

Just War and The American Civil War

Christopher J. Eberle

United States Naval Academy

Abstract

According to many of its advocates, one of the main aims of the Just War Tradition (JWT) is to provide a normative framework that can legitimate war and yet also constrain the destructiveness of war. Many of its critics have argued that these two desiderata are in tension if not outright contradiction: reliance on the JWT tempts its adherents to legitimate the destructiveness of war in morally troubling respects and this temptation is elicited by the JWT's core justificatory requirements. I count myself among those who accept this broad assessment of the JWT. My primary aim in this paper is to specify what it is about the JWT, and what it is about human beings, that renders adherents of the JWT vulnerable to this temptation. I do so by reflecting on Harry Stout's recent moral history of the American Civil War. But I do not draw from my reflections the conclusion that we thereby have reason to jettison the JWT. The fact that adherents of the JWT are vulnerable to a temptation to injustice – even one that threatens the JWT's central moral aims – does not provide compelling reason to reject the JWT.

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1.0 Introduction. According to many of its advocates, one of the main aims of the Just War Tradition (JWT) is to provide a normative framework that can legitimate war and yet also constrain the destructiveness of war. Many of its critics have argued that these two desiderata are in tension if not outright contradiction: when living, breathing, embodied human beings are caught up in war, reliance on the JWT tempts its adherents to legitimate the destructiveness of war in morally troubling respects. I count myself among those who accept this broad assessment of the JWT. My primary aim in this paper is to specify what it is about the JWT, and what it is about human beings, that renders adherents of the JWT vulnerable to this temptation.

2.0 A Cautionary Tale. I will begin by reflecting on what appears to be one troubling manifestation of the JWT's tendency to amplify the destructiveness of war. Harry Stout's recent "moral history" of the American Civil War, **Upon the Altar of the Nation**, describes in rich detail the way in which what I call 'justificatory escalation' helped to legitimate much of the death and suffering inflicted during that tragic conflict.¹ Stout takes much of that death and suffering to be wrongful. Indeed, if he is correct, the escalation of Union war aims rationalized so much wrongful death and suffering that the Union's war against the Confederacy was almost rendered unjust.² Although I believe that Stout's assessment depends on an overly simple understanding of the JWT, reflection on his narrative provides an ideal opportunity to explain why adherence to the JWT so easily leads to the rationalization of disproportionate, and so unjust, and so impermissible, death and suffering.

Stout's primary concern is to articulate how citizens, statesmen, and soldiers understood the moral issues raised by American Civil War.³ He probes the self-understanding of those involved in that conflict, details how many Americans altered their initial assessment as the war unfolded, and shows how their altered understanding was reflected in subsequent action. The result is a marvelously rich narrative in which a dizzying array of political and cultural actors vent, posture, demonize, criticize and, in some cases, reflect on their great conflict. Three components of Stout's narrative are of particular interest.

First, from the onset of the war, agents on the Union side advocated in favor of very different war aims. For example, some abolitionists thought that the Confederacy's maintaining a system of chattel slavery provided the Union with just cause for war, such that Union war aims rightly included the eradication of the Confederacy's slave system.⁴ But bellicose abolitionists were not in great supply at the onset of hostilities. Indeed, most Union citizens, statesmen, and soldiers initially thought that war with the

1. Harry Stout, **Upon the Altar of the Nation: A Moral History of the Civil War**, (New York, NY: Viking Books, 2006). This is my gloss on Stout's narrative. To be clear, though, from the evidence contained in Stout's narrative, it seems that very few of the citizens, soldiers, clergy, media figures, or statesmen described in Stout's narrative had anything like a detailed or explicit understanding of the JWT. At most, Stout's narrative depicts citizens, soldiers, and statesmen who rely on various claims and conceptions that bear a family resemblance to familiar just war conceptions. This will have to do.

2. Stout focuses – by no means exclusively – on the Union side of the conflict. For ease of exposition, I will as well.

3. Parts of this section are taken from Christopher J. Eberle, "Book Discussion," *Journal of Military Ethics* 6/1 (2007): 75-80.

4. As I understand the JWT, there is a tight connection between moral violation, just cause, and legitimate war aim, viz., that the only war aims that a belligerent party may pursue are those that intelligibly respond to the violations that provide a just cause for war. For a detailed articulation and defense of this claim, see Christopher J. Eberle, **Justice and Just War**, unpublished manuscript, available on request to the author.

Confederacy should be fought to achieve more 'limited' aims. In particular, most justified war, not as a response to the enslavement of some 4 million human beings, but as a response to an unjust rebellion that threatened to undermine the integrity of the Union.⁵ Here, for example, is Charles Hodge, a professor at Princeton Theological Seminary:

Now it cannot be asserted that the abolition of slavery, however desirable in itself, is one of the ends for which our national government was instituted. We are not bound to abolish slavery by war, as we should be bound to resist invasion, or as we are bound to suppress rebellion by force of arms ... [T]o make such abolition the end of the war, is a plain and palpable violation of the oath of allegiance to the Constitution, and of the Law of God.⁶

Of course, most advocates of war with the Confederacy recognized the obvious truth that the American Civil War was 'somehow' fought over the issue of slavery. But they could recognize this obvious truth and, at the same time, coherently deny that the Confederacy's maintaining a system of chattel slavery provided the Union with just cause for war. Stout articulates what was apparently a common understanding of the justificatory relation between secession and slavery, the preservation of the Union and the emancipation of the enslaved:

*The moral cause – preserving the Union – could bring with it the happy by-product of emancipation, or at least limited emancipation. But emancipation could not justify the war. In 1861 slavery had not yet even risen to 'a' just cause for most white Americans. 'The' cause was exclusively the Union. Anything else compromised the Constitution and threatened the national covenant. Before casualties soared, one just cause was enough.*⁷

On this understanding, the Confederacy's enslavement of millions of human beings was an egregious moral violation, but not one that could provide a just cause for war, unlike secession, which did provide a just cause for war ... one that would never have obtained absent intractable disagreements over slavery. More succinctly, “...slavery was not the [just] cause of the war. Rather it *was* the cause of *secession*, which *was* the [just] cause of war.”⁸

Second, Union war aims changed over time. As the “blood sacrifice” of Union soldiers became ever more costly and horrific, advocates of continuing war against the Confederacy craved some far more potent and motivating aspiration than mere preservation of the Union.⁹ Lincoln and other Union leaders found this additional aspiration in the abolition of slavery, itself associated with a most weighty

5. “Maintenance of the Union, as Lincoln and Sherman made clear, always ranked first among war aims for most citizens of the United States. Anyone interested in why the mass of northern people supported crushing the rebellion, even at hideous cost, must come to grips with this crucial fact. Union was the key, and for many in the loyal states it had a meaning that extended far beyond the United States. Victory meant keeping aloft the banner of democracy to inspire anyone outside the United States who suffered at the hands of oligarchs.” Gary Gallagher, **The Union War**, (Cambridge, MA: Harvard University Press, 2011), p. 34.

6. Quoted in Harry Stout, **Upon the Altar of the Nation**, p. 175. See also James McPherson, **Battle Cry of Freedom: The Civil War Era**, (New York, NY: Oxford University Press, 1988), 308-12; Andrew Preston, **Sword of the Spirit, Shield of Faith**, (New York, NY: Alfred P. Knopf, 2012), p. 164.

7. Harry Stout, **Upon the Altar of the Nation**, p. 39.

8. Harry Stout, **Upon the Altar of the Nation**, p. 41, author's emphasis.

9. Harry Stout, **Upon the Altar of the Nation**, p. 123.

and admirable moral commitment, viz., to the equality and dignity of each human being.¹⁰ What was initially understood by most to be a fortuitous byproduct of a war that was rendered independently just by Confederate secession eventually became, for many advocates of the Union cause, a central motivating reason for war with the Confederacy. The more egregious the wrong to be righted, and the greater the good to be achieved, by war with the Confederacy, the greater the sacrifices that Union citizens and soldiers were willing to offer: “with slavery – not Union – as the focal point, commentators could accept the escalation of war virtually without restraint.”¹¹ Indeed, Stout doubts that popular support for continued war with the Confederacy could have been sustained had Lincoln not added to Union war aims the transcendent, inspiring aim of freeing the captive and liberating the slave.¹² So Union war aims changed ... and they changed in an 'upward' direction in the respect that the Union eventually fought in rectify twinned injustices, secession and enslavement, the combination of which had far greater normative and motivational weight than the single 'limited' injustice to which it initially responded at the outset of war.

Third, the escalating changes in Union war aims had largely malign consequences for the manner in which the Union conducted war with the Confederacy. The conviction that war with the Confederacy would eradicate the great evil of slavery shored up support for a war that exacted an ever greater toll on soldiers and civilians alike. Ever greater numbers of soldiers were conscripted to fight, resulting in a continuous string of battles, massive numbers of casualties, and a bloody-minded toleration of soldierly suffering. “Total war,” Stout avers, “meant entirely new proportions of soldiers, which meant disproportionate carnage.”¹³ If Stout is correct, then, the normative escalation of the Union's war aims was directly (though, of course, not solely) responsible for the longevity and brutality of a war that took the lives of vast numbers of human beings. Indeed, the cost of the war measured in the denomination of human suffering and death was so extensive that the Union's war against the Confederacy was *almost* rendered disproportionate.¹⁴

The Union's additional, emancipatory aim also helped to legitimate a 'hard war' against the Confederacy, that is, a war strategy of “directed severity” that targeted civilian resources of military value.¹⁵ So, for example, Lincoln was convinced that, if the Union was to prevail, he needed to undermine civilian

10. Harry Stout, *Upon the Altar of the Nation*, p. 389.

11. Harry Stout, *Upon the Altar of the Nation*, p. 188. Stout's explanation of the Union's escalating war aims is consistent with a more mundane explanation: Lincoln and others believed that adopting emancipation as a war aim not only legitimated the vast amount of suffering caused by continuing the war, but also constituted a crucially important means to winning the war: Lincoln “had decided that emancipation 'was a military necessity, absolutely essential to preservation of the Union. We must free the slaves or be ourselves subdued.'” Quoted in James McPherson, *Battle Cry of Freedom*, p. 504. In short, emancipation could function both as a morally compelling war aim and as necessary means to achieving that aim. See also John Fabian Witt, *Lincoln's Code: The Laws of War in American History*, (New York: Free Press, 2013), pp. 237ff.

12. Harry Stout, *Upon the Altar of the Nation*, p. 140, 389.

13. Harry Stout, *Upon the Altar of the Nation*, p. 148. Note that this statement, the like of which recurs throughout Stout's book, indicates a serious problem with the author's understanding of JWT's *ad bellum* proportionality requirement: there is no necessary correlation between the 'proportions' of combatants who participate in a given war and the proportionality of the war in which they participate. 'Small wars' with few combatants and casualties can be disproportionate and 'large wars' with many combatants and casualties can be proportionate.

14. See Stout's concluding reflections, *Upon the Altar of the Nation*, pp. 457ff.

15. James McPherson, “The Hard Hand of War,” *This Mighty Scourge: Perspectives on the Civil War*, (New York, NY: Oxford University Press, 2007), p. 125.

support for the Confederate cause – to break the will of the Confederate supporters and sympathizers.¹⁶ His generals pursued, and Lincoln acquiesced to, a program of forced migration and economic devastation designed to engender severe suffering among civilians who supported or sympathized with the Confederate cause. But the move from a war that targeted enemy combatants to one that also targeted cooperating non-combatants needed potent legitimation and mere preservation of the Union was insufficient to that task.¹⁷ ‘Total war’ required further legitimation and emancipation provided the additional rationale.¹⁸ Here, for example, is the abolitionist William R. Williams, who unblinkingly does the honor:

Since the object of a just war is to suppress injustice and compel justice, we have a right to put in practice against our enemy every measure that will tend to weaken or disable him from maintaining his injustice. To this end, we may choose any and all such methods as we may deem most efficacious.¹⁹

According to Stout, Lincoln adopted emancipation as a Union war aim in order to provide ideological cover for policies that intentionally targeted non-combatants – harsh measures that Lincoln took to be causally necessary to a Union victory over the Confederacy. If Stout is correct, we need to understand Lincoln's Emancipation Proclamation in that context – the issuance of that proclamation both signaled and effected a transformation of the Union's war aims and that transformation in turn facilitated serial *in bello* violations. So Stout:

Emancipation legitimated – and promoted – an escalation of the war on the battlefields and the Southern home front like no other action could do. ...In moral terms, Lincoln repeatedly made it quite clear that he did not need emancipation to fight a just defensive war. But in practical terms, emancipation was necessary as a means to total war.²⁰

However morally sublime in theory, the Union's eventual decision to adopt emancipation as a war aim was in reality the “inner accelerator” to a “total war” in which “civilian suffering could be presumed and morally justified.”²¹

3.0 Proportionality and the American Civil War. Stout clearly takes the escalation of Union war aims to contravene at least the spirit of the JWT: the addition of emancipation to Union war aims was more a result of opportunistic rationalization than of a disciplined assessment of the Union's legitimate grievances against the Confederacy. Moreover, he takes the escalation in war aims to have legitimated

16. Harry Stout, *Upon the Altar of the Nation*, p. 168,

17. Note that Confederate civilians were 'targeted' for suffering not death. The Union's 'total' war against the Confederacy was therefore quite mild when compared to the total wars of the 20th century. So far as I am aware, the Union's war against the Confederacy included nothing like the firebombing of Hamburg, Dresden, or Tokyo. Moreover, the immiseration inflicted by Union armies on the civilian population was supposed to be parceled out in rough accord with culpability: “although not averse to destruction, [Federal soldiers] wanted to see the hard hand of war descend on those who deserved it, and usually only in rough proportion to the extent of their sins.” See Mark Grimsley, *The Hard Hand of War*, (Cambridge: Cambridge University Press, 1995), p. 185.

18. On the aptness of construing the American Civil War as a 'total war,' see Stout, *Altar of the Nation*, p. 467. fn. 9.

19. Harry Stout, *Upon the Altar of the Nation*, p. 174.

20. Harry Stout, *Upon the Altar of the Nation*, p. 185; see also 143, 168;

21. Harry Stout, *Upon the Altar of the Nation*, p. 188.

much violence that should have been unacceptable to advocates of the JWT: the addition of emancipation to Union war aims legitimated the 'blood sacrifice' of too many human beings even for that elevated end. But I do not believe that the addition of emancipation to Union war aims was incompatible, or even in tension, with a proper understanding of the JWT. Escalation there might have been in the Union's war aims, but not necessarily wrongful escalation. Indeed, justificatory requirements at the heart of the JWT are quite – even disturbingly – conducive to the kind of normative escalation that Lincoln and others (apparently) employed to legitimate the death and suffering of so many combatants and non-combatants. In short, the escalation of Union war aims narrated by Stout was entirely in keeping with the letter and spirit of the JWT and, as a consequence, it's not at all clear that the sacrifice of soldiers required to achieve those war aims violated any actual provision of the JWT.²² How so?

3.1 Just Cause and Ad Bellum Proportionality. In order to see why the escalation of Union war aims need have violated neither the letter nor the spirit of the JWT, it will be helpful to specify in brief detail the very important conceptual and substantive relations between the just cause and proportionality requirements. Three comments are particularly relevant to my assessment of Stout's narrative.

First, a war that satisfies the just cause requirement must be a war that can remain proportionate even though it generates a great deal of relevant evil. Because a war that satisfies the just cause requirement must be a response to an egregious violation (or an array of such violations), a *successful* just war achieves war aims that respond effectively to some egregious violation. A war that effectively responds to an egregious violation thereby achieves a great good: if the violation consists in C2's launching a genocidal attack on C1, then for C1 to wage a successful war against C2 just is for C1 to achieve the great good of preventing a genocide. That great good will invariably be relevant to any *ad bellum* proportionality assessment and so can offset many relevant evils that occur during the prosecution of that war.²³ As a consequence, any successful just war will invariably be able to engender a great deal of carnage without becoming disproportionate. Bluntly put, a war that cannot remain proportionate despite considerable suffering cannot be fought in response to a violation that is egregious enough to satisfy the just cause requirement.

Note that what drives this conclusion is, in significant part, a morally elevated construal of human beings at the heart of the JWT. As I see it, because human beings have great worth and dignity, they may be killed only in response to *egregious* violations, and so we can wage a just war only in response to egregious violations, and so a successful just war must achieve very great goods, and those goods must be able to offset many grave evils. Were we to assume otherwise – were the JWT to attribute to human beings some negligible moral standing, then a just war could be fought in response to some trivial wrong, in which

22. Note that I will focus throughout on Stout's claim that the adoption of emancipation as a war aim helped to legitimate disproportionate violence. For the sake of clarity and convenience, I refrain from discussing Stout's claim that the adoption of emancipation as a war aim helped to legitimate indiscriminate violence. Although the adoption of emancipation as a war aim did have some important implications for the moral standing of the Union's use of indiscriminate violence, for example, its infliction of suffering on non-combatants deemed sympathetic to the Confederate cause, detailing those implications would take us too far afield.

23. According to the JWT's *ad bellum* proportionality requirement, as I understand it, a community may wage war in response to a violation that satisfies the just cause requirement only if the relevant 'goods' achieved by so responding are 'proportionate' to the relevant 'evils' caused thereby. Note that the goods constitutive of a successful response to some egregious violation are not the only goods relevant to an *ad bellum* proportionality assessment, but such goods will always be relevant to a proportionality assessment.

case its successful prosecution needn't achieve any great good, in which case an otherwise just war could be rendered disproportionate by comparatively trivial amounts of death and suffering. The carnage permitted in the prosecution of a just war is the moral complement of a commitment to human dignity and worth that lies, I believe, at the heart of the JWT.

Second, although a successful just war will always be able to tolerate a great deal of suffering, different wars can tolerate very different amounts of human suffering. I take as given both that distinct just wars can respond to different violations and that different violations can vary markedly in their normative weight. So, plausibly, the array of violations that provided the Allies with just cause for war against the Axis was far more egregious than that which provided the Union with just cause to wage war against the Confederacy. The greater the normative weight of the violations in response to which C1 justly wages war against C2, the greater the relevant goods C1 achieves by successfully waging war against C2, the greater the relevant evils that those goods can offset, and so the higher the threshold of death and destruction that C1's war against C2 must surpass before it becomes disproportionate. This allows us to compare – in a *very* rough and ready manner – the amounts of death and suffering that can be tolerated by distinct wars: a war waged against a community that has committed two exceedingly grave violations can justly involve far more suffering than a war waged against a community that has committed only one of those violations. So, plausibly, the United States' war against the Axis powers could with justice tolerate far more death and suffering than the Union's war against the Confederacy given that – as I assume – the first was waged in response to Axis violations that were far worse than any committed by the Confederacy.

Third, the threshold at which C1's war actually becomes disproportionate partly depends on how C1 responds to C2's violations. I take as given that a warring party has significant moral latitude in deciding how to respond to the violations that provide it with just cause for war. So, for example, suppose that C2 commits an array of distinct violations that provides C1 with just cause for war. Although I believe that the *only* war aims that C1 may pursue against C2 are those that respond to C2's violations, C1 need be under no obligation to pursue war aims that effectively respond to *each* of those violations.²⁴ If C1 does not adopt a war aim that would otherwise achieve a good that is relevant to a proportionality assessment of C1's war with C2, and if C1, as expected, fails to achieve that good,²⁵ then that good does not weigh in any proportionality assessment of C1's war with C2. What matters for *ad bellum* proportionality assessments are the relevant goods actually achieved by waging war – not those that could have been, but were not in fact, permissibly achieved by waging war.²⁶ So the threshold at which C1 actually violates the JWT's *ad bellum* proportionality requirement depends to a significant extent on the war aims that C1 contingently decides to pursue in response to the violations to which it has been subjected.

3.2 Justificatory Escalation and the American Civil War. Due recognition of the justificatory relations between the JWT's just cause and *ad bellum* proportionality requirements should play an important role

24. I take as given that C1 will sometimes be morally permitted not to respond with military violence to C2's violations, even when those violations (help to) provide C1 with just cause to wage war against C2.

25. I take it that there is a very rough negative correlation between the war aims that communities actually pursue while waging war and those they actually achieve while waging war: if C1 refrains from pursuing some war aim A, then C1's war against C2 is unlikely to achieve A.

26. A comparable point applies to the relevant evils prevented – only those are relevant to proportionality assessments that are actually prevented, not those that could have been but were not prevented.

in any 'moral history,' and so moral accounting, of the American Civil War. What happens when we do so? I submit that we will, or at least that we should, render a far less harsh verdict than does Stout. Stout is clearly, and sensibly, horrified by the human suffering caused by the American Civil War: **Upon the Altar of the Nation** depicts in a moving manner the grim carnage inflicted on combatants as well as the grief that it evoked in grieving parents, widowed spouses, fatherless children and distraught friends. Stout repeatedly punctuates his depictions with accusations of disproportionate and senseless violence. He seems particularly dismayed by the justificatory escalation employed by Lincoln to leverage ever greater martial exertions and apparently believes that the escalation of war aims betrayed the JWT. He seems to believe that justificatory escalation is morally objectionable as such.

But as the preceding discussion makes clear, the escalation of war aims need not legitimate wrongful violence. Note, first, the general point that we can properly evaluate the horrors of the American Civil War not by fixing on the carnage itself, but by reflecting on that carnage in the normative context in which it occurs. More particularly, we cannot determine whether the butchery that so repulses Stout was disproportionate without determining whether it was excessive in relation to the relevant goods achieved by the Union's war with the Confederacy. Second, we cannot make that comparative determination absent some judgment as to whether the eradication of slavery was worth the cost in human suffering. If the threat posed by Confederate secession provided the Union with a just cause for war, if the enslavement of some four million human beings of slavery also provided a just cause for war, and if the Union's war against the Confederacy successfully responded to both of those violations, then the Union's eventual decision to adopt the eradication of slavery as a war aim did in fact legitimate a far more gruesome war than would have been the case absent that decision. Third, if we grant that the Confederacy's maintenance of a system of chattel slavery as well as its secession from the Union sufficed to provide the Union with just cause, then it's hard to see why its citizens, soldiers and statesmen were remiss in appealing to both of those considerations to *justify* the Union's war against the Confederacy ... and thereby to justify the carnage that occurred during the prosecution of that war. The escalation of war aims that so troubles Stout seems entirely in keeping with the basic logic of the JWT.

We can, and should, generalize this last result. The core 'logic' of the JWT provides its adherents with a justificatory 'procedure' that can legitimate carnage even on the scope that occurred during the American Civil War. By laying down as an unalterable requirement that a just war respond to a grievous violation, and by (partly) indexing the amount of allowable human suffering caused by a given war to the normative weight of the violations that provide a just cause, and by granting that warring communities have significant moral latitude in determining how to respond to the various violations that provide them with a just cause, the JWT provides a recipe for legitimating the destructiveness of war. Should we find that we cannot defeat an enemy without inflicting considerable human suffering, we can justify doing so by adopting additional war aims from among the various options. If Stout is correct, this is pretty much what Lincoln and other Union leaders did. He judges this to be a most troubling betrayal of the JWT. But this judgment seems vitiated by Stout's failure to appreciate the complex and close justificatory relations between just cause and proportionality assessments. As I understand it, the JWT does not preclude warring communities from engaging in just the kind of justificatory escalation in which the Union seems to have engaged. Nor, in my judgment, does any sound moral conception.

4.0 Slavery, Just Cause, and Proportionality. Let me briefly pause to consider one clarifying objection to my assessment of Stout's narrative. It might seem that Stout's dim assessment of the Union's war against the

Confederacy is directed, not at the escalation of Union war aims as I have claimed, but at the particular war aims eventually pursued by the Union. That is, perhaps Stout rejects the claim that the Confederacy's wrongful maintenance of a system of chattel slavery provided the Union with just cause to wage war with the Confederacy and that this is why he objects to the Union's escalating war aims. So, for example, he claims that the JWT permits only defensive war,²⁷ and implies that this general claim precludes waging a war to abolish slavery.²⁸ Perhaps Stout is of the view that the Union could wage a just war only in response to some 'external' attack, that the Confederacy's enslavement of human beings constituted no such attack, and thus that the Union's eventual adoption of emancipation as a war aim could not therefore achieve goods relevant to a proportionality assessment of its war with the Confederacy. Emancipation achieved a very great good, but not one that was relevant to a proportionality assessment of the Union's war against the Confederacy.

I believe that this line of argument is dubious – both on the merits and as a description of the enduring commitments of the JWT. As I see it, a just cause is (roughly) constituted by the egregious violation of the rights of human beings. Few such violations are more egregious than the enslavement of some four million human beings – particularly when the enslavement takes the form of chattel slavery. As a consequence, surely the human beings who were enslaved by the Confederates had just cause to organize and employ military violence to liberate themselves: if American slaves had the means necessary to liberate themselves, then they would certainly have had just cause to do so. But of course the normative weight of a given violation does not depend even in the slightest on the ability of the violated to respond effectively to that violation. Consequently, if the enslavement of 4 million human beings is egregious enough to provide the enslaved with just cause for war, then that violation remains sufficiently egregious when the enslaved are incapable of liberating themselves. That is, the Confederacy's maintaining a system of chattel slavery constituted a violation with the kind of normative weight that the Union would need in order to have just cause to wage war against the Confederacy.

Now we might think that Confederate enslavement could not even help to provide the Union with a just cause for war against the Confederacy, not because that gross violation of human rights was insufficiently egregious to provide a just cause, but because the violation of the rights of the enslaved could not provide *the Union* with just cause for war. Perhaps this is the significance of Stout's claim that the JWT permits only defensive wars: because the JWT permits only defensive wars, and because a defensive war is one in which the members of a given community defend the rights of its own members, it follows that the violations the Confederacy inflicted on its slaves – however egregious – could not provide the Union with just cause for war. But this is a morally crimped conception of what makes for a defensive war. The idea that communities have just cause to wage war only by virtue of the violations inflicted on their members has no place in an understanding of the JWT that incorporates a commitment to the great worth and dignity of each and every human being, no matter his or her communal membership. Defensive wars needn't be self-defensive wars.²⁹ So, if we grant that the JWT permits only defensive wars, as Stout avers,

27. Harry Stout, *Upon the Altar of the Nation*, p. xiii.

28. Harry Stout, *Upon the Altar of the Nation*, p. 175.

29. Oliver O'Donovan takes a conception of the JWT that privileges 'self-defense' to be insufficiently Christian – even a reversion to paganism. Here is O'Donovan: “Christian thought on war is irreconcilable with the ... strategy [that makes] *survival* the final criterion of what may and may not be done. To take survival as the bottom line is to revert to the antagonistic model of mortal combat, and so inevitably to retreat from the Gospel proclamation of the universal rule of Christ and from the praxis of loving judgment. When self defense, of state, community, or individual, has the last word, paganism is restored.”

we must understand that claim to mean that the JWT permits wars, not only to defend a community from external aggression or internal dissolution, but also to defend human beings from being violated by their own governments. If that is correct, war waged to emancipate the enslaved is a defensive war ... a war to defend the rights of enslaved human beings.³⁰ Plausibly, then, given that the Union enjoyed the means and opportunity to do for the enslaved what the enslaved were incapable of providing for themselves, the Union had just cause to liberate the enslaved.

Finally, and most importantly, even if we grant that the Confederacy's maintenance of a system of chattel slavery was not a violation that could provide the Union with a just cause for war, it doesn't follow that the goods achieved by adopting emancipation as a war aim were irrelevant to a proportionality assessment of the Union's war against the Confederacy. As I see it, the goods that are relevant to an *ad bellum* proportionality assessment are those goods the deprivation of which constitutes a violation of the rights of human beings.³¹ In order for those goods to be relevant to a proportionality assessment of a given war, then those goods must be achieved by that war. But the goods relevant to proportionality assessments need not be limited to those goods that are internal to the war aims legitimately pursued in a given war: whether serendipitous or the intended upshot of formally declared war aims, the protection of unforfeited rights by military violence achieves goods that must count in any proportionality assessment of that war. As a consequence, even if the Confederacy's maintaining a system of chattel slavery could not even help to provide the Union with a just cause for war, it is still the case that the Union's war against the Confederacy liberated many human beings from a most inhuman bondage, thereby secured weighty rights of many human beings, and so brought about great goods that offset much of the carnage that occurred in the war between Union and Confederacy.

5.0 Permissible and Wrongful Escalation. I have thus far focused on a particular case of what I take to be a very common phenomenon in the history of war – the escalation of the aims to be achieved by waging war. I understand Stout to be skeptical of justificatory escalation as such. I demur: the escalation of war aims, and the consequent legitimization of additional carnage, can be entirely in keeping not only with the core justificatory requirements of the JWT but also with any sound conception of the morality of war. If I am correct, then we need to distinguish between permissible and wrongful escalation. We need, moreover, to distinguish between different kinds of wrongful escalation. I will discuss two varieties, though I have no doubt that there are many more than the two on which I focus.

First, *additive* escalation. This is the species of wrongful escalation that lies at the heart of Stout's narrative: after initiating war in order to preserve the Union, Lincoln later adopted the aim of emancipation and if Stout is correct, Lincoln appealed to this additional end to rationalize the disproportionate carnage engendered by the measures that led to Confederate capitulation. But of course, Stout's narrative describes only one instance of a far broader phenomenon, for there are many

The Just War Rediscovered, p. 9.

30. As I understand it, the Union's war against the Confederacy was a distinctive kind of humanitarian intervention – one that has served an important exemplary function in subsequent American history. See Andrew Preston, **Sword of the Faith**, p. 163.

31. I am here implicitly relying on a conception of rights and justice that has been developed in detail by Nicholas Wolterstorff in his **Justice: Rights and Wrongs** (Princeton, NJ.: Princeton University Press, 2009); **Justice in Love**, (Grand Rapids, MI.: Eerdmans Publishing, 2012). I have developed a conception of the JWT's *ad bellum* proportionality requirement in detail in "Rights, Goods, and Proportionate War," unpublished manuscript, available on request from the author.

ways to engage in wrongful escalation of the additive variety. So, for example, if we adopt a war aim that produces a genuine good, but one to which no-one has a right (the inculcation of the military virtues in our soldiers, or, say, an increase in gross domestic product), and if our adoption of that additional war aim leads us to wage a war that would be disproportionate absent that genuine good, then our adoption of that war aim might very well lead us to deploy disproportionate violence. (This is, I believe, because goods to which no-one has any right have no legitimate role to play in *ad bellum* proportionality assessments, even though such goods can be very weighty indeed.³²) Should this happen, we would succumb to the sin of wrongful escalation. No doubt there are a great many modes of wrongful escalation of the additive sort – at least as many as there are war aims that achieve goods that are not relevant to *ad bellum* proportionality assessments. (It's worth bearing in mind that the members of warring communities often care at least as much about achieving goods to which they have no right as they do about achieving goods to which they do have a right.)

Second, *inflationary* escalation. We can engage in wrongful escalation without adopting additional war aims, for we can try to justify disproportionate violence by according excessive normative weight to the war aims we already pursue. Consider in this regard the following statement made by Charles Sumner:

But fellow-citizens, the war which we wage is not merely for ourselves; it is for all mankind.... In ending slavery here we open its gates all over the world, and let the oppressed go free. Nor is this all. In saving the republic we shall save civilization.... In such a cause no effort can be too great, no faith can be too determined. To die for country is pleasant and honorable. But all who die for country now, die also for humanity. Wherever they lie, in bloody fields, they will be remembered as the heroes through whom the republic was saved and civilization established forever.³³

Here we have a Union advocate making exactly the kind of rationalizing move that so troubles Stout: given Sumner's elevated construal of the moral stakes at issue between the Union and Confederacy, it's hard to imagine him taking seriously the prospect that war with the Confederacy might actually violate the JWT's *ad bellum* proportionality requirement. The reason that it's so hard to imagine him taking that prospect seriously has less to do with the fact that he advocates emancipation as a war aim, than it does with the manner in which he construes that aim. Emancipation does not merely liberate four million actual human beings – it liberates the oppressed 'everywhere'; victory over the Confederacy does not merely preserve some particular polity – it saves 'civilization'; soldiers do not sacrifice themselves merely to preserve the Union – they die for 'humanity.' In Sumner's advocacy we see exemplified one exceedingly common manifestation of inflationary escalation: he construes a specific good to be achieved by war as an instance of some more encompassing genus, imputes to that specific good the full normative weight of the generic good in which it partakes, and thereby vastly exaggerates the normative weight of the specific good that is actually achieved by the employment of military violence.³⁴

32. This is one central respect in which proportionality assessments differ from global consequentialist assessments.

33. Harry Stout, *Upon the Altar of the Nation*, p. 175.

34. Ironically, Sumner's advocacy of a war in which “no effort can be too great” was echoed by some of those who were called to make the required sacrifice. That is, some Union soldiers construed the normative stakes at issue in the war between the Union and the Confederacy in terms comparable to those employed by Sumner: Union victory furthered the cause of “the liberty of the human race for all time to come,” Union failure would require us to bid “farewell to freedom” throughout the world, Confederate victory would extinguish hope for “the cause of Human Progress anywhere else.” (All citations from James McPherson, *What They Fought For 1861-1865*, (New York, NY: Anchor Books, 1995), p. 6, 30, 31.) Here we see the same pattern that is exemplified in Sumner's construal of the Union's cause: Confederate victory would set back the cause of liberty,

It's pretty clear that the additive and inflationary varieties of wrongful escalation are distinct. It's equally clear that they are compatible: we can increase our understanding of the normative weight of our war aims by adopting new war aims, and by inflating our assessment of the normative weight of existing war aims, and, indeed, by adopting additional war aims the normative weight we also exaggerate. That said, it seems to me that there is excellent reason to be far more concerned with the dangers posed by inflationary escalation than the additive variation that plays so central a role in Stout's narrative. This for two reasons.

First, I believe that inflationary escalation is a far more common phenomenon than the additive variety at the heart of Stout's narrative. Even a cursory perusal of the literature on war, waged in whatever century or by whatever community, reveals (in my reading) that the parties involved often overestimate the normative weight of the violations to which they have been subjected or that otherwise provide them with just cause. This is hardly surprising: waging a successful war requires sufficiently motivated soldiers and citizens, motivation to some not insignificant extent tracks the weight of the reasons that are believed to make war just, and so warring communities naturally inflate the normative weight of the wrongs by which they have been victimized.

Second, and more importantly, inflationary escalation seems far more troubling than additive escalation: how we construe the normative weight of the war aims we pursue surely has far more direct implications for our proportionality assessments than the number of distinct war aims we pursue, the order in which we adopt them, whether we adopt them at the outset of war or at some later point in time. Indeed, although Stout seems to think that the carnage caused by the Union's war against the Confederacy could be legitimated only by the adoption of emancipation as an additional war aim, it seems to me that the Union could easily have achieved the same end by inflating the normative weight of the unjust threat posed by secession. How so? Here is one way: by associating the preservation of the Union with the preservation or advancement of liberal democracy itself. This kind of inflationary escalation is succinctly captured in Secretary of State William Henry Seward's description of the Republican agenda: "Their great work is the preservation of the Union, and in that, the saving of popular government for the world."³⁵ Seward's construal of the normative significance of the preservation of the Union was widely echoed. So, for example, according to James Gordon Bennett, the triumphant Union soldiers "secured the perpetuity of the Union upon which all the hopes of the oppressed of all climes and countries depend. ...[T]he soldiers of Grant, Sherman and Sheridan have saved the world as they have saved the Union."³⁶ It is more than worth recalling Francis Lieber's assertion, included in his influential 'Code,' that "to save the country is the paramount consideration."³⁷ Given this inflated understanding of the moral stakes raised by Confederate secession, no appeal to emancipation was necessary. Not really: one vastly inflated just cause can easily do the legitimating work of two....

6.0 *Wrongful Escalation as a Besetting Sin of the JWT*. I take reflection on Stout's moral history of the American Civil War to indicate that the legitimation of carnage that so troubles Stout derives not from a misunderstanding of the JWT, much less a betrayal of the JWT, but from its core justificatory

not merely in the United States, and not merely for a time, but 'anywhere' and 'for all time.'

35. Gary Gallagher, *The Union War*, p. 2.

36. Gary Gallagher, *The Union War*, pp. 17-8.

37. John Fabian Witt, *Lincoln's Code*, p. 236.

architecture. As a consequence, the JWT provides its adherents with a 'recipe' for legitimating carnage. But, of course, even if it is true that the JWT to provide its adherents with the normative resources that they can employ to legitimate vast amounts of human suffering and death, it hardly follows that adherents of the JWT are disposed to employ the JWT to that end, or that they are likely to do so, or anything in the vicinity. In this section, then, I want to argue for that latter, much stronger claim: given familiar facts about the human condition, we should expect those who adhere to the JWT to be severely tempted to commit the sin of wrongful escalation. If this is true, then the JWT is beset by a serious moral defect – one that provides adherents of the JWT with excellent reason to be wary of their assessments of the wars in which they participate.

I should say at the outset that the JWT is not defective merely because some adherents of the JWT employ its justificatory logic to engage in wrongful escalation. For, of course, any plausible and robust conception of the morality of war can be employed by its adherents to legitimate wrongful military violence and so the mere possibility of abuse cannot be disqualifying. But I take it that the JWT bears a more robust relation to wrongful escalation: reliance on the JWT renders its adherents more likely to engage in wrongful escalation than would otherwise be the case. If that claim is correct, then the JWT runs at cross purposes to (one of) its central aims. After all, the JWT is commonly, and plausibly, supposed to form or shape the minds and hearts of those who wage war such that its adherents become the sort of people who can employ military violence in just and morally permissible ways. If adherence to the JWT tempts its adherents to wage war in ways that subvert this core formative aim, then we would have excellent reason to conclude that the JWT is defective on its own terms.³⁸

But why believe that reliance on the JWT does in fact incline its members to engage in wrongful escalation? Very general features of the human condition induce us to escalate our legitimate war aims in ways that rationalize wrongful violence. When the skeletal abstractions constitutive of the JWT are embodied in our lives, and when we are caught up in violent communal conflict, various enduring features of the human condition incline us to exaggerate the normative weight of the wrongs committed against the community with which we identify. Moreover, the JWT includes only modest epistemic resources that its adherents can employ to refrain from exaggerating the normative weight of the wrongs that provide a just cause for war. As a consequence, those who adhere to the JWT will be sorely tempted to engage in wrongful escalation and they will be tempted to do so partly as a consequence of their adherence to the JWT. Given the potentially grave moral consequences of wrongful escalation, and given the pragmatic aspirations of the JWT, adherents of the JWT should find this prospect most troubling.

6.1 Wrongful Escalation as a Persisting Moral Temptation. Crucial to my argument is the claim that ordinary human beings who are caught up in war are very likely to be tempted to engage in wrongful escalation. The fact that adherents of the JWT find wrongful escalation particularly alluring derives from very stable – and admirable – components of human nature. How so?

38. I do not suppose that all advocates take the JWT to have this purpose, though some do. See, for example, Daniel Bell, *Just War as Christian Discipleship*, (Grand Rapids, MI: Brazos Press, 2009), pp. 19-20 and throughout; Darrell Cole, *When God Says War Is Just*, (Colorado Springs, CO: Waterbrook Press, 2002); David Fisher, *Morality and War: Can War Be Just in the Twenty-First Century?*, (Oxford: Oxford University Press, 2011); Richard B. Miller, "Just War, Civic Virtue, and Democratic Social Criticism," *The Journal of Religion* 89/1 (January, 2009): 1-30; Paul Ramsey, *War and the Christian Conscience*, (Durham, NC: Duke University Press, 1961, pp. 128ff. For what I regard as a profound theological articulation of this point, see Charles Matthews, "Just War and the Theology of Evil," *Nova et Vetera*, 10/4 (2012): 1157-82.

We are inveterately moral creatures – we very much want to believe that we live and act in a worthwhile manner, that our identity-constituting projects are excellent, that the communities with which we identify contribute to common human flourishing, and the like. We typically define who we are, and why our lives are important, by the moral projects in which we invest ourselves. Among our most cherished moral projects are the wars we wage; there are very few communal endeavors the pursuit of which more deeply shapes the moral identity of their participants.³⁹ Correlatively, we very much want to believe that the wars in which we invest ourselves are just, excellent, worthwhile, conducive to human flourishing, etc. Moreover, it is presumably the case that 'more is better': the more just and excellent a given war, the more our investment in that war satisfies our common human desire to engage in morally excellent projects and so the greater our incentive to inflate our understanding of the normative weight of the violations that provide us with just cause to wage war. Of course, given the justificatory relations between the JWT's just cause and proportionality requirements, inflated assessment of the normative weight of the violations that provide just cause to wage war skews proportionality assessments. That is, if the members of C1 overestimate the normative weight of the goods achieved by waging war with C2, then they will tend to conclude that war with C2 remains proportionate even when it occasions suffering and carnage that exceed the relevant goods it actually achieves. Plausibly, then, enduring features of the human condition render adherents of the JWT susceptible to engage in wrongful escalation.

This basic anthropological grounding of our susceptibility to wrongful escalation is reinforced by a great variety of complementary factors. I will mention three. First, no community can wage war unless at least some significant number of its members are willing to risk very great goods – bodies, lives, friends, children, parents, cognitive well-being, emotional tranquility, and the like. Most of us are willing to risk such goods only in order to achieve some worthwhile end. Presumably, the more elevated the aims to be achieved by war, the more willing we are to risk. Hence, we typically have powerful pragmatic reason to inflate our estimation of the normative considerations that count in favor of the wars in which we invest ourselves. Correlatively, we have powerful reason to inflate our understanding of the normative weight of the violations that provide us with just cause for war. Again, given the JWT's 'core logic,' this kind of normative inflation skews proportionality assessments and so leads us to tolerate military violence that occasions what is in fact excessive evil.

Second, although the evidence is spotty and contested,⁴⁰ most human beings seem strongly disinclined intentionally to kill one another even when their own well-being is at stake. There is not inconsiderable evidence from a variety of sources – from the personal testimony of soldiers, to statistical studies of kill ratios, to the analysis of undischarged weapons – that many soldiers refrain from killing those who attack them, even when they participate in small unit combat.⁴¹ The conviction that killing another human being achieves some very great moral good can help the reticent to do so. Presumably, the more worthwhile the cause, the less reticent we are to kill our fellow human beings. Given that, other things

39. This is very powerfully argued by Stanley Hauerwas in "Sacrificing the Sacrifices of War," **War and the American Experience: Theological Reflections on Violence and National Identity**, (Grand Rapids, MI: Baker Academic, 2011), pp. 53-70.

40. I am very skeptical of the overall claim; I very much doubt that members of warrior cultures – Vikings and Spartans – were disinclined to kill their fellow human beings. I think it much more likely that those who have been socialized into moral cultures constituted by a commitment to human dignity are disinclined to kill their fellow human beings. My argument in this paragraph should be understood accordingly.

41. See LtCol David Grossman, **On Killing**, (New York, NY: Back Bay Books, 2009).

equal, those combatants who believe that they fight in response to exceedingly weighty violations will be more willing to employ military violence than those who believe that they fight in response to less weighty reasons, we will typically have pragmatic reason to inflate our estimation of the violations that provide just cause for the wars in which we invest ourselves.

Third, our tendency to engage in wrongful escalation also derives from less admirable aspects of human nature than our aspiration to achieve excellent aims. We are driven to escalate no less by fear, anxiety, anger, hatred, and pride than we are by our more elevated aims and aspirations. So, for example, I take as a given, obvious fact about human beings that we are powerfully disposed to care more about the wrongs inflicted on us (and those with whom we identify) than we are to care about the wrongs we inflict on others. Because what we care about canalizes what we notice, the wrongs inflicted on us (and on those with whom we identify) are typically far more salient to us than the wrongs inflicted on strangers, acquaintances, foreigners, and the like. This dynamic is manifest not only in relations between individuals but also in relations between communities: other things being equal, the violations that occurred on December 7, 1941 and September 11th, 2001 were far more salient to Americans than to the Swiss or Chinese. But if the violations inflicted on 'us' are far more salient than those that we inflict on 'them,' we will tend to overlook or downplay the respects in which our actions provide them with reason to attack us. In that case, we will tend to regard their violations as unprovoked or gratuitous in ways that amplify the normative weight of the violations they inflict on us – with the familiar implications for wrongful escalation.

Given, then, that war is typically a relation between aggrieved communities – between groups of bonded human beings who believe that some grave injustice has been inflicted on them by outsiders, and given that the injustices inflicted on 'us' are more salient than those inflicted on them, it is only to be expected that each warring community will have an inflated understanding of the wrongs that provide them with the right to defend themselves with military violence. Consider in this regard a recent, particularly obvious case of 'violation inflation.' In the spring of 2007, 'cyberwar' broke out between Estonia and Russia. Ostensibly in response to an insult to Russian honor – the removal of a statue commemorating the sacrifice of Red Soldiers during The Great Patriotic War, the Republic of Estonia was “hammered with a distributed denial of service attack from thousands of captive computers organized into botnets. Estonian banks were shut down, remittances from abroad didn't arrive, ... government departments came to a standstill, ... big credit card issuers shut down their networks.”⁴² These cyberattacks had some of the characteristics of a conventional war – a perceived injustice, a coordinated response, planned and predictable harm to the ostensible offender, and so on. Some perceived a warlike attack: according to the Speaker of the Estonian Parliament, "When I look at a nuclear explosion and the explosion that happened in our country ... I see the same thing.... Like nuclear radiation, cyberwar doesn't make you bleed, but it can destroy everything."⁴³

Now it's surely the reverse of surprising that Estonians would be extremely sensitive to any attack

42. Joel Brenner, *American the Vulnerable*, (New York, NY: Penguin Press, 2011), p. 128. Attribution remains an issue – the Russian government denied responsibility and ascribed the attacks to spontaneous activity on the part of irate cyberpatriots. Noah Shachtman, “Kremlin Kids: We Launched the Estonian Cyber War,” *Wired Magazine*, March 11, 2009: <http://www.wired.com/dangerroom/2009/03/pro-kremlin-gro/>

43. Joshua Davis, “Hackers Take Down the Most Wired Country in Europe,” *Wired Magazine*, 8/21/07: http://www.wired.com/politics/security/magazine/15-09/ff_estonia?currentPage=all.

emanating from the former Soviet Union. But then that's the point: violated communities are almost always impelled by circumstance and history to inflate the normative weight of the violations inflicted on them. For this is exactly the correct characterization of the Speaker's response. There is no doubt that the Estonians were wrongly 'attacked' – no 'insult to Russian honor' provided 'just cause' for the cyberattacks launched against Estonia.⁴⁴ Moreover, the lives of a good many Estonians were disrupted. Nevertheless, those attacks killed not a single Estonian citizen. None was enslaved. No Estonian property was destroyed or territory seized. Because human beings are worth far too much to be killed over impeded access to banks, credit cards and government departments, the attacks on Estonia provided no just cause for war, as would certainly have been the case had the Estonians actually been attacked with nuclear weapons – even one that makes no-one bleed.

As I noted above, inflationary escalation is an exceedingly common phenomenon in the history of warfare. Although we could therefore continue on this vein for a very long time, I take it that this would be both tedious and superfluous. Suffice to say that the citizens, soldiers, and statesmen who rely on the JWT will almost always have moral aspirations and emotional reactions that tempt them to inflate the normative weight of the violations that provide them with just cause. Given the internal relation between the JWT's just cause and proportionality requirements, we can therefore reasonably expect adherents of the JWT to be powerfully tempted to inflict, or to tolerate, wrongful because disproportionate military violence. When they succumb to that temptation, then they thereby succumb to the mortal sin of wrongful escalation.

6.2 Absence of Clear Constraints on Just Cause Assessments. Given the reasonable expectation that adherents of the JWT will often be tempted to engage in wrongful escalation, it would be very morally satisfying if advocates of the JWT could articulate clear and principled constraints that specify what makes for wrongful escalation. Sadly, however, the JWT includes few, if any, such clear, principled, and 'intersubjectively employable' constraints.

As a matter of cognitive fact, we human beings are not well-suited to develop precise criteria that mark off permissible from wrongful escalation. We possess no precise way to determine the relative normative weight of the considerations that count in favor of waging war: who, for example, is in any decent epistemic position to specify the relative normative weight of the two violations to which Union advocates appealed to justify war with the Confederacy?⁴⁵ We possess no precise way to determine the bearing of legitimate war aims on the amount of allowable human suffering: who among us is in any decent epistemic position to specify with any precision how much human carnage could be tolerated by a war waged to eradicate the Confederacy's system of chattel slavery? We possess no precise way to measure the amount of human suffering caused by a given war or act of war: although we know roughly how many human beings were killed or wounded during the Battle of Antietam, who knows how to translate those

44. Even cursory familiarity with the literature reveals that the notion of a 'cyberattack' (and its correlate, 'cyberwar') is used to denote actions that have consequences ranging from the morally trivial to the absolutely devastating. My judgement is that we need to parse this language very carefully. See Christopher J. Eberle, "Just War and Cyberwar, *Journal of Military Ethics*, 12/1 (2013): 54-67. Some material from this section has been taken from that essay.

45. Of course, it is exceedingly plausible to suppose that, all else equal, we have more powerful reason to fight a war that preserves a just and decent political system and that emancipates slaves than we have to fight a war that only preserves an equally just and decent political system. But we are unable to transmute that ordinal ranking into anything like the cardinal ranking essential to any disciplined proportionality assessment.

numbers into anything like an aggregate amount of something called 'human suffering'?"⁴⁶

Citizens, soldiers, and statesmen who adhere to the JWT have no option but to make such judgments, but they are manifestly unable to render them in anything like a precisely principled and intersubjectively checkable manner.⁴⁷ This is a lowbrow epistemic not a highfalutin' metaphysical claim. Perhaps God possesses a metric that enables some precise comparison of the normative weight of a war that prevents the world's only existing constitutional democracy from committing "hideous national suicide"⁴⁸ with a war that eradicates a system of chattel slavery that imprisons 4 million souls. It's possible that the All-Knowing is able to specify the exact number of innocent deaths that are allowed in order to liberate those 4 million slaves, or just how much human suffering actually occurred in Antietam on September 17, 1862. However that might be, no such metric is accessible to ordinary mortals. We have no option but to employ an incompletely disciplined congeries of intuitive judgments in a thick fog of mystery while buffeted by fear and buoyed by aspirations to righteousness. These circumstances do not put us in a strong epistemic position to make the required judgments.

A further factor impedes us from laying down clear and precise principles that specify when we have unjustifiably escalated the normative weight of our war aims, viz., it is difficult to specify in a principled and otherwise defensible manner the scope, and therefore the normative weight, of many violations to which we respond. Consider in this regard the claim that the Confederacy's maintenance of a system of slavery provided the Union with a just cause to wage war. Plausibly, the normative weight of that gross injustice is partly determined by the numbers of human beings enslaved: the enslavement of millions of human beings is a far graver violation than the enslavement of hundreds. Correlatively, a war that liberates millions of human beings from chattel slavery permits far greater carnage than a war that liberates hundreds. But then, how many human beings were liberated as a consequence of the Union's victory over the Confederacy?

It's hard to tell. I gather that there were roughly four million slaves who lived in the Confederacy at the onset of the American Civil War and so the Union victory formally liberated about that many. But why should the normative weight of that violation be a function of only those slaves who were implicated in the system at the time of liberation? Why not those as yet unborn human beings who would have become slaves had the Union not waged war against a newly resurgent Confederacy?⁴⁹ What about those other human beings, still resident in Africa, who might have been enslaved had the Confederacy allowed for the importation of slaves? It's hard to espy any principled and otherwise defensible reason to deny that the human beings who fall into these categories should augment the normative weight of violation constituted by the Confederacy's system of chattel slavery. But if we do include them, we don't have any

46. The Battle of Antietam was the single most bloody day in the history of the United States: roughly 23,000 casualties in 12 hours of fighting.

47. On the notion of 'intersubjective checkability' see Christopher J. Eberle, **Religious Conviction in Liberal Politics**, (Cambridge: Cambridge University Press, 2002), pp. 278-286.

48. Edward Everett, quoted in Gabor Borritt, **Gettysburg Gospel**, (New York, NY: Simon and Shuster, 2006), p. 109.

49. Suppose, for example, that economic developments in the early 19th century would eventually have rendered the Confederate slave system unsustainable, as some argued would be the case. Plausibly, this eventuality would affect the numbers of human beings who would have been wronged by the Confederate slave system, and so the normative weight of the just cause constituted by the Confederacy's wrongful maintenance of that slave system. If the Confederate slave system would certainly have been defunct by 1870, that would surely factor into any determination of the proportionality of the Union's war against the Confederacy.

precise way to determine how many human beings the Union 'liberated' when it dismantled the Confederacy's system of slaves, in which case it's hard to determine with precision just how much normative weight we should accord to the war aim of eradicating slavery.

Note that a parallel point applies to the other main Union rationale for war against the Confederacy. If numbers matter to the normative weight of a violation that provides a just cause, as they surely do, then the number of human beings implicated in the Union's war to preserve the world's only existing liberal polity seems indeterminately large. We can see the inflationary potential of this point exhibited in the rationale one Union soldier offered his wife to justify his decision to re-enlist: "My grandfather fought and risked his life to bequeath to his posterity ... the glorious Institutions' now threatened by 'this infernal rebellion.... It is not for you and I, or for us and our dear little ones, alone, that I was and am willing to risk the fortunes of the battlefield, but also for the sake of the millions who are to come after us.'"⁵⁰ As it turns out, the millions for whom that Union soldier fought has expanded to include tens and hundreds of millions of human beings. Who knows how large that number will grow? Who is therefore epistemically well-positioned to specify the normative weight of the unjust threat posed by Confederate secession?

This line of argument indicates a further factor that impedes us from determining with precision the normative weight of many violations: the normative weight of a relevant violation is partly a function of future events with respect to which human beings have only the most limited epistemic access. Suppose that C2 attacks C1 and some of the philosophers in C1 begin to wonder whether C1 may respond to that initial attack with military violence without violating the JWT's *ad bellum* proportionality requirement. As we have seen, they cannot make that determination absent an accurate assessment of the violation that provides C1 with just cause to employ military violence against C2. If C2's initial attack is the first step in a genocidal assault on C1's population, then C1's defense is highly likely to satisfy the ABP and many desperate and otherwise wasteful measures pass moral muster. But if C2's attack initiates a plan to impose only light taxation on C1's population, or the replacement of one oligarchic ruling elite with another, or some slight abridgment of political sovereignty, then C1's defense might very well be disproportionate ... if it was just in the first place. What matters, of course, is what C2's initial attack *portends*, and so its overall *plan*, of which the initial attack is only the triggering event. So, for example, whether the United States had just cause for war against Japan in 1941 depends in part on whether the attack on Pearl Harbor was an utterly bollixed training run or the initiation of a plan to achieve a heinous hegemony in the Pacific.⁵¹ If the first, then the permissible response might very well be a demand for compensation. If the second, then war and a mighty bloody one at that.

But how are C1's philosophers to determine what C2's plans involve? C2's intentions might very well be opaque. C2 might very well not have any clear post-conquest goals. C2 might be riven with factional strife, the resolution of which determines C1's eventual fate, but the resolution of which also depends on how C2's war with C1 goes. Indeed, there might very well be no fact of the matter as to what C1's attack

50. James McPherson, *What They Fought For 1861-1865*, (New York, NY: Anchor Books, 1995), pp. 29–30.

51. Similarly for a cyberattack – whether or not it provides a just cause for war partly depends on the plan of which it is a component. An attack on the power grid in one small city that is designed to demonstrate mere technical capacity but that accidentally takes out the power grid of a major metropolitan area has a very different moral status than an attack designed to take out the power grid of that major metropolitan area. Despite the fact that the two attacks have exactly the same consequences, the permissible response to the first might very well be a demand for compensation and to the second war.

portends since any such future fact depends upon any number of as yet unmade decisions undetermined by any present reality.⁵² In short, because the normative weight of C2's initial violation depends on an indeterminate or uncertain plan for the future, we are not only unable to specify with precision the normative weight of many violations, but we are also unable to specify any practicable upper limit to the normative weight of those violations.

What relevance do these facts about the human cognitive condition have for the topic at hand? Given that warring communities will almost always have powerful pragmatic reasons to amplify the normative weight of the violations that putatively provide them with just cause to fight, given that communities tend to find more salient the violations inflicted on them than the violations inflicted on others, and given our inability to arrive at anything like a precise determination of the normative weight of the violations that provide a just cause, the JWT seems to include very few clear and principled impediments to wrongful escalation. Those of us who inhabit the JWT should expect, if not to succumb, then to be sorely tempted, to overestimate the normative weight of the violations to which we respond with military violence. As I see it, we should attribute our vulnerability to temptation at least partially to our commitment to the JWT itself. After all, were we dedicated realists, and so cared not a whit about the moral considerations that count for (or against) war, then we should not be nearly so susceptible to the allure of wrongful escalation. Were we pacifists or militarists, we wouldn't be susceptible at all. (Of course, we would also be vulnerable to various other temptations.)

7.0 Conclusion. I have been at pains to identify a deficiency that strikes at the very heart of the JWT. As an adherent of the JWT, I very much wish that there were some intellectually satisfying and practically effective remedy for that defect. But I see no such remedy. As I see it, recognition of this irremediable defect provides an occasion for proper self-criticism: we should be wary of the JWT even as we embrace its constituent commitments and allow them to shape our actions, emotions, and aspirations. Perhaps by explaining what it is about the JWT, and what it is about human beings, that tempts us to succumb to this 'besetting sin,' we can better prepare ourselves to resist its seductions.

Now this might very well seem a feckless response. After all, if reliance on the JWT subverts its main aims, then it seems that we ought not rely on the JWT: given that one of the JWT's main purposes is to help citizens, soldiers and statesmen employ military violence in a just manner, yet the JWT tends to have the opposite effect, then we should perhaps withhold our allegiance until we discern a better alternative. But I doubt that we have that option. Let me briefly conclude my discussion by explaining why.

First, I take as given that we cannot in good conscience refrain from relying on some conception of the morality of war. East of Eden, war is an unavoidable component of the human condition: to adapt an aphorism often attributed to Trotsky, "you might not be interested in war, but war is interested in you." Given the grim fact that war might well come to us despite our most fervent desire that it not do so, we cannot refrain from relying on *some* understanding of whether, when and how we may with respond with military violence to the military violence directed at us. Of course, the JWT is only one among many competing conceptions of the morality of war. There are many others – an indefinitely large variety of militarisms, positivisms, pacifisms, realisms, and so on.

52. As Michael Bratman has argued, human beings are creatures for whom the formulation and execution of plans is a central moral reality, although the plans that human beings execute are, and as a practical matter must be, indeterminate in important respects. **Intentions, Plans, and Practical Reason**, (Stanford, CA: CSLI Publications, 1999), pp. 29-30.

Second, I take it that we have reason to abdicate from the JWT to some alternative normative conception only if that alternative lacks the defect that leads us to abandon the JWT and isn't vitiated by other, more debilitating problems.⁵³ That is, the fact that the JWT is vitiated by very serious defects does not by itself provide us with sufficient reason to abandon the JWT for one of its competitors. Rather, it must also be the case that the competing conception to which we abdicate is free from defects that are just as debilitating as those that afflict the JWT.

Third, so far as I can tell, each of the JWT's competitors – each variety of pacifism, or realism, or militarism – is plagued by deficiencies no less serious than those that plague the JWT. Of course, I cannot say that I have surveyed all of the relevant alternatives and am therefore in a position to demonstrate that claim. Even if I had, making that case would require us to take an interminable dialectical detour. So I'll leave this as a dogmatic assertion: the defect that I have identified with the JWT is no more debilitating than those that plague its main competitors. If this dogmatic assertion is correct, then my discussion provides no compelling reason to abandon the JWT. Rather, it provides excellent reason to be wary of the JWT, and skeptical of the manner in which we apply its constituent claims to the military conflicts in which we are caught up. (We should, no doubt, be wary of any and all conceptions of the morality of war.)

It seems to me, then, that we are not only unable to avoid war, but that we are also unable to avoid relying on some conception of the morality of war that is defective in very significant respects. The JWT is one such conception. It has many competitors and I believe that each of these competitors has moral or practical defects that are no less serious than that which afflicts the JWT. On this score, I take it, our allegiance to the JWT mirrors what I take to be our permissible allegiance to another broad moral conception, viz., the idea that human beings enjoy a set of natural human rights. How so?

Although (I believe that) the claim that human beings possess natural human rights is a very important moral truth, nevertheless, 'rights-talk' tends to reinforce a morally desiccating 'possessive individualism.' As I see it, the conceptuality of human rights need not as a matter of conceptual necessity, but does as a matter of anthropological fact, tend to reinforce selfishness, self-absorption, and individualism when taken up into the lives and emotions of embodied and encultured human beings.⁵⁴ Although it is not the case that "rights talk carries possessive individualism in its DNA,"⁵⁵ human beings carry within their DNA dispositions that induce them to employ the language and conceptuality of rights in ways that privilege the needs and desires of self ... and the community to which self is bonded. So possessive individualism is a moral temptation to which those who inhabit the conceptuality of rights are especially susceptible – it is a 'besetting sin' of rights-talk. What should we make of this unfortunate fact? Should we jettison the conceptuality of rights for some less self-absorbing alternative – some rightless communitarianism or impartial utilitarianism, perhaps? No: these broad alternatives are even more

53. In his account of the what makes for rational choice between competing moral traditions, Alasdair MacIntyre has articulated a much more demanding version of this claim. See *After Virtue: A Study in Moral Theory*, 2d. ed., (Notre Dame, IN: University of Notre Dame Press, 1984), p. 270.

54. This is especially likely to be the case when the content of the rights we possess are cashed out in the denomination of 'personal autonomy.' See, for example, James Griffin, *On Human Rights*, (Oxford: Oxford University Press, 2008), pp. 32-33.

55. Nicholas Wolterstorff, *Journey Towards Justice*, (Grand Rapids, MI: Baker Academic, 2013), p. 58.

troubling than moral conceptions that incorporate a commitment to natural human rights. So we should affirm the claim that each human being has natural human rights, though warily so and with due recognition of the particular temptations to which we thereby expose ourselves.⁵⁶ This judgment, and the parallel judgment regarding the perils of reliance on the JWT, reflects a broad truth about the human condition, viz., that we ought to be wary of commitments that we cannot in good conscience afford to relinquish.

56. See Nicholas Wolterstorff, *Justice*, p. 7; *Justice in Love*, pp. 90-92; *Journey Towards Justice*, p. 58.