioned in the Hague Convention III, with its call for "reasoned declarations." However, Eagleton observes, on the one hand, that, during World War I, "the ultimatum seems [to have been] more often used" to accomplish this function and that, on the other hand, "If... this is the sole function of the declaration of war, it must be admitted that it has not much raison d'être" (p. 34). We shall forebear commenting upon this conclusion, except to note in passing that Eagleton has not only vitiated
Convention III but also torn the heart out of the military and moral functions of fully reasoned declarations of war.

In sum, Eagleton can find no compelling function that could justify a nation issuing declarations of war. He, therefore, concludes:

It is unfortunately true that, from the viewpoint of the old international law, these functions are not served in a reliable and trustworthy fashion; and that, from the viewpoint of more recent international agreements dealing with the status of war, the situation has been so greatly changed that the declaration of war has become inadequate.

[Consequently,] the pressure of public opinion and of treaties condemning war makes it probable that undeclared wars, rather than declared wars, will be the rule [in the future] (p. 34, 35).

And, indeed, Eagleton's final prediction was entirely correct. In order to "be absolved from the guilt of having carried on illegal war," nations have chosen the simple expedient of not declaring war at all. True, belligerents took the time to issue unreasoned declarations of war during the Second World War, but there has been only one case of declared war since 1945, the formal declarations that appear to have been made on 5 June 1967 by Algeria, Iraq, Kuwait, Sudan, and Syria against Israel. Which is to say more
precisely, since the Second World War, no one has been hardy enough to take up the challenge and attempt to flesh out Convention III, which is for all intents and purposes as dead a letter as are the congressional war powers. Eagleton's study of the forms and functions of the declaration of war remains definitive. Not surprisingly then, the perceived irrelevance of declarations of war has now become crushing, as R. R. Baxter summarizes with an instrumental outlook that would much please Bynkershoek:

...the declaration of war is in these days only of marginal importance. A state, whether in fact the aggressor or the victim of aggression, will seek to justify its resort to war as an act of self-defense. If war has been thrust upon one state by another, there is no need to declare war. If, on the other hand, a state is fatally bent on mischief, it will probably not pause to declare the war that it has [illegally] inflicted on another (Miller 1975, 20).6

Consequently, after the Second World War, attention turned from the seemingly hopeless task of trying to enhance the efficacy of Convention III to the more sensible task of trying to mitigate or avoid its consequences. The most

6The quotation deviates from that which appears on page 20 so as to correct a printing error. R.R. Baxter's manuscript read "illegally inflicted," not "legally inflicted," as appeared in the printed text. Personal communication with the editor, Richard I. Miller, 17 January 1994.
successful strategy has been to shift the burden from the adjectives to the nouns. No longer is it thought appropriate to speak of declared or undeclared, solemn or unsolemn, perfect or imperfect wars, while war "in the legal sense" versus war "in the material sense" is much too cumbersome. Instead, it has become fashionable to distinguish "war" from "armed conflict" -- the noun, "war," unencumbered by any adjectives indicating specifically a formally declared war, preferably with a declaration that conforms to the requirements of Hague Convention III, while "armed conflict" indicates more generally "any difference arising between two states and leading to the intervention of members of the armed forces...," in the words of the Pictet Red Cross commentary on Article 2, paragraphs 1 and 2 of the four 1949 Geneva Conventions (Cited in Miller 1975, 20-1). For example, the Library of Congress and several other government agencies, following this new legal convention, never call the war in Vietnam a "war." Instead, they refer to it as the Vietnamese Conflict (Kimball 1990, 3).

At the level of practical enforcement, one must concede that this initiative has been successful. With the acceptance of "armed conflict" as the legal equivalent of "undeclared war," the ability of the international community to enforce the Hague and Geneva conventions has increased by some small increment. For example, the Bosnian Serbs are
now unable to frustrate the representatives of the International Red Cross seeking to inspect concentration camps by saying that the conventions do not apply because there is no formally declared "war" in Bosnia. There are numerous other ways to frustrate enforcement, but, since 1949, no one has been able to use this excuse. The war in Bosnia is certainly an "armed conflict," and so the conventions do apply.

However, at the level of theory, one must also concede that this initiative has solved nothing, as the following summary of the current situation by Eugene Rostow illustrates:

"Undeclared" (or "limited" or "imperfect") war is a category of public international law, used to denote hostilities on considerable scale conducted in time of "peace" rather than of "war," so far as international law is concerned.... The United States, like most other nations during the last two and a half centuries, has rarely chosen to invoke the international law of war by solemnly "declaring" that a state of war exists, signalling maximum hostilities, and implying the invasion or even the destruction of an enemy state. But a considerable number of our many "limited" or "undeclared" wars, like Vietnam itself, have been authorized by Congress as well as the President through procedures which have been approved in usage and in
Supreme Court opinions since the first years of the
nation under the Constitution of 1789 (1972, 834-5). While substituting "armed conflict" for "undeclared," "limited," or "imperfect" war will remove most of the inverted commas, it will not eliminate all of them. Most particularly, the newly fashionable noun phrase does nothing to improve the coherence of the passage. All the lose ends that became unknit when Bynkershoek challenged Grotius' definition of war continue to unravel.

In the first place, introducing "armed conflict" will not remove the inverted commas around "peace" and "war" and, consequently, the evasive absurdity of the relative clause remains: "Undeclared war/armed conflict is a category of international law, used to denote hostilities on considerable scale conducted in time of 'peace' rather than of 'war', so far as international law is concerned." "So far as international law is concerned" both "war" and "peace" are now formal categories, lacking substance and reality. When a journalist reports that war is ravaging Vietnam or Bosnia or Somalia or Nicaragua, the jurist must correct him by pointing out, first, that, technically, it is not "war," but an "armed conflict," that is ravaging the countryside and, second, that, because there is no "war," only an "armed conflict," "peace" reigns in these countries, "so far as international law is concerned," which is no doubt a great comfort to all concerned.
In the second place, how is one to sort out the relationship among "war," war, and "armed conflict?" Is war the genus, which contains at least two species: 1) (formally declared) "war" and 2) (formally undeclared) "armed conflict?" Or, is "armed conflict" the genus, which contains at least two species: 1) (formally declared) war and 2) (formally undeclared) "war?" Or, is "conflict" the genus, which contains at least two species: 1) unarmed conflict and 2) "armed conflict, which, in turn, subdivides into (formally declared) war and 2) (formally undeclared) "armed conflict?" And, just what is the relationship between "armed conflict" and peace? The relationship between "armed conflict" and "peace" is clear enough: An "armed conflict" is what we now call an "imperfect, limited, undeclared 'war.'" That is, a war that occurs during times of "peace." But does the end of an "armed conflict" bring about a restoration of peace? Or, does "armed conflict" contrast with "conflict," such that the end of an "armed conflict" brings only an unarmed "conflict," not peace? In other words, is the world truly Manichaean? Composed of hot war and cold war only?

However one might sort these insoluble questions out, the fact of the matter is that the jurists have abandoned the search for a definition of war. They have stopped asking the difficult question, "What is war?" and, instead, substituted the much simpler question, "What is armed
conflict?" To which the response is: An "armed conflict" is a "conflict" that has somehow become "armed." And, a "conflict" becomes "armed" whenever "members of an armed forces" intervene in the "conflict." In other words, the jurists have substituted who for what, it always being easier to identify who is doing something than to define that which they are doing.

But there was no reason for the jurists to abandon the search for a definition of war. All they had to do was to contest Bynkershoek, return to Grotius, and build upon that solid foundation. However, returning to Grotius is no longer possible. Both he and international law have been too long irrelevant. Indeed, the only insight they can offer at this juncture on the cusp of the twentieth-first century is the observation that defining war in terms of who engages in war is tantamount to reducing war to combat, a position that even a junior operations officer finds difficult to accept. But, if war cannot be reduced to combat, then what is war? A question we shall attempt to answer in the next chapter.
Chapter 4

Changing Attitudes Toward War:
A New Perspective and a New Typology

War is an exceedingly complex human activity. This complexity is necessarily reflected in the word itself, which struggles to encompass not only war but a long menu of vaguely similar activities, ranging from metaphorical expressions of maximal effort, such as a "war" on poverty or a "war" on drugs, right through to expressions of maximal horror, such as nuclear "war." Indeed, as a substantive, "war" fills five pages plus of the Oxford English Dictionary (1989), to which must be added another column and a half explaining its usage as a verb, both transitive and intransitive. But even when the figurative and metaphorical uses of the word are excluded, the complexity of the concept remains.

The reason for this is that the word is caught in a double ambiguity: The first ambiguity arises out of the relationship between war and combat: Are the two synonymous, designating essentially the same thing such that a war without combat or combat without war is inconceivable? Or, are the two separable, designating essentially different
things such that combat without war as well as war without combat are not only quite possible but commonplace as well? The second ambiguity arises out of the uncertainty that surrounds the location of the boundary between war and its perversions. The boundary between war and peace is reasonably clear, but even the existence of a boundary between war and its perversions is in doubt. Yet, if no such boundary exists, then war is an unbounded phenomenon, the cliché about 'all's fair in love and war' is literally true, and no horror or extreme of violence constitutes a perversion of war, which is an improbable situation.

This double ambiguity has long been recognized. Quincy Wright began his monumental A Study of War by alluding to it (1965, 3), while the term "armed conflict" was introduced after the Second World War specifically to deal with it. "Armed conflict," however, is itself ambiguous, mirroring the ambiguity it is supposed to clarify: Sometimes, it functions as a synonym for "combat." At other times, as a synonym for "war." When used as a synonym for combat, as in the 1949 Geneva Conventions, it indicates that the rules enunciated are to apply to all instances of combat, even when that combat occurs outside of formally declared "wars" in a so-called "armed conflicts." To be sure, a clearer remedy would have been to acknowledge that some provisions of the jus gentium, such as the law regarding neutrality or the Hague Convention III, Relative to the Opening of
Hostilities, apply to war, the whole of war, while others, such as the treatment of the wounded, of prisoners of war, and of noncombatants, apply to combat, the violent fraction of war. As such, it would have been much more straightforward to have divided the *jus gentium* into the laws of war, which seeks to govern the conduct of war properly speaking, and humanitarian law, which seeks to govern or ameliorate the conduct of combat. But such a straightforward division is impossible in the absence of an ability to articulate the difference between war and combat. When used as a synonym for "war," the term "armed conflict" reproduces the technical and legalistic distinction between wars that are formally declared and those that are not. However, once one moves beyond this formal distinction and on into substance all clarity is lost. For example, does anyone seriously believe that the Korean and Vietnam "Armed Conflicts" were not really "wars" just because they were not formally declared? But perhaps the confusion is best seen by observing that, were Grotius to write his seminal work today, his title would have to read *The Laws of War, Peace, and Armed Conflict*; otherwise, he would risk the charge of being out-of-date at the hands of reviewers such as Major James A. Burger, who complimented a new Air Force manual by noting that, "Even the title of the Air Force publication, 'The Conduct of Armed Conflict and Air Operations,' indicates that it is designed to take
an up-to-date approach to the laws of war" (1978, 261). But why should an "up-to-date approach to the laws of war" consist in writing about "The Conduct of Armed Conflict?"

The confusion caused by using "armed conflict" as a synonym for "war" is, however, only a symptom. The underlying cause is that both "war" and "armed conflict" imply that the phenomenon they designate is an unbounded activity. This is the case because both terms acknowledge only one limit to the phenomenon they name, viz., that which separates war from peace. The noun phrase, "armed conflict," does this by creating a contrast with "unarmed conflict," which is presumed to characterize a state of peace, whereas priests and jurists have asserted for millennia that that which makes a war a "war" is the declaration that announces the imminent transformation of peace into war. But this creates an impossible situation. For, if there be only this one boundary, then war is an unbounded phenomenon, which is clearly impossible, since no human activity is without limits that can be transgressed.

In order to confront this double ambiguity, we shall use two tracks. Initially, we shall examine the uncertainty that surrounds the relationship between combat and war. In order to determine whether combat and war are synonymous, we shall address two issues: First, we shall address the question of perspective. Specifically, we shall ask whether the personal experiences of those who experience combat --
either as combatants or noncombatants -- should be privileged above the personal experience of others who are not shot at. While the personal experiences of those who were shot at can obviously tell us much of combat, can they tell us anything of war? Second, we shall evaluate the relative positions of violence and policy. Which is central? Which is peripheral? The purpose of both investigations will be to make headway against the sublimity of the violence of combat. For, combat, being sublime, entralls. Its horror and glory touch upon the divine and engage all who look upon it to the exclusion of all else -- to the exclusion of war, to the exclusion of policy.

Next, we shall search for the boundary between war and its perversions. To locate this boundary, we shall pick up on Clyde Eagleton's claim that declarations of war "establish the legal status of war." This will send us back to the dispute between Grotius and Bynkershoek as to whether war is a "condition" or a "contest," then forward to the conclusion that the primary function of a fully reasoned declaration of war is not to mark the boundary between peace and war, as we have been told for millennia, but rather to mark the boundary between war and its perversions. Which is to say, we shall return by a rather circuitous route to Clausewitz and his principal insight that:

No one starts a war -- or rather, no one in his senses ought to do so -- without first being clear in his mind
what he intends to achieve by that war and how he intends to conduct it (1976, 579).

1. Resisting the Sublime Violence of Combat

Conceptually, one's attitude towards declarations of war depends upon one's conception of war: Those who believe that "war" is synonymous with combat soon adopt the modern opinion that declarations of war are never required. In contrast, those who believe that war is policy cling to the ancient doctrine that a reasoned declaration is always required. The reasons for this contrast are no mystery: Conceiving of war as policy means that one also believes that war is a rational human activity, an activity in which the means used are calibrated to achieve the ends sought. As a rational activity, decision makers not only can, but must, justify their decision, laying out the causes, defining the ends, and explaining how war is the appropriate means to achieving those ends, which of course is precisely what a fully reasoned declaration of war does. In contrast, conceiving of "war" as the violence of combat means that one also believes that "war" is profoundly irrational, the inflicting of pain and suffering on others who have done you no harm for no discernable reason. Being irrational, "war" is profoundly inexplicable, any attempt to explain or justify its violence being merely an exercise in cynicism or worse. The brutal fact of the senseless carnage can perhaps be acknowledged officially with an unreasoned absolute
declaration, such as the Congress has always issued, but anything more is meaningless.

Therefore, conceptually, restoring faith in the need to write only reasoned declarations of war is contingent upon conceiving of war as policy, a human activity that rationally relates the military means to the political ends. This would be an easy task, except for the fact that war often involves combat, sometimes extremely violent combat, which complicates the matter inordinately. In particular, it creates a tendency for the noun to usurp the adjective. That is, in the minds of many, conceding that war often involves "violent" combat is tantamount to defining war as "violence." Logically, of course, this cannot be done because it confuses the whole of war with one of its parts; it is like defining automobile driving as "violence" just because automobile accidents are often violent, on occasion extremely so.

While the confusion of the visually most spectacular part of an activity with the whole of that activity is easily detected in the case of less sublime human activities such as automobile driving, coal mining, and the such like, in the case of war, the same discrimination seldom occurs. Indeed, from many perspectives, "war" is violence -- not merely violent, but violence itself, violence incarnate, the essence of violence: For those who have experienced the horrors of combat directly, the proposition is usually
beyond dispute. For those who have not, a short talk with a
survivor of combat is usually sufficient. But one does not
need to rely upon firsthand testimony. The media tell the
same story. Be they still photographs, documentary films,
or Hollywood productions, the evidence of one’s eyes is
incontestable. "War" is violence. Likewise, most written
accounts offer the same perspective. Be they letters home,
autobiographical accounts, or novels from Leo Tolstoy’s
sublime War and Peace to Joseph Heller’s satirical Catch 22,
the message is always the same. "War" is violence, indeed,
senseless violence, nothing but killing and devastation. As
Tolstoy summarized the situation in one his more striking
passages:

On the twelfth of June, 1812, the forces of Western
Europe crossed the Russian frontier and war (sic)
began, that is, an event took place opposed to human
reason and to human nature (1966, 667).

Part of the problem, therefore, is perspective. But
why should the personal experiences of those who experience
combat be privileged over those who do not? Just because
General Dwight Eisenhower saw no combat during World War II,
does that mean that he knows nothing of war? To be sure, we
can readily agree that General Eisenhower’s personal
experience tells us next to nothing about combat, about the
specific modalities of getting shot at during World War II,
but is it not precisely this fact that makes his perspective
so valuable and informative concerning the war, the whole of
the war, especially, its policy and politics? Furthermore,
does the existence of these two types of personal
experiences not imply the existence of two different and
separable phenomenon as well? Some will experience combat,
while others war, the non-combat components of war.

More precisely, one begins to lose sight of the
violence of combat when one works in an operations section,
as Clausewitz did. For the operations officer -- the
officer directly in charge of making a battle "happen" --
war is an exceedingly abstract affair. He thinks in terms
of units, not individuals. A platoon is ordered here, a
company, there, and where are the trucks to move them? His
job is all lines drawn on maps, orders received from above
and drafted for those below, while, in between updating the
map and drafting the orders, he writes reports, reports, and
more reports. Seldom does violence intrude upon this paper
world. Seldom does it shake his pencil loose from his firm
hand. Even the dead and wounded are transformed from bodies
and buddies into numbers and acronyms -- 3KIA, 5WIA, and
OMIA.

Likewise, for military or political historians, war is
exceedingly abstract. Focusing upon such abstractions as
"the infantry" attacking on the left while "the cavalry"
charges on the right or the pomposity of diplomats and the
hypocrisy of politicians, military and political histories
present a dehumanized, some would say, sanitized perspective. As if to prove the point, even a tedious military history can be enlivened and become a best seller when it changes its focus by privileging the personal experiences of those caught in the cross fire of combat, as John Keegan's popular *The Face of Battle* (1976) does. In this ground breaking book, Keegan sets out to "enlarge" the military historian's stock in trade, the "battle piece" by effacing strategy, not to mention policy, from war:

I do not intend to write about generals or generalship.... [or about] logistics or strategy and very little about tactics in the formal sense. And I do not intend to offer a two-sided picture of events.... On the other hand, I do intend to discuss wounds and their treatment, the mechanics of being taken prisoner, the nature of leadership at the most junior level, the role of compulsion in getting men to stand their ground, the incidents of accidents as a cause of death in war and, above all, the dimensions of the danger which different varieties of weapons offer to the soldier on the battlefield (p. 78).

The irony of Keegan's intentions is quite startling. He plans to "enlarge" the battle piece by narrowing it. He plans to "enlarge" the reader's understanding by removing the significant context and dismissing precisely those elements of the story that situate, explain, and justify the
battle. His battles will take place in a splendid isolation from history, politics, strategy, and logistics. But not, significantly, in isolation from technology, which is what Keegan means by "and, above all, the dimensions of the danger which different varieties of weapons offer to the soldier on the battlefield," the "different varieties of weapons" being dependent upon the development of different varieties of technology as one moves from sticks and stones to missiles and bombs. His battles, therefore, will focus instead upon that which absorbs the individual soldier. Authorial intentions aside, what Keegan has actually done is to change perspective. Instead of viewing battle from the top, he wishes to view it from the bottom. Instead of seeing how policy guides and directs strategy down to the smallest operational detail, he wishes to see how individual experience and personal horror create the "human dimensions" of war. Yet, this "enlarged" perspective has its limitations; when engulfed in the sublime violence of battle, one cannot see the war, not the whole of it, at any rate. With one’s teeth in the dirt and that crisp crack rending the air above, it is impossible to see strategy, much less policy. And so, from this perspective, it is all but impossible not to conclude, as Keegan does, that "the central act of warfare" is killing (p. 316).

But this conclusion follows only because of the chosen perspective. It cannot be sustained when a different
perspective is taken. Yet, insofar as the violence of combat is sublime, not privileging the personal experience of those who have seen combat is exceedingly difficult. Therefore, let us address the question directly. Which is more central to war? Policy or violence? Since violence is but one of the possible outcomes of any human activity -- including war -- the alternatives can be reformulated as follows: Which is more central to war? The purposes that motivate the war or one of its possible outcomes? Asked in this manner, it is clear that a war's purposes are more central. This is so, first, because the purposes that motivate any human activity are more important than any one of that activity's consequences taken in isolation, although not more important than all of the activity's consequences taken together. Second, while a war's purposes can justify a certain amount of violence, the resulting violence can never justify any of the purposes. For example, the trauma caused by sticking a knife into someone's heart can never justify cutting open a human heart, whereas the hope of curing heart disease can easily justify the trauma caused by a surgeon cutting into a patient's heart, understanding the purpose of the resulting violence makes all the difference.

Or, to argue the same point in a different way, consider the problem of "victory." Upon his return from Korea in 1951, General MacArthur told a joint session of the Congress that, "There is no substitute for victory" (Brodie
Needless to say, this is a sentiment with which all can agree. Yet, after all the cheering and applause are finished, what does it mean? How does one know when "victory" has been secured? There are no objective measures. "Victory" does not boil at 100 degrees centigrade. It cannot be calculated at 3.1416. No level or extent of violence signals its arrival, as General Falkenhayn learned in the aftermath of Verdun during the First World War.

In truth, "victory" is a purely relative phenomenon. It is the attainment of a previously fixed goal. Accordingly, to insist that "There is no substitute for victory" is to insist that there is no substitute for policy, no substitute for an official and authoritative declaration of the war's aims, indeed, for a fully reasoned declaration of war. Lacking a clearly articulated goal, "victory" is impossible, no matter what the level of violence. For example, consider the differences between the Revolutionary War and the war in Vietnam. After 4 July 1776, but not before, both "victory" and defeat were possible, because the Second Continental Congress had articulated a clear goal -- independence -- that Commander-in-Chief Washington would either win or lose on the field of battle. In a very real sense, however, America could neither win nor lose its war in Vietnam because no one in a position of authority ever articulated the goal to be
sought. Which is to say more precisely, between 1949 and 1967, Hugh M. Arnold (1975) found twenty-two official rationales for American intervention in Vietnam. As a result, it is not surprising to learn that, in a 1974 survey, Douglas Kinnard found "almost 70 percent of the Army generals who managed the war [in Vietnam] were uncertain of its objectives" (1977, 25). Inasmuch as no clear goal had been articulate, "victory" was literally unobtainable. The "war" could neither be won nor lost; it could only continue until we exhausted ourselves trying to reach a goal we refused to set for ourselves.

In fine, as a matter of simple logic, all discussions of the relative weight of violence to policy in war always lead to the conclusion that the violence of combat is an accidental characteristic, and not an essential or defining characteristic. As Hannah Arendt put the matter, "Violence is by nature instrumental; like all means, it always stands in need of guidance and justification through the ends it pursues. And what needs justification by something else cannot be the essence of anything" (Arendt 1972, 150). Still, the sublime power of the violence of combat is all but overpowering, as can perhaps best be seen by examining the difficulties Clausewitz encountered in trying to overcome it.

The first sign of this difficulty is the fact that it was not until July of 1827, towards the end of his life,
that Clausewitz began emphasizing the centrality of policy over the violence of combat, before that he had focused upon the psychological and other technical aspects of battle. As a result of this late shift in emphasize, he was able to revise only the first chapter of Book I of *On War* before his death in 1831. Yet, the result of this initial revision is far from satisfactory. Since Clausewitz is popularly known as a prophet of "total war," one can safely conclude that most readers are uncertain whether the violence of combat is central or peripheral to war for Clausewitz (e.g., Clausewitz 1976, 20; Mearsheimer 1988, 49; *Encyclopaedia Britannica* 1993, 29:629). This confusion arises because Clausewitz tries to have it both ways in Chapter 1 of Book I, defining war both as violence and as policy, rather than separating combat from war. He is able to have it both ways because, instead of viewing the relationship between war and combat as that of a whole to one of its parts, he views it as the relationship of a Platonic-like idealization of "war" to the concrete historical reality of war. For Clausewitz, this idealization has the advantage of allowing him to construct an idiosyncratic, some would say, metaphysical, dialectic that contrasts an ideal, abstract world of absolute violence to the concrete world of real historical wars.

To this end, he begins his dialectic in Section 2, *Definition*, by asserting that ideally, in the abstract, "War
[by which he surely means combat or battle] is thus an act of force to compel our enemy to do our will" (1976, 75). He next demonstrates in Sections 3-5 that, according to this "pure conception of war," "war" should be an absolute phenomenon, an act of extreme and unrestrained violence struck in a single devastating blow. However, conceiving of "war" in this idealized, abstract manner is perverse and false because no real war is ever absolutely violent; no real war ever strikes the enemy in a single blow. In reality, all wars are discontinuous. They are fought in fits and starts, inactivity and boredom, not violence, being the primary characteristic of all real war. The perverse abstract ideal of absolute violence is never reached for a number of reasons -- chance, the frictions of war, and many others -- which Clausewitz lists in Sections 6-22. But, if no real war is ever absolutely violent, then, Clausewitz concludes in Section 24, all real wars must be "...Merely the Continuation of Policy by Other Means" (p. 87).

Having moved his dialectic step by step from defining "war" as violence to defining war as policy, it should be clear that Clausewitz believed that policy was central to war and the violence of combat peripheral. And, it would be -- except for one further ambiguity: What does he mean by "by other means?" Since the "other means" is usually interpreted as "violent means," there would seem to be little difference between the initial and the final poles of
his dialectic. This circularity is perhaps best illustrated by the work of a group of academic strategists in the late 1950's and 1960's. Reacting to the unacceptable moral and intellectual consequences of a belief in war as violence, these neo-Clausewitzians turned to the Prussian staff officer as a way of restoring policy to its central position. For example, Bernard Brodie begins his War and Politics by admitting that:

The central idea of this book I have borrowed from Clausewitz.... It is a simple idea, and the novice would justly imagine it to be a commonplace -- that the question of why we fight must dominate any consideration of means. Yet this absurdly simple theme has been mostly ignored, and when not ignored usually denied (1973, vii).

He then goes on to describe the devastating results of ignoring Clausewitz, most tellingly in his chapters on World War I and the Vietnam War. Yet, when asked to explain what is meant by the ambiguous phrase "by other means," these neo-Clausewitzians, for instance Raymond Aron in his Clausewitz, Philosopher of War (1985, 401), turn to Lenin, a close student of On War, who explains that:

"war is simply the continuation of politics by other [i.e., violent] means". Such was the formula of Clausewitz, one of the greatest writers on the history of war, whose thinking was stimulated by Hegel. And it
was always the standpoint of Marx and Engels, who regarded any war as the continuation of the politics of the powers concerned -- and the various classes within these countries -- in a definite period" (1964, 219. The square brackets are in the original.).

But, if the "other means" are simply violent means, then Clausewitz's dialectic is destroyed. Instead of moving progressively step by step, argument by argument from abstract ideal to historical reality, from "war" as the violence of combat to war as policy, Clausewitz's dialectic is transformed into a circle, a particularly murderous vicious circle, there now being no real difference between its beginning and its end.

In fine, it appears that even the "philosopher of war" is not immune to the sublime power of the violence of combat. Yet, succumbing to it inexorably leads to tragedy: Believing "war" to be violence, there is little to prevent this belief from becoming a self-fulfilling prophecy -- first, by reducing war to a simple matter of technique, essentially, to finding the biggest bomb, and, then, by authorizing technicians, such as General Curtis LeMay, to tell us what war is "really" like, "I'll tell you what war is all about -- you've got to kill people, and when you've killed enough they stop fighting" (Powers 1984, 60).

But, if "war" be the killing of enough people, then there is never a need for a declaration of war, and
certainly never a need for a fully reasoned declaration. Why or how would anyone ever declare their reasons for killing "enough" people? Only those who believe that the central act of war is not about killing "enough" people, but rather about achieving worthwhile policy objectives, see the need for articulating those objectives, which of course is precisely what a fully reasoned declaration of war does. In other words, only when one adopts the perspective of those who are not caught up in the cross fire of combat is one able to elude the enthralling sublimity of combat and acknowledge that its violence is peripheral to war. Furthermore, substituting the violence of combat for policy, as Tolstoy did, means that it is impossible to even broach the moral and grand strategic dimensions of the war, because, from this perspective, they quite simply do not exist. As with open heart surgery, the violence that results from combat can never justify a war, although the purposes articulated in a fully reasoned declaration may.

2. Establishing the "Condition" of War

Clyde Eagleton had asserted "with confidence...that a declaration establishes the legal status of war." As we have seen however, he was unable to support his "confidence" with any cogent reasoning. Nevertheless, since the assertion is obviously true, developing a cogent argument to restore confidence in it would be most useful. To do so, one must recognize that Eagleton failed to discover the form
and function of the declaration of war for two reasons: In the first place, he failed to distinguish between reasoned and unreasoned declarations. As a result, he was not able to qualify or nuance his assertion in any useful way. Had he, however, distinguished reasoned from unreasoned declarations, he then could have begun with the obvious fact that both reasoned and unreasoned declarations "establish the legal status of war" and immediately qualified that observation by pointing out that unreasoned declarations do so only in a technical, merely legal, sense. In order to put substance and meaning into a declaration, it must be fully reasoned, because only fully reasoned declarations possess substantive military and moral functions. In other words, Eagleton failed to distinguish between matters of formal logic and matters of substance.

In the second place, Eagleton got all tangled up in the ambiguity inherent in the word "war." He failed to broaden and deepen his analysis by recognizing that "the legal status of war" was but a special case of Grotius' more general "condition" of war. Had Eagleton returned to Grotius, he then could have argued that what a declaration of war established was the social, psychological, economic, and legal "conditions" of war, and not the "contest," which is established by means of an actual clash of arms. Instead, Eagleton accepted without reservation the modern
conception of war as a "contest," which only led him into
the usual absurdities:

War, by definition, is a contest between states; the
term could not, therefore, apply to the use of armed
force by the organized government of the community of
countries [i.e., the League of Nations] against an
offender (1933, 282).

Presumably, an enforcement action by the League would be an
"armed conflict" or, perhaps, a "police action," although
Eagleton fails to provide an alternative terminology for
"the opprobrious term war."

With these preliminaries in place, Eagleton could next
have rephrased his question more precisely by asking how or
in what sense a fully reasoned declaration of war
establishes the "condition" of war, or war "in the legal
sense," to use a more modern alternative expression. In
response, he could then have begun by recognizing that the
question involves two sub-questions: First, in what sense
can a declaration of war be said to "initiate" or "start" a
war, as opposed to simply igniting combat? Second, in what
sense does the "condition" of war "in the legal sense"
differ from the "contest" of war "in the material sense," to
combine Renaissance and modern terminology. Or, do the
these phrases represent a distinction without any real
difference, the "contest" of war being the only significant
reality one need worry about?
The two questions are linked, of course, because conceiving of war as a "contest" inevitably reproduces Eagleton's unsatisfactory analysis. That is, when one believes war to be a "contest," then war is quickly reduced to its violent fraction, to combat. It, therefore, follows that to "initiate" or "start" a "war" can only mean to "initiate" or "start" combat and, hence, that there is never a need to declare war. Who, after all, would be so ghoulish as to suggest that a solemn declaration of war in due form is needed to initiate large-scale killing? Large-scale killing is best initiated with bombs, not bombast.

In contrast, when one conceives of war as a "condition," no longer is it necessary to view a declaration of war as a "starting gun" that immediately triggers combat. Now, it is possible to see that a fully reasoned declaration of war, far from initiating combat, instead, possesses an indispensable moral function. It denounces the necessities that have caused the conflict by articulating the grievances that have splintered the peace and suggesting remedies that will restore it. Clearly, this letter of demands, this statement of causes and remedies need not trigger, combat, i.e., the "contest." As the negotiations unfold, combat may of course eventuate. But this is not a necessity. And, it is precisely this lack of necessity that opens up the space for a fully reasoned declaration of war to "establish the condition of war" in the very real sense of "initiating" or
"starting" the "condition" without at the same time igniting the "contest."

In short, a fully reasoned declaration of war (or its functional equivalent) is what makes war whole. Without it, "war" is reduced to its violent fraction, to combat, and becomes an aimless, misshapen caricature of itself. At this point, however, we must recognize a deeper ambiguity. For, we are attempting to speak of three states of affairs using only two terms. That is, we are trying to find a way to distinguish among 1) war with combat (i.e., both the "condition" and the "contest"), 2) war without combat (i.e., the "condition" without the "contest"), and, most difficult of all, 3) combat without war (i.e., the "contest" without the "condition"). In other words, the problem is one of distinguishing among 1) the whole, 2) the whole minus its visually most striking part (i.e., its violent fraction), and 3) the visually most striking part alone (i.e., the violent fraction alone).

To relaunch the argument, it is extremely difficult to distinguish among three states using but two terms -- war and combat, "condition" and "contest," war "in the legal sense" and war "in the material sense," war and armed conflict, etc. Significantly, the "contest" of war has always referred to the visible segment of war, principally, to the violence of combat. By default then, the "condition" of war refers to the invisible fraction of war, to the
enmity that manifests itself in the changed social, psychological, economic, and legal relations that separate friend from foe. But, crucially, enmity is not violence, at least, not the violence of combat. Consequently, it is perfectly possible to divide war into two parts or types -- the changed social, psychological, economic, and legal "conditions" that mark the enmity of war being conspicuously different from the violence of combat that so marks the "contest" of war.

This difference between enmity and violence can be observed in a number of situations. For example, the imposition of economic sanctions seeks to inflict the social, psychological, legal, and economic costs of "war" upon a country while, at the same time, avoiding even the shadow of the violence of combat. A similar situation occurs when, after a considerable amount of fighting, both sides tire and stop fighting without ever signing a treaty of peace. Under these circumstances, the enmity of war continues unabated, even as the scars of the "contest" of war heal and are all but forgotten. The Korean war is an excellent example of this, the violence of combat having long since ceased, without diminishing in the least the altered social, psychological, economic, and legal relations that separate North from South Korea. Israel is another case in point. She has suffered continuously from the enmity of the "condition" of war in the legal, economic,
social and psychological sense since her inception, but only intermittently from the violence of the "contest" of war "in the material sense." Similarly, China and Taiwan have been foes "in the legal sense" since 1949, although their enmity has weakened in recent years. And, Japan continues to restrict its relations with Russia artificially in the absence of a peace treaty.

But, perhaps, the best illustration of the "condition" of war existing without the "contest" is found in ancient Sparta, where, as soon as the ephors assumed office each year, they would immediately declare war against the helots. According to Plutarch, Aristotle maintained that the purpose of this annual ritual was to invest the newly elected ephors with the right to kill the helots with impunity, avoiding thereby the accusation of impiety that would normally be attached to murder (Lycurgus xxviii, 4). This was no doubt a significant part of the Spartan's motivation. Nevertheless, by declaring war upon the helots annually for over five hundred years, the Spartans did not just avoid a charge of impiety. They also changed the relationship between themselves and their subjugated peoples fundamentally. They created the social, psychological, economic, and legal basis for their state by establishing a constitution that transformed the helots, not into slaves or serfs, but into enemies. As slaves or serfs, the Spartans would have been responsible for the helots in a very
personal and direct way, fully integrating them into Spartan society. As enemies, however, the Spartans were able to isolate themselves from the helots psychologically, socially, legally, and even in terms of their microeconomic life, Spartan dependence upon the helots in macroeconomic terms notwithstanding. In other words, because they were legally enemies, the Spartans were under no legal obligation to show the helots any amity, as would have been the case with slaves or serfs. This meant that the Spartans were legally justified in doing all sorts of things that would have been unthinkable under any other constitutional regime. For example, the random, and not so random, assassination of helots by specially trained "secret agents" (krupteia) was easily (perhaps, too easily) justified under the laws of war, whereas the laws of peace would never have sanctioned such activities (Lycuragus xxviii, 2-3; Thucydides IV, 80). Or, the way the helots were so naturally drafted into Lacedæmonian military formations by the simple expedient of considering them as "defectors" from the enemy, whereas, had the helots been slaves or serfs, this would have been extremely difficult for numerous legal, social, and psychological reasons. Serfs join armies only in desperation as acts of rebellion in times of social or religious upheaval, while slave armies are essentially a contradiction in terms, the Ottoman Janissary corps notwithstanding.
In summary then, distinguishing between the enmity of war and the violence of combat makes it possible to distinguish among two of the three states of war: War with combat obtains whenever the enmity of the "condition" combines with the violence of the "contest," while war without combat obtains whenever the "condition" exists without the "contest," i.e., whenever the enmity of war "in the legal sense" exists without going so far as provoking the violence of war "in the material sense." For the sake of convenience, one would like to extend the schema by saying that combat without war (i.e., violence without purpose) obtains whenever the violence of the "contest" of war exists in the absence of the enmity of the social, psychological, economic, and legal "conditions" of war. Unfortunately, this is not possible, as Eagleton demonstrated in great detail to his chagrin.

The discomforting fact of the matter is that the violence of war "in the material sense" generates all of the enmity of war "in the legal sense," willy-nilly, without there being any need to formally declare war, it being impossible to initiate combat without at the same time creating all of the changed social, psychological, legal, and economic effects that a declaration of war entrains. We have clearly reached the limits of Grotius' distinction without having yet gotten to the heart of the matter. Dividing war into a "condition" and a "contest" opens up the
space for "a fully reasoned declaration of war to establish the condition of war," but "opening up the space" does not explain why a fully reasoned declaration is required to fill that space. In terms of establishing the "condition" of war, it is obvious that combat functions equally well, perhaps, even better than a fully reasoned declaration.

In order to understand in what sense one may speak of combat without war, one needs to move beyond Grotius to something else. The simplest way to do this is to repeat Eagleton’s question, not so much to answer it, as to discover a yet deeper ambiguity: In what sense, then, can a fully reasoned declaration of war be said to "initiate" or "start" a war?

To begin with, one must note that an unreasoned declaration of war is grossly defective precisely because it acts as a "starting gun," doing nothing more than signalling the start of the "contest." In contrast, a reasoned declaration "initiates" or "starts" a war in the sense that it informs the war, giving it purpose and design. Without a purpose, "war" is, in reality, either aimless combat or purposeless enmity. This fact creates a strange situation. Both a fully reasoned declaration of war and combat entrain the "condition" of war, the enmity of war "in the legal sense." The difference, to recall Cicero’s distinction, is that combat does it by means of brute force (vim), allowing no time for the social, psychological, legal, and economic
"conditions" of war to influence decision makers before the violence of combat erupts; while a fully reasoned declaration of war does it by means of reason (disceptatio), allowing decision makers to be influenced as negotiations unfold. Should the negotiations ultimately fail, however, a fully reasoned declaration of war possesses still other effects, shaping and controlling the violence of combat with a purpose. Hence, it is the fully reasoned declaration of war -- the way it informs war -- that distinguishes between 1) war with combat and 3) combat without war.

Accordingly, a fully reasoned declaration of war "initiates" or "starts" a "war," not in the sense of initiating combat -- an M-16, fired low, in controlled bursts, does that -- not even in the sense of "initiating" the "condition" of war -- both combat and an unreasoned declaration will do that -- but rather in the sense of informing the war. It informs, first, the "condition" of war by pin pointing the grievances that have transformed the social, psychological, economic, and legal relations between the two peoples from amity to enmity. It informs, next, the "contest" of war, should there be one, by articulating grand strategy, by articulating the ends that will direct and control the means, by articulating the remedies that will restore a shattered peace. For, until and unless the "war" is so informed, there is, in a very real sense, no war. There may or may not be combat; there may or may not exist
the enmity of the "condition" of war, but there is no "war," just purposeless and aimless discord and violence.

Thus, the word "war" has splintered yet again to reveal yet another level of ambiguity. For, when it is seen that a fully reasoned declaration of war "initiates" war by informing it, then not only can one explain in what sense it is possible to have combat without war, but one also realizes that there exists a fourth state of affairs, a mirror image, as it were, of war without combat. What this fourth state of affairs might be labelled is unclear. Perhaps, "sham war" or "cold war" or, more simply, enmity without war. But, whatever it might be labelled, acknowledging that a fully reasoned declaration of war initiates a war by informing it allows one to establish the boundary between war and its perversions: War, properly speaking, is separated from its perversions by a fully reasoned declaration of war. With a fully reasoned declaration, both the war and any combat that may occur are informed with purpose and direction. Without a fully reasoned declaration of war, however, one finds only the perversions of war -- purposeless enmity or aimless combat.

And, finally, having established the boundary between war and its perversions, one is forced to recognize that, beyond the perversions of war, there lies yet another boundary separating the perversions of war from the atrocities of "war." For, whenever combat breaks out,
especially, the uninformed *combat without war*, a high likelihood exists that things will get out of hand and atrocities will occur, ranging from isolated brutalities through massacres, both large and small, on up to incomprehensible genocides. Crucially though, the atrocities that characterize this fifth state of affairs are associated with war only by means of coincidence. Yes, they occur during a "war," sometimes during combat broadly construed, but they are a part of neither.

Atrocities are not part of war, first, because war is a public phenomenon. Its goals and purposes, its victories and defeats are all public knowledge, widely broadcast for the purpose of justifying and motivating the war. This is not the case with atrocities. Atrocities are usually committed in secret and covered up afterwards, the perpetrators wishing their deeds never to be uncovered. Second, atrocities do not and cannot figure among either the purposes or the means of war. With respect to purposes, the committing of atrocities can never justify a resort to war nor do they constitute a purpose from which a grand strategy can be developed. For example, even if some twisted logic led one to believe that the annihilation of the Jews justified Hitler's invasion of Czechoslovakia, Poland, and the other countries of Europe, no coherent grand strategy could be derived from this "purpose," as Hitler's conduct of the war demonstrates.
With respect to means, atrocities are also not a part of combat, narrowly construed, because the committing of such outrages requires leisure, which simply is not available in combat. When the shooting starts, all of one's attention and energy is focused upon the tactical situation. Before or after combat, there may or may not be the leisure to commit atrocities, but not during combat itself. In addition, there also exists a technical reason why atrocities are not part of combat. As Clausewitz observed in his note on "The Character of Strategic Defense" in Book VI, combat is always initiated by the defense, not the offense:

War [i.e., combat or battle] serves the purpose of the defense more than that of the aggressor. It is only aggression [i.e., an attack] that calls forth defense, and war (sic) along with it. The aggressor is always peace-loving (as Bonaparte always claimed to be); he would prefer to take over our country unopposed (1976, 370).

Clausewitz's point is that the attacker is always happy to avoid combat, which never serves his purposes. If at all possible, he hopes to achieve his objective without a fight. Combat begins, therefore, not when the offense attacks, but rather when the defense resists. Until the defense resists, the attack proceeds unhindered and unimpeded towards its objective. This, in one sense, is the essence of combat --
the defense resisting an attack. Atrocities, in sharp and brutal contrast, reverse this process. Unlike combat, it is the attacker, not the victim, who initiates the action. Indeed, an atrocity is heinous precisely because its victims are unable to resist effectively. Were they able to resist effectively, were they given a "fighting chance," it would no longer be an atrocity, but rather combat.

Therefore, beyond the boundary that separates war from its perversions, there exists yet another boundary that separates the perversions of war from the atrocities committed the under cover of war. These atrocities, needless to say, contribute greatly to the ambiguity of the word "war," appearing to many as part of a seamless process of ever escalating violence: A "war" begins with high spirited parades and visions of certain glory, is shocked by the relatively bloodless initial battles, and progresses battle by battle to ever greater levels of violence before degenerating into unrestrained inhumanity, no outrage or excess being too grotesque to inflict upon a despised enemy. The Civil War is perhaps the paradigmatic example. It began with picnickers driving their carriages out from Washington to view First Manassas and escalated to Sherman's March to the Sea. Nevertheless, no matter how frequently this cycle of escalating violence is observed and documented, the underlying structure is not that of a seamless process, but
rather of the transgressing of boundaries, as war is, first,
perverted and, then, used as an excuse for atrocities.

Having marked out the boundaries that separate war from
both its perversions and its atrocities, the sources of the
ambiguity inherent within the word "war" and the location of
the boundaries that clarify this ambiguity should now be
clear. For, the word continually struggles to express not
only itself, not only its perversions, but certain
atrocities as well. It continually struggles to identify
five states of affairs, only two of which are truly "war":

I. War as an Informed Enmity:

   A. War with combat obtains whenever a well-
      articulated purpose informs both the
      "condition" of enmity and the combat that
      engages two peoples.

   B. War without combat obtains whenever a well-
      articulated purpose informs the "condition"
      of enmity that engages two peoples without
      initiating combat.

II. The Perversions of "War"/"War" as an Uninformed
    Enmity:

   A. Combat without war obtains whenever neither
      the "condition" of enmity engendered by
      combat nor the combat itself is informed by a
      well-articulated purpose.
B. **Enmity without war** obtains whenever the "condition" of enmity that engages two peoples is not informed by a well-articulated purpose and this uniformed enmity has not yet resulted in combat.

III. Atrocities committed undercover of "war."
The atrocities committed under cover of war require no exemplification. Their mindless brutality sets them apart. Informed war and uninformed "war," however, do require exemplification. The contrast between war with combat and its perversion, combat without war, may not be immediately apparent. The same is even more true for the non-combat forms of war, war without combat and its perversion, enmity without war. To exemplify the first pair, we shall compare the war in Korea to the "war" in Vietnam and the second pair by comparing the Cuban Missile Crisis to the continuing American reaction to Fidel Castro's accession to power in 1959.

2.1 **War with Combat vs. Combat without War**

Before beginning though, two preliminary problems need to be dealt with -- the existence of functional equivalents to formal declarations of war and the criteria to be used to judge the quality of the reasoning contained in a declaration. As we have said, the difference between an informed war and an uninformed "war" is that the former is shaped with purpose and point by a reasoned declaration of
war, while the latter is not. The point of confusion is that it is the quality of the analysis contained within the declaration, and not the simple existence of the document, that makes the difference. Theoretically, therefore, the existence of the document is not problematic because a reasoned declaration always exists for every war. As soon as the war begins, government officials always make speeches and issue documents that purport to give "indisputably self-evident" reasons justifying the resort to war. Practically, however, the proliferation of the functional equivalents of reasoned declarations of war has become, if not a problem, at least, an annoyance. That is to say that, before the seventeenth century when the nations of the world still made fully reasoned formal declarations of war, the analysis was straightforward and simple. One read the formal declaration and decided whether it contained solid reasons or hollow rationales. Since the seventeenth century, since the nations of the world stopped making formal declarations of war, the problem has grown somewhat more complex. Before making an evaluation concerning the quality of the analysis, one must often shift through a large number of speeches, messages, proclamations, and resolutions, all of which are the functional equivalents of formal declarations of war, to isolate the "official" reasons for the resort to arms. Then, and only then, can one begin to evaluate the quality of the analysis.
And, indeed, this annoyance of not knowing for sure which functional equivalent is the "real" declaration of war is a complicating factor for in all the examples, except the Cuban Missile Crisis. Still, the heart of the problem remains the quality of the analysis used to draft the "real" declaration of war, once it has been identified. In making this analysis, the ideal would be to apply all six of the criteria that we developed as a result of our analysis of Jefferson's Declaration of 1776 in Chapter 2. Using these six criteria, however, is neither practical nor useful. It is not practical because, again, with the exception of the Cuban Missile Crisis, the declarations we shall be dealing with fall so far short of Jefferson's standard that the larger part of the analysis would be taken up with pointing out how each document fails to address four or five of the six criteria. It is not useful because our purposes here are extremely limited. We are not at all interested in the moral functions of a fully reasoned declaration and are interested in the military functions only insofar as they will allow us to discriminate an informed war from an uninformed "war." For this circumscribed purpose, an abbreviated set of criteria will be more useful. Specifically, the criteria we shall use are two: 1) specificity and 2) the ability to derive a coherent military strategy "down to the smallest operational detail."

Needless to say, the ability to derive a viable military
strategy depends crucially upon specificity. For, without specificity, the declaration becomes a compendium of generalities such as "Making the world safe for democracy," from which it is impossible to derive any military strategy whatsoever. Such crowd pleasing generalities, however, are the heart and soul of any good public relations campaign to drum up support for a war. Hence, the difference between an informed war and an uninformed "war" can also be viewed as the difference between a serious document that fulfills the military and moral functions of a declaration of war and a public relations blurb.

The tension between public relations blurb and seriously reasoned declaration of war was conspicuous during the Korean War. It was conspicuous because America fought in Korea under dual auspices: Technically, she fought under the auspices of the United Nations. Actually, however, the United Nations were not the principal defender of South Korea. America was. Consequently, she also fought under her own auspices as South Korea's principal ally. In the absence of a formal declaration of war, a certain amount of confusion could easily have arisen concerning the source and the character of the policies that were to guide the war: Were the Security Council resolutions of 25 and 27 June 1950 and the General Assembly resolution of 7 October 1950 to guide military commanders in the field, since they were technically under United Nations command? Or,
alternatively, were Commander-in-Chief Truman's principal speeches and addresses on Korea to guide military commanders in the field, since they were actually under his command.

That no such conflict occurred is due to the fact that Commander-in-Chief Truman systematically exploited the gap created by this potential conflict: First, he used the existence of the United Nations to segment his audience. Whenever he wished to address his domestic audience, he spoke in his own name. Whenever he wished to speak to his international audience -- to the governments that comprised the United Nations -- he addressed them via the United Nations, through its resolutions. Second, he used the United Nations' resolutions as the basis for the military conduct of the war and his own speeches as the basis for the conduct of his public relations effort to drum up domestic support for the war. As a result, only the United Nations' resolutions needed to be reasoned, needed to contain the specificity that military commanders require to develop a viable strategy. Relieved of the burden of specificity, Truman's own speeches were filled with the generalities that are so important to a successful public relations campaign. (Incidentally, the Bush Administration's conduct of the Persian Gulf War parallels the Truman Administration's conduct of the Korean War in this respect and could have been used as an alternative example.)
To see how systematically serious grand strategic analysis was separated from public relations exercise, one need only compare the United Nations’ resolutions to Commander-in-Chief Truman’s speeches and addresses. The United Nations’ resolutions are models of brevity, specificity, and coherent analysis: Recalling that "the Republic of Korea is a lawfully established government having effective control and jurisdiction over" the southern half of Korea, the Security Council determined in its 25 June 1950 resolution that "the armed attack upon the Republic of Korea by forces from North Korea... constitutes a breach of the peace" and, consequently, "Calls upon the authorities of North Korea (a) to cease hostilities forthwith; and (b) to withdraw their armed forces to the thirty-eighth parallel" (Dept. of State Bull. 3 July 1950, 5). In other words, the grievance that has provoked United Nations entry into this war is the fact that an internationally recognized boundary has been violated and an internationally recognized country invaded. The political objective sought by the United Nations is a restoration of the status quo ante. The military strategies that follow from that political objective are two: After stopping the momentum of the initial North Korean attack and stabilizing the front, commanders in the field could reasonably hope to restore the status quo ante either by counterattacking along the length of the newly stabilized front and pushing the
North Korean Army back across the thirty-eighth parallel or, because Korea is a peninsula, by making an amphibious assault in the vicinity of the thirty-eighth parallel, which, if successful, would cut the North Korean forces off from their sources of supply and force them to retreat back across the thirty-eighth parallel. Needless to say, General Douglas MacArthur chose the amphibious option with spectacular results. At this point, the story becomes rather difficult, difficulties which we shall deal with more fully in Section 4 of the next chapter. Briefly, however, in the wake of the 15 September 1950 landings at Inchon, which virtually destroyed the North Korean Army, the General Assembly passed a resolution on 7 October 1950 that, in effect, authorized General MacArthur to cross the thirty-eighth parallel and occupy all of North Korea. In retrospect, this authorization was a mistake because it drew the Chinese into the war in November with disastrous results. But whatever the flaws of this authorization at the level of policy, the resolution itself again provided commanders in the field with clear guidance. Again, there were two options: Commanders could either employ one or more amphibious operations to occupy the North in stages, or they could attack northward from the thirty-eighth parallel. This time General MacArthur chose a combination of both. The Eighth Army pushed northward along the western coast, while the Marines of X Corps landed at Wonsan on the east
coast before moving northward. With the North Korean Army shattered and Chinese intervention not anticipate, this plan could reasonably be expected to accomplish the assigned objective. In the event, the Chinese did intervene, and the Eighth Army disintegrated before its onslaught.

Waiting until the next chapter to discuss the flawed political analysis that motivated the General Assembly resolution of 7 October 1950, what is most remarkable about the United Nations resolutions is how clear and specific they are, how easily their political objectives translate into viable military operations. Because of this, one has no difficulty seeing how the resolutions informed the war, how they guided and directed operations "down to the smallest operational detail." Hence, because of the clarity of the United Nations' resolutions, the Korean War is an example of war with combat. However, for our purposes, so as to introduce combat without war, the counterfactual case is also of great interest. For, without the United Nations' resolutions, the war in Korea could easily have degenerated into combat without war, devoid of any informing analysis. This could have occurred because the alternative source for policy guidance was Commander-in-Chief Truman's speeches and addresses, all of which lacked the required specificity and relevance. For example, the most conspicuous characteristic of Truman's speeches is the way they completely ignore concrete circumstances on the Korean peninsula. Kim Il-sung
is never mentioned, and North Korea is mentioned in passing on only the rarest occasion. Instead of the specifics of the Korean situation, Truman spoke of sound economic policies at home to prevent inflation while increasing both defense spending and economic production to meet the needs not only of the immediate war but the longer anti-communist struggle. He also spoke of the "Lessons of Munich" -- the need to avoid all appeasement, to oppose all aggression, to uphold the rule of law, and to defend democracy around the world. But, first and foremost, above all, he repeated over and over again that the "Communist conspiracy" was the cause of the war and its defeat was the principal war aim. Inasmuch as anti-Communist rhetoric was so persuasive during the Cold War, this emphasis upon "Communist imperialism" was no doubt very useful in the public relations battle for domestic support. As Senator Arthur H. Vandenberg once told Truman, the best way to generate support was to "scare the hell out of the country" (Cited in Kimball 1990, 8).

The substitution of the world-wide "Communist conspiracy" for the specifics of the Korean peninsula began with Truman's statement of 27 June 1950, two days after the start of the war. This short statement, which also represents one of the few times he mentions North Korea, begins in a rather peculiar way by implying that the South Korean Government is the only government in existence on the peninsula. Thus, after acknowledging that: "In Korea the
[South Korean] Government forces, which were armed to prevent border raids and to preserve internal security, were attacked by invading forces from North Korea." He goes on to declare: "The attack upon [South] Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war." He then moves on to other matters, announcing, first, that he has ordered the Seventh Fleet "to prevent any attack on Formosa" and called "upon the Chinese Government on Formosa to cease all air and sea operations against the mainland [China]," second, that he has "directed that United States Forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated," and, finally, that he was also accelerating "military assistance to the forces of France and the Associated States in Indochina and the dispatch of a military mission to provide close working relations with those forces" (Public Papers of Harry S. Truman 1965a, 492).

While his orders and directives with respect to Formosa, the Philippines, and French Indochina were arguably prudent given the specific circumstances in each of those areas, what strikes one most is their irrelevance to the two-day-old North Korean invasion of South Korea. This is especially true of his directives concerning Indochina and the Philippines. Upon reflection, can anyone suppose that the success or failure of either the Viet Minh insurgency in
Indochina or the HUK insurgency in the Philippines would have had any impact upon the fighting in Korea? More to the point though, this first statement by Commander-in-Chief Truman does not contain a grand strategic analysis of the situation in Korea from which military commanders could possibly derive a coherent strategy. To say that "communism has passed beyond subversion" and that various points along the Asian littoral must be reinforced does not tell anyone what should be done in Korea, where the fighting is actually taking place. This same lack of a specific analysis of the situation in Korea is characteristic of Truman's other addresses. His radio and television address of 19 July 1950 (p. 537-42), his radio and television address of 1 September 1950 (p. 609-14), and his address of 15 December 1950 (p. 741-6) are all filled with denunciations of "Communist imperialism," appeals to the "Lesson of Munich," references to the rule of law, and similar generalities. Indeed, at the nadir of the war, ten months after it began, in his "Radio Report to the American People on Korea and on U.S. Policy in the Far East" of 11 April 1951, the day he relieved General Douglas MacArthur for publicly advocating a widening of the war by attacking China directly, Commander-in-Chief Truman appeared even more confused than ever.

Ignoring the situation on the ground in Korea, he, first, raises the specter not only of a Communist conquest but also of nuclear devastation, which is the technical
meaning of the term "general war, "The question we have had to face is whether the Communist plan of conquest can be stopped without a general war" (Public Papers of Harry S. Truman 1965b, 225). Next, he goes on to claim a modest victory, not on Korea, but rather in the rest of Asia, "Our resolute stand in Korea is helping the forces of freedom now fighting in Indochina and other countries in that part of the world. It has already slowed down the [Communist] timetable of conquest" (p. 225), before taking Senator Vandenberg’s advice and really scaring the hell out of the country:

The dangers are great. Make no mistake about it. Behind the North Koreans and Chinese Communist in the front lines stand additional millions of Chinese soldiers. And behind, the Chinese stand the tanks, the planes, the submarines, the soldiers, and the scheming rulers of the Soviet Union (p. 226).

But, most disturbing of all, he concludes by presenting a naive and contradictory list of war aims:

We are ready, at any time, to negotiate for a restoration of peace in the area. But we will not engage in appeasement. We are only interested in real peace.

Real peace can be achieved through a settlement based on the following factors:

One: The fighting must stop.
Two: Concrete steps must be taken to insure that the fighting will not break out again.

Three: There must be an end to aggression.

A settlement founded upon these elements would open the way for the unification of Korea and the withdrawal of all foreign forces.

In the meantime, I want to be clear about our military objective. We are fighting to resist an outrageous aggression in Korea. We are trying to keep the Korean conflict from spreading to other areas. But at the same time we must conduct our military activities so as to insure the security of our forces. This is essential if they are to continue to fight until the enemy abandons its attempts to destroy the Republic of Korea.

That is our military objective -- to repel attack and to restore peace (p. 226-7).

As a negotiating agenda, Truman's words are naive, first, because his three enumerated points are redundant, all three reducing to the false proposition that peace is the absence of conflict and, second, because, if his real political objective is a "unification of Korea," and not a return to the status quo ante, then it will be virtually impossible to reach an accommodation with the North Koreans and the Chinese, especially the Chinese who entered the war specifically to frustrate a "unification of Korea."
political analysis, his words are also naive because he says he desires "peace" but "will not engage in appeasement," which may mean anything, but probably means that he wants the fighting to stop but will not accede to any of the enemy's demand to achieve it. This is tantamount to demanding an unconditional surrender, which Truman was in no position to do. As a military analysis, his words amount to a list of four non sequiturs: He says that "our military objective" is "to resist outrageous aggression." Resisting outrageous aggression may or may not be a legitimate political objective, but it is certainly not a military objective. For how long and to what purpose is the "aggression" to be resisted? He says that "We are trying to keep the Korean conflict from spreading," which again may or may not be a legitimate political objective, but it is certainly not a military objective. He says that we must "insure the security of our forces" so that they can "continue to fight." Whatever this might mean to Truman, for the dogfaces in the trenches along the thirty-eighth parallel, insuring their security meant stopping the fighting, not continuing it. And, finally, he says that "our military objective" is "to repel attack and to restore peace." Repelling an attack may be a tactical objective, but it can never be a strategic objective, while, restoring peace is the traditional purpose of war, but this purpose is meaningless until it is fleshed out with specifics.
Notice, however, the underlying grand strategic contradiction that generates these non sequiturs. The occasion for Commander-in-Chief Truman’s address was his decision to relieve General MacArthur of command of the United Nations forces in Korea. General MacArthur was at the time publicly advocating the bombing of Chinese logistical facilities in Manchuria and making use of Nationalist Chinese Forces from Formosa, possibly to launch an invasion of southern China. This would certainly widen the war and might eventually have led to a general "nuclear" war. Wishing to avoid such a catastrophe, Commander-in-Chief Truman wanted the combat to remain confined to the Korean peninsula, even if this meant a frustrating stalemate along the thirty-eighth parallel. The dispute was therefore framed as a technical matter concerning the scope of the combat. In Truman’s words, "The question we have had to face is whether the Communist plan of conquest can be stopped without a general war." But the scope of the combat is, or, at least, should be, determined by the purposes of the war. Consequently, if Commander-in-Chief Truman’s purpose were to avoid a "general war" by limiting the combat to the Korean peninsula, then the appropriate way to do that was to define limited war aims that focused exclusively upon the situation in Korea. The most obvious of these narrow purposes was the Security Council’s goal of 25 June 1950 demanding a return to the status quo ante. If, on the other
hand, his purpose were to stop "the Communist plan of conquest" because:

Behind the North Koreans and Chinese Communist in the front lines stand additional millions of Chinese soldiers. And behind, the Chinese stand the tanks, the planes, the submarines, the soldiers, and the scheming rulers of the Soviet Union,

then the logical military corollary was that those directing the "conquest" in China, if not the Soviet Union, should be attacked, precisely as MacArthur was advocating. Hence, MacArthur’s sin was not so much his public advocacy of a wider war, but rather his failure to understand that he should pay no attention to Truman’s speeches, which were part of the public relations campaign. When Lieutenant General Matthew B. Ridgway assumed command as MacArthur’s replacement, he did not make the same mistake. He guided his efforts by the original Security Council mandate to restore the status quo ante, which not incidentally assured that the war was limited to the Korean peninsula.

Such is the commotion that can occur when military commanders mistake the generalities of the public relations effort for the specifics of serious grand strategic analysis. In Korea, however, there existed an authoritative body -- the United Nations -- that was both willing and able to articulate the specifics of a serious grand strategy. Consequently, the war in Korea never degenerated
into an example of combat without war. The same cannot be said for the "war" in Vietnam, which was not fought under the aegis of the United Nations. This meant that successive Commanders-in-Chief were unable to exploit the gap between the technicalities of United Nation's sponsorship and the actualities of American control, as Truman did in Korea. As a result, their own speeches and addresses had to do double duty: Providing the specificities required to guide military commanders in the field, while simultaneously providing the generalities needed for the public relations campaign at home. In 1776, Jefferson had done precisely this by providing the philosophical generalities in the first part of the Declaration of Independence and the specificities in the latter half. But the art of writing fully reasoned declarations of war had long been lost by 1945. And, without the United Nations' resolutions to articulate the specifics needed by the military commanders in the field, successive Commanders-in-Chief found the burden too great. Between 1945 and 1975, one searches in vain for a single document that, by any stretch of the imagination, could serve as the functional equivalent of a fully reasoned declaration of war. There are none; it does not exist. But, if none exists, then Clausewitz's principal insight is violated and transgressed in the most brutal and obvious way:
No one starts a war -- or rather, no one in his senses ought to do so -- without first being clear in his mind what he intends to achieve by that war and how he intends to conduct it (1976, 579).

For, unless someone at sometime articulates the war's purposes, its guiding aims and goals, then the war is uninformed, commanders in the field are unable to develop a viable strategy, and combat without war becomes all but certain, as happened in Vietnam.

That policy makers viewed Vietnam as primarily a public relations exercise is documented in a late 1964 report from Commander-in-Chief Johnson's National Security Council Working Group on South Viet-Nam/Southeast Asia:

Characterizing the use of force in the context of this alternative as a legitimate exercise of the right of individual or collective self-defense in response to an "armed attack" from the North would be a major public relations effort (Cited in Arnold 1975, 42).

However, the almost complete lack of grand strategic analysis can perhaps best be seen in a fascinating 1975 article, already referred to briefly, by Hugh M. Arnold entitled, Official Justifications for America's Role in Indochina, 1949-67. Arnold begins by identifying the problem, postulating a probable cause, and explaining his method:
Vietnam was America's longest war and, despite many explanations by many people (or perhaps because of this), probably the least clearly understood.... This essay attempts to ascertain, through the technique of content analysis, the official justifications most often cited for America's involvement in Indochina from 1949 through 1967. Its purpose is simply to determine quantitatively the specific rationales cited for US policy during this time period, not to analyze their validity. The material examined comes entirely from the documents and statements of those actually in power and making decisions on Vietnam (p. 31).

After completing his content analysis, Arnold classified the official rationales into twenty-three categories -- twenty-two that appear with "some frequency in the official sources," plus, ominously, "Others" that do not appear frequently. Of the twenty-three categories, the Communist threat was by far the most frequently cited rational, constituting 1,141 reference or 57 percent of the total examined (p. 35-6). This, of course, was not surprising. However, Arnold did find it surprising that the "Domino" theory ranked only eighteenth at 8.9 percent, just below "Other," which ranked seventeenth at 11.5 percent (p. 36). Arnold, then, sorted the rationales by administration. For the Truman (19.4 percent), Eisenhower (26.6 percent), and Kennedy (20 percent) Administrations, anti-communism was
the leading rational (p. 37-42; cp. Kimball 1990, 7).
During the Johnson Administration, however, anti-communism dropped to the number four position (6.8 percent) while "A simple response to aggression against an ally; self defense" became the number one rationale (23.1 percent) (p. 42-4).
Next, Arnold compared the rationales used in classified documents with those used in public:

The most striking point, however, is that the themes stressed in private were simply not the same ones offered to the public -- with two exceptions. These were the [anti-]communist theme, and the specific threat of Communist China, both of which were prominently mentioned in both internal and external materials. Among the nine leading classified themes and the top nine public themes, they were the only two in common (p. 47).

And, finally, Arnold concluded that, "If one single reason for the US involvement in Indochina can be derived from the analysis, it would be the perceived threat of communism" (p. 48).

The first and most fascinating aspect of Arnold's study is that he would have thought to do it at all. Under normal circumstances, when one wants to know "the official justification" for any governmental policy, one pulls out the appropriate document and reads it. This official justification will usually list a number of different
reasons for the policy. Frequently, the reasons given will be confused or wrongheaded, but the official justification itself will not be in doubt. For example, is there any doubt about the official justification for the Revolutionary War? Would a content analysis of the Journals of the Second Continental Congress tell us anything more or different than can be learnt from simply reading the Declaration of Independence? Yet, amazingly, Arnold's content analysis is probably the only way to learn what the "official justifications" for Vietnam were. Certainly, one cannot discover them by reading any of the official documents produced between 1945 and 1975, since each document gives a different set of reasons.

The second fascinating aspect of Arnold's study is what can be learned from his results. Of minor interest is the changing rank order of the twenty-three justifications. As one moves from one administration to the next and from private to public justifications, it is interesting to see how changing personalities and shifting domestic circumstances create pressures for a new and different public relations take on Vietnam. Of greater interest, though, is the conspicuous lack of specificity that characterizes all of the official justifications. As Jeffrey Kimball noted, "[The official explanation] applies not only to Vietnam but to other cold war events and issues" (1990, 8). But, if the twenty-three official justifications
used in Vietnam are the same justifications used in Greece, Korea, Berlin, Cuba, and a large number of other places, then all specificity is lost. To assert that Vietnam is but one of a long string of events all of which possess the same cause and the same objective is simply to abdicate responsibility to do the grand strategic analysis required to guide the strategic planning of military commanders in the field "down to the smallest operational detail."

However, it is not the anti-communist-Cold-War rhetoric per se that reduced Vietnam into combat without war. This rhetoric was, after all, but a transient fashion of the times. Rather, it is the vagueness, the obscurity, the ambiguity, the lack of specificity that causes the difficulties. For, even when one filters out the greater part of the Cold-War rhetoric, the lack of specificity remains. For example, consider Commander-in-Chief Lyndon Johnson's 7 April 1965 "Address at Johns Hopkins University: 'Peace Without Conquest'" during which he asked:

...Why are we in South Viet-Nam?

We are there because we have a promise to keep....
We are also there to strengthen world order....
We are also there because there are great stakes in the balance....

Our objective is the independence of South Viet-Nam, and its freedom from attack. We want nothing for
ourselves -- only that the people of South Viet-Nam be allowed to guide their own country in their own way.

We will do everything necessary to reach that objective. And we will do only what is absolutely necessary (The Public Papers of Lyndon B. Johnson 1966, 395).

As with the United Nations' resolutions during the Korean War, anti-communism does not appear in this listing of justifications. Moreover, the stated objective, "the independence of South Viet-Nam," appears to be both clear and specific, a paraphrase of the 25 June 1950 Security Council's objective in Korea. There are significant differences though. Johnson calls for the "independence of South Vietnam"; the Security Council "Calls upon the authorities of North Korea (a) to cease hostilities forthwith; and (b) to withdraw their armed forces to the thirty-eighth parallel." The Security Council resolution is addressed directly to the North Korean authorities, who were in a position both to cease hostilities and to restore the status quo ante; Johnson's speech is directed to the American people, who were not in a position to ensure the freedom of South Vietnam from attack. The Security Council resolution identifies a specific action -- "cease hostilities" -- and ties it to a specific geographical fact -- "the thirty-eighth parallel" -- Johnson's speech implies much, but says little. Crucially for military commanders --
because it defines the limits of the territory they must defend -- the geographic character of "independence" is left undefined. The implication is that an "independent South Viet-Nam" would occupy the boundaries fixed by the 1954 Geneva Accords. But is this the case? Or, are the boundaries open for negotiation? Would a larger or smaller South Vietnam be acceptable to Johnson? If so, then the strategic problem changes radically.

More important still, fixing the political objective vaguely as the "independence of South Viet-Nam" fails to address the specific differences between Korea and Vietnam. Korea is a peninsula, and the combat was ignited by a sudden armored attack across the thirty-eighth parallel. Vietnam is not a peninsula, and infiltration along her western borders with Laos and Cambodia was the principal method of attack. Accordingly, while the political objective in Korea could be framed entirely in terms of Korean peninsula, the same could not be done in Vietnam. The occupation of eastern Laos and Cambodia by the North Vietnamese created an entirely different situation that required an entirely different political objective, an objective which took this occupation into account. Not to have included Laos and Cambodia in his statement of objectives is akin to Britain sending her Expeditionary Force to defend France in 1914 without ever mentioning the German invasion and occupation of Belgium as one of the principal causes of her entry into
World War I and the Germany evacuation of Belgium as one of her principal objectives. To do anything less is to abdicate responsibility to do the grand strategic analysis upon which commanders in the field depend to formulate a viable strategy.

To deal with this situation, Commander-in-Chief Johnson had two options in his 7 April 1965 address. First, he could have described the situation on the ground -- the scope of the North Vietnamese invasions, the extreme difficulties of the terrain, the widespread corruption of the South Vietnamese, Cambodian, and Laotian governments, etc. -- and concluded that, realistically, America did not possess the resources to defend all three countries. One or two perhaps, but not all three. And, hence, he was ordering the withdrawal of most of the American forces already committed. Alternatively, he could have stated that the North Vietnamese invasion and occupation of all three counties -- South Vietnam, Laos, and Cambodia -- was unacceptable, that aggression cannot be rewarded, that the independence of sovereign nations must be upheld, etc., and, consequently, that the independence of all three was our objective. This being the case, he was ordering his commanders in the field to prepare a plan to defend all three countries. True, at this late date, to have publicly widened the war in this manner would have created considerable political difficulties at home, but that is
only to acknowledge that the preceding Commanders-in-Chief had been negligent. For, not to include Laos and Cambodia explicitly among the war’s objectives was to cripple commanders in the field by failing to make the grand strategic decisions upon which they depended. The irony in this is that the importance of the North Vietnamese occupation of the Annam Cordillera had been fully recognized by successive Commanders-in-Chief. Unfortunately though, instead of dealing with it in an explicit and public way, the response was to obfuscate -- to wage a "secret war" by arming the montagnards in Laos, by deploying Special Forces along the western border of South Vietnam, by conducting secret operations across that border, and by bombing, bombing, bombing. But subterfuge is no substitute for policy, a fact demonstrated by Douglas Kinnard in a 1974 survey already noted above that found that "almost 70 percent of the Army generals who managed the war [in Vietnam] were uncertain of its objectives" (1977, 25). But, whenever the generals waging a war are uncertain of its objective, the war is, by definition, uninformed. It lacks purpose, aims, or goals, which is tantamount to saying that it is combat without war, as the "war" in Vietnam was. Strangely then, without the support the United Nations, successive Commanders-in-Chief were unable to produce the functional equivalent of a fully reasoned declaration of war. Why they allowed the public relations effort to
supplant grand strategic analysis is a matter of speculation. There were no doubt several reasons. However, for our purposes, the more fruitful approach is to focus upon the United Nations successes, and not the American failures. Why was the United Nations able to do in Korea what successive Commanders-in-Chief were unable to do in Vietnam? There appear to be two principal reasons: First, the United Nations is cosmopolitan. Whatever the issue may be, both sides are represented; both sides have a voice, and both sides have to be satisfied to some degree. As a result, the rhetorical extremes that are commonly effective at home must be toned down or abandoned altogether. In the case of Korea, this meant that the anti-communist rhetoric that dominated Commander-in-Chief Truman's speeches at home was simply inadmissible. To take an extreme example, whereas it was perfectly acceptable for Truman to say in a speech for domestic consumption that, "Again, 'liberation' in 'commie' language means conquest" (Public Papers of Harry S. Truman 1965b, 224), a more neutral rhetoric was required in the United Nations' resolutions. Deprived of the easy clichés of domestic politics, the drafters of United Nations' resolutions were forced to focus upon the specificities of the situation, indeed, upon the least controversial specificities, which are often the most important.
Second, United Nations' resolutions are debated and voted upon, speeches are not. Speeches are written with an eye towards newspaper headlines and television coverage. Their purpose is to shape public opinion. Resolutions are written with an eye to garnering votes. After they pass, they will be used to shape public opinion, but before that their purpose is to articulate a position that a majority of the delegates can vote for. As part of this process, resolutions are debated. Embarrassing questions are raise that have to be addressed, that cannot be swept aside because those who raise them are active voters. Speeches may raise the same embarrassing questions, but these questions do not have to be addressed, because the listeners are relatively passive spectators. Their questions can be ignored or deflected in ways that are impossible with the questions raised in a debate leading to a vote.

In fine, the vote at the end of a debate imposes a discipline upon the United Nations resolutions that speeches escape. As the Korean War resolutions demonstrate, this discipline, when combined with the need to avoid ideological clichés, tends to focus delegates upon the specifics of the situation, producing the functional equivalent of a reasoned declaration of war, which is precisely what military commanders require to develop a viable strategy. As the Vietnam speeches and addresses of successive Commanders-in-Chief demonstrate, when released from this discipline,
embarrassing questions are too often ignored, and speeches that should function as the equivalents of reasoned declarations of war, providing commanders with the grand strategic analysis they depend upon, become little more than public relations blurbs, compendia of clichés that are of no help to commanders in developing a viable strategy. The former produces an informed war, war with combat; the latter, an uninformed "war," combat without war.

There is, however, considerable irony in these conclusions. Debate leading to a vote is one of the principal hallmarks of democracy. However, no one has ever accused the United Nations of being a bastion of democracy. It is more like a medieval council of great barons than a modern representative assembly. Therefore, to observe that the United Nations' resolutions function well as equivalents to reasoned declarations of war, in part, because of the discipline imposed by a debate leading to a vote is more than a little troubling. Could this mean that, with respect to the declaring of war, "democratic" debate works only in undemocratic councils such as the Security Council? That, in democracies, the generalities of the public relations battle are more important and more effective than the specificities of grand strategic analysis? That, sooner or later, democratic assemblies succumb to the fatal attractions of rhetorical generalities, as the Athenian Assembly did before the Sicilian expedition? Or, could it
simply mean that modern representative assemblies have no experience in debating fully reasoned declarations of war, having always left these decisions to the executive? That, with suitable training, even a representative assembly, such as the Congress, could learn to produce fully reasoned declarations of war of sufficient specificity to provide useful guidance to commanders in the field?

2.2 War without Combat vs. Enmity without War

One would hope that the latter possibility would be the correct one. Unfortunately though, there is no evidence to support such a hope, and considerable evidence to quash it. Whatever the case may be, however, it is time to exemplify the forms of war that do not involve combat -- war without combat and its perversion, enmity without war. Like the forms that involve combat, the difference between the two is that the former is informed with a well reasoned formal declaration of war (or its functional equivalent), while the latter is not, with the result that it soon degenerates into a rather pointless expression of ill will. Unlike the forms that do involve combat, finding suitable examples represents a considerable challenge. The difficulty lies not finding possible candidates, which is not a problem because both economic sanctions and military demonstrations of force are common enough. Rather, the challenge lies in finding examples that are initiated with a document that might be
considered the functional equivalent of a well reasoned declaration of war.

Even rarer, but for our purposes of greater interest, are well motivated examples that are also initiated by the Congress, and not by the Commander-in-Chief. Just how rare may be judged by the fact that there exist no cases of a congressionally initiated show of force, and but few of a congressionally initiated episode of economic sanctions. Still rarer are examples of economic sanctions initiated by the Congress with what can be or, at least, might be considered a reasoned declaration of war. Indeed, there exists but one -- The Comprehensive Anti-Apartheid Act of 1986 imposing sanctions against South Africa. As the reservations and qualifications of the preceding sentences indicate, the Comprehensive Anti-Apartheid Act of 1986 represents a less than ideal example of war without combat, although it is the best available for our purposes. Therefore, instead of trying to deal with all of its ambiguities at the present time, we shall forego examining this sole example of congressionally initiated economic sanctions for the moment, waiting until section 5 of the next chapter to deal with its multiple shortcomings.

Instead of examining an example of economic sanctions therefore, we shall explore an example of a show of force -- the Cuban Missile Crisis -- which possesses the additional virtue of tying in nicely with the example of enmity.
without war that we shall examine -- the American embargo of all trade with Cuba.

For the American public, the Cuban Missile Crisis began at 7:00pm on 22 October 1962 when Commander-in-Chief Kennedy made his "Radio and Television Report to the American People on the Soviet Arms Buildup in Cuba." For several months prior, there had been a steady stream of rumors and allegations of a Soviet military buildup, possibly including missiles, but these rumors had been denied all around, by the Soviets, by the Cubans, and, not least, by Commander-in-Chief Kennedy. However, as the photo-reconnaissance data gathered the week before demonstrated, the rumors were not rumors. Soviet missiles were being deployed to Cuba. Acting upon this certain knowledge, Kennedy spoke to the nation, delivering the functional equivalent of a fully reasoned absolute declaration of war that is a model of specificity.

The first sign of this specificity is that the word "Communist" appears but once in the entire address -- "But this secret, swift, and extraordinary buildup of Communist missiles...." (Public Papers of John F. Kennedy 1963, 807). Otherwise, Kennedy makes it abundantly clear that this is a "Soviet military buildup on the island of Cuba" (p. 806), that "This Nation is prepared to present its case [in any forum] against the Soviet threat to peace..." (p. 808). The unhelpful clichés and generalities of Cold-War rhetoric
played no part in this address. A second sign is that Kennedy names, "Soviet Foreign Minister Gromyko told me in my office that... Soviet assistance to Cuba, and I quote, 'pursued solely the purpose of contributing to the defense capabilities of Cuba'.... That statement was also false." (p. 806-7). Likewise, Commander-in-Chief Kennedy appealed personally "upon Chairman Khrushchev to halt and eliminate this clandestine, reckless, and provocative threat to world peace..." (p. 808). A third sign is that, while Kennedy named two Soviet leaders, he did not name any Cuban leaders; most especially, he failed to name Fidel Castro. Clearly, the Cuban Missile Crisis was a dispute between the Soviet Union and the United States; it had little or nothing to do either with Sino-Soviet Communism or with Cuba, although he did digress slightly "to say a few words to the captive people of Cuba" in the penultimate section of his address (p. 809).

In addition to avoiding anti-Communist clichés and identifying the antagonists unambiguously, Kennedy also articulates the two sources of the crisis with exceptional clarity: The crisis arises out of the Soviet attempt to deploy missiles to Cuba and, perhaps, even more important, their brazen attempt to deny that they were doing so. More important still, Kennedy goes on to flesh out these two charges with a wealth of detail: The missiles are of two types, a medium range ballistic missile capable of reaching
targets from Washington, D.C. to the Panama Canal to Mexico City and an intermediate range ballistic missile capable of reaching targets from Hudson Bay, Canada to Lima, Peru. Their deployment violates the Monroe Doctrine, the Rio Pact of 1947, the Charter of the United Nations, a joint resolution of the Eighty-Seventh Congress (which I shall examine later), and his own public warnings of 4 and 13 September 1962. The attempted denials were made in a statement of 11 September, from which Kennedy quotes, and "last Thursday" during Foreign Minister Gromyko's visit in Kennedy's office. Supported by this detailed information, Kennedy concludes that:

Neither the United States of America nor the world community of nations can tolerate deliberate deception and offensive threats on the part of any nation, large or small (p. 807).

This conclusion, in turn, is fleshed out by a short discussion of how the mere existence of nuclear explosives threatens peace, of how the "cloak of secrecy and deception" unacceptably increases this threat to world peace, and finally, of how "The 1930's taught us a clear lesson: aggressive conduct, if allowed to go unchecked and unchallenged, ultimately leads to war" (p. 807).

Having examined and detailed the sources of the crisis, Commander-in-Chief Kennedy next articulated his objectives:
Our unswerving objective, therefore, must be to prevent the use of these missiles against this or any other country, and to secure their withdrawal or elimination from the Western Hemisphere (p. 807).

To achieve these objectives, Kennedy next proposed a seven point plan, consisting of three military actions (a naval blockade, increased surveillance, and preparation of the military for "any eventualities"), an explicit threat to retaliate directly against the Soviet Union should any missiles be fired from Cuba, an administrative matter (the evacuation of dependents from the Guantanamo Base), and three diplomatic initiatives (convening of the Organization of American States, the calling of a special session of the Security Council, and a personal appeal to Chairman Khrushchev).

Journalist and others have always paid the greatest attention to point three, Kennedy's threat:

**Third**: It shall be the policy of this Nation to regard any nuclear missile launched from Cuba against any nation in the Western Hemisphere as an attack by the Soviet Union on the United States, requiring a full retaliatory response upon the Soviet Union (p. 808).

And, indeed, his threat of retaliation in kind is dramatic. Moreover, it is just the type of double hypothetical that makes for facile speculation: If at some point in the not too distant future the Soviet missiles should become
operational and if at some point in the more distant future any of those missiles should be launched for some unimaginable reason, then dire consequences would follow. Although dramatic, such speculations should not be taken too seriously. On the one hand, it appears that the chances of Kennedy actually carrying out his threat were the remotest of possibilities during the Cuban Missile Crisis. According to General Curtis E. LeMay, Chief of Staff of the Air Force at the time:

During that very critical time [i.e., October 1962], in my mind there wasn't a chance that we would have gone to war with Russia because we had overwhelming strategic capability and the Russians knew it (Kohn and Harahan 1988, 94).

Just how well "the Russians knew it" was explained by General David A. Burchinal, USAF, a senior staff officer at the Joint Chiefs of Staff in 1962, who was also present during the same oral history interview:

It has since always worried me that publications about the Cuban missile crisis all claim that we were so close to nuclear war; ninety-nine percent of the people who write about it don't understand the truth.... Because the Russians were so thoroughly stood down, and we knew it. They didn't make any move. They did not increase their alert; they did not increase any flights, or their air defense posture. They didn't do
a thing, they froze in place. We were never further from a nuclear war than at the time of Cuba, never further (p. 95).

On the other hand, all of the journalistic speculations that worried General Burchinal neglected or ignored the fact that Commander-in-Chief Kennedy had a plan to ensure that the Soviet missiles would never become operational. And, of course, if the Soviet missiles never became operational, Kennedy’s threat would never be tested. But not only did he have a plan, he had an unusually good plan. Indeed, as an integrated package of military and diplomatic initiatives, it is difficult to imagine better. And, of course, in the event, the package proved successful in forcing the removal of the Soviet missiles from Cuba. However, for our purposes, the most interesting aspect of this address is how it informed the crisis, providing us with an excellent example of war without combat. We say war without combat because combat was the only element of war that was missing. In every other respect, the crisis sounded like, looked like, and felt like war. More precisely, it was a show of force coupled with a naval blockade. Thus, the first step in securing the withdrawal or elimination of the Soviet missiles was to assure that no more of them arrived in Cuba. This implied a naval blockade. The second step was to monitor the situation in Cuba to ensure that the missiles already there did not become operational. This implied
increased surveillance, a stepped up schedule of aerial reconnaissance. The third step was to deploy sufficient forces, particularly air forces, to the area around Cuba so as to be prepared for "any eventualities." Should the various diplomatic initiatives fail, these "eventualities" obviously entailed either a series of air strikes or, less likely, commando raids, to "eliminate" the missiles already in Cuba. As a result, even if this example of war without combat should have taken a turn for the worst and become an example of war with combat, the stated political objectives would still have directed and guided military activities "down to the smallest operational detail." For, "eliminating" the Soviet missiles did not imply the same kind of an open-ended military commitment that would create the quagmire of Vietnam; instead, Kennedy's political objectives dictated a relatively restricted number of sorties against a relatively few clearly defined targets -- this radar van or that missile launcher.

Therefore, like the United Nations resolutions during the Korean War, Commander-in-Chief Kennedy's 22 October 1962 address during the Cuban Missile Crisis possessed the specificity that makes for the type of well reasoned declaration that informs a war, be it with or without combat. Had his address lacked this specificity, as Commander-in-Chief Truman's addresses did during the Korean War, the crisis would have been uniformed, sowing confusion
and distress all around and reducing greatly the chances for a successful resolution. But, if the Cuban Missile Crisis be an excellent example of informed war without combat, then the American reaction to Fidel Castro's accession to power in January 1959 is an equally fine example of its perversion, of enmity without war. Not only does it exemplify how vague generalities render a policy uninformed, it also raises the question of how long one should persist in obviously failed policies. We were able to avoid this perplexing question during our discussion of the infinitely more complex case of Vietnam. In the simpler Cuban case, it cannot be ignored or avoided. More particularly, in tracing the American reaction to Castro, we face three different tasks: First, we must identify at least some of the documents that could have or should have informed American enmity towards Cuba. Second, we need to show how they lack the specificity required to inform American policy towards Cuba. And, finally, we need to identify how Castro was able to thwart the sanctions imposed upon him, which, once thwarted, forces one to ask whether different policies were not called for.

Initially, Castro was greeted as a liberator in both Cuba and the United States for overthrowing the discredited dictatorship of Fulgencio Batista. This initial euphoria, however, soon gave way to growing concerns as Castro expropriated American holdings in Cuba, converted large
private farms into state farms, and began espousing Communist policies and doctrines. In response, Commander-in-Chief Eisenhower cancelled the Cuban sugar quota on 16 December 1960, marking a decided shift from amity to enmity. The next step in this building enmity occurred on 3 January 1961 when Eisenhower severed diplomatic relations with Cuba in response to a Cuban order to reduce drastically the size of the American diplomatic mission in Havana. The increasing enmity boiled over for an instant into combat without war on 17 April 1961 when a CIA-trained force of Cuban exiles attempted to land at the Bay of Pigs, a fiasco which greatly embarrassed Kennedy during the first months of his Administration.

In the wake of this embarrassing fiasco, as expressions of good will became more and more difficult to find, the Eighty-Seventh Congress moved in September 1961 to further increase the enmity. It did this, not directly, but rather in a crab-like, indirect manner by appending to section 620 (a) of the Foreign Assistance Act of 1961 an "additional" sentence:

(a) No assistance shall be furnished under this Act to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade

First, to put subsection (a) into perspective, it must be emphasized that the Eighty-Seventh Congress did not impose an embargo upon Cuba. Instead, it merely authorized Commander-in-Chief Kennedy to do so when and if he should feel it necessary. The Eighty-Seventh Congress was not about to disturb the traditional subordination of the Congress to the Commander-in-Chief in matters of war and peace. Second, to highlight how uninformed American policy towards Cuba was from the beginning, the internal inconsistency of the subsection must be noted. Which "policy" is the embargo designed to facilitate? Nominally, "the policy of the preceding sentence." But the policy of the preceding sentence -- to deny all foreign aid to Cuba -- is effected by not sending any foreign aid to Cuba. Rather than "an additional means of implementing" the denial of foreign aid, an embargo represents a significant escalation of enmity between the two countries. Third, and most important of all, subsection (a) identifies neither the causes that would justify the establishment of an embargo nor the remedies that would lead to the embargo being lifted. Still, the congressional motives are not hard to divine from the two succeeding subsections, which, although applying to the administration of American foreign aid in
general, obviously also apply to Cuba. Subsection (b) rules that:

No assistance shall be furnished under this Act [the Foreign Assistance Act of 1961] to the government of any country unless the President determines that such country is not dominated or controlled by the international Communist movement (ibid),

while subsection (c) denies foreign aid to any country that has expropriated American property without compensation.

It appears, therefore, that, at this early stage, the United States entertains two grievances against Castro: First, he is "dominated or controlled by the international Communist movement," and, second, he has expropriated American investments. Assuming that these are indeed the American grievances, the first observation to be made is that neither grievance lends itself to the type of military operations that characterize an informed war with combat. This is the case because neither can be translated into precise geographic objectives. With respect to the first grievance, its excessive generality precludes military commanders from devising a viable strategy. With respect to the second grievance, it is certainly specific, but still it resists a viable military solution, it being unclear what geographic objective could serve as the military objective since the expropriated properties are dispersed more of less evenly across the entire island. In addition, combat
operations to recover the expropriated proprieties would risk destroying many of the proprieties during the course of the operations. This would render many of the recovered proprieties worthless. Having said this, it must be admitted that there always exists a military option for removing a government that is dominated and controlled by unfriendly powers or has expropriated properties -- a massive invasion and extended anti-guerrilla campaign to install a new and more friendly government. However, whether this option would have represented a truly "viable" strategy in the case of Cuba during the early 1960's is a matter of considerable doubt. In fine, the character of the grievances mean that any military operations against Cuba would, in all probability, soon degenerate into a pointless combat without war, an unsettling thought which suggests the possibility that Cuba, instead of Vietnam, could have become America's "Vietnam."

The second observation to be made is that only the second grievance lends itself to the type of non-military operations that characterize an informed war without combat. This is the case because the expropriations not only concern American interests directly and particularly, but their value can be calculated down to the penny. This specificity means, first, that they constitute a viable subject for negotiations between the two governments and, second, that those negotiations could be influenced by the types of
diplomatic, economic, and legal pressures that war without combat generates, the imposition or lifting of various sanctions constituting a quid pro quo for Cuba compensating the owners of expropriated proprieties. In contrast, the first grievance does not lend itself to the type of non-military operations that characterize an informed war without combat. This is the case because who dominates and controls Cuba (or any other country) is a broad philosophical topic that can be argued over endlessly among individuals but does not constitute the type of issue that is subject to inter-governmental negotiations. Inter-governmental negotiations require much greater specificity. But, if negotiation between the two governments are highly improbable on this issue, then it is also highly improbable that the types of diplomatic, economic, and legal pressures that war without combat generates would be effective, it being tautological to observe that non-existent negotiations cannot be influenced.

At this early stage of the dispute, therefore, the range of possible options can be identified: Should an equitable settlement of the expropriations become the center piece of American policy, the enmity between the two countries would be informed by a reasonable grievance and an attainable goal. Awaiting resolution, any sanctions imposed in response to the expropriations could be characterized as war without combat. Should, however, the replacement of the
Castro government with a more friendly government not "dominated or controlled by the international Communist movement" become the center piece of American policy, any sanctions imposed upon Cuba would be uninformed and would soon degenerate into enmity without war. Hence, the crucial question in the fall of 1961 was which of these two grievances was going to become the center piece of American policy towards Cuba.

The answer was not immediately forthcoming. For, having received congressional authorization, Commander-in-Chief Kennedy chose not to exercise it until five months later. Then, on 3 February 1962, following the Pan-American Foreign Ministers meeting at Punta del Este, Uruguay, he issued Proclamation 3447, which imposed an embargo on all trade with Cuba. Congressional authorization having finally been transformed into presidential action, the escalating enmity now acquired virtually all of the characteristics of war -- except combat. Diplomatically, economically, and legally, the "condition" of relations between Cuba and the United States was now indistinguishable from war, the enmity having increased steadily from a revocation of the Cuban sugar quota on 16 December 1960 to the breaking of diplomatic relations on 3 January 1961 to the Bay of Pigs invasion on 17 April 1961 to the congressional authorization of an embargo in September of 1961 to the actual imposition of a total embargo on 3 February 1962. Unfortunately
though, this enmity was uninformed, the expropriations having been dropped from among the official grievances:

WHEREAS the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, in its Final Act resolved that the present Government of Cuba is incompatible with the principles and objectives of the Inter-American system; and, in light of the subversive offensive of Sino-Soviet Communism with which the Government of Cuba is publicly aligned, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense;... 

WHEREAS the United States, in accordance with its international obligations, is prepared to take all necessary actions to promote national and hemispheric security by isolating the present Government of Cuba and thereby reducing the threat posed by its alignment with the communist powers:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under the authority of Section 620 (a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do
1. Hereby proclaim an embargo upon trade between the United States and Cuba....

Proclamation 3447 makes it abundantly clear that Castro's "alignment with the communist powers," and not his expropriations of American investments, was to be the official justification for America's enmity towards Cuba. Confirmation of this choice came in October 1962, when the Eighty-Seventh Congress passed a "Joint Resolution Expressing the Determination of the United States with Respect to the Situation in Cuba." As its title suggests, the resolution is little more than an expression of frustration. It offers neither analysis of nor remedy for the deteriorating relations between the two countries. This fact makes it one of the more curious congressional policy-support resolutions because, as a 1970 background report for the House Committee on Foreign Affairs noted:

The resolution contains no clause "authorizing" the President to do anything, and the President took the position that he needed no authorization, although he welcomed an appropriate endorsement (Committee on Foreign Affairs 1970, 35-6).

Beyond expressing a frustrated determination to do something -- anything -- its four "whereas" clauses and three "resolves" are also significant for their clear expression of the anti-Communist fears of the Eighty-Seventh Congress: The first "whereas" clause set the stage for these fears by
quoting relevant passages from the 1823 Monroe Doctrine. The second clause suggested the possible legal basis for some undefined future action by citing the 1947 Rio Treaty for mutual defense and Article 51 of the United Nations Charter concerning the right to individual and collective self-defense. The third clause demonstrated international recognition of the congressional fears by repeating the finding from the final act of the January 1962 Foreign Ministers meeting at Punta del Este cited in Proclamation 3447 concerning Cuba's identification with the principles of Marxist-Leninist ideology, an identification which was clearly unacceptable, as the fourth clause makes clear, "Whereas the international Communist movement has increasingly extended into Cuba its political, economic, and military sphere of influence." Based upon these "grievances," the Eighty-Seventh Congress resolved:

That the United States is determined --

(a) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of this hemisphere;

(b) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and
(c) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination (Pub. L. No. 87-733, 76 Stat. 697).

In fine, the three documents cited trace the evolution of American policy towards Castro. They illustrate the inverse relationship between enmity and specificity. As the enmity increased, the specificity of both the grievances and the possible remedies decreased. Instead of informing the American enmity with purpose and point, the documents progressively dissipate what specificity the situation possessed, substituting instead a gathering obscurity of generalities. To recall Jeffrey Kimball's observation in regards to American policy towards Vietnam, since the generalities of anti-Communism apply not only to Cuba but to other Cold War events and issues as well, they contribute little to either the analysis or the solution of any specific situation.

Still, despite the excessive generality of the documents that motivated the embargo, one must acknowledge that this lack of specificity did not guarantee that the embargo would fail to topple Castro. Such an outcome, although highly improbable insofar as the enmity was uninformed, was certainly not impossible. For, if any country were ever vulnerable to economic sanctions, Cuba was certainly one of them. The Cuban economy in 1962 was all
but totally dependent upon American trade and investment. It was not, therefore, unreasonable to assume, as Commander-in-Chief Kennedy did when he proclaimed the embargo on 3 February 1962, that any break with the United States was bound to be devastating:

The President pointed out that the embargo will deprive the Government of Cuba of the dollar exchange it has been deriving from sales of its products in the United States. The loss of this income will reduce the capacity of the Castro regime, intimately linked with the Sino-Soviet bloc, to engage in acts of aggression, subversion, or other activities endangering the security of the United States and other nations of the hemisphere (The Public Papers of John F. Kennedy 1963, 106).

However, at the same time that Kennedy identified the way in which the sanctions should work, he also identified the way in which they could be frustrated. If the deprivation of dollar exchange would reduce the capacity of the Castro regime to engage in acts of aggression, the replacement of that dollar exchange with something else, rubles, for example, would sustain that capacity, and render the American sanctions ineffective. Despite enormous costs, Castro was successful in switching from a dollar to a ruble economy, which meant that the sanctions soon lost all point and purpose.
Castro's success in replacing American investment with Soviet subsidies suggested strongly that the sanctions would fail to achieve their stated objective and that the policy would have to be changed. However, during the 1960's, the situation was somewhat ambiguous. On negative side, Canada and the other major industrial powers refused to go along. Beginning in 1964 when the British government encouraged the sale Leyland buses to Havana, the major industrial nations of the world -- America's closest allies -- did not miss an opportunity to trade with Cuba, although it must be admitted that such opportunities were few and far between as long as the Soviets continued to dominate and subsidize the Cuban economy. On the positive side, the United States was able to get twenty-one of the twenty-two members of the Organization of American States to impose sanctions against Cuba in 1964. In the end though, this vote in the Organization of American States proved to be little more than a gesture. In terms of increasing the economic pressure on Cuba, these counties conducted so little trade with Cuba that the loss of this trade could effect little. In terms of diplomatic pressure, the sanctions were of some consequence when first applied in 1964; however, they soon lost potency as the Latin American countries reestablished relations with Cuba one by one. This led the Organization of American States to reconsider its earlier endorsement of
the sanctions in July 1975 at which time it voted to end its endorsement of the sanction altogether.

Thus, by the mid-1970’s, it was clear that the sanctions had failed. Citing Secretary of State Cyrus Vance’s opinion that the embargo against Cuba was a "failure," David Losman concluded that, "Sanctions, then, have been economically effective [i.e., enormously costly to Cuba], yet politically unsuccessful," observing further that, "the absolute refusal to trade with Cuba literally forced and cemented almost permanent relations with the Communist world" (1979, 44, 46). Sheer power proved to be a poor substitute for hardheaded analysis and coherent policy goals. And, having failed so completely, the sanctions became little more than a expression of a continuing, but vague and uninformed, enmity between the two countries, i.e., an example of enmity without war. Had equitable compensation for the expropriated investments been the goal of the sanctions, one might speculate that the sanctions could have been successful, not on toppling Castro, but in establishing some mutually agreeable formula for compensation, the specificity of the goal providing hope for a resolution to the grievance.

Still, acknowledgment that the sanctions had failed by Secretary Vance and others did not lead to any change in the basic policy, as one might expect. Thwarted by Soviet subsidies, unsupported by her closest allies, this
ineffective "total" embargo nonetheless remained in place. The reasons for this failure to change, which are not of interest to us, arise out of simple inertia and the need to placate various domestic constituencies, particularly the Cuban-American community. But, if the policy did not change, the world did, leading to an even more incoherent policy towards Cuba.

In 1989, the Berlin wall came crashing down, affecting both the economic assumptions and the ideological basis of the Cuban embargo. In terms of economic assumptions, Mikhail Gorbachev announced in September 1991 that the Soviet Union could no longer continue to subsidize the Cuban economy. After a short transition period, the Cubans would have to pay for Soviet oil and other goods at market prices in dollars. Since Cuba had been able to thwart the American sanctions by converting from a dollar to a ruble economy, this sudden reversion to the dollar would not only be devastating but offered some hope that Commander-in-Chief Kennedy's 1962 predictions would finally come true. However, greatly diminishing these hopes was the fact that few other countries were willing to support the continued American sanctions, which had become a great embarrassment to America's closest allies. Hence, while trade and investment was not available from the United States, it was available from Canada, Spain, and the other countries of Europe and Latin America. With alternate sources of trade
and investment available to her, it was extremely unlikely that the sanctions would be any more successful over the next thirty years than over the preceding thirty years.

In terms of the ideological basis of the sanctions, obviously, they could no longer be justified by reference to Castro's "alignment" with the Sino-Soviet, Marxist-Leninist Communist powers. With the demise of these powers, the "alinement" ceased to exist. Stepping into this ideological void, Representative Robert G. Torricelli, Democrat of New Jersey and Chairman of the House Subcommittee on Western Hemisphere Affairs, sponsored the "Cuban Democracy Act of 1992," which was enacted as Title XVII of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. No. 102-484, 106 Stat. 2575). The Cuban Democracy Act attempts to address three concerns: First, it tightens the sanctions somewhat. Second, it attempts to fill the ideological void. Third, and most important, it attempts to deal with the fact that few other countries are supporting the sanctions. Section 1706 of the act tightens sanctions in several ways, but the two most important are new restrictions upon remittances from Cuban-Americans to their families and relatives in Cuba and a rule that prohibits ships that have entered Cuban ports from entering American ports for an hundred-and-eighty days. These measures will obviously have some marginal, but not decisive, affect upon the economic situation in Cuba.
The ideological void is filled, in a manner of speaking, by sections 1702, 1703, 1707, and 1708. Section 1702 consists of eight "Findings," all of which add up to the charge that, "(1) The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values...." Instead of his "alignment with the communist powers," America's grievance against Castro is now that he abuses human rights and lacks democratic values. While the charges are no doubt true, for our present purposes, it must be noted that there has been no increase in the level of specificity. Abusing human rights and frustrating the democratic impulses of the Cuban people are no less vague than complicity with Sino-Soviet Communism. The enmity between the two countries remains strong, but uninformed. In light of these new grievances, the act's proposed remedies are contained in section 1703, supplemented by sections 1707 and 1708. Section 1703 consists of ten "Statements of Policy," the intent of which is captured in statement six, "to maintain sanctions on the Castro regime so long as it continues to refuse to move toward democratization and greater respect for human rights." This overall objective is supplemented by section 1707, "Policy Toward A Transitional Cuban Government" and section 1708, "Policy Toward A Democratic Cuban Government," both of which offer a variety of financial and diplomatic assistance to a
post-Castro government. Although the assistance listed in sections 1707 and 1708 is specific enough, the overall goal of realigning the Cuban government along democratic lines suffers for the same sort of vague generality that plagued the old goal of realigning the Cuban government away from Marxist-Leninist Communism. In terms of the specificity that could inform America’s enmity towards Cuba, there has been no change or improvement. Both the officially articulated grievances and the officially articulated remedies render that enmity uninformed.

But we have been discussing superficialities. We have not yet reached the heart of the Cuban Democracy Act of 1992. In 1992, twenty-nine years after Commander-in-Chief Kennedy imposed a total embargo upon Cuba, in the year the Soviet Union ended her enormous subsidies, for proponents of the sanctions, the key to success was to be found in forcing the other governments of the world to join in. As noted above, with the ending of the Soviet subsidies, Cuba was not without other resources because she was able to call upon all the other countries of the world for trade and investment. These other countries provided nothing like the subsidy that the Soviet Union had provided. Still, this alternate trade meant that Cuba was not totally without resources. It followed, therefore, that, if this alternative trade could be cut off, Cuba would, finally, at long last, be totally without resources and Castro would
soon fall. As a result virtually every section of the Cuban Democracy Act of 1992 contains a veiled or not so veiled threat against any country that does not impose sanctions against Cuba. For example, section 1703 (3) seeks "to make clear to other countries that, in determining its relations with them, the United States will take into account their willingness to cooperate in such a policy [of sanctions]," while section 1704, entitled ironically, "International Cooperation," begins softly enough by suggesting that:

(a) Cuban Trading Partners. -- The President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of this title.

But, lest anyone miss the point, immediately goes on to threaten:

(b) Sanctions Against Countries Assisting Cuba. --

(1) Sanctions. -- The President may apply the following sanctions to any country that provides assistance to Cuba:

   (A) The government of such country shall not be eligible for assistance under the Foreign Assistance Act of 1961 or assistance or sales under the Arms Export Control Act.
(B) Such country shall not be eligible, under any program for forgiveness or reduction of debt owed to the United States Government.

In effect then, the unilateral American sanctions against Cuba having failed, the One-Hundred-and-Second Congress, in its wisdom, has decided to declare war on the world, against any country that assists Cuba, which includes most of America's closest allies. Countries, corporations, and vessels that trade with or assist Cuba will be penalized under this act in one way or another.

As one might expect, this extraterritorial application of American law to the other countries of the world did not go unnoticed. Approved by Commander-in-Chief Bush on 23 October 1992, a month later, on Tuesday, 24 November 1992, the United Nations General Assembly passed a Cuban-sponsored resolution calling for an end to the thirty-year-old American embargo against Cuba. The vote was an embarrassing fifty-nine in favor, seventy-nine abstentions, and three against. The three against were the United States, Israel, and Roumania. The New York Times reported that:

Most of the allies declining to come to Washington's support made it clear that they were using the nonbinding vote to signal their anger at a new American law that.... extends American jurisdiction beyond the boundaries of the United States to cover foreign subsidies of American companies (25 November 1992, A1).
The New York Times also reported that Representative Torricelli insisted that the Cuban Democracy Act did not apply to foreign countries (p. A10), but even a casual reading of the act does not support this view. When the Cuban delegation introduced the same resolution again in 1993, eighty-eight nations voted in favor and only fifty-seven abstained. In 1994, the trend continued, a hundred and one countries voting in favor, forty-eight abstaining, and even Roumania failing to hold fast, only Israel and the United States voted against the resolution.

Theoretically then, at some abstract level of legal technicality, the Cuban Democracy Act not only reconfirms America’s thirty-year-old commitment to economic sanctions against Cuba but declares war against any country that trades or assists Cuba as well. However, at a more practical level, since no one including Representative Torricelli believes that the United States would ever actually impose sanctions against a country that assisted Cuba, the current policy towards Cuba is pretty much of a dead letter. It does little more than express a continuing enmity towards Castro, without any real hope of successfully accomplishing its stated objective of toppling him. Still, for our purposes, the incoherence that the act introduces into American policy towards Cuba is the least interesting aspect of the Cuban Democracy Act. Of greater interest is the reaction of the other countries of the world to it in
the United Nations. They obviously find it neither very persuasive nor very helpful. Their reaction leads to speculation about what would have happened if the Security Council, and not the One-Hundred-and-Second Congress, had debated the question of Cuban-American relations after the fall of Soviet Communism.

As noted in our discussion of the United Nations resolutions during the Korean War, the cosmopolitan composition of the United Nations means that the easy generalities of the domestic debate must be either abandoned or toned down considerably. In this more rigorous atmosphere, the extraterritorial provisions of Representative Torricelli's act would never have been mentioned, much less proposed. In addition, the United Nations would never have entertained a proposal to topple Castro. The membership of the United Nations is almost uniformly opposed to the undermining of actually existing governments, no matter what their crimes and misdemeanors may be. Nonetheless, one might speculate that the Security Council could well have entertained a resolution calling for economic sanctions against Cuba for the purpose of encouraging Cuba to negotiate in good faith towards an equitable compensation for the proprieties she had earlier expropriated. Since the American expropriation claims are ultimately going to be the final obstacle in a return to normal relations between the two countries and since this
issue possesses the specificity that lends itself to negotiations between two governments, it might have been possible for the United Nations to endorse wider sanctions to achieve this narrow purpose. Thus, again, one is drawn to the troubling conclusion that, with respect to the declaring of war, the democratic mechanisms of open debate leading to a vote work best in undemocratic assemblies.
Chapter 5

Informing War:
Selected Twentieth Century Declarations of War

In this chapter, we shall investigate more closely how a good declaration of war informs a war and a bad declaration does not by examining the declarations that surround five twentieth-century wars -- the 1914 invasion of Mexico, World Wars I and II, the Korean War, and the 1986 economic sanctions against South Africa. Examining these five wars, we shall be able to gage more accurately how the pressures and crosscurrents of real-world politics affect and distort the ideas and concepts we have developed in the last four chapters. The only disadvantage this procedure is that the details and particulars of disparate historical events cannot be herded and corralled into a single narrative. In consequence, while the documents and circumstances examined yield numerous criteria and lessons, these criteria and lessons are scattered here and there, popping up in unexpected places at unexpected times. There are recurring themes, such as the great difficulties that surround alliance policy, while the mysteries of Roosevelt's
conduct of the Second World War preoccupy us for a good number of pages, especially his demand for an unconditional surrender. But there is no unifying thread. Still, the harvest is rich. For example, Commander-in-Chief Wilson's 1914 declaration against Mexico and his 1917 declaration against Imperial Germany are both organized on a pattern different from that utilized by Jefferson in 1776, which gives us an alternative model for emulation. The circumstances of the Korean War allow us to examine the possibilities of issuing multiple declarations of war, while our discussion of the 1986 economic sanctions against South Africa raises questions of how the Congress might wage a war that the Commander-in-Chief actively opposes, how a piece of peacetime legislation might be transformed into a declaration of war, and, finally, additional discussion of alliance policy.

Our purpose in all this is to broaden and deepen our understanding of what makes for a good declaration of war. Our method is to seek out the relevant "functional equivalents," since, as is to be expected, all of the formal congressional declarations of war are both unreasoned and irrelevant, take them seriously, which constitutes the novelty our approach, and analyze the war in question in light of what its declaration says and does not say. Viewing a war through the lens of its declaration(s) produces, of course, a radically incomplete picture of the
war. This approach necessarily leaves out all of the atrocities committed undercover of war and all of the battles, skirmishes, and fire fights. It also leaves out all of the physical destruction and the noncombatant casualties. In a word, it leaves out all of the characteristics of war that make war films, war novels, and war art so fascinating and compelling. In partial compensation, this method draws out and enlarges the moral and grand strategic character of the war in question, which are precisely those elements that must occupy those who draft fully reasoned declarations of war.

Before beginning, however, there is one point of confusion that must be dealt with. For several millennia, both the general public and legislatures, whenever they existed, have been told that neither the morality of a war nor its grand strategy are of any concern to them. These vital matters of high policy are best handled at the highest levels of the government by those who have access to secret and confidential information, the divulging of which would precipitate immediate disaster. While this occult vision of foreign affairs possesses considerable reality and relevance at the day-to-day tactical level and is not altogether immaterial at the strategic level, at the grand strategic level that we shall be focusing on, it is just plain false. As we shall demonstrate in the following, those who draft fully reasoned declarations of war require no secret
knowledge in order to evaluate the morality of a given war and fix its grand strategy through a thorough analysis of the grievances that have caused it and the remedies that will end it. All that is required is a reasonable grasp of current affairs and a moderate understanding of the history of the countries concerned, an understanding that is easily had by borrowing a or two book from the local library. Again, Jefferson is the model. There is nothing in the declaration of 1776 that was not common knowledge at the time. Nothing private, confidential, erudite, or even secret. This fact has considerable consequences for a democracy, either direct or indirect. In the first place, because only a commonplace knowledge is required to draft and debate a fully reasoned declaration of war, the common people are fully qualified to participate in this debate, several millennia of anti-democratic sentiment notwithstanding. In the second place, because it is of the essence of democracy for the people, or, at least, their representatives, to decide questions of war and peace, it is essential that the people, or, at least, their representatives, draft and debate fully reasoned declarations of war, which, happily, they are fully qualified to do.
1. The Joint Resolution Justifying the Employment by the President of the Armed Forces of the United States, 1914

The conceptual confusion that sustains the simultaneous use of "war" and "armed conflict" to describe essentially the same phenomenon, naturally, affects declarations of war as well. The most frequent and obvious effect is the belief that declarations of war contribute little or nothing to the conduct of war. Less frequent, but more interesting, is the belief that a declaration of war does not declare war, which is one of the more bizarre aspects of the 1914 Joint Resolution Justifying the Employment by the President of the Armed Forces of the United States. But, before discussing the congressional resolution, let us begin with Wilson's address.

On Monday, 20 April 1914, at 3:00 in the afternoon, Commander-in-Chief Wilson addressed a joint session of the Congress. The purpose of his twelve minute address was to report on certain "slights and affronts" to the "dignity" of the United States that had recently occurred in Mexico. Since the 9th of April, American sailors had been arrested for short periods in Tampico and Vera Cruz and telegraphic services had been temporarily denied to diplomatic

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\footnote{Wilson's speech, from which the following quotations are taken, can be found at Cong. Rec. 1914, 6908, 6925; cf. Wilson 1979, 471-474.}
personnel. While trivial in themselves, the potential for great mischief existed according to Wilson:

The manifest danger of such a situation was that such offenses might grow from bad to worse, until something happened of so gross and intolerable sort as to lead directly and inevitably to armed conflict.

The background for this potentially dangerous situation was the turmoil that had engulfed Mexico as the leaders of the successful 1910-11 insurrection against long-time dictator, Porfirio Díaz, fought among themselves. One of these generals, Victoriano Huerta, had proclaimed himself provisional President in Mexico City, but Wilson refused to recognize him as legitimate. Wilson believed, therefore, that the incidents had been fomented by General Huerta "in retaliation for its [the American] refusal to recognize the pretensions of Gen. Huerta to be regarded as the constitutional provisional President of the Republic of Mexico." To rectify this situation, Commander-in-Chief Wilson planned to back the demand of the on-scene commander, Admiral Mayo, that "the flag of the United States be saluted with special ceremony" by General Huerta's soldiers.

Needless to say, more than a diplomatic note would be required in order to force a proud Mexican revolutionary to salute the American flag. Commander-in-Chief Wilson realized this and was preparing a suitable show of force.
Although completely unnecessary, Wilson felt that, in this case, it was politic to consult first with the Congress:

No doubt I could do what is necessary in the circumstances to enforce respect for our Government without recourse to the Congress and yet not exceed my constitutional powers as President, but I do not wish to act in a matter possibly of so grave consequence except in close conference and cooperation with both the Senate and House.

Having thus reaffirmed his sole authority and put the Congress in its properly subordinate place, Commander-in-Chief Wilson next articulated the grand strategy that would control this operation:

I therefore come to ask your approval that I should use the armed forces of the United States in such ways and to such an extent as may be necessary to obtain from Gen. Huerta and his adherents the fullest recognition of the rights and dignity of the United States [applause], even amidst the distressing conditions now unhappily obtaining in Mexico.

As Wilson's cautious qualifications signal, the operation would be a very delicate one. Enough force would have to be applied to threaten and weaken Huerta significantly, but not so much as to provoke a full scale war. Wilson emphasized this point at considerable length:
This Government can, I earnestly hope, in no circumstances be forced into war with the people of Mexico.... If armed conflict should unhappily come as a result of his [Gen. Huerta's] attitude of personal resentment toward this Government, we should be fighting only Gen. Huerta and those who adhere to him and give him their support, and our object would be only to restore to the people of the distracted Republic the opportunity to set up again their own laws and their own Government. [Applause.]

But I earnestly hope that war is not now in question. I believe that I speak for the American people when I say that we do not desire to control in any degree the affairs of our sister Republic. [Applause.] ...The present situation need have none of the grave implications of interference if we deal with it promptly, firmly, and wisely.

Having emphasized that the extremely limited nature of the enterprise, Wilson ended his address with a stirring sample of Wilsonian idealism:

There can in what we do be no thought of aggression or of selfish aggrandizement. We seek to maintain the dignity and authority of the United States only because we wish always to keep our great influence unimpaired for the uses of liberty, both in the United
States and wherever else it may be employed for the benefit of mankind. [Loud and prolonged applause.]

The first thing to note about this address is how faithfully Commander-in-Chief Wilson has conformed to Madison’s precedent. Just as custom and precedent has dictated since 1812, Wilson has convened and given information to the Congress. The second thing is that, also following Madison’s precedent, Commander-in-Chief Wilson’s address is the functional equivalent of a well reasoned declaration of war. He has specified certain grievances that have caused the current enmity between the United States and General Huerta and proposed a remedy that he believed would restore amity. As a result, the actions he has proposed are well informed. He has prepared for war with combat, but he hopes that a show of resolve and force will produce war without combat: A special ceremony during which General Huerta’s soldiers salute the American flag.

Third, and most interesting of all, Wilson’s twelve-minute address is not organized in the same way that Jefferson structured his 1776 Declaration. Basically, Wilson has stood Jefferson on his head. Whereas Jefferson began with a statement of philosophical principles and followed with the specific grievances and remedies, Wilson has begun with the grievances and the remedy and wound up with a statement of principle — Wilsonian ideals, in this case. The circumstance motivating this alternate structure
is that Wilson was giving a public speech, whereas Jefferson was composing a document to be read in private. As the Congressional Record's parenthetical "Loud and prolonged applause" indicate, when giving a public speech, the orator should save the uncontroversial, crowd-pleasing principles for last so as to produce the most dramatic effect, so as to "leave them standing in the aisles." In contrast, a document designed to be read in private requires a more deductive structure, obtaining the assent of the reader to the general principles that will shape the author's analysis of the grievances and remedies before launching into that analysis.

For the present, we shall limit ourselves to simply highlighting Wilson's alternative structure and to observing that, in 1914, he has used that structure constructively to inform the war against General Huerta with a perfectly acceptable reasoned declaration of war. Still, the dangers secreted within Wilson's innovation should not be ignored. No longer is Wilson's primary purpose to inform the war with purpose. That has now become his secondary purpose. His primary purpose is to exhort the Congress to vote a declaration of war. Since declarations of war are not primarily for the purpose of motivating a legislature to vote a declaration of war, we shall not be surprised to discover shortly that this alternative template is of rather limited value.
Having recounted the positive aspects of Wilson's 1914 declaration, we should perhaps inquire into its less savory aspects. It will come as no shock to learn that Wilson was being less than fully candid in his address. All that he said was true and well reasoned, but the subtlety of his game was not fully revealed. To learn of it, let us turn to the congressional maneuvering that followed Wilson's address.

Having been convened and informed of their Commander-in-Chief's wishes, it was time for the Sixty-Third Congress to do his bidding and approve his plans. Awkwardly, this approval could not take the form of a formal declaration of war because their Commander-in-Chief had been at pains to assure the Sixty-Third Congress that "war was not now in question," just an invasion of Mexico. Congressional approval, therefore, would have to come in the form of a joint resolution, that most convenient functional equivalent to a formal declaration of war. In light of this, the House drafted a sensible resolution that evening and immediately sent it on to the Senate:

Resolved, etc., That the President of the United States is justified in the employment of armed forces of the United States to enforce the demands made upon Victoriano Huerta for unequivocal amends to the Government of the United States for affronts and
indignities committed against this Government by Gen.
Huerta and his representatives (Cong. Rec. 1914, 6957).

Led by Senator Lodge, the Republicans in the Senate
sought to challenge Wilson’s proposed policy. Why was
Wilson proposing such limited operations? Why not a general
invasion, such as Winfield Scott led 1847? Why were the
operations directed against General Huerta exclusively? Why
not against others, for example, General Venustiano Carranza
and his Constitutionalist forces? In answer to these
questions, the New York Times observed on 21 April 1914:

The Administration, it is suggested, does not wish to
raise the question of general Mexican atrocities, as it
is well known that most of these atrocities are the
work of "Pancho" Villa and his Constitutionalist
associates, towards whom the Administration has
maintained a sympathetic friendliness (1:8).

Taking advantage of the Administration’s embarrassment,
Senator Lodge attempted to broaden the war by including
these wider atrocities, as can be seen by reading his
proposed substitute preamble:

That the state of unrestrained violence and
anarchy which exists in Mexico, the numerous unchecked
and unpunished murders of American citizens and the
spoliation of their property in that country, the
impossibility of securing protection or redress by
diplomatic methods in the absence of lawful or
effective authority, the inability of Mexico to discharge its international obligations, the unprovoked insults and indignities inflicted upon the flag and the uniform of the United States by armed forces in occupation of large parts of Mexican territory have become intolerable.

That the self-respect and dignity of the United States and the duty to protect its citizens and its international rights require that such a course be followed in Mexico by our Government as to compel respect and observance of its rights (Cong. Rec. 1914, 6964).

However, Senator Lodge's attempt to widen the war quickly failed for lack of support. Not only was the Sixty-Third Congress not inclined to contest Wilson's well-informed policies, but Wilson was undoubtedly correct in advocating an extremely limited intervention aimed solely at weakening General Huerta combined with a "sympathetic friendliness" toward General Carranza and his Constitutionalist faction (cf. Link 1965, 5:338-9). Upon attaining power, General Carranza proved to be a relatively progressive President and solicitous towards American interests. In order to achieve this success, however, Wilson had to conduct a very subtle diplomacy. For, it was vitally important to General Carranza's success not to be seen accepting American assistance. To maintain his
credentials as a Mexican revolutionary, General Carranza had
to be seen as opposing the United States.

The subtlety of Wilson’s diplomacy raises an important
consideration, though. One of the more cogent reasons for
arguing that the Commander-in-Chief alone should possess the
power to declare war is the perceived inability of an unruly
and unwieldy Congress to maintain the discipline and
restraint that a subtle diplomacy demands. For example,
during 1917-1918, Max Weber argued that the nature of
modern, bureaucratically controlled "mass States" required
extreme secrecy and, hence, the exclusion of both the
legislature and the general public:

In direct contrast to the utility of public scrutiny in
the realm of public administration, at the stage of
foreign policy deliberation such publicity can most
severely disturb the rationality and soiberness of
decision-making and hence even endanger or prevent
peace (Cited in Manicas 1989, 313).

Most certainly the messiness of democratic debates lends
great substance to this argument. Still, while certainly
more orderly, it has yet to be proven that White House
meetings produce a greater number of foreign policy
successes. Indeed, why could the Congress not act as
subtly, if not as orderly? For, the subtlety of Wilson’s
diplomacy in 1914 consisted in two elements: Ill-concealed
"secret" deliberations and well-chosen words, the essence of
so much of diplomacy, that, while not entirely false, were not entirely true either. Through the use of closed door sessions, the Congress could conduct "secret" debates that would appear on the front page of the New York Times at least as rapidly as the "secret" White House discussions that Wilson had leaked to the press. Likewise, when accused by opponents of ignoring the far graver atrocities committed by General Carranza's associate, "Pancho" Villa, those in the Congress who support Carranza's faction, should have been able to respond as diplomatically as the White House ever had, "No, we are not ignoring Villa's depredations. But one must look to the larger context and to the immediate problem, which is the slights, the affronts and the indignities visited upon the American flag by General Huerta," and so and so forth in like vein.

But let us return to the Senate chambers so as to savor the foolishness produced there. The specific parliamentary maneuver by which Senator Lodge sought to challenge Wilson's policy was to demand a one day delay before debating the resolution. Acceding to Senator Lodge's demand, Senator Shively, the Acting Chairman of the Committee on Foreign Relations hoisted the Republicans upon their own petard. At about 10:00pm, he called for the Senate to recess until 12:10am, the next day. Returning to their chamber two hours later at midnight, the Senate rejected Senator Lodge's
amended preamble; yet, just as it had during the Spanish-American War, it completely revised the House draft:

Joint Resolution Justifying the employment by the President of the armed forces of the United States.

In view of the facts presented by the President of the United States in his address delivered to the Congress in joint session on the twentieth day of April, nineteen hundred and fourteen, with regard to certain affronts and indignities committed against the United States in Mexico: Be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States.

Be it further resolved, That the United States disclaims any hostility to the Mexican people or any purpose to make war upon Mexico (Pub. Res. No. 63-10, 38 Stat. 770).

In conference, the House agreed to accept the Senate version, which was then passed by both houses and approved by Commander-in-Chief Wilson on 22 April 1914.

Three comments are in order: First, the preamble in particular is yet another excellent example of how the
Congress sees itself as the handmaiden of the Commander-in-Chief concerning questions of war and peace. Even with delays, in less than a day and a half, without additional investigation, debate, or thought, the Sixty-Third Congress has accepted whatever Commander-in-Chief Wilson told them and instantly did his bidding. In addition, the resolution does not even "authorize" Commander-in-Chief Wilson to use the armed forces. Instead, it supinely acknowledges that he is "justified" in using them. Second, as in 1898, the Senate has stripped away what little specificity the House resolution possessed, thereby making a document that calls for the maximum specificity possible -- Jefferson listed twenty-seven specific grievances -- general and non-specific to the point of irrelevance. Third, the disclaimer of the last sentence is beyond belief. On the one hand, after having stripped away the specificity of the House draft, the Senate had to do something to indicate the extremely limited nature of Commander-in-Chief Wilson's planned operations in Mexico. On the other hand, disclaiming "any hostility to the Mexican people or any purpose to make war upon Mexico," while in the same breath approving the invasion of Mexico, an action which cannot be characterized as anything but an act of war, is stunning.

In effect, what the Sixty-Third Congress has done is not to approve an undeclared war but rather to declare an un-war. No court would deny that either Wilson's address or
the congressional joint resolution were functionally equivalent to formal declarations of war, so the war that led to the seizure of Vera Cruz was declared officially, if not formally. Hence, to state that this act of war is not really an act of war transforms the joint resolution into a declaration of un-war. But we digress into the absurd. The proper way to limit military operations "down to the smallest detail" is to inform the war by limiting the political ends for which the war is being fought. And, to limit the ends, one must increase, not decrease, the specificity of the declaration. In any case, neither a declaration of war nor its functional equivalent should ever deny itself, should ever 'disclaim any hostility to whomever or any purpose to make war upon whomever." The word for such a disclaimer is "hypocrisy," naive hypocrisy, perhaps, but hypocrisy nonetheless. One wonders how the family and friends of the two hundred Mexicans reported killed at Vera Cruz viewed the Senate disclaimer.

Be this as it may, while the Senate was dithering over its declaration of un-war during the evening of 20-21 April 1914, events in Mexico were forcing Wilson's hand. After delivering his twelve minute address to the Sixty-Third Congress at 3:00pm on 20 April, Wilson returned to the White House, where he discovered an unexpected telegram from the American consul in Vera Cruz. In the dispatch, the consul informed Wilson that the Hamburg-American Lines's freighter
Ypirange was due to arrive in Vera Cruz on the twenty-first or twenty-second with a cargo of fifteen million rounds of ammunition that General Huerta had purchased in Germany. Obviously, Wilson could not allow General Huerta to be resupplied in this manner. Equally, without a formal declaration of war, he could not stop the Ypirange without creating an unseemly diplomatic incident with Germany. Since the delays in the Senate meant that the joint resolution would not be passed in time, Commander-in-Chief Wilson was forced to act on his own authority after all, which made his gesture of "close conference and cooperation with both the Senate and House" extraneous. As the New York Times of 22 April 1914 summarized Wilson's embarrassment:

The President and his advisors realized that unless an actual state of war existed the seizure of the German vessel and her supplies would be illegal and might bring about difficulties with Germany, which has shown a decidedly friendly feeling toward the United States throughout the Mexican crisis.

In determining to act without waiting for the tardy Senate to finish its deliberation, the President exercised the discretion of which he made mention [in his address of 20 April 1914] (1:5, 2:6).

Exercising that discretion, Wilson immediately issued the necessary orders, and, during the morning of 21 April
1914, sailors and Marines occupied Vera Cruz at a cost of four Americans killed, twenty wounded and a reported two hundred Mexican lives lost. This, along with other developments, led to the resignation of General Huerta on 15 July 1914 and the eventual assumption of the duties of president by General Venustiano Carranza, who drafted a new constitution, and was elected President in his own right in 1917, a post he held until he was assassinated by General Álvaro Obregón in 1920. The affronts and indignities having ceased with the removal of General Huerta, the American troops withdrew from Vera Cruz on 23 November 1914, taking with them the custom duties and other taxes they had collected, which were to be handed over to the de jure government whenever it was recognized, but leaving the fifteen million rounds of ammunition that the Ypiranga had off loaded in the possession of General Carranza, who made good use of them in his final conquest of power.

Such is an outline of the events. Although it caused him considerable trouble to have asked, Wilson had sought congressional approval for his plans, and this is what he got -- no more and no less. The reason he had even bothered was the sure and certain knowledge that the Sixty-Third Congress would, in the end, approve his request without fail. We know that Wilson was sure of his reception not only from the newspapers of the time or from the bracketed "applause" in the Congressional Record but most of all from
the fact that Wilson came before the Sixty-Third Congress at all. No Commander-in-Chief seeks "close conference and cooperation" with the Congress except when he is absolutely certain that the Congress will grant his every wish. When uncertain, the Commander-in-Chief acts on his own authority, as kings have always done. And, as if to prove the point, when he again sent American troops into Mexico -- the Punitive Expedition, led by General John Pershing, to "disperse or capture" "Pancho" Villa's forces after their 9 March 1916 raid on Columbus, New Mexico -- a wiser, if not less cooperative, Wilson saw no need to seek congressional approval.

2. World War I, 1917-1919: "...Let Us Be Very Clear..."

When comparing Commander-in-Chief Wilson's declaration of war against General Huerta in 1914 to his declaration of war against Germany in 1917, one is struck by the almost total absence of elevated sentiment in the 1914 declaration, where it is confined to one short paragraph at the end, while more than half of the 1917 address is devoted to expressions of Wilsonian idealism. The relative absence of sentiment in the 1914 declaration cannot be attributed to an absence of lofty purpose. Wilson intervened in the Mexican civil war to defend the same ideals for which he would later fight World War I -- his abhorrence for dictatorship, his desire to uphold the rule of law, and his firm belief in the superiority of constitutional democracy. Still, in 1914, he
did not dwell upon these sentiments. Instead, he went straight to the heart of the matter, identifying extremely limited grievances that called for extremely limited military operations, which would nonetheless be sufficient to topple the General Huerta and allow the Constitutionalist forces of General Carranza to come to power.

Nonetheless, while one might criticize Wilson's 1914 declaration for its lack of emotion, the way it informs his war against General Huerta remains an excellent example of grand strategic analysis. Indeed, one can go a step further and argue that, precisely because of the absence of lofty sentiment, the relationship among the enumerated grievances, the proposed military remedies, and the desired political goals is clear and unambiguous. The same cannot be said for Wilson's address of 2 April 1917. Because of the large volume of idealistic sentiment and because of their placement after Wilson's concrete analysis, the clear link among grievances, means, and goals is obscured, indeed, erased. In saying this, we wish to move beyond the usual interpretation of Wilson's 1917 declaration.

It has long been recognized that his address divides into two parts. However, the usual interpretation is to identify the first part as a simple prefatory tour d'horizon, while the second part is seen not only as a prime example of Wilsonian idealism but, more important, as an exposition of "the larger issues of the war" (Link 1965,
5:424). A closer reading, however, reveals no such unity or coherence. Rather, one discovers a grand strategic train wreck, a text at odds with itself, sentiment and analysis warring with each other, unable to decide which of two wars the country should wage: A war provoked by extremely limited grievances -- the resumption of unrestricted submarine warfare -- implying extremely limited operations -- principally naval -- in order to achieve an extremely limited political objective -- an end to unrestricted submarine warfare; or a war provoked by extravagant grievances -- the intrinsic evil of autocratic government -- implying unlimited military and naval operations in order to achieve extravagantly expansive political objectives -- "The world must be made safe for democracy." But let us turn to the text itself.

Wilson began his address by recalling "the extraordinary announcement of the Imperial German Government" earlier that year that it would resume unrestricted submarine warfare as of 1 February 1917. Although he characterizes this as "a warfare against mankind," he recounts how his initial reaction was to urge caution and to avoid open warfare by proposing a policy of armed neutrality. Two months later however, Wilson is now forced to acknowledge that armed neutrality has failed,

\[\text{\footnotesize This and the following passages from the address are taken from the Cong. Rec. 1917, 118-20; cf. Wilson 1983, 519-27.}\]
utterly failed. Consequently, in the face of severe provocation, every effort to avoid war having failed:

...in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States [applause]; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war. [Applause.]

Having stated the grievances and formally declared war, Commander-in-Chief Wilson next turned to means. Beginning with the words, "What this will involve is clear," he outlined an appropriately limited grand strategy, a plan consisting of seven elements:

1. "the utmost practicable cooperation in counsel and action with the governments now at war with Germany [applause],"

2. "the extension to those governments of the most liberal financial credits [applause], in order that our resources may so far as possible be added to theirs,"
3. "the organization and mobilization of all the material resources of the country to supply the materials of war,"

4. "the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. [Applause.],"

5. "the immediate addition to the armed forces of the United States already provided for by law in case of war of at least five hundred thousand men [applause], who should, in my judgment, be chosen upon the principle of universal liability to service [applause], and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training,"

6. "the granting of adequate credits to the Government, sustained, ...by well conceived taxation,"

7. "to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans,"

Wilson ends this seven point plan with the very practical admonition that American rearmament must not interfere with her ability to supply "the nations already at war with Germany with the materials which they can obtain only from us or by our assistance. [Applause.] They are in the field
and we should help them in every way to be effective there."
And, finally, he concludes this first part of his address by
forewarning the Sixty-Fifth Congress that the several
executive departments will shortly be forwarding a large
number of bills for its consideration.

What strikes one most about this first part of the
address is its resemblance to his 1914 declaration. It is
both moderate and cohesive. Limited grievances lead to a
limited commitment that entail limited military operations.
The limited commitment is signalled first and foremost by
the fact that Wilson declared war against the German Empire
only, reserving judgment on the other Central Powers, most
notably the Imperial and Royal Government of Austria-
Hungary, the country that had actually triggered the war:

...that Government has not actually engaged in warfare
against citizens of the United States on the seas, and
I take the liberty, for the present at least, of
postponing a discussion of our relations with the
authorities in Vienna. We enter this war only where we
are clearly forced into it because there are no other
means of defending our rights.

It was not until eight months later, in December, that
Wilson would resolve "our relations with the authorities in
Vienna" by requesting a formal declaration from the Sixty-
Fifth Congress against them. But not only is Wilson
reluctant to engage all of the Central Powers, he is also
unwilling to engage fully with the Allied Powers. As the first item indicates, he is unwilling to ally America with Britain, France, and Italy. The closest he will embrace them is "the utmost practicable cooperation in counsel and action." And, indeed, throughout the war, Wilson insisted that America was an "Associated," and never an "Allied," Power. The limited nature of the military operations is signalled by making points two and three financial and economic items, reserving the more explicitly military items to points four and five. Its cohesiveness is seen in the relationship between the limited grievances and, had Wilson said no more, the naval and financial strategy that one envisions developing from these seven points. Since America’s complaint against Imperial Germany was her unrestrained submarine warfare, it would be logical for the navy to bear the brunt of the fighting. Ground forces would of course be sent to Europe, but only in limited numbers for both political and logistical reasons. More important though would be the financial and economic aid, points two and three. By granting liberal credits and providing even more liberal munitions to those countries already in the field, America would not only make a significant contribution to Germany’s eventual defeat, but put the allies very much in her debt, which would have allowed Wilson to pursue the financial component of this strategy after the war, at the peace conference. That is, Wilson
would have arrived at the peace conference with modest expectations but enormous bargaining power, the power to forgive or call in the accumulated war debts of the allies providing him with considerable leverage.

But Wilson did not stop speaking at the end of this most restrained, moderate, and coherent part of the speech. Instead, he went on. Shifting to a more emotional register, Wilson signalled his transition by saying, "While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are." Is this not a very curious sentence? Had Wilson not already told us "clearly" what was involved, listing our "involvement" under seven heads? Had he not already explained "our motives and objectives?" Were we not motivated by the depredations of unrestricted submarine warfare inflicted upon neutral American commerce and the losses in American lives it caused? Was our object not to end these depredations, this loss of lives? Apparently not. It seems that these proximate causes, these specific goals were not the real ones. Instead, there was a higher, more abstract calling.

In the first place, according to Wilson, there has not been any change in motivation between January last and the present:

Our object now, as then, is to vindicate the principles of peace and justice in the life of the world
[applause] as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth ensure the observance of those principles. [Applause.]

Next, Wilson makes much of the point that "We have no quarrel with the German people. [Applause.]" -- only with "the selfish and autocratic power" that is their government. Repeating his theme that democratic nations are more honorable than autocratic ones, he warmly welcomes the recent Russian Revolution as additional proof of the inevitable triumph of democracy. He, then, recalls the Zimmermann telegram and the considerable number of "spies and criminal intrigues everywhere [set] afoot" by "the Prussian autocracy" to dislocate and disrupt "our unsuspecting communities."

Catching his second wind, Wilson launches into a momentous non sequitur:

We are glad, now that we see the facts with no veil of false pretence about them, to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. [Applause.] Its peace must be planted upon the tested
foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them.

The seeds have now been sown from which Wilson's Fourteen Points will grow in the next year; yet, without for a moment denying the tremendous power of these sentiments -- even Senator Lodge stood and cheered enthusiastically during this second part of the speech -- has Wilson not obscured that which was previously clear? No longer is their a clear link between concrete grievances and specific remedies. Indeed, there are no longer any grievances at all, only enlightenment. Before we (Wilson?) wandered in darkness, blinded by the "false pretence" of the Imperial German Government. Now, with the "facts" before us, with the "veil" removed from before our eyes, we see as for the first time the intrinsic evil of autocracy. So enlightened, we now perceive our goals like the Shinning City on the Hill -- "the ultimate peace of the world," "the liberation of its peoples, even the German peoples," "self-determination," making the world "safe for democracy," etc. As sentiment, it is wonderful; as grand strategy, it is nonsense.
The point of course is not that declarations of war should avoid sentiment, should avoid soul-stirring rhetoric such as this. Not at all. The point is that, when such sentiment confuses and confounds the clear exposition of grand strategy, it is inappropriate. Jefferson managed to combine memorable sentiment with solid analysis. His is the model, not Wilson's. For, Wilson's soaring sentiments tragically mislead himself, the American people, and the "oppressed" peoples of Europe. Everyone quickly forgot the moderate and sensible grand strategy of the first part, remembering, instead, the exuberant rhetoric of the second. Or, to be more precise, everyone except the military and naval staffs forgot the first part. American participation in the war was informed by the sober seven points sketched in the first part. The public relations battle, however, was fought with the phrases minted in the second. At Versailles, needless to repeat, the two halves of the address collided, much to the regret of all.

One final peculiarity of the situation in 1917 is the origins of the text of the formal congressional declaration. At about 10:00pm on 1 April 1917, after he had finished the final draft of his speech, Commander-in-Chief Wilson sent the following excerpt to Secretary of State Lansing requesting the Secretary to draw up a resolution "in the sense of these words" (Wilson 1983, 41:516):
...I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war.

The State Department's draft was approved by Wilson and submitted to the House leadership the next day shortly before Wilson spoke to the Joint Session:

**JOINT RESOLUTION, Declaring that a State of War Exists Between the Imperial German Government and the Government and People of the United States and Making Provisions to Prosecute the Same.**

_Whereas._ The recent acts of the Imperial German Government are acts of war against the Government and people of the United States:

_Resolved._ By the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and
That the President be, and is hereby, authorized and directed to take immediate steps not only to put the country in a thorough state of defense but also to exert all of its power and employ all of its resources to carry on war against the Imperial German Government and bring the conflict to a successful termination (The New York Times 3 April 1917, 1).

After passing in the House, it was amended in the Senate, without changing the sense markedly:

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the People of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and people of the United States of America: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the
Imperial German Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States (Approved, April 6, 1917. Pub. Res. No. 65-1, 40 Stat. 1).

In essence, therefore, Commander-in-Chief Wilson not only wrote his own reasoned declaration on 2 April 1917, but the foregoing unreasoned congressional declaration as well. Yet another illustration of how incredibly marginal the Congress has become.

3. World War II: "So, we are going to win the war..."

If Commander-in-Chief Wilson erred by misplacing his lofty sentiments, thereby articulating two grand strategies, twenty-four years later, his Assistant Secretary of the Navy, Franklin Roosevelt, went to the opposite extreme. Commander-in-Chief Roosevelt articulated none at all, which is rather too few. To be more precise, the argument is not that Roosevelt himself lacked a grand strategy. He most certainly had one. The argument is rather that he failed to articulate his grand strategy in his declarations of war, indeed, in any single public document that could be regarded as the functional equivalent of a declaration of war. As a result, he himself was unable to resist an alternate, modified grand strategy, and Truman, after Roosevelt's death on 12 April 1945, found himself in the uncomfortable
position of winding down a war the objectives of which he had only the foggiest intimations.

We know that Roosevelt possessed a grand strategy because scholars have been able to piece it together, once the relevant documents were declassified (e.g., Kimball 1991). The problem, however, is not one of knowledge; it is one of maximizing wartime efficacy. Even ignoring the fact that allowing one man to determine grand strategy is antidemocratic, how is unity of effort and purpose to be achieved unless everyone -- from the commander-in-chief down to the janitor in the bootlace factory -- knows why the war is being fought and what its goals and aims are? The answer, of course, is to wait until the enemy bombs Pearl Harbor. Unfortunately, the enemy is not always so obliging. But even a dramatic and unifying event such as Pearl Harbor is no substitute for a fully reasoned public declaration of war, as the confused and confusing story of 8 to 11 December 1941 demonstrates.

To begin with, the operational pole star to Roosevelt's personnel grand strategy was 1) "the enemy of my enemy is my friend" and 2) "Germany First." Nazi Germany was the principal enemy, the principal threat to American interests, and she must be dealt with first. Everything else was secondary. Anything or anyone who could help accomplish that goal was welcome. Roosevelt decided upon these principles long before Pearl Harbor, and he stuck to them.
throughout the war. The first concrete, if secret, expressions of his policy are to be found in the ABC-1 (American-British [military staff] Conversations-1) agreements hammered out in fourteen sessions between 19 January and 29 March 1941 and the RAINBOW-5 war plan which was formally approved by the Secretary of the Navy on 28 May 1941 and the Secretary of the Army on 2 June 1941. The first concrete public expression was the passage of the Lend-Lease Act on 11 March 1941, and, most pointedly, its extension to the Soviet Union after she was attacked by Nazi Germany in June 1941. This two pronged policy was also strongly hinted at on a number of other public occasions, prominent among them Roosevelt’s meeting with Churchill aboard a group of British and American war ships anchored in Placentia Bay, Newfoundland, 12-14 August 1941. At the end of this meeting, the two leaders issued the Atlantic Charter, that most curious of documents. The charter itself is a joint declaration of eight anodyne "war aims" that echoed Wilson’s Fourteen Points. The sixth point specifically identifies "the Nazi tyranny" as that against which they are warring. However, these "war aims" are being formulated by two countries, only one of which is formally at war with "the Nazi tyranny." The other is formally neutral. Why, the isolationists asked with considerable logic, is a neutral power declaring its "war aims?"
answer of course is that Roosevelt's personal grand strategy was not yet officially America's grand strategy.

Three months later, on 7 December 1941, the situation changed abruptly. Yet, while Pearl Harbor silenced the isolationists, it did nothing to clarify America's grand strategy. Indeed, it only increased the confusion. For, Roosevelt's "A Date Which Will Live in Infamy" speech is a deeply flawed document. It did not and could not inform his conduct of the war. In the first place, it is unprincipled. That is, it is all specific grievances and no principles. If Wilson had confused the issue by devoting too much of his 1917 address to abstract principles, Roosevelt went to the opposite extreme, failing to clarify the issues by linking the war against Japan to any larger political or moral principles. Indeed, the closest he came to a statement of the principles that might have informed the war was, "Hostilities exist. There is no blinking at the fact that our people, our territory and our interests are in grave danger." Yes, of course, but which "interests" are at risk? Roosevelt never got around to explaining in public, very much to Truman's chagrin, who, several years later, would be hamstrung in his efforts to negotiate the German and, most especially, Japanese surrenders, as we shall describe in a moment. In the second place, Roosevelt's 8 December address established no war aim, no goal or objective. Toward the end of his address he did enunciate what was to become,
after the Casablanca Conference in January 1943, the official public war aim -- "absolute victory," "eventual triumph" -- in a word, "unconditional surrender."

Unfortunately though, an "unconditional surrender" counts as a goal or objective only among the sophists, as we shall explore in some detail in the next section.

And, finally, the 8 December address gave excellent reasons for declaring war against Japan, but none whatsoever to war against Germany and Italy. Therefore, because Roosevelt held tenaciously to his "Germany First" policy until his death, his Monday, 8 December 1941 address represented, at best, a temporary or interim grand strategy -- fight the secondary enemy until some means could be found to declare war against the primary enemy. He hinted at precisely this intention toward the end of his fireside chat to the nation on Tuesday, 9 December 1941, in a passage which must be considered a second and more comprehensive declaration of war. First, he proclaimed the precept that had and would guide his alliance policy throughout the war -- "the enemy of my enemy is my friend":

Our policy [of Lend-Lease] rested on the fundamental truth that the defense of any country resisting Hitler or Japan was in the long run the defense of our own country. That policy has been justified. It has given us time, invaluable time, to build our American
assembly lines of production (Public Papers... Franklin D. Roosevelt 1950, 10:526).

Next, he created a most useful myth concerning our grievances against Nazi Germany:

Your government knows that for weeks Germany has been telling Japan that if Japan did not attack the United States, Japan would not share in dividing the spoils with Germany when peace came. She was promised by Germany that if she came in she would receive the complete and perpetual control of the whole Pacific area -- and that means not only the Far East, but also all of the islands in the Pacific, and also a stranglehold on the west coast of North and Central America (p. 529).

Roosevelt was, of course, completely wrong. Germany had been "telling" Japan nothing of the kind, and "promising" even less. It was not Hitler's temptations that had provoked Pearl Harbor; rather it was his own imposition of economic sanctions that had forced the Japanese to attack when they did. But the truth of the matter does not concern us here. What is important is the way in which Roosevelt insinuates that Nazi Germany is the real enemy, the puppet master pulling the strings behind the curtain.

Immediately after this insinuation, Roosevelt goes on to project his own grand strategy upon Germany and Japan,
providing his listeners with a photographic negative as it were:

We know also that Germany and Japan are conducting their military and naval operations in accordance with a joint plan. That plan considers all peoples and Nations which are not helping the Axis powers as common enemies of each and every one of the Axis powers.

That is their simple and obvious grand strategy. And that is why the American people must realize that it can be matched only with similar grand strategy (p. 529).

There was of course no "joint plan." But again that is irrelevant. What is important is that the "American people" must respond "with a similar grand strategy," with Roosevelt's personal grand strategy of considering every friend of my enemy my enemy and every enemy of my enemy as my friend. To hammer this point home, there next followed a long list of military non sequiturs:

We must realize for example that Japanese successes against the United States in the Pacific are helpful to German operations in Libya; that any German success against the Caucasus is inevitably an assistance to Japan in her operations against the Dutch East Indies; that a German attack against Algiers or Morocco opens the way to a German attack against South America, and the Canal.
On the other side of the picture, we must learn also to know that guerrilla warfare against the Germans in, let us say, Serbia or Norway help us; that a successful Russian offensive against the Germans helps us; and that British success on land or sea in any part of the world strengthens our hands (p. 529-30).

Since the Japanese and Germans were operating completely independently of each other, the mutual support that Roosevelt ascribes to their operations can be dismissed as pure fantasy. Likewise, on 9 December 1941, when the United States was technically at peace with Germany, the success or failure of the Serbians, the Norwegians, the Russians, or the British would do nothing to help or hinder the American effort in the Pacific. But, of course, that is the whole point. In Roosevelt’s mind, if not in minds of his countrymen, it is a mere technicality that war had not yet been declared against Germany and Italy:

Remember always that Germany and Italy, regardless of any formal declaration of war, consider themselves at war with the United States at this moment just as much as they consider themselves at war with Britain or Russia (p. 530).

Again, Roosevelt projects his own feelings onto the enemy, showing the country a photographic negative of his own policy. However, if all of this indirection be a little too
oblique, the Commander-in-Chief concludes with a dose of realpolitik that brings everything into focus:

We expect to eliminate the danger from Japan, but it would serve us ill if we accomplished that and found that the rest of the world was dominated by Hitler and Mussolini.

We are going to win the war and we are going to win the peace that follows (p. 530)

However muddled or fantastic Roosevelt's argument may have been, its foundational premises were rooted firmly in reality. Unfortunately though, while most Americans could readily accept the precept that "any enemy of my enemy was my friend," the reality of Nazi domination was not a message a majority of Americans were particularly ready to hear, not even, or, perhaps, especially, after Pearl Harbor. For most Americans, Imperial Japan, not Nazi Germany, was the main enemy. And, so Roosevelt ends this portion of his radio chat on a characteristically ambiguous note: "So, we are going to win the war...." Yes, of course. But which war? The declared war against Japan? The undeclared war against Germany? Or, both? Roosevelt strongly implies both, but the Congress had declared war only against Japan. The question had clearly not been settled. Thus, despite the fact that this passage from Roosevelt's 9 December 1941 fireside chat is the clearest and most complete public statement of his grand strategy, it is still far from
satisfactory. It is too indirect, too personal, and his authority for waging war against Nazi Germany is very much in doubt. Furthermore, Roosevelt has glossed over the primary grand strategic puzzle of the war -- America's alliance relationship with the Soviet Union: Should the United States ally itself with the Communist dictatorship? And, if so, to what degree?

The question of degree was the nub of the problem. For, although it was important for Roosevelt to choose as between a "Japan First" and a "Germany First" strategy both options were, in a certain sense, equally acceptable. For the British and the Soviets, this was not the case, of course, and their needs weighed heavily in the balance. But from a purely American perspective, the bottom line was that both Nazi Germany and Imperial Japan were going to be defeated; the exact order was not particularly important. The same cannot be said about America's alliance with the Soviet Union. Unlike America's other allies, an alliance with the Soviet Union was pregnant with the most serious repercussions for the peace. The trade-offs among geography, lost American lives, and policy were stark and brutal. Geography dictated that the Soviets had a natural interest in Eastern Europe, not to say a natural sphere of influence. More important though, it also dictated that the Red Army and, in all probability, only the Red Army was going to liberate Eastern Europe. A liberating army,
needless to say, is pretty much free to impose whatever political settlement it desires. Roosevelt was planning to do just that in the areas his army liberated; he could expect little different from Stalin.

But not only did geography dictate that the Red Army would liberate Eastern Europe, an American desire to minimize the number of American lives lost in the European war also meant that it was highly desirable for the Soviets, and not the Americans, to do the heavy fighting that would be necessary to liberate Eastern Europe. As long as the Red Army was engaged against the bulk of the Wehrmacht, American casualties could be kept to a minimum and the US Army to ninety divisions, thereby placing few strains upon American manpower resources (cf. Matloff 1960). The trade-off was of course political. In order to minimize American casualties in Western Europe, Roosevelt was going to have to give Stalin a free hand in Eastern Europe. One could always hope that Stalin would be subtle and unobtrusive in his manipulation of the situation in Eastern Europe, but, at the end of the day, unless Roosevelt was willing for more Americans to fight and die in Europe, there was little he could do to restrain Stalin after the Red Army liberated Eastern Europe.

Needless to say, Roosevelt decided to minimize American casualties in Europe by providing unrestrained support for the Red Army as it battled its way back from Moscow and
Stalingrad and on to Berlin. Since it is difficult to imagine anyone making a different decision, it is nearly impossible to criticize Roosevelt for making it. The objection, therefore, is not that Roosevelt made the decision; it is, rather, that his lack of candor concerning this alliance -- both the bargain itself and the devil with whom it was being made -- poisoned the peace. After the war, the natural and logical consequences that followed from Roosevelt's adherence to the principle that "my enemy's enemy is my friend" would be labelled "The Betrayal of Yalta." However, there was no betrayal at Yalta; rather, there was a compelling decision made to minimize American casualties in Europe and to make little effort to resist the dictates of geography. The decision lacked, perhaps, a certain idealism, but its logic was irresistible.

But, again, it is nearly impossible to criticize Roosevelt for not being more candid. He was caught in a trap not of his own making. The temper of the times, as reflected all too faithfully in the Congress, made such candor impossible. The fragile domestic consensus that had been sparked by Pearl Harbor quite simply could not have withstood a public debate on the eventual costs for our alliance with the Soviet Union. Consequently, at no time during the war, did Roosevelt or any high Administration official suggest publicly that the peace might be as troubled as the war because Stalin might not live up to the
ideals of the Atlantic Charter. Still, had the Congress possessed sufficient sophistication to have allowed for such a public debate, much of the animus that is captured in the slogan "Betrayal at Yalta" could have been dissipated. Roosevelt's decision was, after all, irresistible. But the fact of the matter was that the climate of the times would not have supported a public debate on such a difficult issue as the trade off between American casualties in Europe and Soviet control in Eastern Europe. Neither the Congress nor the public then possessed the required level of sophistication. That degree of sophistication is acquired only from a long practice of debating fully reasoned declarations of war, only from the serious study of the grand strategy that should inform a war, two skills that the Congress, in particular, has yet to begin to acquire.

Be this as it may, Roosevelt's most immediate problem in December 1941 was not explaining the unpalatable repercussions of his policy towards the Soviet Union; rather, it was finding an official way to enter the war against Nazi Germany. Fortunately, this difficulty was overcome almost immediately. Adhering to the provisions of Article III of the Tripartite Pact, both Germany and Italy declared war on the United States four days later, Hitler in a long eighty-eight minute diatribe before the Reichstag, Mussolini in a short exhortation before a crowd of fifteen thousand in the Palazzio di Venezia. In response,
Commander-in-Chief Roosevelt sent a short message to the Congress at 12:26 pm the same day. His message, which was read in both Houses simultaneously, began, "On the morning of December eleventh, the Government of Germany, pursuing its course of world conquest, declared war against the United States," mentioned as an afterthought, "Italy also has declared war against the United States," and concluded, "I therefore request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy" (Public Papers... Franklin D. Roosevelt 1950, 10:532). Two and three-quarters hours later, moving as quickly as parliamentary procedure permitted, Commander-in-Chief Roosevelt signed both declarations, which were identical to the unreasoned declaration the Seventy-Seventh Congress had voted against Japan seventy-two hours earlier.

With this ended what might be called the "heroic" period of Second-World-War declarations of war, the declarations against Bulgaria, Hungary, and Roumania on 5 June 1942 being but an afterthought, a complaisance towards the Soviets. In summary then, between 8 and 11 December 1941, the functional equivalent of six declarations of war were issued: Three by the Congress, three by the Commander-in-Chief. All three of the congressional declarations were unreasoned and, hence, of no interest. Roosevelt's message of 11 December was also unreasoned and, hence, as
meaningless as the formal congressional declarations. However, the address of 8 December and the fireside chat of 9 December were both reasoned and, hence, of significant interest. Nonetheless, whether taken together or separately, they fail to articulate a coherent grand strategy; they fail to inform the American portion of the Second World War. The 8 December address fails because it is all grievances against Japan, a simple listing of the recent attacks. It articulates neither the principles nor the goals that might justify the war. In addition, it does not mention Nazi Germany. The 9 December fireside chat remedies this last fault, but fails on two counts: First, it failed to clarify the limits of our relationship to the Soviet Union, and, second, it failed to establish priorities as between "Germany First" or "Japan First." For, once war had been declared against Germany, the second most important grand strategic decision was to establish the relative distribution of resources as between the two principal theaters. Should America work to defeat Japan first and, then, turn its full efforts against Nazi Germany? Or, should the priority be the other way around?

The question was obvious and urgent. And, indeed, Roosevelt had long since answered it in his own mind — "Germany First." Yet, he never said so clearly and publicly. Consequently, America’s grand strategy remained muddled in everyone else’s mind. Not only did a majority of
Americans believe that Japan, not Germany, was the main enemy well into 1943 (Stoler 1980, 434), but, more important, General George C. Marshall and the Joint Chiefs of Staff argued for a "Pacific-First" alternative strategy during all of 1942 and on through to mid-1943. Amazingly -- dangerously -- then, six declarations of war and no grand strategy. Roosevelt had lost the initiative. Instead of informing the war by denouncing the grievances and declaring goals that demanded a policy of "Germany First," Roosevelt waffled, allowing circumstances and others to modify and muddle his allocation of resources.

The principal "circumstance" that muddled his priorities was the need to be seen doing something, anything, to fight the Germans. The principal "other" who modified his grand strategy was Winston Churchill. For, to say that the second most important grand strategic choice was whether to defeat Germany or Japan first is to focus exclusively upon American interests. Complicating the matter were the interests of the British Empire, which, for centuries, had had a fundamental interest in controlling the Mediterranean, especially, the eastern Mediterranean after the opening of the Suez canal, as the life line of her vast empire. Thus, when Hitler's attack on the Soviet Union in June 1941 removed any immediate danger of a German invasion of the British Isles, Churchill was in a position to shift his attention to pursuing Britain's traditional imperial
interest in the Mediterranean. This led, after Pearl Harbor, to a proposal for a joint American-British campaign in North Africa during 1942.

From an American perspective, the primary advantage of this British proposal was that it relieved pressure from the press and public to get on with the war, to fight some Germans, any Germans, by ensuring that American troops would engage German troops at the earliest possible moment. The primary disadvantage was that it made a mockery of Roosevelt’s "Germany First" policy. As General Marshall and the Joint Chiefs of Staff argued repeatedly, in order to implement a "Germany First" policy, one had to assume a defensive posture in the Pacific and, then, take decisive action against Germany. "Decisive action," however, did not mean nibbling around the edges of Hitler’s conquests south of the Alps. It meant remaining inactive during 1942 and much of 1943 so as to build up sufficiently large forces in England to make a successful crossing of the English Channel during 1943, and, then, driving straight for Berlin so as to meet up with the Red Army somewhere to the east, somewhere in Poland. There really was no other way to implement a "Germany First" strategy. Furthermore, as General Marshall and the Joint Chiefs of Staff pointed out repeatedly, the logical corollary of this analysis was that, should decisive action against Germany be delayed because resources were being diverted away from the pre-invasion buildup in England
for any reason, then decisive action was always possible against Japan. America, if not Britain, could always assume a defensive posture in Europe so as to go on the offensive in the Pacific. Moreover, a "Pacific First" policy would possess the not inconsiderable advantages of conforming to the desires of the majority of Americans, General MacArthur, the US Navy, and China, all of whom were itching to fight the Japanese, and not the Germans.

Needless to say, Commander-in-Chief Roosevelt adamantly opposed any change in the rhetoric of his personal grand strategy. He was, however, amenable to changes in the actual allocation of resources. Hence, the final compromise worked out by General Marshall was to retain the rhetoric of "Germany First" in planning documents but to reallocate American resources three ways: In Europe, while continuing the buildup for a cross-Channel invasion in 1944, limited American resources were divert to the British-proposed Mediterranean strategy in 1942 and 1943. In the Pacific, additional new resources were authorized so that offensive action against the Japanese could begin. As a result of this reallocation, the number of Americans engaged against the Germans did not surpass the number engaged against the Japanese until the June 1944 Normandy landings (Stoler 1980).

Yet, this compromise grand strategy was not inevitable. Had it been possible for Commander-in-Chief
Roosevelt to be more forthright in his public pronouncements, it is easy to imagine a different outcome. For example, instead of sending a perfunctory note to the Congress requesting declarations of war against Nazi Germany and Italy on 11 December 1941, Roosevelt could have seized this opportunity to have made a major address before a joint session of the Congress in which he could have stated forcefully the reasons Nazi Germany was more of a threat to America than Japan, and, hence why we should defeat our European enemies before turning our full attention to the Pacific. Having articulated his "Germany First" grand strategy publicly and clearly and having received an enthusiastic congressional endorsement, Roosevelt would then have been in a strong position to deal with both domestic and foreign challenges. Domestically, he could have explained why so few American troops were engaged against the Japanese and none at all against the Germans during 1942 -- this seeming inactivity being necessary to buildup sufficient forces in England for a cross-Channel invasion against our primary enemy in 1943. Overseas, with public support behind him at home, Roosevelt would have been able to resist British demands for a Mediterranean strategy, for diverting American troops to campaigns in North Africa and Italy. Then, had American and British forces invaded northern France during 1943, they, and not the Soviets, would most probably have liberated Berlin and most of the
rest of Eastern Europe, with all that that would have meant for our alliance relationship with the Soviet Union and the postwar settlement.

In the final analysis though, Roosevelt's failure to articulate clearly and publicly the grievances that would have justified a "Germany First" policy is a relatively minor matter. What confusion and disagreement there was did not so much impede the war effort as send it off in a different direction. Still, the lesson should be clear: Grand strategy, at the level we are discussing, cannot be kept secret. It must be communicated publicly, clearly, and forcefully so that no one is in doubt, so that unity of purpose and effort can be established and maintained. Under no circumstances should the Joint Chiefs of Staff, not to mention the general public, still be debating one of the most fundamental elements of grand strategy eighteen months after the commencement of a war. Whenever this happens, something is wrong, very wrong. Which brings us to the central paradox of Roosevelt's conduct of the Second World War: In private, at secret conferences and meetings, he ran the war with enormous vision, compassion, and just plain common sense, but, publicly, he portrayed the war as if he were a public relations experts, a slick Madison Avenue and Hollywood type who knew everything about "molding" public opinion and nothing about grand strategy and the consequences of their actions for the peace. The
schizophrenia between the private competence and the public deception is as unnerving as it is striking.

3.1 Failing to Declare Peace: Expediency and Confusion

Still, when all is said and done, Roosevelt’s failure to articulate publicly and clearly the grievances that would justify his "Germany First" grand strategy is a relatively minor defect in his declarations of war. Of much greater consequence is his failure to declare peace, a failure which affords the opportunity to examine in some detail the moral functions of a declaration of war. Until now, we have been content to repeat that the moral function of a well-reasoned denunciation of war is to articulate the remedies that will restore a shattered peace. Implicit in this of course is the belief that a direct and intimate link connects the stated grievances to the proposed remedies. It is now time, however, to make this belief explicit and give it some precision. This can be done most easily by recalling Hannah Arendt’s observation that:

Violence, being instrumental by nature, is rational to the extent that it is effective in reaching the end that must justify it. And since when we act we never know with any certainty the eventual consequences of what we are doing, violence can remain rational only if it pursues short-term goals (1972, 176).

Arendt’s point of course is that human action is always perilous because of the unpredictable effects of the
principle of double effect, and that the perils increase as
the distance between the action and its justifying goals
lengthens. Furthermore, this is true even, or, perhaps,
especially, when the action is motivated by the best of
intentions.

Hence, the dilemma for those undertaking any action is
to articulate short-term objectives that not only resolve
the immediate irritant but do so without jeopardizing long-
term interests. For example, Jefferson's short-term goal of
independence clearly resolved both the twenty-seven
grievances that had provoked the rebellion and, at the same
time, moved the colonist toward the accomplishment of their
long-term goals. Crucially however, Jefferson did not
specify what that long-term goals might be, beyond a vague
reference to "these United Colonies." Another good example
is Wilson's 1914 declaration of war against General Huerta.
The declaration's two short-term goals -- 1) that General
Huerta render full military honors to the American flag and
2) that he reprimand certain officers -- not only remedied
the immediate irritant, his harassment of American
officials, but also promoted Wilson's long-term goal of
ensuring that the progressive forces of General Carranza's
Constitutionalists eventually gained power in Mexico. But
again crucially, in 1914, in his declaration, Wilson
purposely remained vague about just what those long-term
goals were. In sum, both declarations were "rational" in
Arendt's terms. Both established a direct link between the stated grievances and the desired short-term resolution, while at the same time creating sufficient, but not necessary, conditions for realizing barely hinted at long-term interests.

This last point is critical. It marks the difference between expediency and confusion, the two principal violations of Arendt's precept. Expedience occurs whenever the long-term consequences of a decision are ignored in the pursuit of short-term advantage. Confusion and disappointment, whenever long-term interests are substituted for short-term goals, whenever the declaration breaks the link between the stated grievances and the short-term remedies by implying that certain long-term interests are the short-term remedies, in other words, that the war is a necessary, and not merely sufficient, condition to achieve those long-term interests. As an example of expediency, we shall investigate Roosevelt's incessant demand for an unconditional surrender during World War II. This is a relatively straightforward example, which we shall take up in the next section. It produces no great surprises, once one recognizes an unconditional surrender for what it is, an injurious expedient. However, our two examples of confusion -- Wilson's Fourteen Points and Roosevelt's Atlantic Charter -- produce a most curious surprise when one concludes that the source of the disappointment generated by substituting
long-term for short-term goals is not so much a confusion of goals as a confusion of relationships. That is, the war aims (i.e., the peace terms) articulated in a well-reasoned declaration of war define one's relationship to one's enemy because they require the enemy's cooperation, which he pointedly refuses to give. Thus, Jefferson's short-term goal of independence defined the colonist's relationship to the British because its attainment required British cooperation. In contrast, long-term goals do not define one's relationship to one's enemy because the achievement of these goals seldom require the enemy's cooperation. Instead, they require the cooperation of one's allies. Thus, Wilson's long-term goal of making the world safe for democracy could be achieved only through the full cooperation of his allies, while Roosevelt's goal of no territorial aggrandizement could be achieved only through the full cooperation of the Soviet Union. Whether the defeated enemy cooperated or not in these matters was largely irrelevant.

In other words, the confusion begins when one demands of the enemy that which only the allies can grant; the disappointment, when the allies fail to fulfill commitments agreed to by the defeated enemy, but to which they never committed themselves. For, the allies are not bound by the peace terms enunciated in a declaration of war; they are bound only by the terms of the treaty of alliance, should
there be one. Unfortunately though, a treaty of alliance is not always desirable or possible, which creates a little noticed dilemma. How does one define one’s relationship to one’s allies when a treaty of alliance is either impossible or inadequate? Wilson tried to resolve this dilemma by mixing his short- and long-term goals together in his Fourteen Points; Roosevelt, by articulating only long-term interests in the Atlantic Charter and the United Nations Declaration while refusing to even consider the possibility of articulating his short-term goals, which remained unknown throughout the war. Since Roosevelt’s approach to both of these dilemma was conditioned by, if not a reaction to, Wilson’s handling of them, we shall begin with an examination of his Fourteen Points.

3.1.1 Sowing Confusion and Reaping Disappointment: "I am perfectly willing to mislead..."

On 8 January 1918, nine months after his 2 April 1917 declaration of war, Commander-in-Chief Wilson returned to the Capitol to clarify his war aims. Everyone agreed that "making the world safe for democracy" was rather too vague, and so Wilson returned to enunciate more precisely his peace terms under fourteen famous points. Later in the year, Imperial Germany accepted these Fourteen Points as the basis of an armistice and the starting point for peace talks. Jubilation over the end of the slaughter in the trenches, however, soon turned into recriminations and disappointment
when only six of the Fourteen Points (numbers 7, 8, 10, 11, 13, and 14) were accepted by the allies gathered at Versailles for the peace talks. There are of course a number of reasons for this failure in peace making. From our perspective, the most obvious is to note how much the Fourteen Points of January 1918 differ from, not to say conflict with, the seven points of the first part of Wilson's declaration of April 1917. In addition, a delay of nine months before offering one's peace terms to the enemy creates problems of its own. But, the two difficulties that touch upon the problems of drafting declarations of war most directly are, first, the confused and confusing quality of Wilson's Fourteen Points and, second, Wilson's failure to obtain the agreement of his allies beforehand.

The second point is straightforward. Before declaring war, Wilson should have secured an agreement with the Allied Powers on war aims as a condition for American entry into the war. As a result of this fundamental error, the relationship between America and its allies was always ambiguous, each side never knowing what the other "really" wanted. Hence, the Fourteen Points were never an agreed upon Allied position; they were always Wilson's peace terms, the war aims of an Associated Power only. Wilson was of course free to lobby for them at the peace conference, which he did most vigorously, but, as an Associated Power, he had relatively little leverage. Twenty-three years later,
Roosevelt would not make the same mistake. He made sure that Britain agreed to eight principles for organizing the peace four months before America entered the war by signing the Atlantic Charter. Then, after Pearl Harbor, he ensured that all the other allies endorsed those principles by signing the United Nations Declaration. The advantage of arriving at an agreement among the allies before or soon after a war commences is obvious. As we shall note in a moment, Roosevelt’s problem was that, after he had rectified Wilson’s error by securing acceptance by all of his allies of his long-term goals, he failed to articulate the short-term goals that would make it possible to realize his long-term goals. In particular, he failed to secure agreement with Stalin on the composition of the Polish government and on Poland’s frontiers before the Red Army had liberated Poland.

The first point is more complex and more interesting. To appreciate why, it is useful to analyze the Fourteen Points in two different ways and, then, to compare the results: First, to draw out the confusion of the peace terms themselves, it is useful to carve the list up using Arendt’s distinction between the short-term goals that can justify a resort to war and the long-term goals that cannot. Next, one needs to separate out those goals that require the assent of the enemy from those that require the assent of the allies. And, finally, comparing the results of these
two exercises, one is not surprised to discover that points that require the assent of the allies are also the long-term points that cannot justify the war and that the points that require the assent of the enemy are, which leads to the conclusion that Wilson’s idealism went awry, not so much because it lacked realism, but rather because it conflated and confounded long- and short-term goals that should have been dealt with separately.

When the Fourteen Points are analyzed using Arendt’s criterion, they divide into three groups or types: 1) Three of the points clearly represent short-term goals directly related to the war. 2) Eight points clearly represent long-term interests of general concern. 3) Three points are a mixture of long- and short-term interests. The three short-term goals are points 7. withdrawal of German troops from Belgium, 8. withdrawal of German troops from France and restoration of Alsace-Lorraine, and 11. withdrawal of German and Austrian troops from the Balkans. The withdrawal of German and Austrian troops from the various invaded countries is clearly a short-term goal of the war. Indeed, these withdrawals, in and of themselves, will settle all of the most immediate grievances. They are also obvious first steps towards reaching agreements on any larger issues. All three points are, therefore, "rational" war aims in Arendt’s terms.
The eight long-term goals are 1. "open covenants of peace, openly arrived at," 3. free trade, 4. a reduction in armaments, 5. "impartial adjustment of all colonial claims, based upon... the principle that... the interests of the populations concerned must have equal weight...," 10. "autonomous development" for "the peoples of Austria-Hungary," 12. self-determination for the non-Turkic peoples of the Ottoman empire and internationalization of the Dardanelles, 13. "An independent Polish State" with "free and secure access to the sea," and 14. The formation of "a general association of nations." All of these points are of course laudable. One may even want to argue, as Wilson did, that they represent the underlying causes of the war. Yet, none of them was a direct or immediate cause of the war, and all of them are vague long-term goals whose achievement is problematic in the extreme. None of them can truly inform a war. For example, points 1, 3, and 4 are goals that will in all probability never be reached. Covenants can perhaps be more openly arrived at, trade can perhaps be made somewhat freer, and armaments can perhaps be reduced to some degree, but to wage a war to achieve incremental movement towards any or all of these goals is unjustifiable, especially the thought that a war can be fought to reduce arms. Likewise, point 5 is problematic because the adjustment of colonial disputes is particularly irrelevant to any discussion of the immediate causes of World War I. Points 10, 12, and 13 are
also troubling. Even should one want to argue that the underlying causes of the war might have been a frustrated desire for self-determination among the peoples of Eastern Europe and Southwest Asia, America, Britain, France and Italy most certainly did not enter the war in order to secure self-determination for these peoples. Consequently, for the Great Powers, in general, and America, in particular, self-determination is neither a grievance nor a remedy that could possibly inform the First World War. And, finally, the establishment of "a general association of nations, point 14, could hardly justify a resort to war. The absence of such an association was certainly not a grievance that provoked the war. Therefore, all eight points are "irrational" in Arendt's terms. They are far too long-term to be able to justify a resort to war.

The three mixed points are 2. "Absolute freedom of navigation ... in peace and war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants," 6. withdrawal of Central Power troops from Russia and the arrival at a settlement acceptable to the Russian people, and 9. "readjustment of the Italian frontier ... along clearly recognizable lines of nationality." These points are mixed because, at one level, they do respond to direct and immediate causes of the war; yet, at another level, they do not. Yes, Imperial Germany's violation of freedom of
navigation was the specific cause of America's entry into
the war, but to wage war for an "absolute" freedom of
navigation? According to Commander-in-Chief Madison, that
was the reason we fought the War of 1812, which, since we
lost, fairly well determined that no such "absolute" right
existed. And, what is this "enforcement" action that Wilson
is talking about? Likewise, the withdrawal of Central Power
troops from Russia may have been a good idea, but the
question is complicated by the fact that the Russians were
soon to sign a peace treaty with the Central Powers at
Brest-Litovsk on 3 March 1918. And, finally, the
readjustment of the Italian frontier along ethnic lines was
not possible in light of the secret covenants secretly
arrived at that had been the condition for Italian entry
into the war in the first place. Thus, while these three
points are certainly "rational" at one level, they are
unrealistic at another.

Having carved up Wilson's Fourteen Points one way, we
can dissect them another way, classing them according to
whether they require the assent of the enemy or the allies.
Putting aside the three mixed points as indeterminate, the
three short-term "rational" objectives demanding the
withdrawal of Central Power troops from Belgium, France, and
the Balkans clearly require the assent of the enemy. They
are, therefore, proper peace terms and properly included in
a declaration of war. Indeed, a declaration that did not
include terms such as these would be grossly defective. In contrast, five of the eight "irrational" long-term objectives do not require the assent of the enemy, but rather that of the allies. It is difficult to imagine that Imperial Germany or the other Central Powers objecting to open covenants, free trade, a reduction in arms, or a general association of nations. Moreover, since none of these points represent an immediate cause of the war and since their acceptance would not end the war, it is difficult to see how or why they should be considered as peace terms. Yes, they may all be desirable long-term goals, but their realization depends upon the assent of the allies much, much more than that of the defeated enemy. They are, therefore, not proper peace terms and should not be included in a declaration of war. Insofar as the allies agree to implement points such as these after the war, the proper place to articulate such an agreement would be some other document, but not in a declaration of war.

This conclusion is reinforced by considering the status of the three points excepted just above. On the one hand, point 10, autonomy for the peoples of the Austro-Hungarian Empire, point 12, self-determination of the non-Turkic peoples of the Ottoman Empire, and point 13, an independent Polish State are clearly of interest to the governments in Vienna, Constantinople, and Berlin. On the other hand, their assent or dissent is a distinctly secondary issue.
Before demanding the opinion of their enemies, the allies need to agree among themselves, determining whether unleashing this multitude of nationalisms is in their own best long-term interest. Therefore, until and unless there is agreement among the allies, presumably in the form of a joint declaration, demands such as these should not figure among the remedies found in the declaration of war of any individual country. To do so risks creating unnecessary difficulties among the allies long before the enemy objects.

This conclusion is driven home by remembering that this is precisely what Roosevelt did in World War II, transforming Wilson’s "idealism" into a species of realism. Thus, four months before Pearl Harbor, in August 1941, Roosevelt met with Churchill in Placentia Bay, Newfoundland, for the Atlantic Conference. At end of this conference, the two leaders issued the Atlantic Charter. This curious document has always been seen as a statement of Allied "war aims." However, in light of what we have just said, it is better seen as a declaration of alliance principles. For, none of the Charter’s eight principles could possibly inform the war. None of them addresses grievances that were the immediate causes of the war nor do they require the assent of the enemy. Indeed, it is easy to imagine Hitler appending his signature to the Charter to show his full agreement. After all, why would Hitler object to Roosevelt and Churchill agreeing that:
First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned;

Third, they respect the right of all peoples to choose the form of [their] government...;

Fourth, they will endeavor... to further the enjoyment of all States... to trade and raw materials...;

Fifth, they desire... the fullest collaboration between all nations in the economic field...;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety...;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hinderance;

Eighth, they believe that all nations of the world... must come to the abandonment of the use of force.... (For. Rel. 1941, 1:368-9). Italic added.) That Hitler himself did not believe in some or all of these principles, even that they were a direct challenge to him and his methods is irrelevant. For, it was of little or no concern to Hitler what Roosevelt and Churchill believed or the principles upon which they planned to organize the
peace. Hitler had his own ideas about how the peace should be organized, and it was the outcome of the war that would eventually decide whose plans would be implemented. Consequently, except for the rather unkind clause in article the sixth, "...after the final destruction of the Nazi tyranny...," Hitler could have no objection to signing the Atlantic Charter. But, if the enemy would not object, then the Charter cannot be looked upon as a statement of "war aims," as an articulation of "peace terms." It was rather a declaration of alliance, of the principles that should govern the alliance as the alliance attempts to organize the peace after the war, a point that was made clearly enough in the document's preamble:

...being met together, [the President and the Prime Minister] deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world (p. 1:367).

and this interpretation is reinforced in the preamble of the United Nations Declaration of 1 January 1942:

The Governments signatory hereto,

Having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and
Northern Ireland dated August 14, 1941, known as the Atlantic Charter... (For. Rel. 1942, 1:25).

Clearly then, these were not "war aims." They were not conditions or terms to be imposed upon the enemy. Instead, they were principles by which the alliance hoped to organize the peace after its more immediate war aims had been imposed upon the enemy. And, herein lies, the rub. Roosevelt, out of expediency, entirely neglected to articulate any peace terms at all. Instead, he substituted a demand for "complete victory," for an unconditional surrender. But unconditional surrender is not a purpose that can inform a war. It is not a short-term goal that can "rationally" justify a resort to war in Arendt's terms nor is it a sufficient condition, a well-advised first step, towards the eventual achievement of any long-term interest. Indeed, a demand for unconditional submission breaks the chain that should connect short- to long-term goals, making it all but impossible to attain either. Thus, where Wilson confused the issue by mixing short- and long-term goals indiscriminately, Roosevelt produced a different type of confusion by having no short-term goals at all, only long-term goals.

The place where Roosevelt's lack of war aims caused the most confusion in organizing the peace after the war was, of course, in Eastern Europe, Poland, especially. Had Roosevelt been in a position to articulate a set of concrete
war aims for Eastern Europe, even as late as 1943, then much of this confusion might have been avoided. By linking his short-term war aims with his long-term goals to advance self-determination and democracy in Eastern Europe, Roosevelt would have set the limits of America’s alliance with the Soviet Union. But, obviously, he could not do this without destroying the consensus at home and the alliance abroad. The Congress at home and geography abroad made this task all but impossible.

3.1.2 Resorting to Expediency: "I may be entirely inconsistent..."

Like any good expedient, Roosevelt’s call for an unconditional surrender is simultaneously explicable and inexplicable. It is explicable as long as one ignores the negative long-term consequences and highlights the positive short-term gains; it becomes inexplicable, however, just as soon as one reverses the process. Both perspectives are of course well argued in the literature. Authors such as Raymond G. O’Connor (1971) and Warren F. Kimball (1991), who focus upon the enormous political and diplomatic obstacles that Roosevelt overcame daily, find nothing surprising and much to admire in his demand. As O’Connor so forcefully puts it, unconditional surrender was undoubtedly the key to Roosevelt’s Diplomacy for Victory. Without it, a military victory would have been much harder to come by and, in all probability, much more costly in American lives. Accepting
this view, however, depends upon a detailed, almost day-to-
day, knowledge of the large and small crises with which
Roosevelt had to deal. Since few people possess this
intimate knowledge of the situation, few see the pressures
that motivated Roosevelt. More frequently then, authors
such as Hanson W. Baldwin (1950), Paul Kecskemeti (1958), or
Anne Armstrong (1961) argue that unconditional surrender was
the greatest of the Great Mistakes of the War, to repeat the
title of Baldwin’s book. Not only did Roosevelt sacrifice
America’s long-term political interests for short-term gains
but he also increased enemy resistance and complicated the
already difficult task of negotiating surrender agreements,
which, together, had the unfortunate effect of lengthening
the war.

Given the contradictory character of Roosevelt’s
expediency, any discussion of it is a most troubling
enterprise, like discussing the drinking of fetid water:
Yes, the drinking of fetid water can be justified as an
expedient in extreme circumstances -- sustaining life
requires the intake of a certain amount of water every day;
sometimes the only water available is unclean; therefore, in
extreme circumstances, there sometimes is no other option
but to drink fetid water. Yet, the minute one moves beyond
this general rational, every detail immediately and
inevitably turns upon itself and becomes yet another
indictment of drinking unclean water: Yes, drinking fetid
water will keep a body alive, but it also exposes the body to typhoid, cholera and other waterborne diseases, which is hardly a recommendation for drinking foul water.

Accordingly, the discussion that follows suffers: Even when attempting to be most sympathetic, the end result is yet another condemnation of Roosevelt’s demand. For example, any attempt to justify Roosevelt’s demand by showing how it simultaneously conformed to his personality and facilitated his efforts to sustain the fragile post-Pearl Harbor consensus at home and the ever brittle Big Three Alliance abroad is incomplete unless one points out that one of the principal effects of a demand for an unconditional surrender is to preempt all discussion of peace terms. But, in the absence of agreed upon peace terms, several extremely unpalatable consequences follow: One is unable to negotiate with one’s enemy, which lengthens the fighting; one is unable to achieve a sufficiently comprehensive understanding with one’s allies, which prepares the ground for acrimonious misunderstandings after the war, and one is unable to articulate realistic war aims for oneself, which sows the seeds for disillusionment and recriminations over a dimly perceived "Betrayal at Yalta."

More to the point, however, after being whipsawed back and forth by these numerous contradictions, one slowly becomes aware of a great void, a troublesome silence, at the heart of it all: Like the hound of Baskervilles, the
Congress never barked. Until 7 December 1941, its debates over foreign policy had been exceedingly vigorous and vocal -- discordant and disorderly, but vocal and vigorous. After Pearl Harbor, an all but total silence fell upon the Capitol. The members spoke in hushed and reverent tones, when they spoke of foreign policy at all. Was this silence the result of a patriotic restraint? The suspicion slowly grows that it was more a matter of Roosevelt’s policy than congressional restraint. According to Churchill, Roosevelt had had no plans to involve the Congress, saying in November 1941, "I shall never declare war; I shall make war. If I were to ask the Congress to declare war, they might argue about it for three months" (Kimball 1991, 247 n. 83). And, that was precisely what he was doing, as lend-lease grew and the Navy expanded its patrols across the Atlantic. The bombing of Pearl Harbor changed everything though. Roosevelt did ask the Seventy-Seventh Congress to declare war, and it did not argue for three months, not even for three minutes. But, having achieved this unprecedented domestic consensus, how was Roosevelt to preserve it? Clearly, the greatest immediate threat the post-Pearl Harbor consensus was a free and open debate in the Congress over war aims, over peace terms. If the relatively simple issue of America’s entry into the war had riven the Congress and the country to such an extent before Pearl Harbor, just imagine what a debate over peace terms would do? Should
Italy retain Triest? Should Japan retain her half of Sakhalin? Should the German border rest on the Oder or further to the east? Had the Congress debated questions such as these, the results would surely have been pandemonium. But none of these questions could approach the explosive potential of a congressional debate over America's alliance with the Soviet Union. Pandemonium is too gentle a word to describe what would have happened had Roosevelt allowed the Congress debate the wisdom of allowing the Red Army to liberate Poland and Eastern Europe.

Hence, the stunning brilliance of Roosevelt's demand for an unconditional surrender. The moment the Seventy-Seventh Congress accepted Roosevelt's demand, it also accepted the most perfect gag imaginable. All discussion of war aims, peace terms or alliance relations could now be stonewalled, first, by reassuring those who asked that any and all concerns would be discussed at length at some indefinite time in the future after the chimera of "complete victory" had been achieved and, second, by threatening anyone who possessed the temerity to question the demand with political suicide, as the junior Senator from Florida, Claude Pepper, did in the final words of his rebuke of Senator Burton K. Wheeler on Monday, 15 January 1945:

I venture to say that if that speech [in which Senator Wheeler called for a discussion of peace terms and "the abandonment ... of the brutal and costly slogan of
"unconditional surrender" [cf. Cong. Rec. 1945, 84-5] is picked up and translated to the German people by Propaganda Minister Goebbels it will give encouragement to the enemy (Cong. Rec. 1945, 256).

Thus, it was not so much that Roosevelt lacked alternatives that forced him to demand an unconditional surrender as his immediate need to silence the Congress, which was incapable upholding its end of the constitutional bargain by articulating the grievances that caused the war or the peace terms that would end it. Yoked together with such a Congress, Roosevelt did his best to minimize the damage it could inflict. But, before discussing the congressional silence at the heart of Roosevelt's demand for an unconditional surrender, about which there is little to say, let us first examine at some length a few of the innumerable contradictions that afflict any demand for an unconditional surrender, about which there is perhaps too much to say.

3.1.2.1 Resorting to Unconditional Surrender

The crucial defect in a demand for an unconditional surrender is that it renders war uninformed. It transforms war with combat into combat without war. War with combat implies the existence of a certain restraint because the war is informed by clearly articulated objectives, goals, and purposes to which the enemy can assent as soon as their propriety has been forcefully brought to his attention.
Unconditional surrender, in contrast, implies all absence of restraint because the stated purpose of the war is the complete and total submission of the enemy. From the enemy's perspective, complete and total submission is completely and totally unacceptable. From our perspective, the desire to impose a total submission authorizes unlimited violence. This is the case because, to recall Clausewitz, the war's aims control the conduct of the war "down to smallest operational detail" (1976, 579). Consequently, when the announced goal of the war is total submission, unlimited means are both authorized and necessary. And, once unlimited means have been authorized, war soon degenerates into its most violent fraction -- combat. Thus, notwithstanding the fact that "unconditional surrender" appears to possess the hard edge of purpose, upon reflection, this appearance is seen to be chimerical, to be nothing but sophism of the most cynical sort, a fact that has only recently been forgotten.

Until approximately the mid-nineteenth century, it was generally believed that the demand for surrender at discretion was worse than immoral; it was counterproductive. To be sure, history provided innumerable instances of victor's betraying surrender terms as soon as the vanquished had laid down their arms or opened the gates to their cities. Yet, perfidy is not the same thing as an explicit demand for perfect subjection, although the end results are
similar. History also recorded many cases of peoples habitually demanding unconditional surrender. The Gauls, the Huns, and several different Turkic bands all made this type of demand upon their neighbors near and far at one time or another. The Mongols in particular built their reputation on such exorbitant demands. However, war à outrance is not war, but a perversion of war. Motivated by simple ferocity and unable to secure legitimacy from those they exterminated, the Mongols and their like satisfied their immediate desires for blood and plunder at the expense of failing to build enduring political structures, as many commentators have observed (e.g., Keegan 1993, 207-12). Consequently, for those who waged war for purposes other than the quenching of an uncontrollable blood lust, the rapid rise and precipitous fall of these various tribal empires was but another proof of the inutility of demanding a perfect subjection of one's enemies.

History also told of wars, invariably civil wars, in which the initial demand was for surrender at discretion. However, in these cases, before roughly 1850, there were usually strong voices raised in condemnation. For example, one of Edmund Burke's principal reasons for supporting the American Revolution was the fact that the Prime Minister, Lord North, was demanding an unconditional surrender.  

³Frederick North, Second Earl of Guilford and Eighth Baron North, was the Tory Prime Minister from 1770 to 1782, whose inept colonial policies led to the American Revolution.
Burke's initial objection to the demand was that it violated the precepts of good government:

All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter. We balance inconveniences, we give and take, we remit some rights that we may enjoy others, and we choose rather to be happy citizens than subtle disputants (Burke 1908, 130-1).

Consequently, even if Parliament had the right to demand perfect submission, "It is not what a lawyer tells me I may do," Burke argued, "but what humanity, reason, and justice tell me I ought to do" (p. 108). And, it was patently inhumane, unreasonable, and unjust to demand an unconditional subjection:

I know it is said that your [Lord North's] kindness is only alienated on account of their [the colonist's] resistance; and therefore, if the colonies surrender at discretion, all sort of regard and even much indulgence is meant towards them in future. But can those who are partisans for continuing a war to enforce such a surrender be responsible (after all that has passed) for such a future use of a power that is bound by no compacts and restrained by no terror? Will they tell us what they call indulgences? Do they not at this instant call the present war and all its horrors a
lenient and merciful proceeding?... The profession of kindness with that sword in his [Lord North's] hand, and that demand of [unconditional] surrender is one of the most provoking acts of his hostility (p. 207-8).

Insofar as the demand itself was proof of imprudent government and implacable hostility, Burke was forced to advise the colonists:

But because, brethren, these professions [of indulgence by Lord North] are general, and such as even enemies may make, when they reserve to themselves the construction of what servitude and what liberty are, we inform you, that we adopt your own standard of the blessing of free government.

[Therefore, r]especting your wisdom, and valuing your safety, we do not call upon you to trust your existence to your enemies. We do not advise you to an unconditional submission (p. 180, 185).

And, finally, Burke saw danger not only for the colonists in a policy of perfect subjugation, but to Great Britain as well:

Contending for an imaginary power we begin to acquire the spirit of domination and to lose the relish of honest equality (p. 232).

Needless to say, during World War II, no Burke came forward on the Allied side to advise the Germans and
Japanese not to trust their safety to the indulgence of their enemies. The reason no Burke arose was that during the course of the nineteenth century unconditional surrender had become respectable, even desirable, in the eyes of many. In Europe, this process began with the long peace that followed the French Revolution and the Napoleonic Wars. Inspired by Napoleon's crushing victories, desiring to make war "scientific" by detaching it from policy, and carried away by romantic notions concerning violence in general, and war, in particular, the feeling slowly grew that "total war" was not only possible but desirable. Von Moltke, the elder's dramatic and crushing victories in 1866 against Austria and 1870 against France gave further impetus to this opinion, which found its full florescence in the two World Wars of the twentieth century.

In America, the process began with the Civil War. In the face of the South's refusal to entertain terms, President Lincoln and General Ulysses S. Grant came separately to the conclusion that "total war" was their only option. This conclusion, most reluctantly arrived at, resulted from a profound sense of frustration, which perhaps found its clearest expression in Representative Thomas Williams' resolution of Monday, 13 February 1865:

It is hereby declared to be the sense of this House that this Government has already exhausted all the resources of a just and wise statesmanship ... and that
therefore any further overtures through embassies, public or private, official or unofficial, looking to treaty or compromise with the usurpers at Richmond, would be not only unprofitable, as they would be inconsistent with the rights and dignity of this nation, but are to be deprecated as absolutely mischievous, in giving encouragement to the insurgents and protracting their resistance, by exposing us to misconstruction, and giving color to the delusion that we mistrust our ability to subdue them to obedience, and are ready to accept something short of the restoration of the Union and the unconditional submission of those who have rebelled against it (Cong. Globe 1865, 777-8. But see Representative Cox’s resolution of 16 January 1865 (p. 275) for a more "Christian" approach.).

In military terms, the frustration expressed in the Williams resolution meant that neither Lincoln nor Grant opposed the scorched-earth campaigns of Generals Philip Sheridan and William Sherman through the Shenendoa Valley, Mississippi, Georgia, and South Carolina.\(^4\) However, as John Bennett

\(^4\)The story of the European acceptance of "total war" is well told in Michael Howard’s introductory essay, "The Continuing Relevance of On War" (Clausewitz 1976). The American story is found in Charles Strozier’s (1990) "The Tragedy of Unconditional Surrender" and James M. McPherson’s (1990) "Lincoln and the Strategy of Unconditional Surrender." However, see Mark E. Neely, Jr’s (1991) "Was the Civil War a Total War?" for an alternative view.
Walters, a Southerner, concluded in his seminal study of Sherman's march to the sea, the devastating destruction authorized by a demand for an unconditional surrender is always counterproductive:

That his [General Sherman's] campaigns contributed materially in hastening the final defeat of the Confederacy can hardly be denied; but since the principal purpose of the conflict from the Federal point of view was to bring back into the fold those states which had attempted to withdraw, good policy would seem to have required that it be accomplished with as little cause for future hatred as possible. In the case of Mississippi, Georgia, and South Carolina, however, the wanton destruction and the outrages and indignities to which their people were subjected in Sherman's application of his concept of total war created wounds which would remain sensitive for generations to come. Although they came back into the Union, other causes of estrangement would pass away and be forgotten long before the crime committed by him against the spirit of their people would be forgiven (1948, 480).

After the Civil War, especially in the North, the correctness of Lincoln's policy was never questioned. During the First World War, this Northern predilection for perfect submission was very much in evidence during the 1918
mid-term congressional elections. When Woodrow Wilson, a Southerner, unexpectedly opened negotiations with the Imperial German government in October on the basis of his Fourteen Points, a Northerner, Teddy Roosevelt, vehemently opposed him:

When the American people speak for unconditional surrender, it means that Germany must accept whatever terms the United States and its allies think necessary in order to right the dreadful wrongs that have been committed and to safeguard the world for at least a generation to come from another attempt by Germany to secure world domination. Unconditional surrender is the reverse of a negotiated peace (1926, 378. First appeared in the Kansas City Star, 26 October 1918).

Teddy Roosevelt was not alone in his opposition. He was joined by most of the press, many in the Congress, especially, among the Republicans, and by General John J. Pershing. A short-lived "Unconditional Surrender Club" also sprung up and lobbied for overturning the President's policy. As a loyal member of Wilson's administration, Assistant Secretary of the Navy, Franklin Roosevelt, publicly endorsed Wilson's call for "peace without victory," although he probably believed his uncle was correct (O'Connor 1971, 4-5). Thus, by the 1940's, both Franklin Roosevelt and the general public were well disposed to
support uncritically a demand for an unconditional surrender.

But, if the ethos of the times made it impossible for a Burke to arise among the Allies, that is not to say that no one objected. On the Allied side, the objections were very muted, very private, and very gentle, as we shall see in a moment. Consequently, the task of publicly opposing Roosevelt’s demand was the sole responsibility of the enemy. Nazi officials, with their fine sense of perversity, did not so much object to Roosevelt’s demand as wonder at their incredible good fortune. Joseph Goebbels, Hitler’s Minister of Propaganda, was jubilant upon hearing Roosevelt’s announcement at the end of the Casablanca Conference. In Goebbels’ considered opinion, unconditional surrender was:

...a world-historical tomfoolery of the first order....
I should never have been able to think up so rousing a slogan. If our Western enemies tell us: we won’t deal with you, our only aim is to destroy you ... how can any German, whether he likes it or not, do anything but fight on with all his strength (Cited in Armstrong 1961, 160)?

And so, stripped of its philosophical reflections, Burke’s advice to the American colonists was reduced by Nazi propagandist to a grim, but effective, slogan: The Thousand Year Reich must be defended to the last breath, for, surrender meant a "Super Versailles," destruction and

On the other side of the world, Japanese officials were more sensitive to the tragedy of their situation. From their perspective, the Americans were fighting a war without purpose or point. There was nothing in the American demand that the Japanese officials could negotiate about, much less assent to. As they saw it, Roosevelt’s demand created an impossible situation. Diplomatically, it created an impasse that was forcing them to fight long after they had lost the war, as Foreign Minister Shigenori Togo cabled to Ambassador Naotake Sato in Moscow on 12 July 1945:

...it is His Majesty's heart’s desire to see the swift termination of the war. In the Greater East Asia War, however, as long as America and England insist on unconditional surrender, our country has no alternative but to see it through in an all-out effort for the sake of survival and the honor of the homeland (For. Rel. (Potsdam I) 1945, 876).

The reasons Japanese officials saw no alternative are quite simple. In terms of honor, acceding to a demand for an unconditional surrender is an act of treason, pure and simple. It means abrogating the constitution one has sworn to protect and nullifying the laws one has sworn to uphold. In terms of survival, it means turning one’s country over without reservation to the tender mercies of an enemy "that
is bound by no compacts and restrained by no terror," to repeat Burke's argument. But, no official can betray his country and his oath of office in such a blatant manner. No American president could ever accept the abrogation of our Constitution; no American official could ever accept the nullification of our laws; no American citizen could ever accept placing himself and his family at the unrestrained mercy of a conqueror. Therefore, how could anyone possibly imagine that German, Italian, or Japanese officials could or would do what we ourselves could never do? In fine, unconditional surrender is a demand easy to make, impossible to accept.

In response to Roosevelt's unacceptable demand however, Prime Minister Kantaro Suzuki's Government was not without resources. Its desperate situation notwithstanding, by mid-May 1945, it devised a two pronged initiative. On the diplomatic side, not knowing of Stalin's secret agreement at Yalta to enter the war against Japan three months after the defeat of the Nazis, it sought to enlist the good offices of the Soviet Union, as Cabinet Secretary Hisatsune Sakomizu summarized the initiative after the war:

Unconditional surrender was an offer which was very much unagreeable to Japan. It was impossible. Wasn't there any means better than unconditional surrender? If we would ever propose cease-fire directly to America, she would surely insist on the unconditional
surrender and stick to it. Therefore, we would have to do anything else -- something -- to have an arbitrator. That is why the Soviet Union was chosen (Giovannitti and Freed 1965, 158).

On the military side, Japan hoped to 'knock some sense' into the Americans, as Colonel Saburo Hayashi, War Minister Korechika Anami's personal aid, recalled after the war:

War Minister Anami was opposed to accepting the unconditional surrender terms. He wanted Japan to reserve some conditions in the wake of the surrender. Because of this he wanted the chance to deal a heavy blow to the American landing forces. He believed that we would be able to repel the first wave of the American landing but had little confidence in turning back successfully the second and third attacks. There was hope that in dealing such a heavy blow to the first American landing forces, the Americans might be led to discuss the termination of the war. The purpose was to create a situation which might have resulted in producing favorable conditions in the peace treaty for our country (Giovannitti and Freed 1965, 128).

The force of Colonel Hayashi's report of General Anami's thinking is, perhaps, better appreciated when one recalls General Robert E. Lee's conduct during the morning hours of 9 April 1865 immediately preceding his surrender to General Ulysses S. Grant at Appomattox. After General
Philip Sheridan's victory at Five Forks on 1 April 1865 and the breaching of Lee's lines at Petersburg on 2 April 1865, the Army of Northern Virginia was forced to withdraw. Initially, Lee hoped to escape encirclement by a series of rapid marches southwest along the Richmond-Danville Railroad to Danville, where he would find rations and supplies for his tired and hungry troops. Unfortunately, Grant, moving just as rapidly, was able to cut the Richmond-Danville Railroad and blocked Lee's escape southward on 5 April 1865. Responding, Lee turned towards the northwest; however, without rations and under constant pressure from Grant's forces, his army soon began to dissolve before his eyes. Realizing this, Grant initiated negotiations for "the surrender of that portion of the C.S. Army known as the Army of Northern Virginia" in order "to shift from myself the responsibility of any further effusion of blood" in a note dated April 7, 1865 -- 5 p.m. (Freeman 1935, 103). The negotiations continued throughout 8 April 1865 by means of an exchange of notes, as Lee attempted to determine Grant's terms. Grant was not to be drawn out, however, stating only that the surrendered men would be disqualified from bearing arms until they were properly exchanged (p. 112). Not pleased with Grant's reticence, Lee proposed that he and Grant meet "at 10 A.M. tomorrow on the old stage road to Richmond between the picket lines of the two armies," but also determined to continue the retreat, a night march being
ordered for one o'clock in the morning 9 April 1865 (p. 113, 115).

By eight o'clock the next morning, however, Lee found himself surrounded. Major General John B. Gordon's corps soon found its way blocked by Federal troops to the front, while Lieutenant General James Longstreet's corps was being pressed by two Federal corps to the rear. Faced with this situation, Lee still wavered, "Then there is nothing left me to do but to go and see General Grant, and I would rather die a thousand deaths" (p. 120). The decision, however, was unavoidable. Still, few men in the thoroughly beaten Army of Northern Virginia could face up to this reality. For example, Brigadier General E. Porter Alexander tried to convince Lee that the troops should melt into the countryside individually or in small groups, evading the Federal forces and returning to their home states to fight again. When Lee failed to respond immediately, Alexander pressed, saying:

But, General, apart from all that [the impossibility of the situation] -- if all fails and there is no hope -- the men who have fought under you for four years have got the right this morning to ask one favor of you.... A little blood more or less now makes no difference, and we have the right to ask of you to spare us the mortification of having you ask Grant for terms and have him answer that he has no terms to offer. That it
is 'U.S., Unconditional Surrender.' That was his reply to Buckner at Fort Donelson, and to Pemberton at Vicksburg, and that is what is threatened us. General, spare us the mortification of asking terms and getting that reply (Alexander 1962, 605).

Lee, however, rejected Alexander's the suggestion for disbanding the army as neither viable, conducive to peace, nor morally acceptable. On a softer note, Lee assured Alexander:

But I can tell you one thing for your comfort. Grant will not demand an unconditional surrender. He will give us as good terms as this army has a right to demand, and I am going to meet him in the rear at 10 A.M. and surrender the army on the condition of not fighting again until exchanged (p. 605).

Still, as the morning progressed and the ten o'clock meeting with Grant did not materialize, Lee began to waver, confiding in Longstreet that he feared that Grant might imposes more severe terms. Longstreet, who had known Grant before the war, told Lee that Grant would propose honorable terms, as Lee would have in a similar situation (Longstreet 1969, 627-8). Yet, when Colonel Orville E. Babcock, General Grant's aide de camp, arrived with an explanation for the delays shortly after noon, Longstreet, reflecting the somber mood at the time, said to Lee, "General, unless he [Grant] offers us honorable terms, come back and let us fight it
out" (Freeman 1935, 132). Needless to say, when he finally
arrived at Wilmer McLean’s house at one-thirty in the
afternoon, General Grant did not live up to his name. He
did not impose an unconditional surrender upon Lee.
Instead, he began the instrument of surrender with, "In
accordance with the substance of my letter of the 8th
instant I propose to receive the surrender of the Army of N.
Va. on the following terms, to-wit:...." (p. 137). Such is
the attitude of commanders when faced with only the prospect
of a demand for an unconditional surrender. But, if Robert
E. Lee, who spoke the same language, had attended the same
schools, and had officers on his staff who knew General
Grant intimately, could be so hesitant to surrender on terms
and so ready to fight to the bitter end had unconditional
surrender been demanded, it perhaps becomes easier to
understand General Anami’s attitude, which was shared by
many of his Cabinet colleagues.

In fine then, the Suzuki Government, like General Lee,
was desperately trying to discover the American peace terms.
But Roosevelt’s demand for an unconditional surrender meant
that the Americans had no peace terms. America had "war
terms," a rational for endless combat, but no peace terms.
Roosevelt had resolutely foreclosed that option,

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\(^5\)For Grant’s recollections of the surrender, see pages 724-744 in his Memoirs (1990), especially, how his initial ‘jubilation’ swiftly changed to ‘sadness and depression’ (p. 735) and his efforts to spare his defeated foe "unnecessary humiliation" (p. 739-41).
substituting instead the vague generalities of the Atlantic Charter and The United Nations Declaration. In the face of this implacable nothingness, Japanese diplomats were desperately trying to entice the Soviets into using their good offices to pry America’s war aims out of the Truman Administration, while Japanese military leaders were desperately preparing to knock some sense into the Americans as they crossed the beachheads in southern Kyushu. But, if a forlorn desire to learn America’s peace terms informed Japanese strategy in 1945, American strategy was informed by nothing more elevated than a desire to fight to the last Japanese, as Commander-in-Chief Truman reiterated in his 6 August 1945 address announcing the atomic bombing of Hiroshima:

We are now prepared to obliterate more rapidly and completely every productive enterprise the Japanese have above ground in any city. We shall destroy their docks, their factories and their communications. Let there be no mistake; we shall completely destroy Japan’s power to make war.

It was to spare the Japanese people from utter destruction that the ultimatum of July 26 [for an unconditional surrender] was issued at Potsdam. Their leaders promptly rejected that ultimatum. If they do not now accept our terms they may expect a rain of ruin from the air, the like of which has never been seen on
this earth (Public Papers of President Harry S. Truman... 1961, 198-9).

One hesitates even to compare Truman's demand with Jefferson's. Jefferson informed the Revolutionary war with a restraining purpose, with a demand for independence. Even had the Thirteen Colonies possessed the power to "obliterate" Great Britain, they would not have. It would not have served their purpose, which was simply independence, a painful, but not impossible demand for Lord North's government. In sad contrast, Truman's demand does not inform the war in the Pacific. Just the opposite, it creates not war with combat, but combat without war, aimless, purposeless, endless combat. Echoing Roosevelt, he proposes to "obliterate" the Japanese, unless they accept an impossible demand, a demand that Edmund Burke had advised the American colonists two hundred years before to reject, "Respecting your wisdom, and valuing your safety, we do not call upon you to trust your existence to your enemies. We do not advise you to an unconditional submission." Valuing the safety of the Japanese, if not their wisdom in attacking Pearl Harbor, who could call upon them to put their trust in a nation that promised them "a rain of ruin from the air, the like of which has never been seen on this earth?"

In the event, both the diplomatic and military halves of the Suzuki initiative were doomed to failure. The diplomatic side fell apart on 8 August 1945, three months to
the day after the Nazi surrender, when the Soviet Union entered the war in the Pacific as promised at Yalta, while, on the military side, preparations to meet the American landings were progressing much too slowly. In light of this, General Anami, the Minister of War, voted with the rest of the Cabinet to open direct negotiations with the Americans on 10 August 1945, which lead to the Japanese surrender on 14 August.

But, if the failure of the initiatives themselves were tragic, the reasons for their failure are even more disturbing. The Suzuki Cabinet was correct in assuming that, "If we would ever propose cease-fire directly to America, she would surely insist on the unconditional surrender and stick to it." For, this is precisely what happened on 11 August 1945, when Secretary of State James Byrnes rejected the first Japanese surrender as insufficiently unconditional. Hence, they were also correct in believing that intermediaries were required, and the Soviet Union was the obvious candidate. The fatal flaw in this plan, as Ambassador Sato in Moscow kept repeating almost to the point of insubordination, was that the Soviet Union had no interest whatsoever in assisting the Japanese. The Americans had already made it worth her while at Yalta to join the alliance against Japan.

Thus, the root cause for the failure of the Suzuki initiatives was that the Americans were unwilling under any
circumstances to sit down with the Japanese and negotiate the surrender as Grant had sat down with Lee at Appomattox in order to avoid "any further effusion of blood." In other words, only the vanquished could initiate peace talks. The victors were absolutely forbidden to do so. As a result, the side with the military initiative forfeited the diplomatic initiative, which is most disturbing. This self-induced paralysis was particularly counterproductive in the Pacific, because Japan was the only major belligerent to change governments during the course of the war, before its homeland has been invaded. Indeed, demonstrating an unprecedented degree of political flexibility, she changed governments, not once, but four times -- General Hideki Tojo's government being replaced by that of General Kuniaki Koiso on 16 July 1944, a week after the fall of Saipan; General Koiso's government being replaced nine months later by that of Admiral Baron Kantaro Suzuki on 7 April 1945, a few days after the American landings on Okinawa; and Admiral Suzuki's government being replaced four months later by that of the Imperial Prince Naruhiko Higashikuni on 15 August 1945, the day after Secretary Byrnes accepted the Japanese surrender.

Now, governments do not fall when they are winning wars. When they are loosing, however, they fall with a monotonous regularity. More to the point though, the fall of a government is usually the prelude to the opening of
peace talks, as was the case with Italy, Germany, and Roumania among others. This fact was not entirely lost upon the leadership in Washington, as Eugene Doorman, a State Department expert on Japan, later recalled:

The appointment of Suzuki, who had been very close to the Emperor and who had been the target of Japanese militarists in 1936 [i.e., Suzuki had been very seriously wounded in an assassination attempt in 1936], was a clear signal to us, in light of his record and history, that Japan was preparing to discuss ending the war (Giovannitti and Freed 1965, 70).

Consequently, under normal circumstances, each time a government fell in Tokyo, a diplomatically alert enemy would have initiated the appropriate feelers to see if the new government was ready to come to terms. But Roosevelt’s demand created completely abnormal circumstances, and all of these opportunities to end the war in the Pacific early on were lost.

The final irony, of course, is that, by the spring of 1945, President Truman and his advisers knew from decoded Japanese diplomatic correspondence that Prime Minister Suzuki’s Government would accept just about any conditions, as long as the Emperor could remain on the throne. But, if the Japanese were ready to open peace talks, preferably using the good offices of the Soviet’s, Truman was not.

Roosevelt’s insistent demand for an "unconditional
surrender" prevented him from doing so. And, so, unable to seize the diplomatic initiative, the war continued until the Soviet entry into the Pacific war on 8 August 1945, at which time the Japanese broke the deadlock by opening direct, if constrained, negotiations on 10 August 1945 via Max Grässli, Chargé d'Affaires ad interim of Switzerland, in Bern.

By this time, the only issue left to negotiate was the status of the Emperor. The Suzuki government began the negotiations by accepting the terms of the Potsdam Declaration of 26 July 1945 "with the understanding that the said declaration does not comprise any demand which prejudices the prerogative of His Majesty as a Sovereign Ruler" (For. Rel. 1945, 6:627). However, instead of accepting these terms outright, Secretary Byrnes, who feared being accused of not imposing a sufficiently "unconditional" surrender upon the Japanese, responded on 11 August 1945 in a suitably ambiguous manner:

"With regard to the Japanese Government's message accepting the terms of the Potsdam proclamation but containing the statement, 'with the understanding that the said declaration does not comprise any demand which prejudices the prerogative of His Majesty as a sovereign ruler,' our position is as follows:

"From the moment of surrender the authority of the Emperor and the Japanese Government to rule the state shall be subject to the Supreme Commander of the Allied
powers who will take such steps as he deems proper to effectuate the surrender terms.

"The ultimate form of government of Japan shall, in accordance with the Potsdam Declaration, be established by the freely expressed will of the Japanese people..." (For. Rel. 1945 6:631-2).

The ambiguity of Byrnes’ reply of course created a fresh crisis for the Suzuki government. However, hoping that the temporary subjugation of the Emperor to the Supreme Commander implied the continuation of the Imperial Institution itself and knowing that the Japanese people would continue to support the Imperial Institution, with the firm support of War Minister Anami, the Suzuki government accepted Secretary Byrnes’ terms on 14 August 1945, thereby ending the negotiations they had initiated four days earlier. Nonetheless, the tragedy remains. By May of 1945, a consensus on acceptable terms had been reached in both Tokyo and Washington. All that was missing to end the war then was the will to negotiate on the part of the Americans.

Going a step further however, Truman and Byrnes did not refuse to negotiate out of mere truculence. On the contrary, they lacked the will to negotiate because, although they surely meant what they said, they were unable to say what they meant. Beyond a shadow of a doubt,
Commander-in-Chief Truman meant every syllable of his 8 May 1945 statement recognizing the surrender of Nazi Germany:

Nazi Germany has been defeated.

The Japanese people have felt the weight of our land, air, and naval attacks. So long as their leaders and the armed forces continue the war the striking power and intensity of our blows will steadily increase and will bring utter destruction to Japan's industrial war production, to its shipping, and to everything that supports its military activity.

The longer the war lasts, the greater will be the suffering and hardships which the people of Japan will undergo -- all in vain. Our blows will not cease until the Japanese military and naval forces lay down their arms in unconditional surrender.

Just what does the unconditional surrender of the armed forces mean for the Japanese people?

It means the end of the war.

It means the termination of the influence of the military leaders who have brought Japan to the present brink of disaster.

It means provision for the return of soldiers and sailors to their families, their farms, their jobs.

It means not prolonging the present agony and suffering of the Japanese in the vain hope of victory.
Unconditional surrender does not mean the extermination or enslavement of the Japanese people (Public Papers of President Harry S. Truman... 1961, 50).

As a piece of wartime propaganda, Truman's statement makes some sense. It is a direct appeal to the Japanese people over the heads of the leadership. Unfortunately, the Japanese people were not going to surrender, except metaphorically. It was the leadership that would conduct the negotiations and actually sign the instrument of surrender. It was the leadership that Truman had to address and convince before the Japanese people could be said to have surrendered. Yet, Truman's exposition of the meaning of "unconditional surrender" fails to address any of the very real and legitimate concerns of the Suzuki government. Most especially, Truman failed to clarify the status of the Imperial Institution. At a more practical level, he also failed to say whether the Japanese would be allowed to organize the disarmament and demobilization of their armed forces or whether the Americans would do so, a turn of events that would imply chaos because all Japanese officers would lose all rank and authority as soon as the "unconditional surrender" came into effect. But even more devastating than Truman's failure to address the leadership and its concerns directly is his failure to define
"unconditional surrender." As Robert Butow has analyzed the problem:

... the problem so far as he [Foreign Minister Togo] was concerned was not the old stand-by explanation heard time and again -- face-saving -- but rather it was the necessity of determining exactly where unconditional surrender ended and conditional surrender began. What Japan and her Foreign Minister needed was a positive, not a negative, definition of terms, with special emphasize, of course, on the future of Japan’s imperial house (1954, 131).

In a word, one of the primary defects of a demand for an unconditional surrender is that it is impossible to define the demand positively: Does it really mean an "unconditional" surrender? If so, then it is inachievable. Or, does it mean something else, something less than an "unconditional" surrender? And, if so, what? As Assistant Secretary of State Archibald MacLeish pointed out in his infamous memorandum of 6 July 1945:

Surrender on terms, even irreducible terms, is not unconditional surrender. I am not here raising the question whether we should accept the irreducible Japanese terms. I am raising the question whether, if we do, we should not state explicitly what it is we are doing (For. Rel. (Potsdam I) 1960, 895).
MacLeish, being as diplomatic as possible, says that he is raising a "question." What he is actually doing, however, is "threatening" political suicide for anyone who would suggest accepting Japan's irreducible terms of retaining the Emperor by going public. As a result, not only is a demand for an unconditional surrender impossible for the vanquished to accept; it is equally impossible for the victors to define, which means that, to repeat once again, the war is uninformed. It has degenerated into combat without war, the victors reduced to waging their war without regard for the peace.

3.1.2.2 Saying What One Means, Meaning What One Says

But, if the inability of either Roosevelt or Truman to define his peace terms was what most disturbed the enemy, his allies and advisers were more concerned with other dilemma, two of which were raised by Secretary of State Cordell Hull in his memoirs:

Basically, I was opposed to the principle [of unconditional surrender] for two reasons, as were many of my associates. One was that it might prolong the war by solidifying Axis resistance into one of desperation. The people of the Axis countries, by believing they had nothing to look forward to but unconditional surrender to the will of their conquerors, might go on fighting long after calmer
judgment had convinced them that their fight was hopeless....

The second reason was that the principle logically required the victor nations to be ready to take over every phase of the national and local Governments of the conquered countries, and to operate all governmental activities and properties. We and our Allies were in no way prepared to undertake this vast obligation (Hull 1948, 2:1570).

Hull's second concern did not loom large in the thinking of his colleagues, at least not during the war; the first did. Anything that prolonged the war was of vital and immediate concern to all, which prompted both Churchill and Stalin to express reservations about Roosevelt's demand. At the Casablanca Conference, where Roosevelt first announced his demand publicly during the final news conference on 24 January 1943, Churchill voiced no objection. Yet, after the war, he tried to distance himself by claiming that he had been surprised to hear Roosevelt make the announcement (cf. Kimball 1991, 76). Later, at the Tehran Conference in November 1943, Churchill also seconded Stalin's call to publish terms to the Nazi, no matter how harsh, and, as a compromise, he even suggested the substitution of "prompt surrender" for "unconditional surrender." As for Stalin, while he never repudiated Roosevelt's demand publicly, he challenged it several times in private, most notably at the
Tehran Conference. Finally, during the spring of 1944, with British assistance, he pressured Roosevelt into relenting and exempting "propaganda" directed at the German satellites from the demand. This lead on 12 May 1944 to a joint statement suggesting that the European war could be shortened if Bulgaria, Hungary, and Roumanian ceased all collaboration with Nazi Germany and became co-belligerents on the allied side (O'Connor 1971, 61-2). Having gained this exemption for "propaganda" purposes, Stalin then proceeded systematically to offer terms to Roumania, Bulgaria, Hungary, and Finland, who soon accepted them (Kimball 1991, 77; O'Connor 1971, 61-3). As a result, Stalin turned former enemies into allies and shortened the war on the Eastern Front by some months.

The most impressive example of this was the case of Roumania. On 20 August 1944, the ninety divisions of the Second and Third Ukrainian Front renewed their attack into northern Moldavia. The opposing Wehrmacht and Roumanian forces crumbled before this onslaught, the Soviet forces taking Iasi on the first day. Reacting to this breach of the Roumanian frontier and building upon previous contacts with the Allies, King Mihai had Ion Antonescu, the pro-Nazi dictator, arrested and immediately sent an official delegation to Moscow. Terms having been agreed, Roumania

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6Roumania entered the war against Germany on 25 August 1944; Bulgaria, on 8 September 1944; Hungary, on 20 January 1945; and Finland, on 3 March 1945.
entered the war against Nazi Germany on 25 August 1944, fielding the fourth largest army arrayed against Hitler, depriving Germany of its largest source of oil at Ploesti, and dramatically changing the strategic situation in the Balkans. But perhaps the best measure of the value of turning Roumania from an enemy into an ally is the casualty count. During the three years that the Third and Fourth Roumanian Armies fought along side the Wehrmacht against the Red Army, from 2 July 1941 until 25 August 1944, they suffered 330,000 casualties -- dead, wounded, and missing. During the nine months that those same armies fought along side the Red Army against the Wehrmacht and the Honved, the Hungarian Army, the Third and Fourth Roumanian Armies suffered 170,000 casualties -- half again as many in just nine months (Georgescu 1991, 223. Cf. Hitchins 1994, Ch. 11 and 12.).

Thus, while the Red Army was able to avoid some of the worst effects of Roosevelt’s demand by negotiating surrenders with the Nazi satellites, the US Army was not, a situation which led General Marshall and his colleagues to resist Roosevelt’s demand. Specifically, the Army objected to the way it increased enemy resistance, complicated the already difficult task of negotiating the surrender of the enemy’s armed forces, and, hence, lengthened the war
unnecessarily. From the military perspective, the most distressing problem was the way in which Roosevelt's demand lengthened the war by complicating the surrender negotiations. One of the unstated assumptions of Roosevelt's demand was that the unconditional surrender would just happen: One day, the enemy would realize his error, stop fighting, and passively accept our every whim and wish. Needlessly to say, this was not going to happen. Any government with several million men under arms, no matter how badly beaten, retains a residual power that must be reckoned with, if only to negotiate an orderly disarmament and demobilization of the enemy's armed forces. Consequently, negotiations with the enemy are unavoidable; all that the demand for an unconditional surrender does is to delay, draw out, and complicate further those already difficult negotiations, as can be seen by recalling the imbrogli that surrounded the Italian, the German, and the Japanese surrenders.

Mussolini was overthrown by Marshal Pietro Badoglio on 25 July 1943, fifteen days after the Allied invasion of Sicily. Soon after, Badoglio initiated secret talks with the Allies in Lisbon. In these negotiations, Badoglio set two principal conditions for the Italian surrender: First, that the Allies protect the Italian king and government from
the Germans and, second, that the Allies accept Italy as a co-belligerent. The necessity of the first and the advantages of the second should have been obvious to all. Yet, because of Roosevelt's intransigence, these talks did not bear fruit until September, when a number of face-saving statements, memoranda of understanding, and revisions to revisions removed the offending words "unconditional surrender" and introduced the "conditions" that the Italians were demanding. By this time, however, both the diplomatic and the military initiatives had been lost. The Germans had reinforced their forces in Italy and seized control of the country. Instead of gaining a large portion of the peninsula without a fight by meeting Marshal Badoglio's modest demands in July, the Allies were forced to engage in some of the fiercest combat of the war in what was, in essence, a diversionary campaign.

In the German case, there are two stories to tell. The first is a tale of what did not happen; the second of what did. What did not happen is that Hitler was not overthrown. This is extremely unusual, given the extent of his defeat by the summer of 1944 and the all but iron-clad rule that governments fall when they suffer irretrievable military defeats. There are, of course, a number of reasons for this failure, but, principal among them is Roosevelt's demand for an unconditional surrender, which had a particularly pernicious effect upon the officer corps. Since becoming
Chancellor on 30 January 1933, Hitler had been opposed by various groups and individuals. This resistance was, however, singularly ineffective. To become effective it had to enlist the active cooperation of the Wehrmacht for two simple reasons: First, only the officer corps was immune to Gestapo infiltration, thereby making conspiracy possible (Hoffmann 1988, 72-3). Second, only the army had the necessary organization and forces, thereby making a coup plausible. Unfortunately though, the officer corps lacked the motivation to act against Hitler. They remembered the 1918 Armistice and the Treaty of Versailles and, therefore, required assurance that a second armistice would not produce a second vindictive peace, a "Super Versailles" in Goebbels' words. Consequently, before any significant number of high ranking officers would undertake the enormous risks — both personal and political — the German Resistance needed "to persuade German military leaders that an armistice would not amount to unmitigated defeat. Therefore they [the Resistance] sought Allied assurances -- in vain" (p. 105). "All approaches, feelers, and contacts produced only one reply: Germany must surrender unconditionally" (p. 102). Since the officers could surrender unconditionally just as well with Hitler as without him, few chose to join the Resistance.

Goebbels was correct. Unconditional surrender was, indeed:
...a world-historical tomfoolery of the first order.... If our Western enemies tell us: we won’t deal with you, our only aim is to destroy you ... how can any German, whether he likes it or not, do anything but fight on with all his strength (Cited in Armstrong 1961, 160)?

And, for those few German officers whose conscience compelled them to do something other than fight on, they approached their tasks with a resigned fatalism:

He [Colonel Claus von Stauffenberg, the officer who tried to assassinate Hitler on 20 July 1944] knew there was no prospect of substantial support from within or outside Germany [for the coup that was to follow Hitler’s assassination]. He knew the Allies would not settle for less than unconditional surrender. He knew the fronts could not be stabilized [outside of Germany’s borders]. His brother Berthold Stauffenberg put the position succinctly when he said the worst part was "knowing that we cannot succeed, and yet that we have to do it, for our country and our children." The meaning of the [attempted] coup d’état was self-sacrifice. It purpose transcended immediate practical results (Hoffmann 1988, 129-30).

Still, the tantalizing prospect of what might have happened remains:

It seems clear that had the German generals been able to act to end the war and had the Allies been willing
to negotiate, the war might have ended earlier, nine months to two years earlier depending on the degree of compromise (Armstrong 1961, 254).8

But Roosevelt was not willing to negotiate; the German generals were not willing to overthrow Hitler without assurances that a "Super Versailles" would not ensue, and the war in Europe continued with unabated fury until the Spring of 1945. Consequently, the German surrender negotiations were not dominated by the struggles of the anti-Nazi Resistance inside of Germany, but rather by the sour taste left by the Italian fiasco. For, General Dwight D. Eisenhower, who had been directly responsible for negotiating with the Italians, was so disillusioned by that experience that he refused to use the complex unconditional surrender text that had been prepared for him.9 Instead, he substituted a simpler "Act of Military Surrender." At the level of theory, this ensured that the surrender was not in

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8See also "Excerpts from a Note About the July 20, 1944, Plot [to assassinate Hitler] by Colonel General Alfred Jodl, Nürnberg, 1946" in Armstrong 1961, 277; and von Klemperer 1992.

9The prepared instrument in fourteen articles is found at For. Rel. 1944, I:256-61. Eisenhower’s continuing difficulties with Roosevelt’s demand for an unconditional are one of the secondary themes in Stephen E. Ambrose’s (1970) account of Eisenhower’s war years, as can be seen by following the references listed in the index. Eisenhower’s 20 November 1944 cable to the Combined Chiefs of Staff attempting "to find a solution to the problem of reducing the German will to resist," in part, by defining the terms of the "unconditional" surrender demand can be found in The Papers of Dwight David Eisenhower (1970, IV:2312).
in fact unconditional, because the instrument applied only to "all forces on land, at sea, and in the air who are at this date under German control" and specifically foresaw the possibility of further negotiations:

4. This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to GERMANY and the German armed forces as a whole (59 Stat. 1858).

In theory, the German Government could have continued negotiating for terms. As a practical matter though, the German surrender was not unconditional either, but rather a haphazard, undirected, rolling affair. That is, Eisenhower faced a rather unique situation in the spring of 1945. Since early April, German forces in the west had essentially stopped fighting and were surrendering as quickly as American or British forces could reach them. In the east, against the Red Army, however, German forces continued their last ditch resistance.

Hence, as a practical matter, half of the German armed forces had already capitulated weeks before Eisenhower even began negotiating their surrender. The point of his negotiations, therefore, was to convince the other half to surrender to the Red Army. On the German side, the goal was to prolong the negotiations for as long as possible so as to allow the greatest number of Germans to escape from the
oncoming Red Army. After Hitler’s suicide on 30 April 1945, Admiral Karl Dönitz, his successor, did just that by continuing the piecemeal surrenders of the past month. On 2 May 1945, he opened negotiations with British Field Marshal Bernard Montgomery for the capitulation of the German forces in northwest Germany only. This agreement was concluded on 4 May and took effect the next day, 5 May 1945. Admiral Dönitz then dragged out the talks for the capitulation of the rest of his forces for another three days until 8 May 1945. However, it was one thing to get Generals Alfred Jodl and Wilhelm Keitel to sign the Instrument of Surrender on behalf of the German High Command and another thing to enforce it. With the connivance of Admiral Dönitz, the German forces under the command of Field Marshal Ferdinand Schörner continued fighting against the Red Army in Czechoslovakia. This organized defiance continued until 10 May 1945, when General Eisenhower ordered all German troops crossing the Elbe returned to the Soviets for violation of the instrument of surrender. With this, Admiral Dönitz ordered Field Marshal Schörner to capitulate. Nonetheless, subordinate commanders continued an uncoordinated resistance until 12 May 1945 when Prague fell. The net result of this rolling surrender was that between two and a half and three million Germans escaped to the west during Dönitz’s short reign (Kecskemeti 1958, 149-52). Which is to say that, as a
practical matter, he pretty much received the terms he was seeking.

It is, of course, possible to interpret the circumstances of the German surrender differently. Instead of emphasizing 1) the piecemeal character of the German surrender and 2) the limitations of the instrument of surrender to conclude that the German surrender was not in fact "unconditional," a State Department lawyer seeking to establish a firm legal basis for the Allied occupation would emphasize 1) the utter collapse of the Nazi government and 2) Eisenhower's unilateral proclamation of 8 May 1945 that, "In Europe, that formula [of unconditional surrender for the Axis Powers made at Casablanca] has now been fulfilled" (Reproduced in O'Connor 1971, 117) to claim that the surrender was indeed "unconditional." The retort to this claim would be to ask whether "collapsing" is the same thing as "surrendering" and whether the conquerors can legitimately proclaim the surrender of the conquered. Or, is that something the conquered must do for themselves?

But however one interprets the events in Europe, Field Marshal Schörner's failure to obey the instrument of surrender was a particularly ominous omen for American officials as they contemplated the coming invasion of Japan. Field Marshal Schörner's command consisted of only several tens of thousands of battle weary troops who were isolated, surrounded, and cut off from any hope of resupply or
reinforcement. His defiance was easily contained. In Asia, this would not be the case. Only a third of the Imperial Army was deployed in the Home Islands, slightly less than two million men. The other two thirds were deployed overseas as follows: over two million men in Korea, Manchuria, and China, including Formosa; over two hundred thousand men in French Indo-China, Thailand, and Burma; over five hundred thousand men in the Philippines and the Dutch East Indies; and over one hundred thousand men still remaining on by-passed Pacific islands (Stimson and Bundy 1948, 618). These figures do not include the sailors of the Imperial Navy who also were stationed outside the Home Islands and could have joined with the Army troops in their areas to increase their numbers significantly. These forces were also for the most part well-trained, well-equipped, and fresh. In addition to their large numbers and quality though, these forces possessed a long history of independent action in defiance of the Tokyo government, especially the Kwan-tung Army in Manchuria. But most significant of all, the Japanese forces in China were the only Axis forces in 1945 to conduct successful offensive operations, Operation ICHIGO having cleared all the rail lines between Beijing and Guanzhou/Hong Kong and overrun all of the United States Fourteenth Air Force's air bases in eastern China. Needless to say, victorious armies are more than a little reluctant to surrender, as General Joseph Stilwell, the American
Commander in China, reminded Washington on a number of occasions. In the words of his biographer, Barbara Tuchman:

The success of ICHIGO and the Chinese military passivity in the face of it raised the fear that the Japanese army in China might root itself into the mainland and continue to fight even after defeat of the home islands, prolonging the war perhaps for years before it could be conquered (1970, 467).

The danger was obvious. It would serve little purpose to invade Japan and impose an unconditional surrender upon the government in Tokyo unless that government could impose the surrender terms upon commanders outside of the Home Islands. It was, therefore, essential to manage the Japanese surrender in such a way as not to tempt local commanders to repudiate it and continue fighting on their own. To accomplish this, the Truman administration needed to do two things: First, it had to ensure that the government in Tokyo did not collapse and lose all of its authority as the government in Berlin had. Second, the Emperor had to remain on his throne. Of the two, by far the more important was maintaining the Emperor's prerogatives. Since the local commanders had all sworn oaths of personal allegiance to him, it would be nearly impossible for them to disobey his order to surrender, if the Emperor remained on the throne and if he cooperated. The most striking example of the supreme importance of the Emperor to a smooth
surrender was the attempt by a group of mid-rank officers within the Imperial Army during the night of 14-15 August 1945 to gain control of the Emperor’s person so as to prevent him from publicly announcing the Suzuki government’s decision to surrender. In pursuit of this objective, their first act was to assassinate Lieutenant General Takeshi Mori, commander of the First Imperial Guards Division, which stood duty at the Imperial Palace, when he failed to come over to their way of thinking quickly enough. This initial coup attempt was frustrated by the timely arrival of General Shizuichi Tanaka, Commander of the Eastern District Army, General Mori’s immediate superior, who countermanded the assassins’ orders. Subsequent coup attempts were effectively blocked when War Minister Anami committed suicide later that same evening, thereby denying legitimate leadership to any other coup plotters. Having contained the situation in Tokyo, the Imperial family, in an unprecedented move, assumed governmental responsibilities upon the resignation of the Suzuki government on 15 August 1945. The new Prime Minister, Imperial Prince Naruhiko Higashikuni, at the Emperor’s urging, immediately dispatched envoys to personally carry the Emperor’s order to local commanders, which assured the orderly surrender of Japan’s overseas forces (Butow 1954, Ch 10).

When combined with a desire to end the war before the planned invasion of the Home Islands, one has little
difficulty understanding why General Marshall and his Army colleagues were among the most tenacious campaigners for including assurances that the Emperor would remain on the throne in the Potsdam Proclamation. That he, Secretary of War Henry Stimson, Secretary of the Navy James Forrestal, and Acting Secretary of State Joseph Grew lost this bureaucratic battle is a tragedy relieved only by the courage of Primer Suzuki and his government in eventually managing the surrender successfully.  

3.2 Juggling

But, if so many of Roosevelt’s closest associates, both at home and abroad, actively opposed unconditional surrender, albeit privately and most gently, because it lengthened the war by unnecessarily complicating surrender negotiations, then why did he persist with such constancy that Warren Kimball was moved to observe that, "unconditional surrender was not a policy proclamation, it was an assumption" (1991, 63)? The reasons Roosevelt persisted are of two sorts: He was predisposed to make the demand, and he saw no alternative. The first predisposing factor was the changed ethos that had developed during the previous one hundred years. This change made the demand appear unobjectionable to many and meant that for every

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10 The issue of guaranteeing the Imperial system naturally came up again during the final surrender negotiations of 10-14 August 1995. At that time, Secretary of War Stimson and Chief of Staff to the Commander-in-Chief, Admiral William Leahy, again pleaded for retaining the Emperor (Bernstein 1977, 4-5).
person advising against someone else was advising for. The second and more important predisposing factor was Roosevelt's personality. The visionary architect of peace constantly warred against the master politician. As a visionary, Roosevelt defined his long-term interests clearly in the Atlantic Charter and secured the assent of his Allies at the outset, thereby avoiding Wilson's error. As the master politician however, he was a "juggler":

You know I am a juggler, and I never let my right hand know what my left hand does.... I may have one policy for Europe and one diametrically opposite for North and South America. I may be entirely inconsistent, and furthermore I am perfectly willing to mislead and tell untruths if it will help win the war (Cited in Kimball 1991, 7).

In order to control the unknown contingencies of tomorrow, even an apprentice politician knows that one must keep one's options open for as long as possible. And, in a long and difficult war, how better to keep them open than by demanding an unconditional surrender, since the immediate effect of the demand is to delay all discussion of contentious peace terms until some undefined future date?

On the political and more important side, Roosevelt and the country had to overcome two starkly different problems separated by the Japanese attack on Pearl Harbor. The common thread that ran through both was the need to silence
all debate and discussion if anything was to be accomplished, since all debate was either unrealistic or irrelevant. Silence was not possible before Pearl Harbor, but, after, Roosevelt seized the opportunity to great effect.

Before 7 December 1941, the discordant and divisive three-way dispute among the pacifists, the isolationists/unilaterists, and the internationalists/defense-through-strength-faction meant that the clear and obvious dangers in both Europe and Asia were not being met with anything like the urgency demanded. During this period, Roosevelt's fondest dream was that the Congress would stop talking and start acting. As he told Churchill in November 1941, "I shall never declare war; I shall make war. If I were to ask the Congress to declare war, they might argue about it for three months" (Kimball 1991, 247 n. 83). Unable to silence either the Congress or the "America First" groups, Roosevelt bided his time. On the one hand, he patiently awaited the inevitable incident that would end all of the talking and allow for action -- the sinking of a Lusitania or some such. On the other hand, he minimized the damage done by all this disagreeing by agreeing, at least some of the time, with the pacifists and isolationists. Thus, like Wilson before him, he fought the 1940 presidential campaign on a no war platform. For example, in his campaign address on 29 November 1940 in Cleveland, he repeated again:
There is nothing secret about our foreign policy.... I have stated it many times before, not only in words but in action. Let me restate it like this:

The first purpose of our foreign policy is to keep our country out of war....

The second purpose of this policy is to keep war as far away as possible from the shores of the entire Western Hemisphere....

Finally, our policy is to give all possible material aid to the nations which still resist aggression, across the Atlantic and Pacific Oceans (Public Papers... Franklin D. Roosevelt 1950, 9:546).

However, he did conclude this restatement of his foreign policy with this subtle caveat, "And let me make it perfectly clear that we intend to commit none of the fatal errors of appeasement" (p. 546). The message was necessarily ambiguous. Since a commitment of avoid "the fatal errors of appeasement," all but assured American entry into the war sooner or later, the first purpose of Roosevelt's policy was somewhat quixotic. Still, Roosevelt's intentions were clear. The policy was to keep the United States out of war -- if at all possible. That this was, in all probability, impossible is not an indictment of either the policy or Roosevelt's sincerity. As a good politician, he emphasized the positive during the
campaign, awaiting reelection to his third term in order to be more candid. For example, during his fireside chat of 29 December 1940, he admitted that:

If we are to be completely honest with ourselves, we must admit that there is risk in any course we may take. But I deeply believe that the great majority of our people agree that the course that I advocate involves the least risk now and the greatest hope for world peace in the future (p.640).

Through it all, however, he sought to prepare America for war as best he could, obtaining increased appropriations for the Army and Navy, introducing peacetime conscription, enacting Lend-Lease, and so on. As Roosevelt summed it up during his 9 December 1941 fireside chat:

Knowing that the attack might reach us in all too short a time, [after the fall of France] we immediately began greatly to increase our industrial strength and our capacity to meet the demands of modern warfare.

Precious months were gained by sending vast quantities of our war material to the Nations of the world still able to resist Axis aggression. Our policy rested on the fundamental truth that the defense of any country resisting Hitler or Japan was in the long run the defense of our own country. That policy has been justified. It has given us time, invaluable time, to
build our American assembly lines of production (Public Papers... Franklin D. Roosevelt 1950, 10:526).

After 7 December 1941, all the talk that had disrupted and delayed preparations for the war ended abruptly. The pacifists were rendered mute; the isolationists instantly converted to internationalism. As Senator Arthur Vandenberg, a previously isolationists Republican of Michigan, announced on the Senate floor just before he voted for the declaration of war against Japan on 8 December 1941:

There can be no shadow of a doubt about America's united and indomitable answer to the cruel and ruthless challenge of this tragic hour -- the answer not only of the Congress but also of our people at their threatened hearthstones.... I have fought every trend which I thought would lead to needless war; but when war comes to us -- and particularly when it comes like a thug in the night -- I stand with my Commander in Chief for the swiftest and most invincible reply of which our total strength may be capable.... For now, nothing else will be enough except an answer from 130,000,000 united people... (Cong. Rec. 1941, 9505).

But, if Pearl Harbor had ended all "disagreements" over the need to go to war, in order to win the war, Roosevelt had a desperate need to forestall all disagreements over the goals of the war, over its peace terms. That is, after America finally entered the war in December 1941, Roosevelt
found himself in a difficult situation. Contrary to what one might expect, his primary problem was not so much how to defeat the enemy, but how to nurture the brittle post-Pearl-Harbor consensus at home while cultivating the nascent unity among the Allies abroad. If the Alliance held abroad and the consensus at home, ultimate victory was assured. This was clear even during the darkest days of 1941 and 1942. But should either consensus crumble, the repercussions would be incalculable. Roosevelt knew this, and he quite correctly saw these two tasks as his primary responsibility.

Unfortunately though, both the domestic consensus and the foreign alliance were improbable and implausible in the extreme. To believe that the miraculous conversion of vociferous isolationists into raging internationalists on 7 December 1941 constituted a permanent transformation of American politics was only slightly less preposterous than believing that an alliance composed of the world's greatest colonial power, the world's greatest Communist power, and the world's greatest capitalist power could be sustained. As soon as the immediate military crisis receded, no one would be surprised to see irreconcilable colonial, Communist, and capitalist ambitions tear the Alliance asunder, while renewed cries of "America First" would splinter the domestic consensus. To avoid these twin catastrophes, Roosevelt had to juggle with all his skill and ensure that no controversy got out of hand. In practical
terms, this meant that he had to avoid any and all discussion of possible peace terms. There would of course be disagreements over military strategy, but, as long as everyone remained committed to defeating the Axis, these could be resolved relatively easily. Likewise, the vague long-term interests announced in the Atlantic Charter would not provoke disruptive controversies precisely because they were so ambiguous. However, any debate over possible peace terms was guaranteed to provoke heated and possibly fatal disputes. The composition of interim regimes in the liberated territories, the amount of possible reparations, the realignment of borders, and the like were just the type of issue that could shatter a fragile wartime consensus.

Not seeing any alternative then, Roosevelt finessed all of these potentially destructive issues by ensuring that they were never discussed. His expedient for doing this was simple and elegant. He proposed a phantom goal around which everyone could unite. For, that is what a demand for surrender at discretion is -- a phantom. It sounds hard, precise, and very martial, but, in fact, it is entirely inconsistent, perfectly misleading, and willfully untrue. Just what a master juggler needs to perpetuate a splendid deception. It is entirely inconsistent in that it never means what it appears to mean. It never means that the enemy is actually expected to "surrender unconditionally."

Thus, while Roosevelt habitually demanded an "unconditional
surrender" in both public and private, whenever pressed, he always relented. As a result, his real policy, as he explained to Secretary Hull in April 1944, was to insist rigorously upon the "principle" but to allow exceptions in each and every specific cases:

I understand the problem thoroughly, but I want at all costs to prevent it from being said that the unconditional surrender principle has been abandoned. There is a real danger if we start making exceptions to the general principle before a specific case arises....

I understand perfectly well that from time to time there will have to be exceptions not to the surrender principle but to the application of it in specific cases. That is a very different thing from changing the principle (For. Rel. 1944, 1:592; also cited in Hull 1948, 2:1577).

To point out that any "principle" quickly becomes meaningless whenever exceptions are made in each and every specific case is to miss the point. For a master juggler, the point is neither the principle nor the exceptions, but the timing. The "real danger" of consensus destroying controversy arises when "we start making exceptions to the general principle before a specific case arises." Roosevelt was happy to abandon his "principle" in any specific case as long as he was able to defer all contentious issues until
the end game. But perhaps Secretary Hull captured the policy's perfect inconsistency best when he observed that:

As for our Oriental enemy, Japan surrendered three months later [after the Nazi surrender] when she perceived that the principle of unconditional surrender could be applied conditionally (Hull 1948, 2:1582).

Unconditional surrender is perfectly misleading because it renders a declaration of war fatally unreasonable, negating both its moral and military functions. That is, the moral function of any well-reasoned denunciation of war is to declare peace -- to articulate the remedies that will restore a shattered peace. But "unconditional surrender" is not a remedy, condition, or term that will restore peace. It is instead a shrill and unreasoned demand for the other side, but not ourselves, to stop the combat, to stop the fighting. A unilateral cessation of combat, however, is not peace, unless one wishes to argue that "peace" is merely the absence of combat. Indeed, the demand necessarily promotes excessive violence, since the war's declared purpose is nothing less than to bludgeon the enemy into a perfect submission. Likewise, the military function of any well-reasoned denunciation of war is to inform the war, to give it a shape and coherence by linking the war's political purpose to its operational objectives, which, in turn, control the conduct of the war "down to smallest operational detail" (Clausewitz 1976, 579). But, a demand for an
"unconditional surrender" destroys these links, depriving a war of shape or coherence. Indeed, the demand necessarily promotes the perversion of war, since its declared purpose is nothing less than to bludgeon the enemy into a perfect submission. In fine, a demand for unconditional subjection is misleading because it leads to combat without war, because it is a "policy" to wage an uninformed war without regard to the peace. But, of course, the whole purpose of the demand was to mislead. By misleading, Roosevelt, the juggler, felt he could implement his plan for peace only if he could preclude any discussion of specific peace terms until after the war.

And finally, a demand for unconditional submission is willfully untruthful because it has nothing to do with the enemy's surrender, but everything to do silencing all discussion of contentious peace terms in the hope of sustaining unity within the alliance and harmony at home. The juggler's trick, as we just noted, is therefore one of timing. He has to focus attention upon the unattainable phantom goal of perfect subjection until the end game, until the actual surrender when specific peace terms must be spelled out. At that moment, the juggler hopes that the situation will have changed such that any and all of the suppressed conflicts and antagonisms that would have torn asunder the wartime consensus before can now be handled, or, at least, glossed over, without excessive rancor.
And, indeed, Roosevelt made the first part of this juggle work extremely well. During the war, he was extraordinarily successful in silencing debate over contentious issues and, thereby, in holding together his improbable foreign alliance and his implausible domestic consensus. Unfortunately, Roosevelt died before the end game with Germany and Japan, which creates one of the great "might-have-beens" of history: Had Roosevelt, the master juggler, lived to play out the game, would the results have been different, perhaps, better? His mishandling of the Italian surrender does not suggest that they would have, but, of course, we shall never know. All that can be said for certain is that even the best of haberdashers cannot juggle the way Roosevelt could.

Such speculations aside, by the end of the war, the inconsistent, misleading, and untruthful nature of his expedient made the juggle increasingly more difficult. Abroad, the phantom goal of an unconditional surrender simply could not be sustained. With both the allies and the enemy, the silence had to be broken, and all of the contentious peace terms so studiously avoided had to be discussed and decided, with predictably tragic results. At home, however, the phantom was not only sustained, but it flourished, laying the domestic foundations for the Cold War to follow.
The tragedy of Poland provides the obvious example of how Roosevelt could not sustain his juggle among the Allies. The first three points of the Atlantic Charter committed the Allies to seeking "no aggrandizement, territorial or other"; "no territorial changes that do not accord with the freely expressed wishes of the peoples concerned"; and respect for "the right of all peoples to choose the form of government under which they will live." Stalin had readily agreed to these three general principles. However, whenever this general commitment shaded off into specific details, Stalin was always quick to remind Roosevelt and Churchill of certain historical and security realities. Namely, his need to ensure that the pre-war Soviet-Polish frontier was relocated westward and the vital importance of ensuring that friendly regimes governed in Poland and throughout Eastern Europe. Moreover, cognizant of his commitments under the Atlantic Charter, Stalin had prepared a group of exiled Poles, the so-called Lublin Poles, who were more than happy to ensure that "the freely expressed wishes" of the Polish people included both of these demands. Stalin's squaring of the Polish circle would have been uncontroversial except for the existence of another group of exiled Poles, the so-called London Poles, who were staunchly anti-Russian, anti-Communist, and unlikely to accede to more than marginal changes in the Soviet-Polish frontier. More to the point,
the London Poles were overwhelmingly supported by the Polish-American community.

Given this situation, it is not hard to see why Roosevelt felt the need to suppress all discussion of Poland during the war. In the end, however, he could not keep juggling the London and Lublin Poles forever. As the Red Army fought its way through Poland and into Germany, these issues had to be discussed and decided. During the TOLSTOY talks in Moscow from 9-17 October 1944, Churchill and Stalin came to an understanding concerning their respective spheres of influence. Britain would have a free hand in Greece and the Eastern Mediterranean in return for allowing the Soviet Union a free hand in Eastern Europe, in general, and in Poland, in particular. These understandings were repeated and reinforced at Yalta (7-12 February 1945), so that Stalin had every reason to believe that he had been given a free hand in Poland. Moreover, having conspicuously excluded the Soviets from the Italian surrender negotiations, Roosevelt was in no position to demand a place at the table when Stalin negotiated agreements on the Eastern Front.

Nonetheless, as the crude brutality with which Stalin rearranged liberated territories became apparent, first, in Roumania, then, in Poland and the rest of Eastern Europe, Churchill began to back way from the commitments he had made in Moscow and Yalta. In spite of this, until his death on 12 April 1945, Roosevelt attempted to hold the Alliance
together."

Subsequently, Truman was less inclined to juggle, less inclined to minimize Stalin’s barbarity, which set the stage for the Cold War that followed, seemingly inexorably, from the hot war. In the end, then, despite its ability to finesse controversy among the Allies during the war, Roosevelt’s demand for an unconditional surrender lead to vast misunderstandings among the Allies after the war.

At home, unlike with the enemy and the Allies, Roosevelt’s demand for "total victory" was stunningly effective. Even as the end game neared, it was spectacularly successful in preempting both public and private debate of peace terms. In the public sphere, perhaps the most notable incident was the uproar over Senator Burton K. Wheeler’s radio address of Friday, 5 January 1945. In this wide-ranging address, Senator Wheeler, first, decried the "power politics" and "spheres of influence" being established by the Soviets in Eastern Europe and the British in Greece, which had inevitably led to violations of the Atlantic Charter; second, he opposed peacetime conscription; third, he called for the immediate establishment of "a United Nations political council ... to see that the present series of disgraceful unilateral peace settlements now taking place in [Eastern] Europe stops"; fourth, he endorsed a United States of Europe, and, finally,

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"A good summary of how Roosevelt attempted to minimize (juggle?) Stalin’s rather crude takeover of Eastern Europe, especially, Poland, can be found in Kimball 1991, Ch 8."
he concluded "by urging ... that the American people demand the abandonment ... of the brutal and costly slogan of 'unconditional surrender'. Until this is effected, we shall go on blowing Europe and our own boys to bits without rhyme or reason" (Cong. Rec. 1945, 84-5).

Since Senator Wheeler was a man of considerable stature, one would expect his words to have carried considerable weight. A Democrat unilateralist from Montana with twenty-three years seniority, he had supported Roosevelt’s domestic agenda before the war, while opposing his foreign policies. However, the bombing of Pearl Harbor had changed him into an internationalist who faithfully supported the war effort. One would, therefore, think that his sensible remarks would have been well received. But they were not. Secretary of State Stettinius released a short, almost hysterical, statement the very next day that ignored all of the speech except the passage concerning unconditional surrender:

...Senator Wheeler’s attack upon the unconditional-surrender principle ... will be understood in Germany and in Japan as meaning that if these countries can resist long enough, and kill enough American soldiers, the will of the American people to achieve a complete victory will be broken and a negotiated peace can be secured. The people of Germany and Japan do not know, as the people of the United States do know, that
Senator Wheeler speaks not for the American people but for a discredited few whose views have been overwhelmingly rejected by their fellow citizens of every party. Senator Wheeler's statement is, therefore, profoundly regrettable (Dept. of State Bull. 7 January 1945, 43; Cong. Rec. 1945, 85).

In addition to this broadside, which was picked up and applauded in the press, the Administration retaliated in more practical ways. Despite his seniority, it mounted a successful campaign to deny Senator Wheeler a seat on the Senate Foreign Relations committee that he was then seeking. And, finally, on 15 January 1945, when Senator Wheeler took to the Senate floor to defend himself at length (He spoke for over three hours.), Senator Claude Pepper rose to denounce Senator Wheeler's failure to support blindly Roosevelt's demand for an unconditional surrender:

...in my humble opinion what will cost far more lives [than the unconditional surrender demand] is the hope of the Germans that political division and dissension in the United States, to which the able Senator from Montana is now contributing, will make it possible for them to obtain better terms than unconditional surrender. That is where their hope lies, Mr. President; and until that hope is crushed and destroyed they will continue to fight (Cong. Rec. 1945, 255).
Needless to say, after such treatment by the Administration, the Senate, and the press, few were willing to question the wisdom of Roosevelt's demand in public.

But it was not just on the Senate floor and among the general public that debate was stifled. The same brutal treatment awaited those within the highest reaches of government who dared to object. Thus, on 13 June 1945, James Forrestal, the Secretary of the Navy, could record in his diary that Commander-in-Chief Truman had indicated "that before he left for Europe [to attend the Potsdam Conference] he wanted to have a meeting of [the Secretaries of] State, War and Navy, plus the Joint Chiefs of Staff, to secure a clear outline of our national objectives in Asia" (Forrestal 1951, 69). Three and a half years into the war -- two months before it ended -- and the Commander-in-Chief and his principal advisers are not yet "clear" about "our national objectives." In a word, the war is still uninformed; the Administration had yet to articulate its war aims. World War II languished to the end as a case of combat without war. It never became a case of war with combat. The reason for this, of course, was Roosevelt's demand for surrender at discretion, which foreclosed all debate, all possibility of informing the war. For, how does one inform a war; how does one define "our national objectives" except by debate? But such a debate is specifically precluded by a demand for an "unconditional surrender."
In particular, each time some one tried to arrive "at a precise definition of our war aims," they were frustrated by someone else who would insist that Roosevelt's policy of "unconditional surrender" could not be defined because it was a self-evident policy that demanded nothing less than an "unconditional surrender" (Forrestal 1951, 69). This of course is what happened to Secretary of the Navy Forrestal, Secretary of War Stimson, Acting Secretary of State Grew, and General Marshall when they attempted to shorten the war in the Pacific by inserting a passage into the Potsdam Declaration telling the Japanese that "unconditional surrender" did not mean "unconditional surrender," did not mean an end to the institution of the Emperor. Those opposed to this effort, notably Archibald MacLeish in a brutally effective memorandum, responded by threatening political annihilation for those who advocated such a change. After pointing out that, "Surrender on terms, even irreducible terms, is not unconditional surrender," MacLeish highlighted, not once, but twice, the unacceptable political price that would have to be paid for any change:

If we are modifying the announced policy of unconditional surrender to a new policy of surrender on irreducible Japanese terms, the American people have a right to know.
...if what we propose is to replace the policy of unconditional surrender with a policy of surrender on irreducible Japanese terms, we should say so and say so in words which no one in the United States will misunderstand (For. Rel. (Potsdam I) 1960, 895, 897; cf. Bernstein 1977, 4-5).

The desperate need of the Suzuki government to know and understand how the Americans planned to treat them after they surrendered is, of course, of no concern to MacLeish. He is only concerned, he says, with the right of the American people to be told should such a significant change in policy be made. But surely MacLeish also understood that any politician, with the possible exception of the now dead Roosevelt, who dared to announce such a change would be annihilated in a firestorm of protest. After three and a half years of being told that those terms were "complete victory," "unconditional surrender," few in the Administration, the Congress, the press, or the general public would countenance any deviation for Roosevelt's demand. And, so, it comes as no surprise that no one was willing to take up MacLeish's challenge, Senator Wheeler's treatment was more than enough to deter even the hardiest. 12

12The sad story of the effort of senior officials within the Truman Administration to "define" unconditional surrender can be followed most easily in the diaries of James Forrestal (pp. 24, 52, 55, 66-77, 265-6). In Forrestal's opinion, "The great mistakes were made during the war because of American failure to realize that military and political action had to go hand in hand. Both the British and the Russians realized
But, if neither the public nor the highest government officials were free to debate the conditions that would inform the war, that would restore peace because of Roosevelt’s demand, then, by default, the war would be uninformed combat, the war would be fought without regard for the peace, which was precisely the trap that Roosevelt was trying to avoid when he proposed the Atlantic Charter. In fine, a demand for unconditional surrender means that both the allies and the public know whom they are fighting against, but not what they are fighting for. The political leadership preserves a fragile consensus at the price of not articulating the war’s purposes.

Thus, Roosevelt’s conduct of the Second World War was a tragic juggle -- simultaneously politically brilliant and profoundly immoral. It was immoral in the way that a demand for an unconditional surrender is always immoral. It lengthened the war unnecessarily and sanctioned unnecessary death and destruction, culminating in the incalculable horror of the atomic bombings. It was politically brilliant in the way that it silenced the Congress and American public at home and the Allies abroad. Without this silence, it

this fact and that was what lay behind Churchill’s desire to attack through the Ljubljana Gap [i.e., his Mediterranean strategy of attacking Germany from the northern Adriatic through Slovenia to Vienna and beyond]" (p. 496). For a more detailed account of General Marshall’s attempt see Villa 1976; see also Grew (1952, Ch. 36). For the details of how senior officials again struggled with these issues during the crucial negotiations of 10-14 August 1945, see Bernstein 1977.
would have been impossible to have achieved the unparalleled unity of action -- if not purpose -- both at home and abroad that so marked Roosevelt's conduct of the war.

But, if Roosevelt himself is absolved from much of the guilt for using immoral means to achieve a good end by the circumstances that forced him to impose silence at home and abroad, those upon whom the silence was imposed cannot. In particular, it is the American public and their too faithful representatives in the Congress that must bear the greater burden of guilt. Churchill and Stalin were always ready to discuss the war's aims, the terms for peace to demand of the enemy, as the conference in Tehran and the TOLSTOY talks demonstrate. The basis for these discussions would not be the tenants of the Atlantic Charter, of course, but rather the number of divisions each Ally had in the countries concerned. Yet, it was precisely this realism, or, should one say, cynicism, that made it imperative for Roosevelt to silence all debate at home, neither the Congress nor the American public was prepared to discuss the war in these harsh terms. As early as 5 October 1937, in a major address in Chicago, Roosevelt had pleaded with the American people to wake up, look around, and honestly appraise the worsening situation in the world:

...as I have seen the happiness and security and peace which covers our wide land, almost inevitably I have been compelled to contrast our peace with very
different scenes being enacted in other parts of the world.

It is because the people of the United States under modern conditions must, for the sake of their own future, give thought to the rest of the world, that I, as the responsible executive head of the Nation, have chosen this great inland city and this gala occasion to speak to you on the subject of definite national importance (Public Papers... Franklin D. Roosevelt 1941, 6:406-7).

The apologetic and defensive tone with which Roosevelt justifies his speaking of world affairs is barely imaginable today. Yet, for his honesty and candor, he was called a warmonger and worse. But, if an honest and, above all, a realistic debate was not possible either in the Congress or among the American public, then what else could Roosevelt had done but silence those who could not debate the war realistically with his innately immoral demand for an unconditional surrender?

4. The Korean War, 1950-1953

One of the curious things about declarations of war is that each belligerent normally issues just one per war. This is curious because, especially, in war, circumstances change. Battles are won or lost; support at home waxes and wanes; new allies join in, while old allies drop out. In response to these changes, the belligerents obviously have
to modify their grand strategy, adjusting their war aims so as to reflect the new political or military realities. Inasmuch as the declaration of war is the proper place to articulate grand strategy, one would expect any such changes to provoke a new declaration, fixing the new war aims and explaining what motivated them. However, this is not generally the case. While not generally the case, there are, nonetheless, a few exceptions. In particular, there are the United Nations Security Council resolutions for the Korean and Persian Gulf wars. In both cases, the Security Council passed a number of resolutions at different times, defining new war aims and changing grand strategy to reflect new circumstances. Therefore, the question arises: Why does the Security Council pass what are in effect multiple declarations of war, when others do not?

Since the Security Council has always been an ally, and never a principal in a war, the answer appears to revolve around two factors: On the one hand, allies possess greater flexibility in reacting to changed circumstances than do the principal belligerents. This appears to be so because, for the principals, motivation is usually high, often desperate, and their objectives usually of great importance and, hence, not easily modified. For the allies in contrast, motivation is often moderate, not to say opportunistic, and their objectives, often tentative, not to say hesitant. As a consequence, changes in circumstances often affect allies
more than they do principals. For example, during the Revolutionary war, if the battle of Yorktown had been won by General Cornwallis, it is easy to imagine that the French would have quickly terminated their alliance, making peace with the British and leaving Washington to carry on the struggle alone. Louis XVI was willing to support the revolt in order to weaken the British empire, but only if he could do so at minimal risk. Accordingly, allies in a war are much more likely to see a need to modify their war aims than are the principals and, hence, much more likely to see a need for a new declaration of war.

On the other hand, the coordinate relationship between the declarations that begin wars and the peace treaties that end wars usually obviates the need for multiple declarations. Under normal circumstances, the peace conference is the proper place for both principals and allies to reconcile their declared goals with changed circumstances. That is, one declares one’s objectives at the beginning of the war, fights for them as best one can, and, then, squares the declared objectives with the resulting political and military realities during the peace negotiations. The vanquished scale their demands back; the victors press for an even more favorable outcome, and, should there be neither victor nor vanquished, everyone splits the difference. For both logical and rhetorical reasons, as long as peace talks are a real prospect, it
seldom makes sense to revisit the original declaration. However, occasions do arise when this process of reconciliation is completely frustrated. One of the belligerents, usually the side that has just suffered a great reversal, refuses either to enter into peace talks altogether or enters the talks without modifying its war aims. When this happens, the principal on the other side and the allies on both sides are affected differently.

For the principal that has just inflicted the reversal, nothing has really changed. In the absence of a peace treaty, its declared war aims have not yet been achieved, and so it must soldier on. For the allies, however, much has changed. For those allies who have failed to achieve their objectives, the war may be proving too costly, and now may be a good time for them to cut their losses and quit. For those allies who have achieved their objectives, there is no need to continue fighting, and now may be a good time for them to quit also. But, should they decide to continue, they will have to revise their original grand strategy and fix new war aims. Under these circumstances, it is appropriate for the allies, but not the principal belligerent, to debate and pass a second or even a third

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13To be more precise, I have been unable to locate any examples where the refusal of one side to recognize defeat after a great reversal of its fortunes and enter peace talks has changed the war aims of the principal on the side that inflicted the reversal. Such cases may exist, but I have not been able to locate one.
declaration of war, as the Security Council has done during both the Korean War and the Persian Gulf War. For the sake of simplicity, let us consider the Korean case.

The Korean War began at 4 o’clock in the morning Korean time on Sunday, 25 June 1950 with a devastatingly effective North Korean tank attack across the 38th parallel. That same day in New York (which was the next day in Korea), the Security Council passed its first resolution, which concluded that the Security Council:

Determine that this [North Korean] action [of attacking South Korea] constitutes a breach of the peace,

I. Calls upon the authorities of North Korea (a) to cease hostilities forthwith; and (b) to withdraw their armed forces to the thirty-eighth parallel.

III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities (Dept. of State Bull. 3 July 1950, 5).

When the North Korean authorities failed to heed the Security Council’s "call," a more forceful resolution was passed two days later on the eve of the fall of Seoul. In this resolution, the Council:
Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area (Dept. of State Bull. 3 July 1950, 7).

Taken together, these two resolutions constitute a reasoned declaration of war against North Korea. They informed the war and fixed the restoration of the *status quo ante* as the allies' war aim, which, in June, as the North Korean juggernaut rolled over ill-equipped South Korean forces and ill-prepared Eighth Army reinforcements, appeared to be all that could be hoped for.

Less than three months later, however, General MacArthur's daring landing at Inchon on 15 September 1950 changed the situation dramatically. In one move, MacArthur appeared to have secured the allies' war aim of restoring the *status quo ante*. He had forced the North Koreans "to withdraw their armed forces to the thirty-eighth parallel." But appearances are deceiving. The *status quo ante* is a fragment of Latin that signals a fervent hope, not a solid reality. Nothing can be restored to its former condition. The North Korea of September was not the North Korea of June. Her armed forces had been crushed, completely shattered. As a result, the North Korean authorities lacked authority. They could neither defend their own territory nor maintain internal security. North of the 38th parallel
and south of the Yalu River, everything was in suspense. The landings at Inchon had created a huge vacuum, just waiting to be filled.

Under normal circumstances, this vacuum would have been filled by peace talks. Had MacArthur been more forthcoming in his 1 October 1950 call for a North Korean surrender (Dept of State Bull. 9 October 1950, 586) or had the North Koreans been willing to admit their defeat and request talks, it is possible to imagine that the United Nations would have provided, as a part of the peace settlement, the massive outside assistance that the North Korean authorities so desperately needed to reconstitute themselves. However, neither side was then ready for peace. Motivated by hubris and Cold War politics, the allies decided to fill the vacuum themselves. What had seemed the maximum possible in June was viewed as the minimum obtainable in September. Accordingly, on 7 October 1950, the General Assembly redefined victory, passing a resolution:

Recalling that the essential objective of the resolutions of the General Assembly referred to above was the establishment of a unified, independent and democratic Government of Korea,

1. Recommends that

(a) All appropriate steps be taken to ensure conditions of stability throughout Korea;
(b) All constituent acts be taken, including the holding of elections, under the auspices of the United Nations, for the establishment of a unified, independent and democratic Government in the sovereign State of Korea;... (Dept. of State Bull. 23 October 1950, 648).

Needless to say, in order to secure these new war aims, allied forces were going to have to push beyond the 38th parallel, all the way to the Yalu River. This would have been an easy task after Inchon, except that the North Koreans had not been idle. They had found an ally of their own to fill the vacuum. Motivated by desperation and playing upon Chinese fears of encirclement, Kim Il-Sung convinced the Chinese to enter the war should the allies penetrate too far above the 38th parallel -- which they did in short order. The scene was now set for renewed fighting. With allied forces pushing north at the same time as Chinese forces moved south, the vacuum filled quickly. The inevitable clash came on 26 and 27 November, when the Chinese launched their own "Inchon," an envelopment that lead to the near destruction of the Eighth Army in November, to the loss of Seoul for a second time on 4 January 1951, and two long years of grinding warfare thereafter.

In the event, therefore, it appears that it was a mistake to have redefined victory in October. Given Chinese concerns about a "capitalist encirclement," the withdrawal
of North Korean forces to the 38th parallel appears, in retrospect, to have been all that was possible. However, sorting out what might or might not have been possible does not concern us here. The point is that circumstances change and that, in many cases, the proper way for allies, but not principles, to respond to these changes is to redefine their grand strategy by issuing a second or even a third declaration of war. This option is not open to the principals in a war because, even in the face of defeat on the field of battle, the logic of their war aims does not permit of modification.

For example, had the North Koreans issued a declaration of war in June of 1950, they no doubt would have agreed with the United Nations on the need to establish a unified, independent, and democratic Government in a sovereign State of Korea, adding only this newly unified, independent and democratic government should also be socialist. Until Inchon, it looked as though they were going to achieve this goal. After Inchon, it looked as if, not they, but the South Koreans and their United Nations allies were the ones who would establish a unified, independent, democratic, but not socialist, Korea. However, at this point, it would have made no sense for the North Koreans to have issued a second declaration fixing the withdrawal of their forces to the 38th parallel as their new war aims. Assuming that they would have accepted the status quo ante, the proper place
for them to have indicated this new war aim would have been in the peace negotiations. Likewise, after the entry of the Chinese and the stabilization of the battle lines along the 38th parallel, it still made little sense for the North Koreans to revise their original war aims. For them to have declared in March of 1951 that they had now abandoned their desire to establish a unified, independent, democratic, socialist Korea and replaced it with the desire to reestablish the status quo ante would have been illogical and counterproductive. The logic and rhetoric of their original war aims compelled them to maintain the original objective, while at the same time bowing to the battlefield realities that made that objective impossible in the peace negotiations.

In sum then, whereas it makes little sense for the principals in a war to issue multiple declarations of war, it would often be most advantageous for allied powers to do so as a way to articulate and clarify their commitment to the alliance. So far, the United Nations Security Council is the only body to have done so, but it is not difficult to think of situations in which this option would have been useful. The Vietnam War comes to mind. Had the Congress voted a fully reasoned declaration of war against North Vietnam sometime during the late 1950’s, then it would have been appropriate for the Congress to have subsequently modified that initial declaration in response to changed
circumstances. For example, in an effort to end the corruption and the counterproductive policies of the Diem regime, the Eighty-Eight Congress voted to restrict aid to the Government of South Vietnam in December of 1963.\textsuperscript{14} Properly worded, this congressional initiative could have constituted a second declaration of war, setting a limit to American assistance to South Vietnam unless the corruption and the counterproductive policies ceased. Then, nine months later, at the time of the Gulf of Tonkin incident, the Congress could have voted a third declaration of war that took into account these new circumstances, and so on and so forth. Inasmuch as South Vietnam was unlikely to ever met the minimal standards for a continuing alliance with the United States, it seems unlikely that a fully reasoned declaration of war against North Vietnam would have survived more than a few modifications. But it the intriguing possibilities of the principle, not the reality, that interests us here.

5. The Comprehensive Anti-Apartheid Act of 1986

The Comprehensive Anti-Apartheid Act of 1986\textsuperscript{15} is the South African economic sanctions bill that was passed over President Reagan's veto on 2 October 1986. Discussions of economic sanctions usually turn on whether such sanctions are "effective" or not. This question, however, is of no

\textsuperscript{14}Pub. L. No. 88-205, 77 Stat. 380, quoted below.

\textsuperscript{15}Pub. L. No. 99-440, 100 Stat. 1086.
interest to us. Be they effective or ineffective, what
draws our attention is the fact that economic sanctions are
part and parcel of war, an integral and inseparable element
of the *ultima ratio regum*. They are integral because they
are one of its principal precipitating causes, one of the
more frequent *casus belli*. They are inseparable because
they are one of its principal effects, the disruption of
commercial relations being one of the inevitable and
unavoidable ramifications of a state of war. In fine,
economic sanctions are the principal means by which nations
wage war without combat.

Curiously though, since the First World War, economic
sanctions have not been viewed as a part of war, at least,
not by those who have imposed them. Rather, advocates have
often seen them as a more humane alternative to war, a way
to condemn or punish unacceptable behavior or to enforce
some standard of international conduct by inflicting the
invisible suffering of economic deprivation, while avoiding
the visible violence of combat. For example, speaking in
the Indianapolis Coliseum on 4 September 1919, President
Wilson suggested that:

A nation that is boycotted is a nation that is in sight
of surrender. Apply this economic, peaceful, silent,
deathy remedy, and there will be no need for force. It
is a terrible remedy. It does not cost a life outside
the nation boycotted, but it brings a pressure upon
that nation which, in my judgment, no modern nation can resist (Cited in Hufbauer, et al. 1990, 1:9).

However, Wilson's view of "boycotts" is peculiar in the extreme. How can a remedy be called "peaceful" when it is also "silent, deadly and terrible?" Except among cynics, why should the fact that "boycotts" do "not cost a life outside the nation boycotted" recommend them? Especially, since it is the weakest members of the boycotted nation who will suffer the most? The peculiarity of Wilson's views arises from the fact that he is advocating economic sanctions as an alternative to war. Had he said that the economic disruption of war without combat was often sufficient in itself to produce a coming to terms, had he said that a prudent strategy often dictates allowing economic disruption to take its toll before resorting to combat, there would have been nothing remarkable about his statement. But to imply that sanctions were an alternative to war is just to confuse the whole issue. It is like saying that one part of an orange, the rind, for instance, is a viable alternative for the whole orange. Parts rarely make acceptable substitutes for the whole of which they are but a part.

One of the reasons economic sanctions have not been recognized as a casus belli since the turn of the century is that they are usually imposed upon small or distant countries that are physically incapable of initiating combat
against the countries that have imposed the sanctions. Indeed, Roosevelt's sanctions against Japan just prior to the attack on Pearl Harbor is one of the few cases of economic sanctions leading to war in the twentieth century. Nonetheless, from at least the time of the Megarian Decrees, the imposition of economic sanctions has been one of the principal precipitating causes of war (Thucydides, I, 139; cf. I, 23. For a stronger evaluation of the effects of the decree, compare Aristophanes, Archarians 530-543.). Therefore, once one recognizes that economic sanctions are not an alternative to war, but rather an example of war without combat, then it becomes clear that the bills enacting such sanctions will possess many of the characteristics -- both good and bad -- of a declaration of war. On the bad side, economic sanctions have usually been initiated by the President, although the Congress has also taken the initiative -- in a manner of speaking. For example, Kaempfer and Lowenberg (1992, 55) in a study of twenty-one "Trade Sanctions Episodes" between 1971 and 1986 found that the Congress had initiated eight of the episodes. The "manner" of these "initiatives," however, was less than

16 The most comprehensive study of economic sanctions is that of Hufbauer, Schott and Elliott (2d ed. 1990), which lists 116 cases between 1914 and 1990, 77 of which involved the United States.

17 For an insight into the tangled legal basis that supports Presidential action in this field, see Barry E. Carter's 1988 International Economic Sanctions: Improving the haphazard U.S. legal regime.
forthright. It consisted of extremely abrupt and diffident clauses, such as the following, tucked away as an amendment to a foreign or military assistance act or some other piece of legislation:

It is the sense of the Congress that assistance authorized by this Act should be extended to or withheld from the government of South Vietnam, in the discretion of the President, to further the objectives of victory in the war against communism and the return to their homeland of Americans involved in that struggle (Pub. L. No. 88-205, 77 Stat. 380).

Such discreet and uninformative authorizations reflect the usual Congressional practice of voting only unreasoned declarations of war, only at the behest of the Commander-in-Chief.

On the good side, however, there is one grand exception to this supine manner. Indeed, when due allowance is made, the Comprehensive Anti-Apartheid Act of 1986 represents the most thoughtful "declaration of war" that the Congress has ever written. The only fault to be found with it is that it is not merely a declaration of war. Rather, it is a sort of omnibus war bill, combining, pell mell, a declaration of war, a declaration of alliance, a war budget, and an assortment of pronouncements on strategic, tactical and administrative matters. Nonetheless, when one takes the trouble to disentangle all of these disparate elements,
separating them out and lining them up in their proper places, the results are most rewarding. In particular, the act repays study on two counts: First, the 1986 act allows one to explore further the content of a declaration of war, identifying what should be included and what should be dealt with in separate legislation. The process we shall employ to do this is to apply the template we derived earlier in Chapter 2 from Jefferson's 1776 Declaration. By filling in the blanks of the template with language from the act, we are not only able to compose a fully reasoned declaration of war against South Africa but also to identify material better dealt with in separate legislation. Second, the 1986 act also provides significant evidence for believing that the Congress should be playing a more active role in framing alliance policy than is now thought appropriate.

5. 1. What's In, What's Out

The Comprehensive Anti-Apartheid Act of 1986 is unusual for two reasons: Its level of detail and the fact that Commander-in-Chief Reagan opposed it. The two points are obviously related, Reagan's opposition clearly forcing the Ninety-Ninth Congress to legislate details it would normally have left to the Commander-in-Chief's discretion. But this causal connection is of little or no interest; rather, it is the two facts taken in isolation that provoke our curiosity. Thus, to take Reagan's opposition first, the simple fact of presidential opposition raises a most
intriguing question. When the Congress opposes a war, we all know what happens. The Commander-in-Chief wagers the war on his own authority, as kings have always done. But what happens when a Commander-in-Chief opposes a war that the Congress insists upon waging? American history provides no clear response to this dilemma. The only partially similar case is Commander-in-Chief McKinley’s opposition to the Spanish-American War. But McKinley’s opposition was muted and, in the end, he came around to the Congressional viewpoint and supported the war. Accordingly, the 1986 act provides the only precedent. And, its solution is clearly the only viable option. In such a case, the Congress has to legislate at a level of detail similar to the 1986 act so as to impose its will upon the Commander-in-Chief.

Having said that though, the dangers of a "Congressional war" should be immediately clear. Never is it wise to entrust the conduct of a war to a commander who opposes the war, as Nicias’ command of the Sicilian expedition demonstrates. Consequently, a second and more important lesson to be learned from the 1986 act is that "Congressional wars" are acceptable only when there is virtually no possibility for combat. The Congress may impose the economic disruption of war without combat upon an enemy in the face of the Commander-in-Chief’s opposition, but even to contemplate war with combat would be to ask for disaster.
Turning next to the level of detail, the 1986 act is, as we noted earlier, an omnibus war bill. It contains everything, including the kitchen sink. Reagan's opposition to the sanctions, however, does not account for all of this detail. A secondary factor was the failure of the Ninety-Ninth Congress to think of the 1986 act as a declaration of war. Instead, this *casus belli* was thought of as an ordinary piece of peacetime legislation. Among other things, this meant that the drafters attempted to be, as they state in their title, as "comprehensive" as possible. However, when one shifts perspective and views the act as functionally equivalent to a declaration of war, it soon becomes clear that it functions very poorly as a declaration of war, precisely because it is so "comprehensive." What is needed, then, is to reorganize the act, separating the material appropriate for a declaration of war from the material better dealt with elsewhere. For example, there is the kitchen sink -- the truly extraneous material -- such as that found in Section 510, Prohibition On The Importation Of Soviet Gold Coins. While the inclusion of such extraneous matter may be acceptable in peacetime legislation, it is clearly inappropriate for a declaration of war. Should the Congressional horse trading necessary to secure passage of a declaration of war require a side deal such as that on Soviet gold coins, this extraneous matter should clearly be dealt with in separate legislation.
Once the truly extraneous material has been separated out, the next step is to liberate the declaration of war from within the text. To do this, we shall apply the template we derived earlier from Jefferson to the 1986 act so as to identify those passages that suitably fill in the outline. All the other materials will then be reshaped for use in other documents. After filtering the act through the template, the resulting declaration would look something like the following, where the passages quoted from the 1986 act are printed in small capitals and the transitions "borrowed" from Jefferson are printed in italic:

A declaration of war against South Africa by the Senate and House of Representatives of the United States of America in Congress assembled,

For far too long, in far too many countries, political oppression has cloaked itself in racism, artificially dividing societies and depriving entire peoples of their dignity because of accidental differences in coloration. Sadly, the United States is no stranger to this ignoble practice. Sobered, therefore, by the corrosive effects and shameful legacy of our own history of slavery and segregation, all Americans instinctively find the Government of South Africa's POLICY OF APARTHEID ABHORRENT AND MORALLY REPUGNANT (Sec. 110. (a) (1)). Yet, wishing better for all South Africans and conscious that a decent respect to the
Opinions of Mankind requires that we should declare the causes which impel us to war, we herein declare that the United States:

(1) BELIEVES STRONGLY IN DEMOCRACY AND INDIVIDUAL FREEDOMS;
(2) ENDORSES POLITICAL PARTICIPATION OF ALL CITIZENS;
(3) REGARDS A FREE, OPEN, AND VITAL ECONOMY AS A PRIMARY MEANS FOR ACHIEVING SOCIAL EQUALITY AND ECONOMIC ADVANCEMENT FOR ALL CITIZENS; AND
(4) IS COMMITTED TO A POLICY OF SECURING AND ENHANCING HUMAN RIGHTS AND INDIVIDUAL DIGNITY THROUGHOUT THE WORLD (Sec. 110. (a) (2-5).

And, that, when governments violate these principles in the gross and repellant manner in which the Government of South Africa has violated them, such violations evince a Design to reduce the citizens of such nations under absolute Despotism. Confronted with such circumstances, which repel all peoples of good will, it is our Right, it is our Duty, to assist the oppressed citizens of South Africa to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of the oppressed peoples of South Africa; and such is now the Necessity which constrains the United States to assist them to alter their former Systems of Government. The History of The Government of South Africa is a History
of repeated injuries and Usurpations, all having in
direct Object the creation of an undemocratic racist
form of oppression. To prove this, let Facts be
submitted to a candid World.

The Government of South Africa has imposed a
draconian state of emergency so as to subvert THE
PRINCIPLE OF EQUAL JUSTICE UNDER LAW FOR CITIZENS OF ALL RACES.

The Government of South Africa has refused to
RELEASE NELSON MANDELA, GOVAN MBeki, WALTER SISULU, BLACK TRADE
UNION LEADERS, AND ALL POLITICAL PRISONERS.

The Government of South Africa has frustrated THE
FREE EXERCISE BY SOUTH AFRICANS OF ALL RACES OF THE RIGHT TO
FORM POLITICAL PARTIES, EXPRESS POLITICAL OPINIONS, AND
OTHERWISE TO PARTICIPATE IN THE POLITICAL PROCESS.

The Government of South Africa has declined to
ESTABLISH A TIMETABLE FOR THE ELIMINATION OF APARTHEID LAWS.

The Government of South Africa has refused to
NEGOTIATE WITH REPRESENTATIVES OF ALL RACIAL GROUPS IN SOUTH
AFRICA THE FUTURE POLITICAL SYSTEM IN SOUTH AFRICA.

The Government of South Africa has failed to END
MILITARY AND PARAMILITARY ACTIVITIES AIMED AT NEIGHBORING STATES
(Sec. 101. (b) (1-6)).

The Government of South Africa has not REVOKED THE
GROUP AREAS ACT, THE POPULATION REGISTRATION ACT nor any of
the other acts which support the policy of systematic
racial discrimination called apartheid, including its
refusal to GRANT UNIVERSAL CITIZENSHIP TO ALL SOUTH AFRICANS, INCLUDING HOMELAND RESIDENTS (Sec. 106. (d) (3)).

The Government of South Africa has removed BLACK POPULATIONS FROM CERTAIN GEOGRAPHIC AREAS ON ACCOUNT OF RACE OR ETHNIC ORIGIN.

The Government of South Africa has DENATIONALIZED BLACKS AND CREATED A DISTINCTION BETWEEN THE CITIZENSHIP STATUS OF BLACK AND WHITE SOUTH AFRICANS.

The Government of South Africa has placed RESIDENCE RESTRICTIONS ON ALL SOUTH AFRICANS BASED ON RACE OR ETHNIC ORIGINS.

The Government of South Africa has RESTRICTED THE RIGHTS OF BLACKS TO SEEK EMPLOYMENT IN SOUTH AFRICA AND TO LIVE WHEREVER THEY FIND EMPLOYMENT IN SOUTH AFRICA.

The Government of South Africa has created artificial RESTRICTIONS WHICH MAKE IT IMPOSSIBLE FOR BLACK EMPLOYEES AND THEIR FAMILIES TO BE HOUSED IN FAMILY ACCOMMODATIONS NEAR THEIR PLACE OF EMPLOYMENT (Sec. 202. (b) (A-E)).

The Government of South Africa has refused to UNBAN DEMOCRATIC POLITICAL PARTIES, THEREBY SEVERELY RESTRICTING THE ABILITY OF SOUTH AFRICANS OF ALL RACES TO PARTICIPATE IN THE POLITICAL PROCESS (Sec. 311. (a) (3)).

In every stage of these Oppressions the United States has INTERVENED AT THE HIGHEST POLITICAL LEVELS IN SOUTH AFRICA TO EXPRESS THE STRONG DESIRE OF THE UNITED STATES TO SEE
THE DEVELOPMENT IN SOUTH AFRICA OF A NONRACIAL DEMOCRATIC SOCIETY (Sec. 103. (b) (5)). However, all of these efforts have come to naught, as have all similar efforts by the other industrialized democracies, the Organization of African Unity, and the United Nations. In light of this enduring recalcitrance on the part of the Government of South Africa, we must, therefore, acquiesce in the Necessity, which denounces this tragic breech in the amity between our two peoples, and hold them, as we hold the rest of mankind, Enemies in War, in Peace, Friends.

We, therefore, the Senate and House of Representatives of the United States of America in Congress assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good people of the United States of America, solemnly Publish and Declare, that it is the policy of the United States of America to help to bring about an end to apartheid in South Africa and lead to the establishment of a nonracial, democratic form of government (Sec. 4) through economic, political, and diplomatic measures (Sec. 101. (c)). And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortune, and our sacred Honour.
With due apologies to Jefferson for mixing his flowing eighteenth century periods with the act’s twentieth century legalese, the resulting text nonetheless captures the intent of the Ninety-Ninth Congress by clearly identifying the grievances that have cause this enmity and establishing the remedies that will restore amity between the United States and South Africa -- a nonracial, democratic South Africa. But what is to be made of all the other material in the act? Upon consideration, one discovers that it falls into one of three categories, each of which calls for a separate piece of legislation. First and least controversial of all, the declaration has omitted all the sections dealing with money, in particular, Title II, Measures To Assist Victims Of Apartheid, which authorized funds for scholarships and other direct financial assistance. This material was omitted in order to avoid the deformities of the 1846 declaration, it being clear that the declaration of war is no place to discuss the budget for the war (The 1846 declaration is reproduced in the Appendix.). Such money matters are more properly dealt with in a separate authorization bill.

Second, the declaration has omitted Title III, Measures By The United States To Undermine Apartheid, and Title IV, Multilateral Measures To Undermine Apartheid, which together contain the specific economic sanctions and negotiations that the Ninety-Ninth Congress wished Reagan to implement, along with Title V, Future Policy Toward South Africa, and
Title VI, Enforcement And Administrative Provisions, which detail the reports, studies, and other administrative actions the Ninety-Ninth Congress wanted the Administration to undertake. Normally, of course, when the Commander-in-Chief supports the declaration of war, it is not necessary to legislate these matters of detail at all. The laws of nations and the Commander-in-Chief’s own initiative would suffice to ensure that a suitable strategy and tactics were set in motion. However, the 1986 act is of particular interest precisely because Reagan opposed the sanctions. In this unusual and inauspicious situation, the only way for the Congress to impose its will upon a reluctant Commander-in-Chief would be for it to bring forward separate legislation detailing the specific strategy and tactics it wishes him to follow. Separate legislation is required for the sake of clarity and coherence, separating the document setting out grand strategy from the documents fixing strategy and tactics. The point of course is that the policy questions that surround a decision to oppose apartheid are different and distinct from the tactical considerations that surround, for example, a prohibition on air transportation with South Africa (Sec. 306). One could easily support the general policy, but oppose specific tactics, arguing, for example, that continuing air connections were essential to facilitate informal, people-to-people diplomacy, an important means of maintaining
international pressure on the Government of South Africa. Since these debates are so very different, the documents articulating them should also be different in order to avoid confounding and confusing the two.

Third and most controversial of all, the declaration has omitted all the sections articulating American policy towards the African National Congress and towards terrorism. The controversy arises because many would argue that the act's greatest strength, the reason it passed over Commander-in-Chief Reagan's veto, was that it was not a vindictive bill aimed solely at the South African Government. In an even handed manner, it condemned the excesses of both sides, "It is the sense of the Congress that a suspension of violence is an essential precondition for the holding of negotiations. The United States calls upon all parties to the conflict to agree to a suspension of violence" (Sec. 106. (b)). The act then went on to balance its economic sanctions against the South African Government with a threat to withdraw American support if:

...the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate [in negotiations]; or if the African National Congress, the Pan African Congress or other organizations --

(1) refuse to abandon unprovoked violence during such negotiations; and
(2) refuse to commit themselves to a free and
democratic post-apartheid South Africa under a
code of law,
then the United States will support negotiations which
do not include these organizations (Sec. 311. (c)).
The fact that the Ninety-Ninth Congress articulated
American policy towards both the African National Congress
and terrorism is undeniably a good thing. Our only
criticism is that it should have done so in a separate
document for reasons of clarity and coherence, as just
argued above. Having said that however, we must hasten to
note that these sections represent an historic departure in
the conduct of American foreign policy. This is the first
and only time the Congress has publicly and officially
declared American policy towards allies in a war, setting
the limits beyond which American friendship will not go,
without reference to the Commander-in-Chief indeed, in
defiance of his wishes. Previously, whenever the Congress
desired to set limits on an ally, it merely authorized the
sanctions in a vague sort of way, leaving it up to the
Commander-in-Chief’s discretion as to whether those limits
would actually be imposed, as we saw above when we cited the
clause sanctioning South Vietnam. Since alliance policy is
clearly a part of grand strategy, however, one can only
wonder that the Congress has not taken the initiative to
articulate alliance policy before. Whatever the reasons may
be, having established the precedent, albeit absent-mindedly, there is no reason it should not be repeated in the future, especially, since the United States seldom wars without the benefit of allies.

Normally, of course, alliance policy is spelled out in a presidentially-negotiated treaty of alliance. These treaties are usually signed well before the beginning of any war and, in consequence, are contingent in form, stating that, should the ally be attacked, the United States would provide this or that military assistance either automatically or upon "consultation." Because of this contingent quality, most treaties of alliance are hypothetical. They deal with matters that both parties hope will never come to pass. As a result, normally, a treaty of alliance is not the place to deal with questions such as those addressed in the 1986 act's policy towards the African National Congress and terrorism.

Normality, however, has many exceptions. In particular, two cases arise that call for more than the usual treaty of alliance can deliver. The first exception is a case like that addressed in the 1986 act. In this case, the United States found itself "allied," in effect, with groups that could not sign a treaty, the opposition to apartheid in South Africa being no more than a disparate collection of often feuding proto-political parties with no collective negotiating nor ratifying procedures. In this
situation, a unilateral "Declaration of Policy Towards ..." containing language similar to that found in the 1986 act would be an appropriate means to establish the limits of our "alliance." When combined with a declaration of war denouncing the common enemy, the two documents would recreate the evenhanded treatment that so marked the Comprehensive Anti-Apartheid Act of 1986.

The other exception is both more complex and more interesting. It occurs when the basic postulates that sustain a treaty of alliance prove false. That is, most treaties of alliance are predicated upon the belief that neither the internal policies of the ally nor his post-war ambitions will cause any significant difficulties. These beliefs are, however, grounded less in fact than in the hypothetical nature of treaties of alliance. With the advent of war, these assumptions often prove false. When this happens, it sometimes becomes difficult to distinguish one's nominal enemy from one's nominal ally, since the latter is either damaging the war effort directly through the pursuit of counterproductive internal policies, as was the case with Ngo Dinh Diem's regime in South Vietnam, or preparing to frustrate our conception of the post-war peace, as was the case with the Soviet liberation of Eastern Europe during World War II. In both cases, something more is needed than the normal, presidentially-negotiated treaty of alliance can deliver.
Just what that something more might be is a matter of considerable uncertainty, since the 1986 act provides the only precedent. In all probability though, the process would begin with a joint Congressional resolution or declaration. In some cases, that might be sufficient. For example, in Vietnam, a unilateral Congressional declaration stipulating that a reduction in the amount of corruption and a broadening of Ngo Dinh Diem's political base would be the price for continued American support would no doubt have been all that was needed, Diem being so entirely dependent upon American support. In other cases, when the ally is relatively less dependent upon American support, the joint resolution might authorize the President to open, or re-open, negotiations with the ally with an eye on securing agreement on certain stated conditions. For example, echoing Wilson's Fourteen Points, the Seventy-Seventh Congress might have passed a joint resolution authorizing Roosevelt to initiate negotiations with Great Britain and the Free French concerning the modalities for ensuring respect for the principle of self-determination in their respective colonies after the war. From these negotiations, two possible outcomes were probable: On the one hand, should the negotiations have proven successful, the new treaty of alliance would have been submitted to the Senate for ratification, and the alliance would have been constructed upon the firmest possible grounds, both parties
having arrived at a clear understanding of the other’s desires. On the other hand, should the negotiations have proven unsuccessful, or not immediately successful, Roosevelt could either have broken off the alliance or entered into an executive agreement that would have kept the war effort going until either the ally or the Seventy-Seventh Congress changed its mind.

In the really tough cases, when the ally has little real need for American assistance, the joint resolution might simply authorize the President to open negotiations with the ally, the lack of specific conditions indicating that he should cut the best deal he can. For example, during the Second World War, a debate in the Seventy-Seventh Congress on an alliance with the Soviet Union would, in all probability, have failed to agree upon a single set of conditions. Forced to balance the vast ideological and geopolitical gulf that separated the United States from the Soviet Union against the enormous increase in American casualties should the Red Army not prosecute the war all the way to Berlin, the Seventy-Seventh Congress would most likely have split down the middle. On one side, those perceptive enough to see the undesirable post-war difficulties of a Soviet dominated Eastern Europe would have combined with those committed to an anti-communist ideology to push for harsh conditions that would clearly have been unacceptable to Stalin. On the other side, those savvy
enough to understand how many more American soldiers would be killed and wounded should the Soviet Union diminish its war effort in the least would have pushed for very lenient conditions. Unable to bridge the gap between these two positions in a reasonable amount of time, the Seventy-Seventh Congress would have had to turn to Roosevelt, asking him to cut the best deal he could with Stalin. With Senate ratification of the resulting treaty, there would have been little room for what became known as the "Betrayal of Yalta."

But, whatever the modalities, the point is that alliance policy is an integral part of grand strategy, and, hence, a legitimate matter for Congressional initiative. The danger, of course, as Weber and many, many others have argued, is that the acrimonious debate in the Congress will make all alliances impossible, either by producing totally unrealistic conditions or simply by the debate itself, some members saying things that permanently alienated the ally. Indeed, it takes no imagination at all to envision a partisan Congress making a prospective alliance all but impossible to negotiate, thereby seriously damaging the war effort. While this danger is very real, the 1986 act provides an excellent counter example of what responsible Congressional debate can produce. In addition, when the Congress cannot articulate a realistic policy towards the ally, for partisan or any other reasons, perhaps, that is a
good sign that the proposed alliance will be counterproductive in the long run. For, beyond question, the greatest danger in alliance politics is not a free-for-all Congressional debate, but the all too ready acceptance of the facile expediency that has governed too many alliances -- namely, that the enemy of my enemy is my friend. For, there comes a point when the enemy of my enemy ceases to be a friend and, instead, becomes an enemy in his own right. Determining that point by setting the conditions and limits of our friendship is no less important than declaring war on the enemy. Since the Congress has a Constitutional responsibility to do the latter, it must have a Constitutional responsibility to do the former as well.

6. Conclusion

To this point, we have been looking backwards, struggling to understand the how and why of declarations of war -- how to distinguish a good from a bad declaration and why the habit of making them was lost over the past four hundred years. Now, if only for a moment, we should look to the future, speculating upon the possibilities for revitalizing and reviving this archaic custom so essential to the integrity of representative democracy.

When speculating upon the future, one could start in any number of places. However, perhaps the best starting point is a curious asymmetry in the lexicon we have inherited from the eighteenth century. How the judicial and
executive branches, chameleon-like, change their names — from Commander-in-Chief to President or chief executive, from courts-martial to courts-civil — depending upon whether one is speaking of their military or civil functions. In the case of the legislative branch, however, no such change in name takes place. There exists no lexical equivalent to "commander-in-chief" for the legislative branch. No word, phrase, or title has come down to us to indicate that the Congress is now discharging wartime, and not peacetime functions.

This lexical asymmetry is also reflected in the daily routines and operation of the executive and legislative branches. During times of war, the White House operates differently than it does in times of peace. It takes on a distinctly military air, with maps on the wall and soldiers in the halls. The President becomes the Commander-in-Chief. In contrast, on Capitol Hill, the Congress remains the Congress. Nothing really changes. The atmosphere may change; the content of some of the bills may change; the politics may even change, but the rules and structures remain the same, the daily routine of committee meetings and role-call votes does not change. The institution and its operation are largely untouched by the war.

This lexical and quotidian asymmetry is also reflected in the history of representative assemblies since the sixteenth century. These assemblies have seldom assumed
military functions. They have always deferred to their respective executives, as is evidenced most forcefully by their systematic failure to formally debate declarations of war. Indeed, the exceptions prove the rule. Exceptionally, during revolutionary times, in the absence of an executive branch, representative assemblies have taken on the job of actually conducting a war, for example, during the English Civil War or during the American and French Revolutions. However, in every case, this was considered as a revolutionary expedient to be corrected as soon as the immediate emergency could be overcome and a proper government with a proper executive could be constituted.

In fine, since at least the sixteenth century, representative assemblies have been seen as a peacetime branch of the government, and not a wartime branch, the serious business of war being reserved for the executive. This asymmetry among the branches of government is contradicted, however, by Article I, Section 8 of the Constitution, which empowers the Congress "to declare war," and, therefore, implies that the Congress does indeed possess distinctly military functions. Specifically, it possesses the function of determining the nation's grand strategy by analyzing the grievances that have caused the peace to be breached and the remedies that will end the war and restore peace. But, if the Congress does in fact possess distinctly military functions, then why does it not
also possess a distinctive martial name and a distinctive wartime organization just like the other two branches of government?

There is of course no answer to this question, but it does point the way towards the shape of the reforms that would be necessary to transform Article I, Section 8 from a dead letter into a living tradition. Moreover, when one begins to think about it, it is not just Article I, Section 8 of the Constitution that motivates a desire to develop a wartime title and structure for the Congress. Such a change is also motivated by the most pervasive circumstance of political life: Polities can exist in either one of two states or conditions -- in a state of peace whenever they maintain amicable relations with their neighbors or in a state of war whenever their relations turn sour and inimical. In response to the duality of their condition, all polities, from the smallest clan to the largest empire, have always created parallel structures and organizations to meet the vastly different contingencies of peace and war. Depending upon the circumstances, they assemble for regular councils and for war councils. They institute civil courts to adjudicate a civil code and courts martial to adjudicate the articles of war. They elect or anoint a chief and a war chief. They distinguish between warriors and citizens, and so on and so forth. Significantly, while the structures and functions of peace and war are separate, distinct, and
parallel in all societies, the individuals who people these structures are frequently the same. Hence, the chief will also be the war chief. The council will also sit as the war council, and citizens will simultaneously serve as soldiers and soldiers, as citizens.

Thus, there would be little novel or new if the Congress were to adopt a second title -- Council of War might be appropriate -- and establish a different structure and rules whenever it debates a declaration of war. In fact, after two hundred years of failing to declare war properly, one is forced to conclude that the current peacetime structure and rules of the Congress are completely inappropriate for the difficult task of declaring war. It is, therefore, not only desirable but imperative that the Congress adopt a different structure and a different set of rules to govern its military functions. What that structure and those rules might be is more than a little difficult to imagine. All that can be said for certain is that they would not resemble the current peacetime arrangement, which is demonstrably ineffective.

Reforming the Congress, however, is not possible until two other groups have been reformed: The professional military and the general public. The professional military obviously must be trained to understand that the Congress -- sitting as a Council of War -- is the one that sets grand strategy, not the Commander-in-Chief and, consequently, that
the Commander-in-Chief can no longer initiate wars. They must learn that his orders are not lawful in the absence of a formal reasoned declaration of war -- or, at a minimum, the existence of a debate that will soon lead to a formal reasoned declaration of war. Likewise, the general public must be educated to understand that the integrity of representative democracy, not to mention the Constitution, demands that the Congress -- sitting as a Council of War -- initiates all wars with a formal, fully reasoned declaration of war modelled upon Jefferson's Declaration of 1776. Indeed, educating the general public is the essential first step in reforming the Congress. Until the public pressures the Congress to adopt new structures and procedures, the Congress will predictably do nothing. Among other considerations, it is only with the strongest public support that the Congress could ever hope to overcome the inevitable opposition of the Commander-in-Chief to what he would call, with considerable justification, a usurpation of his traditional prerogatives.

However, all of that is for the future. For the present we shall content ourselves with the conceptual spade work, with rethinking the congressional war powers: 1) With pointing out that the crucial question that arises out of Article I, Section 8 is not the temporal question, "When should the Congress declare war?" but rather the textual question, "What constitutes a good declaration of war? How
does one distinguish a bad from a good declaration?" 2) With relocating the source of the controversy over the congressional war powers out of changing circumstances of the nineteenth and twentieth centuries and back to the sixteenth century when all nations stopped declaring their wars formally. 3) With distinguishing clearly between war and combat and all that follows from that. These three points, when taken together, should take a controversy that has been mired in the same rut for over two hundred years and open it up to inventive and imaginative innovations again. For the great irony is that Madison and his colleagues got it right in Philadelphia two hundred years ago. In a representative democracy, the peoples representatives and only the peoples representatives should possess the power to declare war. Their only "mistake," if one wishes to call it that, was that they could not transcend the absolutist customs and habits that had been handed down to them from the sixteenth century. Perhaps, this is not so surprising after all. Having exhausted themselves, as it were, creating the peacetime structures of a new form of government -- a representative democracy founded upon the will of the sovereign people and suitable for governing a most extensive republic as it expanded and entered the newly emerging industrial age -- they lacked the energy to create new wartime structures. They lacked the energy to elaborate the institutional and textual criteria
that could breath life into the congressional war powers, leaving that task, as it were, to the posterity for whom they labored to "secure the blessings of liberty."
Appendix:

American Declarations of War

In two hundred years, the Commander-in-Chief has requested a total of twelve declarations of war from the Congress on five different occasions -- in 1812 for the War of 1812, in 1846 for the Mexican-American War, in 1898 for the Spanish-American War, in 1917 for World War I Imperial Germany and the Imperial and Royal Austro-Hungarian Government, and in 1941 for World War II against Japan, Nazi Germany, Italy, Bulgaria, Hungary, and Roumania.

For the sake of simplicity, in the text, however, I spoke of the five "occasions" and not the twelve declarations. The reason for this is that the declaration against Austro-Hungary in 1917 is a carbon copy of the declaration against Imperial Germany, while all six of the World War II declarations follow the pattern set by the first, the declaration against the Empire of Japan. The two declarations against Spain in 1898 are significantly different -- the Joint Resolution of 20 April being conditional, while the declaration of 25 April is both absolute and unreasoned -- but this does not in any way affect our argument. The declaration of 25 April is curious
primarily for the fact that it post-dated the start of the war back to 21 April, which is rather unusual. The Joint Resolution of 20 April 1898, which McKinley used as an ultimatum, is of interest because, in form, it appears to be reasoned. Yet, the excessive vagueness of the arguments used in the amended Senate version that finally passed render it inadequate. All the other eleven declarations were both unreasoned and absolute in character.

1. For the War for Independence:

In CONGRESS, July 4, 1776.

A DECLARATION

By the REPRESENTATIVES of the UNITED STATES OF AMERICA,

In GENERAL CONGRESS assembled.

WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness -- That to secure
these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great Britain is a History of repeated injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World.
He has refused his Assent to Laws, the most wholesome and necessary for the public Good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in their Operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

He has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.

He has refused for a long Time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the Dangers of Invasion from without, and Convulsions within.

He has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to
encourage their Migrations hither, and raising the
Conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by
refusing his Assent to Laws for establishing Judiciary
Powers. He has made Judges dependent on his Will alone,
for the Tenure of their Offices, and the Amount and Payment
of their Salaries.

He has erected a Multitude of new Offices, and sent
hither Swarms of Officers to harrass our People, and eat out
their Substance.

He has kept among us, in Times of Peace, Standing
Armies, without the consent of our Legislatures.

He has affected to render the Military independent of
and superior to the Civil Power.

He has combined with others to subject us to a
Jurisdiction foreign to our Constitution, and unacknowledged
by our Laws; giving his Assent to their Acts of pretended
Legislation:

For quartering large Bodies of Armed Troops among us:
For protecting them, by a mock Trial, from Punishment
for any Murders which they should commit on the Inhabitants
of these States:

For cutting off our Trade with all Parts of the World:
For imposing Taxes on us without our Consent:
For depriving us, in many Cases, of the Benefits of
Trial by Jury:
For transporting us beyond Seas to be tried for pretended Offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an arbitrary Government, and enlarging its Boundaries, so as to render it at once an Example and fit Instrument for introducing the same absolute Rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the Lives of our People.

He is, at this Time, transporting large Armies of foreign Mercenaries to compleat the Works of Death, Desolation, and Tyranny, already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy the Head of a civilized Nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become
the Executioners of their Friends and Brethren, or to fall
themselves by their Hands.

He has excited domestic Insurrections amongst us, and
has endeavoured to bring on the Inhabitants of our
Frontiers, the merciless Indian Savages, whose known Rule of
Warfare, is an undistinguished Destruction, of all Ages,
Sexes and Conditions.

In every stage of these Oppressions we have Petitioned
for Redress in the most humble Terms: Our repeated Petitions
have been answered only by repeated Injury. A Prince, whose
Character is thus marked by every act which may define a
Tyrant, is unfit to be the Ruler of a free People.

Nor have we been wanting in Attentions to our
British Brethren. We have warned them from Time to Time of
Attempts by their Legislature to extend an unwarrantable
Jurisdiction over us. We have reminded them of the
Circumstances of our Emigration and Settlement here. We have
appealed to their native Justice and Magnanimity, and we
have conjured them by the Ties of our common Kindred to
disavow these Usurpations, which, would inevitably interrupt
our Connections and Correspondence. They too have been deaf
to the Voice of Justice and of Consanguinity. We must,
therefore, acquiesce in the Necessity, which denounces our
Separation, and hold them, as we hold the rest of Mankind,
Enemies in War, in Peace, Friends.
We, therefore, the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be, Free and Independent States; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

2. For the War of 1812:

   The declaration of 1812 is reproduced in Chapter 1 (Pub. L. No. 12-102, 2 Stat. 755).

3. For the Mexican-American War:

   This most bizarre of all declarations of war requires a word of introduction. In 1812, the Twelfth Congress had declared war and, then, almost immediately adjourned without appropriating any monies to fight the war. Needless to say, this had caused enormous difficulties. Thirty-four years
later the Twentieth-Ninth Congress did not want to repeat
the same embarrassing mistake, hence, all the money clauses.
In addition, the Mexican-American War is arguably the most
"political" war in American history. By "political," I mean
the petty "politics" of pork and personal advantage, as is
reflected, for example, in section 6 of the act.

An Act providing for the Prosecution of the existing War
between the United States and the Republic of Mexico.

Whereas, by the act of the Republic of Mexico, a state
of war exists between that Government and the United States:

Be it enacted by the Senate and House of
Representatives of the United States of America in Congress
assembled, That, for the purpose of enabling the Government
of the United States to prosecute said war to a speedy and
successful termination, the President be, and he is hereby,
authorized to employ the militia, naval, and military forces
of the United States, and to call for and accept the
services of any number of volunteers, not exceeding fifty
thousand, who may offer their services, either as cavalry,
artillery, infantry, or riflemen, to serve twelve months
after they shall have arrived at the place of rendezvous, or
to the end of the war, unless sooner discharged, according
to the time for which they shall have been mustered into
service; and that the sum of ten million dollars, out of any
moneys in the treasury, or to come into the Treasury, not
otherwise appropriated, be, and the same is hereby, appropriated, for the purpose of carrying the provisions of this act into effect.

Sec. 2. And be it further enacted, That the militia, when called into the service of the United States by virtue of this act, or any other act, may, if in the opinion of the President of the United States the public interest requires it, be compelled to serve for a term not exceeding six months, after their arrival at the place of rendezvous, in any one year, unless sooner discharged.

Sec. 3. And be it further enacted, That the said volunteers shall furnish their own clothes, and, if cavalry, their own horses and horse equipments; and when mustered into service shall be armed at the expense of the United States.

Sec. 4. And be it further enacted, That said volunteers shall, when called into actual service, and while remaining therein, be subject to the rules and articles of war, and shall be in all respects, except as to clothing and pay, placed on the same footing with similar corps of the United States army; and in lieu of clothing, every non-commissioned officer and private in any company, who may thus offer himself shall be entitled, when called into actual service, to receive in money a sum equal to the cost of clothing of a non-commissioned officer or private (as the case may be) in the regular troops of the United States.
Sec. 5. And be it further enacted, That the said volunteers so offering their services shall be accepted by the President in companies, battalions, squadrons, and regiments, whose officers shall be appointed in the manner prescribed by law in the several States and Territories to which such companies, battalions, squadrons, and regiments shall respectively belong.

Sec. 6. And be it further enacted, That the President of the United States be, and he is hereby, authorized to organize companies so tendering their services into battalions or squadrons, battalions and squadrons into regiments, regiments into brigades, and brigades into divisions, as soon as the number of volunteers shall render such organization, in his judgment, expedient; and the President shall, if necessary, apportion the staff, field, and general officers among the respective States and Territories from which the volunteers shall tender their services, as he may deem proper.

Sec. 7. And be it further enacted, That the volunteers who may be received into the service of the United States by virtue of the provisions of this act, and who shall be wounded or otherwise disabled in the service, shall be entitled to all the benefits which may be conferred on persons wounded in the service of the United States.

Sec. 8. And be it further enacted, That the President of the United States be, and he is hereby, authorized
forthwith to complete all public armed vessels now authorized by law, and to purchase or charter, arm, equip, and man, such merchant vessels and steamboats as, upon examination, may be found fit, or easily converted into armed vessels fit for the public service, and in such number as he may deem necessary for the protection of the seaboard, lake coast, and the general defense of the country.

Sec. 9. And be it further enacted, That whenever the militia or volunteers are called and received into the service of the United States, under the provisions of this act, they shall have the organization of the army of the United States, and shall have the same pay and allowances; and all mounted privates, non-commissioned officers, musicians and artificers, shall be allowed 40 cents per day for the use and risk of their horses, except of horses actually killed in action; and if any mounted volunteer, private, non-commissioned officer, musician, or artificer, shall not keep himself provided with a serviceable horse, said volunteer shall serve on foot.

Approved 13 May 1846. (Pub. L. No. 29-16, 9 Stat. 9)

4. For the Spanish-American War:

House Resolution 233 was introduced in the House on 13 April 1898 but completely revised by the Senate. The original resolution read as follows:
Joint resolution (H. Res. 233) authorizing and directing the President of the United States to intervene to stop the war in Cuba, and for the purpose of establishing a stable and independent government of the people therein.

Whereas the Government of Spain for three years past has been waging war on the Island of Cuba against a revolution by the inhabitants thereof without making any substantial progress towards the suppression of said revolution, and has conducted the warfare in a manner contrary to the laws of nations by methods inhuman and uncivilized, causing the death by starvation of more than 200,000 innocent noncombatants, the victims being for the most part helpless women and children, inflicting intolerable injury to the commercial interests of the United States, involving the destruction of the lives and property of many of our citizens, entailing the expenditure of millions of money in patrolling our coasts and policing the high seas in order to maintain our neutrality; and

Whereas this long series of losses, injuries, and burdens for which Spain is responsible has culminated in the destruction of the United States battle ship Maine in the harbor of Havana and the death of 260 of our seamen;

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and directed to intervene at once to stop the war in Cuba to the end and with the
purpose of securing permanent peace and order there and establishing by the free action of the people thereof a stable and independent government of their own in the Island of Cuba; and the President is hereby authorized and empowered to use the land and naval forces of the United States to execute the purpose of this resolution (Cong. Rec. (House) 18 April 1898, p. 4041, where the Senate amendments are also recorded.).

* * *

Joint Resolution For the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the Island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect.

Whereas the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battleship, with two hundred and sixty of its officers and crew, while on a friendly visit in the Harbor of Havana, and cannot longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and
ninety-eight, upon which the action of Congress was invited:

Therefore,

Resolved by the Senate and the House of Representatives of the United States of America, in Congress assembled,

First. That the people of the Island of Cuba are, and of right ought to be free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the Island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

Approved, April 20, 1898. (The Joint Resolution was passed at 1:30am on 19 April 1898. Pub. Res. No. 55-24, 30 Stat. 738)
An Act Declaring that war exists between the United States of America and the Kingdom of Spain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this Act into effect.


5. For World War I:

Both the Joint Resolution that Commander-in-Chief Wilson had the State Department draft for the Congress and the slightly amended final congressional declaration are reproduced in Chapter 5. The declaration of war against the Imperial and Royal Austro-Hungarian Government (Approved, 7 December 1917. Pub. L. No. 65-1, 40 Stat. 429) is identic with the declaration against the Imperial German Government.
As a sign of the times, it is of interest to note that the declarations for the First World War contain, for the first time, the novel idea that it is possible for the Imperial German Government to make war upon the people of the United States, while the United States makes war only upon the Imperial German Government, but not its people. This sentiment occupied a long and much acclaimed passage in Wilson's 2 April 1917 address to the Joint Session of the Congress. All six of the Second World War declarations also reproduce the same novel distinction.

6. For World War II:

The declaration against the Imperial Government of Japan (Pub. L. No. 77-328, 55 Stat. 795. Approved, 8 December 1941, 4:10pm, EST.) is reproduced in Chapter 2. The other five declarations are identical except for two changes: 1) the name of the country concerned changes and 2) the "Whereas" clause reads "...has committed unprovoked acts of war..." in the declaration against Japan and "...has formally declared war against..." in the other five. The other five declarations are against the Government of Germany (Pub. L. No. 77-331, 55 Stat. 796. Approved, 11 December 1941, 3:05pm, EST.), against the Government of Italy (Pub. L. No. 77-332, 55 Stat. 797. Approved 11 December 1941 3:06pm, EST.), against the Government of Bulgaria (Pub. L. No. 77-563, 56 Stat. 307. Approved, 5 June 1942.), against the Government of Hungary (Pub. L. No.
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