

## WAR, SCHEMAS, AND LEGITIMATION: ANALYZING THE NATIONAL DISCOURSE ABOUT WAR

In June 1966, a U.S. Army helicopter pilot in Vietnam sent a letter to Dr. Benjamin Spock, author of a famous childrearing tome and outspoken war critic. The pilot wrote: “What I do is deliver men into battle to fight and die, a useless task. . . . I am sure most of the super patriots would call me unpatriotic or worse. . . . I see the results of war every day, and I shake my head and wonder why we human[s] shall never understand its futility.”<sup>1</sup> Dr. Spock’s letter in response was returned several weeks later stamped: “Verified Deceased. Return to Sender.”<sup>2</sup>

War can stimulate discussion on nearly every intellectual and emotional plane. The pilot, in a simple letter never intended for public consumption, captures many themes used to question the validity of war as a means of human interaction. His view of war lacks the gilding notions of patriotism, honor, and bravery, instead portraying the cool efficiency of his mission: taking men to a battle in which they fight and die.<sup>3</sup> He sees and rejects the most powerful script that helps us maintain our self-identity in war — patriotism and its curious need to question all those who do not conform. In contrast, a veteran of both World Wars wrote to Dr. Spock with a very different perspective:

I know at first hand the horrors of war, and am certainly no “hawk” in this situation. But this country only became great because, when necessary, its citizens had the guts you seem to so conspicuously lack, to stand up and pay the price to try to end such horrors imposed by others.<sup>4</sup>

This veteran portrays war as necessary and views it as central to the country’s greatness.<sup>5</sup> Further, he implicates the powerful ideal of sacrifice for the greater good — “to try to end such horrors imposed by others.” Finally, he casts Dr. Spock not as an insider but rather as differentiated from those who “had the guts [Dr. Spock] seem[s] to so conspicuously lack.”

Underlying the differences between the two views is a contrast in the cognitive patterns, or schemas, that describe war. The World War veteran implicated strong scripts of nationalism, honor, and sacrifice

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<sup>1</sup> DEAR DR. SPOCK: LETTERS ABOUT THE VIETNAM WAR TO AMERICA’S FAVORITE BABY DOCTOR 41–42 (Michael S. Foley ed., 2005) [hereinafter SPOCK].

<sup>2</sup> *Id.* at 42.

<sup>3</sup> See also CHRIS HEDGES, WAR IS A FORCE THAT GIVES US MEANING 38 (2002) (“Just remember . . . that none of these boys is fighting for home, for the flag, for all that crap the politicians feed the public. They are fighting for each other, just for each other.” (quoting a U.S. Marine lieutenant colonel) (internal quotation marks omitted)).

<sup>4</sup> SPOCK, *supra* note 1, at 75–76.

<sup>5</sup> Cf. HEDGES, *supra* note 3, at 3 (“[War] can give us purpose, meaning, a reason for living.”).

— the hoary qualities invoked to justify war for thousands of years. The pilot in Vietnam, witnessing the inner workings of war, rejected the same nationalist and patriotic scripts. The strong divergence in views of war makes it remarkable that countries enter military actions with such seeming regularity and ease. In the United States at least, tremendous public support for war tends to accompany the onset of military actions. This Note explores the public discourse that leads up to the decision to enter a war. It blends elements of just war theory and critical realism to present a framework that illuminates the channels through which discussions about the propriety of a given war flow. A recognition that the discourse not only follows established rhetorical paths, but also is influenced significantly by them, can reveal important distinctions of form and substance within the debate. A better understanding of the psychological phenomena that affect our thinking about war also has implications for legal doctrine. As this Note discusses, cognitive biases may lead us into wars we later regret, suggesting a need for structural safeguards that could help prevent such outcomes.

Part I introduces critical realism and schema theory. Part II proposes a “just war” schema derived from elements of just war theory, through which political leaders validate potential wars. Examples drawn principally from public rhetoric preceding the recent American military action in Iraq illustrate the existence of this schema and suggest how an administration attempting to lead its citizens into a war can trigger the schema by following well-established rhetorical patterns. Part III examines the interaction of the just war schema with traditional ingroup and outgroup cognitive structures and heuristics, in particular looking at the potential impact of the fundamental attribution error on war decisionmaking. It also briefly sketches implications for war-related legal doctrine and structures.

This Note, of course, is not the first attempt to link public discourse with elements of just war theory.<sup>6</sup> Instead, it seeks to demonstrate the extent to which American public debate about war tracks elements of just war theory and to explore how known attributes of schema theory can offer insight into the quality and integrity of the debate.

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<sup>6</sup> See, e.g., MICHAEL WALZER, ARGUING ABOUT WAR 10 (2004) (noting “the odd spectacle of George Bush (the elder), during the Persian Gulf war, talking like a just war theorist”); *id.* at 7 (“All of us in the [Vietnam] antiwar camp suddenly began talking the language of just war — though we did not know that that was what we were doing.”); Tawia Ansah, *War: Rhetoric & Norm-Creation in Response to Terror*, 43 VA. J. INT’L L. 797, 820–24 (2003) (recognizing “the grand narrative of a just war”); see also NORMAN SOLOMON, WAR MADE EASY: HOW PRESIDENTS AND PUNDITS KEEP SPINNING US TO DEATH 35, 87, 167–69 (2005) (collecting quotations from American political leaders and others addressing just cause and right intention, two elements of just war theory).

## I. CRITICAL REALISM AND KNOWLEDGE STRUCTURES

The critical realist project seeks “to bring to legal theory and the law the best evidence available on how real humans behave, on how they make sense of their worlds, and on what moves them.”<sup>7</sup> In their article, *Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory*, Ronald Chen and Professor Jon Hanson provide a synthesis of the extensive social psychology literature exploring cognitive knowledge structures. They state that “[c]ategories and schemas influence every feature of human cognition, affecting not only what information receives attention, but also how that information is categorized, what inferences are drawn from it, and what is or is not remembered.”<sup>8</sup> This Part summarizes elements of their framework that are particularly pertinent to the American war discourse.

Chen and Professor Hanson describe a two-step method by which we process information. First, we categorize it by placing “elements, experiences, instances, or arguments into groups.”<sup>9</sup> The dominant view of categorization is prototype theory.<sup>10</sup> It suggests that, as we seek to place new stimuli into already-established mental categories, we compare the new input with prototypical examples of each category.<sup>11</sup> Thus, if we think of a war, we are more likely to conjure images of Vietnam or World War II than Korea. Second, we “apply a schema to [new information] in order to draw inferences and derive predictions.”<sup>12</sup> Schemas are divided into four main categories: self,

<sup>7</sup> Ronald Chen & Jon Hanson, *Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory*, 77 S. CAL. L. REV. 1103, 1129 (2004).

<sup>8</sup> *Id.* at 1131.

<sup>9</sup> *Id.* at 1132.

<sup>10</sup> *Id.* at 1154. Prototype theory may be linked with the representativeness heuristic, according to which individuals judge the relative “fit” of each memory according to superficial comparisons. See RICHARD H. THALER, *QUASI RATIONAL ECONOMICS* 152–54 (1994). Thus, the representativeness heuristic leads us to predict a more successful occupation of the Sahara than the Amazon: the Sahara’s most salient feature — desert terrain — conjures up visions of the Persian Gulf or Iraqi interventions, whereas the Amazonian jungle seems more similar to Vietnam. This heuristic also implicates the most salient triggers for modern American debates about war: Vietnam and World War II are two of the most representative paradigms for war in the contemporary American psyche. Hence, those supporting military action employ rhetoric with analogies to World War II; those opposing attempt to conjure associations with Vietnam. *Cf.* Chen & Hanson, *supra* note 7, at 1211–15 (exploring the interaction between metaphor, language, and schema choice).

<sup>11</sup> For instance, within the cognitive “bird” category, a robin is considered more representative than a chicken. Chen & Hanson, *supra* note 7, at 1152 (citing Lance J. Rips et al., *Semantic Distance and the Verification of Semantic Relations*, 12 J. VERBAL LEARNING & VERBAL BEHAV. 1, 4 (1973)). People also tend to think that “‘7’ is a better ‘odd number’ than . . . ‘51.’” *Id.* at 1153 (quoting MASSIMO PIATTELLI-PALMARINI, *INEVITABLE ILLUSIONS: HOW MISTAKES OF REASON RULE OUR MINDS* 150 (1994)) (internal quotation marks omitted).

<sup>12</sup> *Id.* at 1132. A schema is “a cognitive structure that represents knowledge about a concept or type of stimulus, including its attributes and the relations among those attributes.” *Id.* at 1131

person, role, and event. Self schemas describe “our knowledge and expectations about ourselves” — for instance, that we are conservative, liberal, intelligent, or patriotic.<sup>13</sup> Person schemas represent the “characteristics, behaviors, and goals” of other individuals.<sup>14</sup> Role schemas allow us to categorize our expectations of others who hold certain social positions. For instance, they help us know what to expect from a doctor: “From what other stranger would we be unsurprised to be asked to ‘say “ahhhhhhh” or to disrobe?’”<sup>15</sup> Finally, event schemas, also known as scripts, enable us to “understand the different steps or sequence of events involved in a given process.”<sup>16</sup>

In addition to these four content-based schema categories, one descriptive category is relevant here: the “balanced” schema, which “[i]n common-sense terms, . . . represents a ‘black and white’ attitude.”<sup>17</sup> The prototypical balanced schema is the existence of “ingroups” and “outgroups” by which we divide the world into broad and homogenized categories of “us” and “them.”<sup>18</sup> A compelling example of this phenomenon comes from an experiment in which researchers divided boys at a summer camp into two groups: Rattlers and Eagles.<sup>19</sup> When

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n.111 (quoting SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION* 98 (1991)) (internal quotation marks omitted). In greater detail, schemas:

(1) provide categories for labeling people, places, events, and processes, thereby simplifying the environment, (2) influence what new information will be attended to, encoded, and retrieved from memory, (3) enable the individual to make inferences from incomplete data by filling in missing information with best guesses, (4) provide a plan for solving problems and making more confident decisions, (5) influence the weighting of evidence brought to bear in making decisions and predictions, and (6) generate expectations against which reality is contrasted and one’s experiences are compared.

Ruth Hamill et al., *The Breadth, Depth, and Utility of Class, Partisan, and Ideological Schemata*, 29 AM. J. POL. SCI. 850, 852 (1985); see also Chen & Hanson, *supra* note 7, at 1131 n.111 (collecting definitions).

<sup>13</sup> Chen & Hanson, *supra* note 7, at 1134.

<sup>14</sup> *Id.* at 1135.

<sup>15</sup> *Id.* at 1137.

<sup>16</sup> *Id.*

<sup>17</sup> MATTHEW S. HIRSHBERG, *PERPETUATING PATRIOTIC PERCEPTIONS: THE COGNITIVE FUNCTION OF THE COLD WAR* 35 (1993) (quoting Robert P. Abelson & Milton J. Rosenberg, *Symbolic Psycho-Logic: A Model of Attitudinal Cognition*, 3 BEHAV. SCI. 1, 5 (1958)).

<sup>18</sup> This schema underlies many of humanity’s greatest shortcomings, including stereotypes, prejudices, and violent actions against “them”: war generally, and in its most grotesque form, genocide. See MICHAEL MANN, *THE DARK SIDE OF DEMOCRACY: EXPLAINING ETHNIC CLEANSING* 70 (2005) (explaining American genocide against Native American tribes in part based on the unwillingness of settlers to view “natives” or “savages” as part of the settlers’ “civilized” ingroup (internal quotation marks omitted)); Jon Hanson & Kathleen Hanson, *The Blame Frame: Justifying Racial Oppression in America*, 77 HARV. C.R.-C.L. L. REV. (forthcoming Summer 2006) (manuscript at 20–27, on file with the Harvard Law School Library) (explaining the oppression and impoverishment of Native Americans and African Americans as a natural product of the “blame frame” through which white Americans viewed these groups).

<sup>19</sup> See Jon Hanson & David Yosifon, *The Situational Character: A Critical Realist Perspective on the Human Animal*, 93 GEO. L.J. 1, 55–57 (2004) (citing MUZAFER SHERIF ET AL., *INTERGROUP CONFLICT AND COOPERATION: THE ROBBERS CAVE EXPERIMENT* (1961)).

kept separated, each group exhibited only mild aversion to the other group (outgroup) and relatively weak intragroup solidarity (ingroup). Once the groups were placed into competitive situations, however, outgroup aversion and ingroup solidarity increased significantly. As the competition increased, “the resultant stereotyping, prejudice, and discrimination that followed were robust.”<sup>20</sup>

Schemas affect how we seek, filter, and recall information.<sup>21</sup> “Not only do schema[s] tell us *what to see*, but they also tell us *where to see it*.”<sup>22</sup> We are more likely to credit schema-confirming information and reject schema-challenging stimuli. This filtering effect is driven by the “top-down” aspect of schemas: “[I]ncoming information is compared with or fitted into existing schemas stored in memory.”<sup>23</sup> Hence, once a schema is “primed,” it becomes a theory that influences “the interpretation of subsequent environmental events.”<sup>24</sup> For example, in one study Harold Kelley provided two subject groups a short description of a guest lecturer whom they had not previously met in advance of hearing the lecturer speak.<sup>25</sup> The descriptions were identical, except that one group was told the lecturer was “warm,” the other “cold.” This simple one-word substitution colored each group’s perceptions of the lecturer: on a scale of 1 through 15 measuring whether the lecturer was

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<sup>20</sup> *Id.* at 56. Appeals to moral values — cooperation and forgiveness — had no effect on the animosity; only when the groups were given common enemies was the “us versus them” schema reduced. For instance, at one point the bus carrying both groups “broke down,” forcing the groups into a cooperative posture. *Id.*

<sup>21</sup> There are “three types of inferences that individuals make based on the schemas that they apply: default inferences, inferences about future events, and inferences to other schemas.” Chen & Hanson, *supra* note 7, at 1164 (footnote omitted). Default inferences lead us to fill in (create or make up) missing information to confirm our schema: we will infer a fourth wheel when we see a car pictured with three. *See id.* at 1165. Schemas lead us to predict the future behavior of others according to the appropriate schema — seeing a person entering a restaurant activates our restaurant script, according to which we presume she will eat a meal in the near future. *See id.* Finally, inferences from one schema can cause us to activate other related schemas. Chen and Professor Hanson argue that Justice Bradley, concluding that women could be barred from the legal profession in *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 140–41 (1872) (Bradley, J., concurring in the judgment), could not reconcile “the women’s sphere (or the then-dominant schema regarding women) . . . with the rough and tumble sphere [or schema] of aggressive, adversarial attorneys.” Chen & Hanson, *supra* note 7, at 1166.

<sup>22</sup> Chen & Hanson, *supra* note 7, at 1156 (alteration in original) (quoting David E. Rumelhart, *Schemata and the Cognitive System*, in 1 HANDBOOK OF SOCIAL COGNITION 161, 180 (Robert S. Wyer, Jr. & Thomas K. Srull eds., 1984)) (internal quotation mark omitted).

<sup>23</sup> YUEN FOONG KHONG, ANALOGIES AT WAR: KOREA, MUNICH, DIEN BIEN PHU, AND THE VIETNAM DECISIONS OF 1965, at 37 (1992). “Bottom-up” processing occurs as well; the relative weight and frequency of “top-down” and “bottom-up” processing are unclear. *See id.* “Bottom-up” processing, or examining pieces of data to construct the whole, is generally more “cognitively taxing.” *See* Chen & Hanson, *supra* note 7, at 1143.

<sup>24</sup> KHONG, *supra* note 23, at 37–38 (quoting E. Tory Higgins & John A. Bargh, *Social Cognition and Social Perception*, 38 ANN. REV. PSYCHOL. 369, 374 (1987)).

<sup>25</sup> Harold Kelley, *The Warm-Cold Variable in First Impressions of Persons*, 18 J. PERSONALITY 431, 432–34 (1950).

“sociable” (1 = “Sociable”; 15 = “Unsociable”), the “warm” lecturer was rated 5.6 and the “cold” lecturer 10.4.<sup>26</sup> For personality traits not strongly associated with “warmth,” the differences were less robust. For instance, little difference was reported as to whether the lecturer was “submissive” or “dominant,” or whether he would “get ahead.”<sup>27</sup>

We tend to recall schema-consistent or schema-inconsistent information more readily than irrelevant data.<sup>28</sup> After watching a video of a woman at a birthday party, participants in another study recounted details that were consistent with the schema given to them beforehand — those told she was a librarian recalled that she wore glasses or owned classical records, whereas those told she was a waitress remembered her drinking beer and having a television.<sup>29</sup>

Chen and Professor Hanson identify several motivations that play a role in which schemas we apply and the reliance we place on them.<sup>30</sup> These motivations include accuracy, self-affirmation, accountability, conformity, position (or placement as compared to others), closure, and the “metamotive” of schema protection.<sup>31</sup> Within this latter category is the confirmation bias, through which “people will focus on or highlight evidence that tends to support their schemas, theories, and beliefs and ignore or downplay disconfirming facts.”<sup>32</sup> Thus, schemas can be remarkably persistent, even when challenged by abundant inconsistent information.<sup>33</sup> At times, persistence can cause grave and irreversible harm. Discussing Vietnam, journalist Frances FitzGerald wrote:

Whether or not the American officials actually believed their own propositions, they repeated them year after year with a dogged persistence and a perfect disregard for all contradictory evidence. . . . [F]or the American official effort to fit the new evidence into the old official assumptions was something like the effort of the seventeenth century astronomers to fit their observations . . . into the Ptolemaic theory of the universe.<sup>34</sup>

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<sup>26</sup> *Id.* at 434 tbl.1.

<sup>27</sup> *Id.* at 434 tbl.1, 435.

<sup>28</sup> See Chen & Hanson, *supra* note 7, at 1168–73.

<sup>29</sup> *Id.* at 1169 (citing Claudia E. Cohen, *Person Categories and Social Perception: Testing Some Boundaries of the Processing Effects of Prior Knowledge*, 40 J. PERSONALITY & SOC. PSYCHOL. 441, 444–47 (1981)).

<sup>30</sup> See *id.* at 1182–97.

<sup>31</sup> See *id.*

<sup>32</sup> *Id.* at 1196.

<sup>33</sup> See generally Lee Ross et al., *Perseverance in Self-Perception and Social Perception: Biased Attributional Processes in the Debriefing Paradigm*, 32 J. PERSONALITY & SOC. PSYCHOL. 880 (1975).

<sup>34</sup> KHONG, *supra* note 23, at 209 (first omission in original) (quoting FRANCES FITZGERALD, *FIRE IN THE LAKE: THE VIETNAMESE AND THE AMERICANS IN VIETNAM* 34 (1972)).

## II. THE “JUST WAR” SCHEMA

Long before the first shot is fired and the first body falls, a culture must have in place the discursive means for making such actions possible.<sup>35</sup>

The decision to enter a war should be, and often is, subject to strong scrutiny as a nation of people, in both individual and group capacities, seeks moral clearance for the military action. This analysis, as with all human decisions, is subject to simplifying reduction. The collective and evolving wisdom of several centuries has identified elements of a “just” war, giving rise to “just war” theory. This Part explores how elements of just war theory map onto a prototypical “just war” schema: a just war in the collective American psyche is one in which each element of the war is validated.<sup>36</sup> It argues neither that the just war schema is the *only* way in which Americans process the question whether to commence a war,<sup>37</sup> nor that all Americans are even formally aware of just war elements. However, these elements do appear to embody many of our intuitions about what justifies a war. Thus, the just war schema seeks to demonstrate the existence of just war elements in war-related discourse by assessing arguments made in the public sphere by both government officials and citizens and gauging the resonance of the various factors as reflected in public opinion polls.

### A. *Just War Theory*

Modern just war theory divides war into three parts: *jus ad bellum* (addressing the right to use force), *jus in bello* (addressing how to use force), and *jus post bellum* (addressing cessation and postludes to

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<sup>35</sup> ANDREW MARTIN, RECEPTIONS OF WAR: VIETNAM IN AMERICAN CULTURE 159 (1993).

<sup>36</sup> Just war theory does not begin with an assumption of pacificism, but rather asks whether war is an appropriate response within a certain context. See, e.g., Ronald J. Rychlak, *Just War Theory, International Law, and the War in Iraq*, 2 AVE MARIA L. REV. 1, 17–18 (2004) (citing George Weigel, *Pope John XXIII Lecture: The Just War Tradition and the World After September 11*, 51 CATH. U. L. REV. 689 (2002)). Some commentators note that *jus ad bellum*, addressing the right to use force, provides not only the criteria by which to deem a potential war just, but also a *mandate* to go to war when the conditions of *jus ad bellum* are met. See, e.g., Michael Novak, *Just Peace and the Asymmetric Threat: National Self-Defense in Uncharted Waters*, 27 HARV. J.L. & PUB. POL’Y 817, 826 (2004) (“[T]he term ‘just war’ signifies that sometimes the virtue of justice requires the use of war, as a legitimate and sometimes necessary means to a just end.”).

<sup>37</sup> Every individual likely weighs each factor differently according to personal schemas, scripts, and experiences. For instance, role schemas loom large for some people: the President’s view of the war will be determinative of their personal views. See, e.g., Kevin Diaz, *Uneasy Support for War*, STAR TRIB. (MINNEAPOLIS), Dec. 28, 2002, at A1 (“I don’t feel like we know everything, or that we’ve been told everything. Nobody wants to have a war. But if the president thinks it’s necessary, he knows more than we do, and I trust him.” (quoting a local business owner)).

war).<sup>38</sup> This Part focuses on *jus ad bellum* — the script according to which we view entry into a war as just. The concept of *jus ad bellum* has a long pedigree, dating back to St. Augustine.<sup>39</sup> Today, the most commonly recognized elements of *jus ad bellum* are just cause, legitimate authority, right intention, probability of success, proportionality of ends, and last resort.<sup>40</sup> These elements largely frame the public discussion in advance of war.<sup>41</sup> The following sections address how these elements<sup>42</sup> were implicated in the months leading up to the most recent American military action, the invasion of Iraq.

1. *Just Cause.* —

Polls have demonstrated time and time again that Americans are willing to accept a high death toll . . . if they think it's a just cause.

— Noam Chomsky<sup>43</sup>

Some of our soldiers will perish in this just cause. May God bless them and may humanity honor their sacrifice.

— John McCain<sup>44</sup>

Just cause means that a country must go to war for an appropriate reason, which most clearly exists when a country is responding defensively to an attack by another. Particularly relevant in the current “war on terror”<sup>45</sup> is the question of preemptive or preventive action. Most theorists believe that preventing or preempting an impending war can be a “just” cause: the real focus is on the degree and immi-

<sup>38</sup> *Jus post bellum* is a recent addition to just war theory. See, e.g., WALZER, *supra* note 6, at xiii.

<sup>39</sup> Rychlak, *supra* note 36, at 4–5.

<sup>40</sup> See Novak, *supra* note 36, at 827.

<sup>41</sup> “Critics argue that the military destruction of Saddam Hussein’s regime would be, in a word, unjust. This opposition has coalesced around a set of principles of ‘just war’ — principles that they feel would be violated if the United States used force against Iraq.” John McCain, Op-Ed., *The Right War for the Right Reasons*, N.Y. TIMES, Mar. 12, 2003, at A25.

<sup>42</sup> This section does not address the element of legitimate authority. Although considerable debate has surrounded whether the United States had authority to undertake preemptive military action, the *jus ad bellum* definition of legitimate authority questions the relationship between the aggressor citizens and their internal leadership structure. In the United States, there were few serious contentions, in the *public discourse* leading up to the invasion of Iraq, that the President was not vested with the authority to commence military action.

<sup>43</sup> SOLOMON, *supra* note 6, at 211 (quoting Matthew Tempest, *Noam Chomsky*, GUARDIAN ONLINE, Mar. 16, 2004, <http://www.guardian.co.uk/print/0,3858,4878794-111321,00.html>).

<sup>44</sup> McCain, *supra* note 41 (writing one week before the 2003 U.S. invasion of Iraq).

<sup>45</sup> Many have analyzed the import of viewing the current situation as a war on “terror,” as opposed to “terrorism.” See, e.g., Katie Rose Guest, *The Ideology of Terror: Why We Will Never Win the “War,”* 28 J. AM. CULTURE 368, 368 (2005) (“[H]ad Bush declared war on *terrorism*, a noun that denotes physical acts of violence, then the war would have remained attached to the material world. By declaring war on *terror*, America’s enemy became ephemeral and eternal.”).

nence of the threat and the level of evidence necessary to legitimate the anticipatory strike.<sup>46</sup>

The creation and maintenance of just cause rationales built upon self-defense took center stage in the public discourse leading to military action in Iraq. The Bush Administration carefully framed its two main goals for the Iraq occupation, disarmament and the spread of liberty, in self-defense terms. The Administration initially advanced disarmament as the rationale for attacking Iraq.<sup>47</sup> The Bush Administration trumpeted the existence of chemical and biological weapons, with National Security Adviser Condoleezza Rice proclaiming that the answer to the question, “[h]as Saddam Hussein finally decided to voluntarily disarm?” was “a clear and resounding no.”<sup>48</sup> President Bush connected Iraq’s apparent possession of these weapons with the possibility that terrorist organizations would use them: “One of the greatest dangers we face is that weapons of mass destruction might be passed to terrorists, who would not hesitate to use those weapons.”<sup>49</sup> This possibility completed the loop necessary to create an apparent immediate danger and to warrant preemptive action.<sup>50</sup>

The Administration carefully coupled the preemption theme with what appeared to be an auxiliary benefit — spreading liberty. Speaking in February 2003, President Bush opined that “[a] liberated Iraq can show the power of freedom to transform that vital region, by bringing hope and progress into the lives of millions. America’s interests in security and America’s belief in liberty both lead in the same direction, to a free and peaceful Iraq.”<sup>51</sup> As support for this point, President Bush analogized to the close of World War II, arguing that

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<sup>46</sup> See, e.g., MICHAEL WALZER, *JUST AND UNJUST WARS* 74–85 (1977) (announcing a “general formula” for validating anticipatory actions: “states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence”); cf. Novak, *supra* note 36, at 829–32 (discussing issues concerning the timing and rationality of preemptive strikes).

<sup>47</sup> President George W. Bush, The President’s News Conference, 39 WEEKLY COMP. PRES. DOC. 295, 304 (Mar. 6, 2003) (“[O]ur mission is very clear: disarmament.”).

<sup>48</sup> Condoleezza Rice, Op-Ed., *Why We Know Iraq Is Lying*, N.Y. TIMES, Jan. 23, 2003, at A25.

<sup>49</sup> President George W. Bush, Remarks on the Iraqi Regime’s Noncompliance with United Nations Resolutions, 39 WEEKLY COMP. PRES. DOC. 164, 164 (Feb. 6, 2003).

<sup>50</sup> See President George W. Bush, Remarks to the American Enterprise Institute Annual Dinner, 39 WEEKLY COMP. PRES. DOC. 247, 247 (Feb. 26, 2003) [hereinafter Bush, American Enterprise Institute] (“The danger posed by Saddam Hussein and his weapons cannot be ignored or wished away. The danger must be confronted.”); see also President George W. Bush, Remarks at the Port of Philadelphia in Philadelphia, Pennsylvania, 39 WEEKLY COMP. PRES. DOC. 400, 403 (Mar. 31, 2003) (“The actions we’re taking in Operation Liberty Shield are making this Nation more secure. . . . In every case, by acting today, we are saving countless lives in the future.”).

<sup>51</sup> Bush, American Enterprise Institute, *supra* note 50, at 248.

“[a]fter defeating enemies, we did not leave behind occupying armies; we left constitutions and parliaments.”<sup>52</sup>

As it became apparent that the numerous early reports of chemical and biological weapons were false, the Administration reinforced the preemptive rationale for the military occupation of Iraq with the auxiliary spread-of-liberty theme: “[W]hen Iraq is democratic, you’re going to have one of t[he] lynchpins of a very different kind of Middle East. . . . I think all Americans would agree that we’ve got to have a different kind of Middle East, because it was the center of gravity from which al Qaeda came.”<sup>53</sup> Thus, even though “weapons of mass destruction” were no longer an obvious or imminent threat, the cause was still basically one of self-defense: the ripple effects of transforming Iraq into a democratic state would cause a broader transformation in the Middle East that in turn would dry up the primary source of America’s terrorist enemies. By 2005, the transition was complete: disarmament had completely disappeared as a reason for the military action. Now Iraq was solely the most important front in the war on terror.<sup>54</sup>

The argument that fighting Iraq meant fighting terror clearly had an impact. In October 2002, a Pew Research Center poll found that when supporters of the war were asked to provide reasons for their support:

[S]ix-in-ten mention some aspect of the military or terrorist threat from Iraq as a reason for their support. Nearly one-in-five (17%) explicitly mention the prevention of future terrorism. Many (13%) say that Iraq was linked to Sept. 11 or other past terrorist acts, and the same number support military action on a belief that Iraq has weapons of mass destruction.<sup>55</sup>

When asked specifically whether “Saddam helped 9/11 attacks,” 66% agreed;<sup>56</sup> asked whether invading Iraq would “help win the war on

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<sup>52</sup> *Id.* President Bush was referring specifically to Japan and Germany.

<sup>53</sup> 60 *Minutes* (CBS television broadcast Mar. 28, 2004), *transcript available at* <http://www.whitehouse.gov/news/releases/2004/03/print/20040328.html> (remarks of then-National Security Advisor Condoleezza Rice); *see also* President George W. Bush, Remarks on the Anniversary of Operation Iraqi Freedom, 40 WEEKLY COMP. PRES. DOC. 430 (Mar. 19, 2004).

<sup>54</sup> President George W. Bush, Remarks to the Council on Foreign Relations, 41 WEEKLY COMP. PRES. DOC. 1826, 1826 (Dec. 7, 2005) (“[W]e must recognize Iraq as the central front in the war on terror.”).

<sup>55</sup> PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS THINKING ABOUT IRAQ, BUT FOCUSED ON THE ECONOMY (Oct. 10, 2002) [hereinafter PEW RESEARCH CTR.], <http://people-press.org/reports/print.php3?ReportID=162>.

<sup>56</sup> By February 2003, only 57% agreed. PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, POST-BLIX: PUBLIC FAVORS FORCE IN IRAQ, BUT . . . U.S. NEEDS MORE INTERNATIONAL BACKING 3 (Feb. 20, 2003) [hereinafter PEW RESEARCH CTR.], <http://people-press.org/reports/pdf/173.pdf>.

terrorism,” 52% agreed.<sup>57</sup> The arguments on preemption were taking root as well: the same poll found that 56% of respondents agreed that the “preemption precedent [was] not a worry.”<sup>58</sup>

The changing rationales — disarmament, spreading liberty, and primary battleground in the “war on terror” — hew closely to the self-defense nature of just cause. Disarmament would remove the perceived future threat of terrorists receiving weapons of mass destruction, whereas spreading democracy would pave over a breeding ground for future terrorists.

2. *Right Intention.* — The element of right intention addresses the subjective motivation for the military action. The presence of a just cause is necessary, though not sufficient, to provide moral clearance for a military action. The just cause must also be the action’s primary motivation. Hence, although the United States could arguably enter Iraq under a disarmament theory of preemption, entry predicated on an actual intent to secure future oil supplies would render the war illegitimate. Critics of the military interventions routinely point to oil as the true reason for military action in the Middle East. For instance, Representative Dennis Kucinich named oil “the strongest incentive” for the invasion of Iraq.<sup>59</sup> President Bush dismissed these criticisms, maintaining the right intention paradigm by drawing a distinction between “honest critics” and those “who claim we acted in Iraq because of oil.”<sup>60</sup>

3. *Probability of Success.* — Just war theory requires that a nation entering war have a reasonable chance of success. This criterion is mainly pragmatic; even if other elements of the just war schema are satisfied, the war is not justified if it is unlikely to achieve the stated goal. This element does not contain bright-line categories, and there is no requirement that a country foresee a thirty, fifty, or seventy percent chance of success. Indeed, governments facing long odds have entered wars today considered just — for example, the American colonies in the American Revolution or Britain in World War II.

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<sup>57</sup> PEW RESEARCH CTR., *supra* note 55.

<sup>58</sup> *Id.*

<sup>59</sup> *Meet the Press: Dennis Kucinich and Richard Perle Debate Military Action in Iraq* (NBC television broadcast Feb. 23, 2003) (transcript available at LEXIS, News Library, Scripts File).

<sup>60</sup> President George W. Bush, Remarks to the Veterans of Foreign Wars, 42 WEEKLY COMP. PRES. DOC. 31, 37 (Jan. 10, 2006). Among the other “true” intentions offered for America’s actions were “the establishment of an American garrison to carry out policy goals in western Asia by military means,” Susanna Margolis, Letter to the Editor, *An Administration Out of Touch?*, N.Y. TIMES, Mar. 15, 2003, at A16, and the destruction of “an enemy of [America’s] close ally, Israel,” Editorial, *Non-Military Victories Matter*, USA TODAY, Mar. 20, 2003, at 14A. These and similar statements indicate that there were very real questions about the nation’s motivations for invading Iraq — questions the Bush Administration doggedly countered with preemption and spread-of-liberty themes.

The salience of this element is most telling in the American collective memory of Vietnam. Recent supporters of American military actions have consistently been forced to counter the “Vietnam” analogy when proposing military intervention on foreign soil. One component of the “no more Vietnams” refrain is pragmatic: the United States should not enter wars it “is unlikely to win.”<sup>61</sup> In the Iraq war, overt concern about the probability of military success was minimal, as there was little doubt that the United States would prevail militarily.<sup>62</sup> Instead, the concerns were more specific: 59% of Americans in October 2002 worried “a great deal” that Iraq would use “biological or chemical weapons against U.S. troops.”<sup>63</sup> By February 2003, this concern was “great” among 66% of Americans; only 9% responded that they did not have much concern.<sup>64</sup>

4. *Proportionality.* — Proportionality requires that the harm caused by military action correspond to the injustice that provides just cause for the war.<sup>65</sup> Though just war theory defines harms primarily as human suffering and physical damage, official public discourse before the invasion of Iraq took a wider “means versus ends” approach that studiously avoided a detailed account of harm.<sup>66</sup> The Administration did promise to “minimize the loss of life,”<sup>67</sup> though it never offered a public assessment of how many Iraqi and American lives would be lost, as compared to the perceived threat to the United States. Instead, the Bush Administration framed the proportionality of the Iraq inva-

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<sup>61</sup> KHONG, *supra* note 23, at 258 (describing the “strategic, moral, [and] pragmatic” aspects of the most common usage of the “no more Vietnams” refrain).

<sup>62</sup> Once, however, the mission of the war is viewed not as simple military victory, but as imposition of a new governing regime, the measure of “victory” becomes considerably less clear, and the ability to predict accurately its eventual success more difficult. These concerns were at play in early 2003. See Editorial, *The War Begins*, N.Y. TIMES, Mar. 20, 2003, at A32. For a more nuanced version of this argument, see Brian Dollery & Lin Crase, *Rhetorical Patterns in the Australian Debate over War with Iraq*, 21 PROMETHEUS 355, 359–60 (2003), which describes “futility arguments” in Australian war discourse that characterized the war on Iraq as “‘futile’ in the sense that it did not address the root socio-economic and foreign policy issues fuelling international terrorism.”

<sup>63</sup> PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, SUPPORT FOR POTENTIAL MILITARY ACTION SLIPS TO 55% (Oct. 30, 2002), <http://people-press.org/reports/print.php3?ReportID=163>.

<sup>64</sup> PEW RESEARCH CTR., *supra* note 56.

<sup>65</sup> David DeCosse, *Lost in the ‘Logic of War,’* <http://www.scu.edu/ethics/publications/ethicalperspectives/logic.html> (last visited Apr. 9, 2006); cf. WALZER, *supra* note 46, at 119–20 (describing proportionality as a doctrine by which we “balance the costs of continued fighting against the value of punishing the aggressors”).

<sup>66</sup> President Bush did recognize that “[w]ar has no certainty, except the certainty of sacrifice.” President George W. Bush, Address to the Nation on Iraq, 39 WEEKLY COMP. PRES. DOC. 338, 340 (Mar. 17, 2003). He also stated: “We care about the suffering of the Iraqi people. . . . [T]here’s a lot of food ready to go in. . . . [W]e want to make sure they’ve got ample medical supplies. The life of the Iraqi citizen is going to dramatically improve.” Bush, *supra* note 47, at 301.

<sup>67</sup> Bush, *supra* note 47, at 300.

sion by giving extraordinary weight to the perceived nature of the threat to the United States, essentially arguing that the invasion of Iraq would satisfy proportionality given the dire harm the nation faced: “The price of doing nothing exceeds the price of taking action . . . . The price of the attacks on America . . . on September the 11th were enormous.”<sup>68</sup>

Public opinion appears to demonstrate the relative lack of importance of this prong: In February 2003, whereas 66% of Americans worried “a great deal” about U.S. troop exposure to chemical or biological weapons, 57% about more domestic terrorism, and 55% about high U.S. casualties, only 47% worried “a great deal” that “[m]any Iraqi civilians might be killed.”<sup>69</sup> Twenty-three percent were “not much” worried about Iraqi civilian deaths.<sup>70</sup>

5. *Last Resort.* — The question of last resort was a central point in the pre-Iraq invasion debate. The public, both in America and abroad, assailed the Bush Administration for failing to give non-military measures a chance to fully disarm the Hussein regime.<sup>71</sup> However, months before the March 2003 invasion of Iraq, the Administration reported that it was pursuing every possible diplomatic method of disarming Saddam Hussein’s regime. These efforts centered on the Administration’s attempt to enforce U.N. Resolution 1441,<sup>72</sup> which ordered Hussein to disarm immediately. Thus, on the eve of the American invasion of Iraq, Bush was able to declare: “Should Saddam Hussein choose confrontation, the American people can know that every measure has been taken to avoid war . . . .”<sup>73</sup> President Bush also rhetorically shifted responsibility for the decision to invade Iraq to the dictator: “I want to remind you that it’s his choice to make as to whether or not we go to war.”<sup>74</sup> Polls indicated that Americans generally believed that war was the only way to disarm Hussein: in February 2003, 58% thought that Iraq “will not cooperate and can not be peacefully disarmed.”<sup>75</sup>

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<sup>68</sup> *Id.*; cf. WALZER, *supra* note 46, at 120 (“[T]here is an overwhelming tendency in wartime to adjust ends to means . . . , that is, to redefine initially narrow goals in order to fit the available military forces and technologies.” (citing YEHUDA MELZER, *CONCEPTS OF JUST WAR* 170–71 (1975))).

<sup>69</sup> PEW RESEARCH CTR., *supra* note 56, at 25.

<sup>70</sup> *Id.* at 9. These numbers cannot, of course, be interpreted conclusively: it is not clear whether they reflect a belief that few Iraqi civilians would actually be injured or indifference to Iraqi casualties.

<sup>71</sup> See, e.g., Murray Magen, Letter to the Editor, *U.S. Acting Like Rogue Nation*, SUN-SENTINEL (Ft. Lauderdale), Mar. 16, 2003, at 4F (“War is positively a last resort. We have not exhausted all possible, peaceful means to deal with Saddam Hussein.”).

<sup>72</sup> U.N. SCOR, 57th Sess., 4644th mtg., UN Doc. S/RES/1441 (2002).

<sup>73</sup> Bush, *supra* note 66, at 340.

<sup>74</sup> Bush, *supra* note 47, at 305.

<sup>75</sup> PEW RESEARCH CTR., *supra* note 56, at 22.

### III. INGROUPS, OUTGROUPS, AND THE FUNDAMENTAL ATTRIBUTION ERROR IN THE JUST WAR SCHEMA

The elements of the just war schema outlined in Part II frame public American discourse about war. This Part argues that the just war schema depends upon, and largely mimics, typical ingroup and outgroup balanced schemas in which “we” are essentially “good” and the “other” is “bad.” As a result, our views on war may not only be susceptible to, but also rely upon, the same error-producing heuristics typical of ingroup and outgroup structures, particularly the fundamental attribution error.<sup>76</sup>

War and national identity are intricately linked concepts.<sup>77</sup> At the core of national identity, and directly affecting several elements of the just war schema, are concepts of self and others. War demands clear categories of “us” and “them” — with the group “us” representing some version of right, and the group “them” symbolizing “wrong” or “evil.” Anything less would not justify the use of deadly force against the other. The disturbing transformative power of group homogenization is reflected throughout the history of war. Journalist Chris Hedges writes of Serbia: “Petty gangsters, reviled in pre-war Sarajevo, were transformed overnight at the start of the conflict into war heroes. What they did was no different. They still pillaged, looted, tortured, raped, and killed; only then they did it to Serbs, and with an ideological veneer.”<sup>78</sup>

No group likes to believe that it is susceptible to similar hypocrisy; however, observing how others have conceived of self and enemy in war can suggest ways in which we may be susceptible to similar errors. This Part assesses the self and person schemas at work in war discourse; it then looks at evidence of the fundamental attribution error within them. Finally, this Part examines the interplay between these schemas and the just war schema.

#### A. *Self Schema*

On a general level, the American sense of self is intimately connected to the American form of government and its corollaries. During the Cold War, Americans strongly identified with democracy, which they viewed as highly positive,<sup>79</sup> and perceived its antithesis, communism, as largely negative.<sup>80</sup> Indeed, American patriotism,

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<sup>76</sup> See *infra* section III.C.

<sup>77</sup> Cf. Julie Drew, *Identity Crisis: Gender, Public Discourse, and 9/11*, 27 *WOMEN & LANGUAGE*, 71, 71 (2004) (noting that on September 11, “prevailing narratives of who and what we are, as Americans, took a hit”).

<sup>78</sup> HEDGES, *supra* note 3, at 9.

<sup>79</sup> See HIRSHBERG, *supra* note 17, at 84.

<sup>80</sup> See *id.* at 81.

measured by positive views of being “proud” to be American, “has proved to be strong and stable.”<sup>81</sup> Political scientist Matthew Hirshberg proposes an “American patriotic schema,” in which the concepts “United States,” “democracy,” “freedom,” “self,” and “good” are all positively correlated with each other.<sup>82</sup> These elements remain largely intact today: the spread of “freedom” and “democracy” are central ingredients of our current war scripts.

### B. Person Schema

Conversely, Professor Hirshberg posited a Cold War schema in which the “Soviet Union,” “communism,” and “oppression” were each positively correlated with one another.<sup>83</sup> Similarly, attributions of the outgroup — be they “terrorists,” the “axis of evil,” or some other appellation — dominated the public discourse leading up to and during the invasion of Iraq. President Bush has repeatedly relied on the art of dispositionalism, which is the attribution of others’ negative actions to their internal nature.<sup>84</sup> Immediately after the September 11 attacks, he homogenized countries, non-state terrorist organizations, and terrorist individuals under the “terrorist” umbrella: “We will make no distinction between the terrorists who committed these acts and those who harbor them.”<sup>85</sup> He also established a “good versus evil” divide, naming North Korea, Iran, and Iraq “an axis of evil.”<sup>86</sup> In attempts to maintain consensus for the war, he has concentrated on the “-ist” suffix, a common and effective means to distinguish “them” from “us.” Thus, “[t]he enemy of freedom in Iraq” is “a combination of rejectionists and Saddamists and terrorists.”<sup>87</sup> Other enemies of the war effort — both domestic and international — include “jihadists,”<sup>88</sup> “pessimists,” and “defeatists.”<sup>89</sup> “Terrorists” are easily defined by immutable and uniform characteristics: “They want to stop the advance of freedom in Iraq. . . . There is no limit to their brutality. They kill the innocent to achieve their aims. This is an enemy without conscience.”<sup>90</sup>

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<sup>81</sup> *Id.* at 84.

<sup>82</sup> *Id.* at 38–39.

<sup>83</sup> *Id.* at 42–43.

<sup>84</sup> See *infra* section III.C., pp. 2114–16.

<sup>85</sup> President George W. Bush, Address to the Nation on the Terrorist Attacks, 2 PUB. PAPERS 1099, 1100 (Sept. 11, 2001).

<sup>86</sup> President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union, 1 PUB. PAPERS 129, 131 (Jan. 29, 2002).

<sup>87</sup> President George W. Bush, Remarks to the Woodrow Wilson International Center for Scholars, 41 WEEKLY COMP. PRES. DOC. 1855, 1856 (Dec. 14, 2005).

<sup>88</sup> President George W. Bush, Remarks at the Heritage Foundation President’s Club Luncheon, 39 WEEKLY COMP. PRES. DOC. 1583, 1585 (Nov. 11, 2003).

<sup>89</sup> President George W. Bush, Address to the Nation on Iraq and the War on Terror, 41 WEEKLY COMP. PRES. DOC. 1882, 1883 (Dec. 18, 2005).

<sup>90</sup> Bush, *supra* note 87, at 1856–57.

Thus, the sides are easily distinguished, and there is no gray zone: “Either you are with us, or you are with the terrorists.”<sup>91</sup>

Such negative attributions are commonplace in war and, many argue, necessary to it.<sup>92</sup> Creating outgroup attributes via analogy to reviled prototypes has long been a mainstay of political rhetoric: President Johnson invoked the appeasement of Hitler at Munich when justifying the war on Vietnam; President George H.W. Bush analogized Saddam Hussein’s actions in Kuwait to Hitler’s actions in Poland; and President Clinton analogized Milosevic to Hitler.<sup>93</sup>

### C. Fundamental Attribution Error

The formation of strong ingroup and outgroup identities via self and person schemas in the war context suggests that we may be susceptible to the fundamental attribution error, a common error-producing heuristic. The fundamental attribution error predicts that a “positive” action by the ingroup will be cast in positive terms and attributed to the group’s “good” nature, whereas a “negative” action will be viewed as exceptional and influenced by external, situational factors.<sup>94</sup> Thus, many Americans automatically attributed the brutality of Abu Ghraib to localized situational pressures, rather than to the inherent nature of American armed forces.<sup>95</sup>

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<sup>91</sup> President George W. Bush, Address Before a Joint Session of the Congress of the United States, Response to the Terrorist Attacks of September 11, 2 PUB. PAPERS 1140, 1142 (Sept. 20, 2001).

<sup>92</sup> Hedges explains:

A soldier who is able to see the humanity of the enemy makes a troubled and ineffective killer. . . . We must be transformed into agents of a divinely inspired will, as defined by the state, just as those we fight must be transformed into the personification of unmitigated evil. There is little room for individuality in war.

HEDGES, *supra* note 3, at 73–74. Some argue that the Bosnian conflict is one example of the spontaneous creation of outgroups by repeated inflammatory rhetoric of political leaders. See, e.g., PETER MAASS, *LOVE THY NEIGHBOR: A STORY OF WAR* 273–77 (1996) (describing, in the months before the Bosnian conflict, “Muslims, Serbs and Croats . . . [living] right next to one another and, in the [common] case of mixed marriages, . . . shar[ing] the same bed and g[iving] their children a Serb first name, a Muslim last name, and perhaps . . . a Croat middle name”).

<sup>93</sup> SOLOMON, *supra* note 6, at 63–68.

<sup>94</sup> See Michelle A. Travis, *Perceived Disabilities, Social Cognition, and “Innocent Mistakes,”* 55 VAND. L. REV. 481, 519–22 (2002).

<sup>95</sup> See Mike Williams, *U.S. To Try Soldier in Iraq*, ATLANTA J.-CONST., May 10, 2004, at 1A (noting claims that Abu Ghraib soldiers “were pressed into a chaotic situation with a badly overcrowded prison, poor supervision and intense pressure to get valuable intelligence from detainees”). Those responsible for this “situation” tended to see it differently. In response to questioning about the Abu Ghraib abuses, Secretary of Defense Donald Rumsfeld dismissed the role of situational factors, arguing that the cause of the atrocities “is something so fundamental . . . with the people involved that whether they have a PX [Post Exchange] or a good restaurant is not the issue.” *Operations and Reconstruction Efforts in Iraq: Hearing Before the House Armed Services Committee*, 108th Cong. 101 (2004) (testimony of Donald Rumsfeld, Sec’y of Defense).

Professor Hirshberg's research shows that fundamental attribution bias in war is strong for the ingroup and weaker for the outgroup. He provided a fictional scenario in 1988 to 104 university undergraduates in which the United States or the Soviet Union either bombed a village or dropped humanitarian supplies. One set of students was asked about their level of agreement with a statement attributing government actions to the United States's internal nature: whether bombing or airlifting supplies was "in the nature of the United States." Seventy-seven percent of respondents agreed that airlifting supplies was in the United States's nature, whereas 38% thought bombing was.<sup>96</sup> When external attributions were tested, only 8% agreed that the United States was "forced" to drop supplies (89% disagreed), whereas 58% agreed that the nation was "forced" to bomb (31% disagreed).<sup>97</sup> Thus, although the students were quick to see humanitarian action as an inherent and natural response by the United States, they were much less likely to attribute the negative action (bombing) internally and instead were more likely to search for external causes of the behavior.<sup>98</sup>

Respondents asked the same questions regarding Soviet actions, however, exhibited more ambivalence, and their political leanings more heavily influenced their responses.<sup>99</sup> Fifteen percent of respondents agreed that airlifting supplies was in Soviet nature (65% disagreed), whereas 35% agreed that bombing was in its nature (50% disagreed).<sup>100</sup> The same percentage of respondents (35%) agreed that the Soviet Union was "forced" to airlift supplies as agreed that it was forced to drop bombs (54% and 58% disagreed, respectively).<sup>101</sup> Hirshberg explained the lack of anti-Soviet attribution bias as the product of "increasingly positive attitudes toward the Soviet Union . . . accompanied by a decreased tendency to discount helpful Soviet behavior or use harmful Soviet behavior as a basis for dispositional attributions."<sup>102</sup> These results demonstrate that although we tend to have strong positive attributions toward our own national motives, the strength of our negative attributions toward our enemies can

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<sup>96</sup> HIRSHBERG, *supra* note 17, at 172-74. Twelve percent disagreed that airlifting supplies was in the United States's nature; 50% disagreed that dropping bombs was. *Id.* at 174. All findings were statistically significant. *Id.*

<sup>97</sup> *Id.* at 174.

<sup>98</sup> *See id.* at 175. Results differed significantly when students' political leanings were taken into account. Twenty-nine percent of conservatives and moderates believed dropping bombs was in America's nature (65% disagreed), whereas 65% believed America was forced to do so (24% disagreed). Among liberals, 56% thought dropping bombs was in America's nature (22% disagreed), and 44% thought America was forced to do so (44% disagreed). *Id.*

<sup>99</sup> *See id.* at 176.

<sup>100</sup> *Id.* The results were not statistically significant. *Id.*

<sup>101</sup> *Id.* at 177. The results were not statistically significant. *Id.*

<sup>102</sup> *Id.* at 180.

fluctuate more over time in response to broader political and cultural shifts in perception.

*D. Ramifications for the Just War Schema*

Our schemas and related biases are dangerous because they make it easier for us to convince ourselves that wars are truly just, possibly leading us into wars ultimately deemed unjustified. For example, uncompromising classifications of “us” and “them” leave little room for ambivalence. Much as the “communists” in the 1950s were the unwavering epitome of all things evil in the world, “terrorists” and “jihadists” are today pure antitheses to the United States and all it represents. Professor Hirshberg reports that Americans “have tended to believe tautologically that the United States is on the right side.”<sup>103</sup> Thus, “[o]bjections to interventions . . . tend to be limited to disagreements over their costs and benefits, rather than fundamental challenges concerning whether the United States has intervened on the correct side.”<sup>104</sup> Although this Note does not intend to take a position on the veracity of the characterizations that dominate war discourse, it does seek to show that the black-and-white nature of these characterizations can lead us very easily down the path to war: since we conceive of no gray area in which the two opposed sides may peacefully (though perhaps uncomfortably) coexist — for instance, when we believe the enemy is by *nature* manifestly bent on destroying us — we can quickly conclude that the decision is not one of *whether* there will be war, but rather *on whose terms* it will take place.

Indeed, the ingroup-outgroup heuristic is pivotal in establishing each element of the just war schema. Just cause depends on self-defense; if we perceive terrorists (and their supporters) as homogenous groups bent on defeating democracy through violent means, then we have no choice but to eradicate them. Homogenization of the threat also endows it with substantial flexibility as a rationale: since the threat is great and uniform, any constituent part of it can justify confrontation. Hence, any nation that “supports” terrorists is now part of the threat and thus a legitimate target of preemptive strike. Both the fundamental attribution error and the schema-protection “meta-motive”<sup>105</sup> counsel that once a country is identified as part of a homogenous “terrorist” threat, we will interpret its current and future actions in schema-consistent ways and dismiss schema-inconsistent information as externally motivated.

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<sup>103</sup> *Id.* at 189.

<sup>104</sup> *Id.*

<sup>105</sup> See *supra* p. 2104.

Just cause also implicates our self schema more directly. It is elementary that each side in a war believes that its position is justified.<sup>106</sup> The view that we are motivated primarily by self-defense is inherently self-affirming — we are that which is worth protecting. Further, we are forced to coalesce into a patriotic unitary whole — just as “they” are homogenized, so are “we.” Finally, framing a war as self-defensive allows us to see ourselves as externally forced into war — we are not internally a war-mongering type (like “them”), but rather “are a peaceful people.”<sup>107</sup> Yet, when challenged by external forces, we can still demonstrate that “we’re not a fragile people, and we will not be intimidated by thugs and killers.”<sup>108</sup>

Right intention also implicates both ingroup and outgroup identities. Because we consider ourselves inherently “good,” we must act with the right intention. The motivation for the war under a right intention rubric is more easily defined as against “terrorism,” “jihadists,” or “Saddamists” than against “oil-rich countries,” “rebels,” or “visionaries.” Schema theory again counsels caution: since we operate in a cognitive schema in which “we” are generally associated with “good,” when presented with conflicting rationales for a war we may tend to accept those which confirm our self schema and dismiss others as secondary or irrelevant.

Proportionality supports positive self identities by suggesting that “we” are not rushing into just any wars, but rather only those in which we predict that we will inflict only as much harm to others as we will avoid ourselves. More troublesome, however, is the potential dehu-

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<sup>106</sup> This characterization sets aside those citizens who dissent on grounds that the cause is not just. The interaction of several other self schemas, such as ideological, political, or religious scripts, can create significant minorities who no longer believe that their nation’s cause is “just.” Instead, this Note focuses on majority perceptions since political and media discourse are most directly aimed at these perceptions, and because these perceptions are instrumental in creating the political consensus necessary to support and sustain war. Cf. CHRIS HEDGES, *WHAT EVERY PERSON SHOULD KNOW ABOUT WAR* 3 (2003) (“Between 65 and 85 percent of the American public will support a military action when it begins.”).

<sup>107</sup> Bush, *supra* note 66, at 340.

<sup>108</sup> *Id.* As a matter of comparison, it is important to realize that similar schemas have been used to validate various oppressions and genocides. See, e.g., MANN, *supra* note 18, at 180–84 (describing Nazi racial sentiments underlying the “German Question” as perceptions that Jews and Slavs threatened the economic and political strength of the German nation); Hanson & Hanson, *supra* note 18 (manuscript at 19–22) (arguing that various framing schemas made it “easy to justify making war on the Indians and blaming them for their own suffering”). The point of this comparison is not that recent military actions are indistinguishable from these earlier wars, but rather that tremendous horrors have been carried out under very similar rubrics. The implication of a slippery slope here is not accidental; instead, it suggests the need for extreme self-vigilance when we feel highly threatened by seemingly monolithic outgroups. History and science suggest that reliance on a dispositionalist concept of self as good and benign may not be enough to overcome the power of our schemas and situations. Cf. MANN, *supra* note 18, at 26–29 (describing the famous studies by Stanley Milgram that starkly suggest “ordinary people are capable of cruel behavior if given license by legitimate institutions”); Hanson & Yosifon, *supra* note 19, at 6–8 (same).

manizing effect of outgroup homogenization. Casualties among “terrorists” or the “axis of evil” are likely weighed differently than casualties consisting of “fathers,” “brothers,” or “daughters.”<sup>109</sup>

Finally, endowing the “enemy” with unyielding traits legitimates claims that war is the last resort: diplomacy will not work and they will never stop attacking us; thus, we must attack them. Because the “terrorist” category evokes the familiar refrain that “we will not negotiate with terrorists,” it operates to convince us that dialogue is not only unlikely to be successful, but also that it is presumptively impossible. Finally, last resort also implicates our self schemas along now familiar lines: The decision to enter into war is not ours. Instead, we are moved by an external force — the obstinate or irrational nature of the enemy — to engage in war.

Thus, in a variety of ways our schemas make us more likely to enter wars we possibly should not. They cause us to see those who are similar to our enemies as our enemies; to inflate our own justifications for war and not question our motivations; to downplay the harm we will cause to a dehumanized enemy; and to see our enemies as irrational and incapable of compromise, yielding the ultimate conclusion that our only option is war. In this way, we feel compelled to enter wars by situational influences that protect our self-attributions that we are inherently noble, right, and just.

#### *E. Some (Fanciful) Ideas for Debiasing Our Warmaking Structure*

The nature of our prewar cognitive and rhetorical patterns counsels that we establish safeguards against potentially biasing heuristics. In particular, we should explore making binding precommitments about what justifications for war are acceptable, as well as the degree and source of evidence necessary to satisfy those requirements. These commitments may take a simple form — requiring war resolutions to be more detailed or reauthorized more frequently — or they may entail constitutional changes in which the pertinent government actors precommit to a process that mitigates biasing heuristics that tend to be amplified greatly in times of crisis.<sup>110</sup>

One way to remove bias from the decisionmaking process would involve employing an additional set of ex ante restrictions on warmak-

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<sup>109</sup> It is an argument for another time whether one label is more correct than the other relative to any particular individual. However, the well-documented tendency for us to seek out and filter information in accord with preexisting schemas again suggests that our assessments of “proportionality” according to schematic processing may be skewed.

<sup>110</sup> See Jon Hanson, *Count to Twelve: Some Lessons from Social Cognition Theory* 4 (2001) (unpublished manuscript, on file with the Harvard Law School Library) (“When a person’s scarce cognitive resources are already heavily taxed, as they tend to be when the person is feeling outrage, the chances for understanding the underlying causes [of another person’s behavior] — and, hence, generating effective solutions — are greatly diminished.”).

ing. These restrictions would address three central conditions that promote schematic war decisionmaking: insufficient time, lack of dissenting perspectives, and overly simplified conceptualizations of the “enemy.” To address the first condition, we could implement a “cooling-off period” between the time the President first proposes entering military action and the point when he becomes constitutionally authorized to commence the military action.<sup>111</sup> Such a cooling-off period may lead to more rational deliberation, as the schematic mind avoids reconciling schema-inconsistent information when it is “too cognitively busy or occupied.”<sup>112</sup> Second, we could require the President to include dissenting voices in warmaking deliberations, perhaps by requiring congressional authorization for any military actions,<sup>113</sup> imposing supermajority requirements in Congress for the authorization,<sup>114</sup> requiring some modicum of approval by international bodies, or even mandating that the President participate in three televised debates with war opponents. These ideas all seek to allow dissenting voices to be engaged and thus to offset the often automatic discounting of schema-challenging inputs. Finally, before any decision to enter a war is reached, perhaps we could require the government to open a dialogue with the “enemy.” When addressing conflicts involving only third-party nations, we frequently suggest that the opposing sides meet to consider an armistice. It is curious that we do not always follow our own advice.

Although these *ex ante* restrictions may help reduce the errors associated with schematic decisionmaking, *ex post* penalties could also play a role by subjecting government actors to an incentive-based regime in which they internalize *ex ante* the costs of erroneous decisionmaking.<sup>115</sup> In the political realm, *ex post* penalties could include automatic

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<sup>111</sup> This is an unrealistic solution when there is the potential for an imminent attack, and any true proposal, rather than the thought experiment offered here, would have to address seriously the numerous exigencies that accompany actual warmaking decisions. This proposal also appears to severely restrict executive authority, but this is not an immediate concern as this section focuses on what could be, not what is. Further, groups organized like the executive branch, with a presumption against including dissenting voices, are particularly susceptible to “groupthink” and its related schematic errors, suggesting that reducing the role of the executive, at least in the decisionmaking regarding the *commencement* (as opposed to actual implementation) of war, may be desirable.

<sup>112</sup> See Chen & Hanson, *supra* note 7, at 1229.

<sup>113</sup> Cf. 50 U.S.C. § 1544(b) (2000) (generally requiring the President to withdraw forces within sixty days of beginning a military action absent congressional authorization).

<sup>114</sup> Cf. Bruce Ackerman, *Terrorism and Civil Liberties*, YALE ALUMNI MAG., Mar./Apr. 2006, at 24, 26 (suggesting an “emergency constitution” under which a “supermajoritarian escalator” for congressional reauthorizations will “terminate the use of emergency powers within a relatively short period” (internal quotation marks omitted)).

<sup>115</sup> Cf. Jon D. Hanson & Kyle D. Logue, *The Costs of Cigarettes: The Economic Case for Ex Post Incentive-Based Regulation*, 107 YALE L.J. 1163, 1173–78 (1998) (arguing that, when future

removal from office when the President is found to have (intentionally) acted on erroneous information; sanctions on the offender's political party, including automatic limitations on fundraising or the barring of a member of the same party from replacing the removed official; or simply automatic impeachment proceedings.<sup>116</sup> These ideas, obviously unrealistic under our current constitutional structure, invite a conversation about whether smaller, incremental steps could effect the same ends within our current constitutional framework.

### CONCLUSION

Social psychology demonstrates that all of our decisions and actions are influenced by internal cognitive shortcuts and external situational pressures. Important public policy choices, including military decisionmaking, are not immune to these inherent biasing effects. This Note suggests that our framing of discussions about war is susceptible to errors that plague schematic thinking generally and may be particularly vulnerable to errors introduced by strong ingroup and outgroup formulations. We know, with the benefit of hindsight, that these errors can lead us severely astray.<sup>117</sup> A critical look at the discourse leading to war invites us to consider ways in which these errors can be prevented.

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costs are not perceived or internalized by one group of actors, liability should be shifted to the more deterrable set of actors).

<sup>116</sup> Impeachment for erroneous warmaking is not a fanciful notion, especially today. See Jeanne Cummings, *Impeachment Proves Risky Election Issue*, WALL ST. J., Mar. 6, 2006, at A4 (citing poll results indicating that 51% of Americans think Congress should consider impeaching President Bush if he "didn't tell the truth about the reasons for the Iraq war," as contrasted with only 27% having supported the impeachment of President Clinton).

<sup>117</sup> In March 2003, a reporter asked President Bush the following:

Mr. President, millions of Americans can recall a time when leaders from both parties set this country on a mission of regime change in Vietnam. Fifty thousand Americans died. The regime is still there in Hanoi, and it hasn't harmed or threatened a single American in the 30 years since the war ended. What can you say tonight, sir, to the sons and the daughters of the Americans who served in Vietnam to assure them that you will not lead this country down a similar path in Iraq?

His response was that the Iraqi mission was "clear," aiming for "disarmament." Bush, *supra* note 47, at 304.