A Just War Theory for a
Four-Sided Armed Conflict

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Abstract  Contemporary just war theory usually addresses armed conflicts between two group agents, assuming that one is an aggressor and the other a defender. This paper discusses conflicts between two ethnonational groups, both of which include defenders (minimalists) and aggressors (maximalists). The normative questions that this essay addresses are two: (1) Are minimalists entitled to join their maximalist co-nationals in fighting the maximalists on the other side, and if so, in which circumstances? (2) If so, what should minimalists have aimed to achieve by resorting to force and coercion?

Keywords: Just War Theory; ethnonational conflict; minimalist defenders; maximalist aggressors; Palestine; Zionism

I. Introduction: A Four-Sided War

The armed conflicts that contemporary just war theory addresses involve either two aggressors or (more typically) an aggressor and a defender. One party to these armed conflicts is a state that presumptively represents its citizens and the other is either another state or a non-state actor. The group agents imagined by theorists are complex; they are composed of political leaders, soldiers (or combatants), and uninvolved civilians (“innocents”). But, in a clear sense, the parties to such conflicts are “homogenous” in a way that allows describing them as either “aggressors” or “defenders.”

The homogeneity of the parties to the armed conflicts follows from two facts. First, modern states monopolize internal legitimate force; soldiers and civilians who oppose the war that their country fights might refuse to participate in the war or protest against it, but they do not change the fact that a state in war is either an aggressor or a defender. Second, the non-state actor in war falls under one of these two categories since, presumably, the leaders and the militants involved in the non-state actor’s war voluntarily joined it. They wholeheartedly or halfheartedly identify with its agenda.

Inspired by the armed conflict that took place in Palestine in 1948 (see below Section IV), this essay addresses what I call “four-sided armed conflicts.” The parties to such wars are two extended families or two ethnic nations living in the state of...
nature. Both groups are composed of armed aggressors and armed defenders. The aggressors aim to eliminate or expel all members of the other group. Like their aggressive brothers and sisters, defenders aim to prevent members of the other group from eliminating and/or expelling them; unlike them, defenders strongly oppose the killing and the expulsion of innocents, which their aggressive brothers and sisters advance.

The cases I will discuss are all different concretizations of “the overarching hypothetical.” As structured in this introduction, the hypothetical contains many gaps, which I will fill as the analysis proceeds. The hypothetical concerns two noble rich families, the Montague and the Capulet families. The Capulets live in the Capulet castle; the Montagues in the Montague castle; the castles are located next to each other. The Capulets and the Montagues are sworn enemies. They disagree on almost every issue that concerns the areas surrounding the castles, like who was there first, who holds occupancy rights, who owns the gold, diamonds, and oil in these areas, who is entitled to the water and forests, etc. No sufficiently strong political framework properly represents both families—as I noted, the families live in the state of nature. Hence, no third party is formally entitled to resolve the various disputes that fuel the Capulets/Montagues animosity.

The Montagues are united in believing that the Montague moral theory about the territories surrounding their castles is correct, whereas Capulets believe that they are right and that Montagues are wrong as to their rights over the Capulet-Montague territory. Notwithstanding, the Montagues are deeply divided as to how the conflict between them and their neighbors is to be resolved; mutatis mutandis, the same is true of the Capulets. “Bad Montagues” (I will describe them as “maximalists” and “aggressors” as well) aim to conquer the Capulet castle and to kill or expel all Capulets, including the innocents. The “bad Capulets” aim to ruin the Montague castle and to eliminate or expel all innocent Montagues. Bad Montagues are repeatedly attacking the Capulet castle and aggressing against uninvolved Capulets, whereas bad Capulets are repeatedly attacking the Montague Castle and aggressing against uninvolved Montagues. Thus, bad guys fight in self- and other-defense, against the bad guys on the other side; additionally they fight in order to promote justice (as they and their good brothers and sisters conceive it). Still, bad guys also want to kill or expel all members of the other family, believing this to be a necessary means for securing the ends listed above.

In sharp contrast, minimalists in both extended families, “the good Montagues/Capulets,” believe that although their rivals’ moral view is mistaken, it is not unreasonable. They further believe that the conflict should be resolved by a fair procedure, like bargaining, mediation, or juridical decision made by a legitimate impartial court. Maximalists on the other side continuously inflict unjust threats on them; in response, minimalists fight back in self-defense. Besides self- and other-defense, they aim to achieve a cease-fire which they render as a necessary means for ending the conflict.

I am mainly interested in two questions. The first concerns the scope of the
right to self-defense possessed by individual minimalists; the second concerns the
rightful political arrangements that minimalists should strive to achieve by using
force and coercion. Accordingly, Section II handles the first question by identifying
circumstances in which minimalists (as individuals, identified by their aims) might
permissibly collaborate with their bad brothers and sisters in fighting against the
aggression exercised by maximalists on the other side. Indeed, the major task of
this section is to show that there might be what I will call "permissible dirty hands
cases," in which, according to accepted theories of the right of self-defense, the
minimalists-maximalists collaboration in an interfamilial war is permissible.

Section III addresses the second question by reshaping the overarching hypothetical.
In the reshaped hypothetical, the Capulets and the Montagues are ethno-cultural nations.
What are the political goals that minimalists (as organized political “parties”) should
pursue in a four-sided ethnonational conflict? I will argue that, in some circumstances,
a two nation state solution for the disputed territory, which involves a forced separation
between the communities, is the optimal solution.

Section IV will briefly present a historical narrative of the 1948 conflict between
Arabs and Jews over Palestine, which matches the reshaped hypothetical discussed in
Section III. I will suggest that, if this historical narrative is true, the warring parties
should have pursued a two nation state solution and forced separation between Arabs
and Jews.

II. The Right to Self-Defense in a Four-Sided Armed Conflict

I will assume that the overarching hypothetical has two normative features. First,
maximalists culpably threaten the minimalists on the other side, and therefore, subject
to the necessity and proportionality constraints, minimalists acquire a right to harm
them in self- and other-defense. That is, in the internal debate between the good
guys and the bad guys, the good guys are right: violence is the morally wrong way
to secure the just outcome. I will further assume that the good Montagues/Capulets
have a pro tanto moral (self-defense based) reason to collaborate with their aggressive
brothers and sisters. This is because, by doing so, they will weaken the aggressors on
the other side, and thereby decrease the level of threat that aggressors impose on them.
I assume, however, that arguably, the mere collaboration with the bad guys is morally
costly. By doing so, good guys get their hands dirty.

In Section II.1, I describe cases where minimalists should not collaborate with the
bad sisters and brothers, despite the fact that in doing so they would promote their
legitimate interest. The A- and B-cases that I will present in II.1 are, therefore, “clean
hands cases.” In the A cases good guys effectively fight against their bad siblings in
defense of good guys on the other side. Accordingly, the A-cases will be characterized
as “intrafamilial” clean hand cases. In the B cases, good guys defend themselves by
fighting bad guys on the second side. I will describe them as interfamilial cases.

In Section II.2, I address the type of case which interests me in this paper—cases
C and D. In those cases, minimalists won’t survive the maximalists’ attack on them without collaborating with the maximalists on their own side. I characterize these cases as the "dirty hands cases." I will argue that while in some cases (the C-cases) the collaboration is nevertheless impermissible, in others (the D-cases) getting one’s hands dirty is permissible.

II.1 The (A&B) Clean Hands Cases

The A-Cases: Intrafamilial Clean Hands Cases

In the following “intrafamilial clean hands cases,” minimalists can defend themselves without collaborating with their aggressive brothers and sisters. Instead, they can form an alliance with the minimalists on the other side. I shall argue that, in such cases, minimalists should keep their hands clean rather than collaborate with maximalists, simply because in terms of their legitimate interests, the clean hands strategy is more effective than, or as effective as, the dirty hands strategy.

Case A1 involves four reasonably well-matched groups. Good Montagues/Capulets are as powerful as the bad Montagues/Capulets. Good Montagues can easily form alliances with good Capulets who will fight their bad brothers and sisters in defense of good Montagues. In return, good Montagues will protect good Capulets by going to an intrafamilial war against their aggressive sisters and brothers. Being at war with each other, maximalists are unlikely to find common ground for an alliance, so they won’t be able to fight minimalists together. Thus, in Case A1, and in all other clean hands cases, good guys have no reason to expect that an interfamilial war, where Montagues and Capulets fight each other, would better promote their narrow self-interests. It follows that rather than collaborating with their bad brothers and sisters, good Montagues should fight bad Montagues in the good Capulets’ defense, and good Capulets should fight bad Capulets in good Montagues’ defense.

In Case A2, defenders on both sides are equally small and weak while aggressors are equally large and powerful. However, each bad guys’ group concentrates on fighting the other so they have a lot less force available to fight the minimalists on their side. Minimalists therefore can form an alliance that takes advantage of the fact that the maximalists are already heavily committed to fighting each other. In Case A2, an intrafamilial war effectively reduces the level of threat imposed on good guys: good Capulets weaken the bad Capulets and thereby defend good Montagues, and good Montagues weaken bad Montagues and thereby defend good Capulets. The dirty hand alternatives, viz., collaborating with the bad guys on one’s own side in fighting the bad guys on the other side, is not better, with respect to self-defense.

Consider Case A3. Minimalists on both sides can stay out of the fight altogether, allying themselves in their refusal to get involved. While good Montagues do not fight bad Capulets in self-defense, their allies, good Capulets, do not fight bad Montagues in self-defense. Good Montagues’ refusal to fight does not increase the level of threat imposed on them by Capulets, thanks to the fact that good Capulets do not collaborate with their aggressive sisters and brothers. Again, mutatis mutandis, the same is true
of good Capulets’ refusal to fight. In this final clean hands case, while both groups of minimalists avoid the war, no minimalist gets worse off because of it, thanks to the fact that minimalists on the other side avoid the war as well.

It might be thought that the normative judgments offered above are mistaken, in light of the associative duties to which good Montagues are subject. To see the problem, imagine that during the armed conflict, Alice Montague realizes that Bob Montague is trapped in a burning house and that only she can save him. The fact that Alice and Bob are related might be morally significant. Put in Seth Lazar’s words, “holding the risk to Alice constant, below some level of threat to Bob, Alice will have no general duty to protect Bob but will have an associative duty to do so. Moreover, the associative duties to protect can require us to endure greater risks and costs than general duties to protect can. So, . . . if we hold the threat constant, above some level of risk to herself, Alice will have no general duty to protect Bob, but will have an associative duty.”

Now, suppose that Alice is a defender and Bob an aggressor. Is Alice’s associative duty towards him removed due to this fact? Or suppose that Danny, an aggressive Capulet, is attacking Bob: Bob fights back but there is a good chance Danny will prevail and kill him. Is Alice free from her duty to rescue Bob, merely because he is as bad as Danny? Intuitively, the answer seems negative. At least on the face of it, it seems that Alice should rescue her brother Bob, and then convince him to become a minimalist. Alternatively, she ought to rescue him, and then the Montagues, as a collective body, should punish him for the crimes that he committed.

The worry is that the alliance that minimalists can form with each other is impermissible, due to the associative duties minimalists owe to their maximalist brothers and sisters. In particular, the associative duty to which a good Montague is subject to rescue her brother suggests that she is under duty not to kill him in defense of innocent strangers. Indeed, Alice Montague has a right to kill Danny Capulet, a maximalist who plans to aggress against her in order to expel her from the Montague Castle. It doesn’t follow that Clara Capulet, Danny’s minimalist sister, has a right to kill him in Alice’s defense.

In response, I concede that the analysis offered above should be modified, but let me offer two observations before modifying it. First, associative duties do not have to be part of our story. A clean hands case in which the relationship between the bad guys and their good brothers and sisters has no moral significance, and as such grounds no associative duties, is easily imaginable. Bad guys might be so bad that the good guys’ decision to estrange from them would be justified. Suppose, for example, that Bob Montague treats his sister Alice as a traitor. He is ready to kill her in pursuit of the ethnic cleansing of the Capulets. Then, surely, Alice is under no associative duty to assume risk in rescuing him from a burning house. It follows that, in such cases, good Montagues’ decision to go to an inafamilial war in order to defend themselves need not be sensitive to the fact that they are related to bad Montagues.
Second, suppose Bob Montague really loves his sister, Alice, and that Danny Capulet is as dedicated and loyal to his sister, (good) Clara. Bad Bob is pursuing ethnic cleansing of all Capulets, because he wants his beloved sister to be safe, and believes ethnic cleansing is the only way to achieve this goal. Observe that even in such cases Alice should harm Bob in Clara Capulet’s defense because of the morally important relation between Alice and Bob. Their relationship grounds a duty that Alice bears towards Bob to prevent him from wronging Clara. Alice ought to prevent Bob’s wrongdoing, especially if, in order to avert the threat, she has to inflict only a minor harm on Bob.

Let me now modify my analysis of clean hands cases. Consider the set of cases in which minimalists permissibly attack their maximalist siblings in defense of minimalists on the other side, and the set of cases where minimalists permissibly fail to assist their maximalist siblings to defend themselves. I now suggest that in all such cases, either minimalists bear no associative duties towards their brothers and sisters or that these duties do not conflict with the duty of minimalists to collaborate with the minimalists on the other side. The two observations I have just offered show that this set of cases is not null.

**The B-Cases: Interfamilial Clean Hands Cases**

*Case B1* is a final clean hands case: while Good Montagues are ready to stop the Montague aggression by force in good Capulets’ defense, they are unable to do so. Worse, were good Montagues to fight their bad brothers and sisters, it would be much easier for bad Capulets to ruin the Montague castle and to kill the innocents living in it. (The same is true of good Capulets. By fighting against their own bad brothers and sisters, they would unintentionally assist bad Montagues in conquering the Capulet castle and killing the innocents living in it.)

Why can’t minimalists form an alliance and fight the maximalists together? One possibility is that the good Montagues are a minority, and would be quickly defeated in an interfamilial war. Good Capulets have no reason to expect that the Montagues’ interfamilial war will reduce the level of threat imposed on them, simply because such a war is unlikely to permanently weaken the bad guys on the other side. In light of these justified low expectations, minimalists would not form an alliance with minimalists on the other side. As a result, the Montague interfamilial war would strengthen bad Capulets.

Consider a variant of Case B1. The interfamilial war that good Montagues would fight can benefit good Capulets, only if it is fought exactly at the time good Capulets go to war against bad Capulets. Minimalists on both sides know, however, that they have no chance to time their defensive interfamilial wars. They further know that the uncoordinated interfamilial war that the Montagues might fight would weaken the aggressive Montagues and thereby strengthen the bad Capulets: while the Montagues fight each other, bad Capulets would conquer territories that the Montagues hold.

In light of these facts, defenders in Case B1 opt for an interfamilial war rather
than an intrafamilial war: they fight the aggressors that threaten them rather than the aggression that their brothers and sisters exercise against their enemies. Case B1 is a clean hands case, since good Montagues do not have to collaborate with their bad brothers and sisters in defending themselves. They are organized and powerful and they can identify the aggressors that impose the unjust threat on them and target them.

There are moral costs to the interfamilial war, however. By targeting the bad Capulets, good Montagues strengthen bad Montagues. Still, normatively, it seems self-evident that if the costs of the intrafamilial war against bad Montagues are that high—viz., it strengthens the aggressors on the other side—good Montagues’ interfamilial war against the bad Capulets would be permissible. If bad Danny Capulet attacks Alice Montague and bad Bob Montague attacks good Clara Capulet, Alice does not have to fight Bob in Clara’s defense, if this would make Danny’s attacks on her much riskier. Alice has a right to self-defense even if exercising it will cause her to give up on the opportunity to rescue Clara. It seems as clear that Alice has a right to kill Danny in self-defense even if, as a side effect, Bob’s attacks on Clara would be riskier.

II.2 The (C&D) Dirty Hands Cases

In real circumstances that somehow resemble the overarching hypothetical, clean hands cases in which defenders can effectively defend themselves without collaborating with aggressors are very unlikely. This is because usually the differences between families—between “us” and “them”—are visible, so that identifying other members of one’s family or ethnic group is easy. It is very hard for minimalists to identify and to negotiate with the minimalists on the other side. Worse, aggressors tend to stick to their maximalist agenda whereas minimalists tend to shift towards more maximalist views.

In dirty hands cases, minimalists promote their minimalist agenda by collaborating with their aggressive brothers and sisters. In one type of case good Montagues only produce munitions, food and shelter while bad Montagues use these resources in fighting aggressive Capulets in Montagues’ defense. Alas, bad Montagues use the resources produced by their good brothers and sisters in promoting their own maximalist agenda, as well. In a second type of case, minimalists promote their own minimalist agenda, while knowingly (although unintentionally and reluctantly) contributing to the illegitimate ends that their maximalist brothers and sisters pursue.

As I already noted in the introduction, I aim to show that there might be permissible dirty hands cases in which, according to popular theories of the right of self-defense, the minimalist-maximalist collaboration in an interfamilial war is permissible. Before describing such cases let me design cases in which getting one’s hands dirty seems impermissible.

**The C-Cases: Impermissible Interfamilial Dirty Hands Cases**

The following *Case C1* is an impermissible dirty hands case. Bob Montague,
an aggressor, attacks good Clara Capulet. She fights back. At this point, Bob’s chances to survive Clara’s defensive attack are equal to Clara’s chances to survive Bob’s aggression. Alice Montague can kill Clara in her brother’s defense, or kill her brother in Clara’s defense. Alice loves her brother, believes that she might convert him to minimalism, and on top of all that, it is in her legitimate self-interest to rescue him, since he is likely to protect her from the Capulet aggression in the near future. Despite these facts, it should be obvious that since Bob unjustly attacks Clara, Alice ought not to kill Clara in Bob’s defense.⁹

**Case C2.** Pursuing ethnic cleansing, Danny Capulet unjustly attacks Alice Montague. In order to survive Danny’s attacks, Alice should let her brother Bob use her gun for killing Danny. Alas, Alice knows that on his way to kill Danny, Bob will use her gun to kill two innocent Capulets, Clara and Elena, as part of the ethnic cleansing that he is after. Alice inflicts a kind of a riding roughshod harm: she enables the killing of two uninvolved Capulets in the lead-up to protecting her own life. Even if this type of harming counts as incidental or collateral, most moralities of self-defense would render it disproportionate and hence impermissible. The good effect of Alice’s collaboration with Bob (i.e., Alice’s survival) does not outweigh its bad effect (viz., the death of Clara and Elena).¹⁰

**Case C3** is more complicated. Bob Montague is on his way to kill Danny Capulet in Alice’s defense by using Alice’s gun. Alice knows, however, that Bob intends to use her gun to kill innocent Clara Capulet. Would Alice be right in arguing that the unintentional side-effect of her collaboration with Bob is proportionate and therefore permissible? No. I believe Case C3 to be an impermissible case. Following most theories of the right to self-defense I take it that intentional killing is harder to justify than foreseeable and yet incidental killing. That is, collateral killing might be overall permissible in virtue of being proportionate, yet, had the killing in question been intentional (and all other things equal) it would have been impermissible. Now, following Saba Bazargan, I maintain that the harm that Alice Montague’s collaboration with her brother Bob inflicts on Clara Capulet is not purely incidental or collateral.¹¹ Alice’s wrongdoing is harder to justify than a “regular” non-intentional killing; this is because she enables Bob to commit an *intentional* killing. Enabling the intentional killing of an innocent victim is almost as wrongful as intentional killing: Bob’s “malign intentions are manifested in [Alice’s] actions when [she] accedes to Bob’s wishes.” This, Bazargan says, affects “the weight that the resultant harms ought to receive in our deliberations.”¹²

**The D-Cases: Permissible Dirty Hands Cases**

There are, though, permissible dirty hands cases in which minimalists’ collaboration with maximalists in promoting a shared minimalist agenda seems, at least at a first glance, permissible. Call **Case D1** “Picking.” Bob Montague and Danny Capulet impermissibly fight each other. Probably both will end up dead. Alice Montague can kill Danny in her brother’s defense, or kill her brother in Danny’s defense. Killing Danny will benefit Alice, since Alice loves Bob, and Bob is likely to defend his
beloved sister in the future. Might Alice permissibly prefer Bob to Danny in such a case?

Before answering this question let us look at “the good-guys variation” of Picking, *Case D1*. Suppose Alice realizes that the sisters Clara and Elena Capulet innocently threaten each other: they find themselves driving toward each other, because of innocent mistakes they made. No one is culpable of the coming tragedy; moreover, Clara and Elena are equally responsible for it. If all parties stay passive, there is a good chance that both Elena and Clara will end up dead as a result of a total loss crash. Alice, an uninvolved good Montague, can rescue one of them by killing the other. Alice’s personal moral and prudential stakes are much lower compared to her stakes in Case D1: she won’t benefit from the death of either Clara or Elena.13

Alice’s duty to be impartial (and Clara’s and Elena’s correlative right to Alice’s impartial treatment) means that she should not prefer Elena to Clara (or vice versa) based on an irrelevant feature that one of them instantiates (like height, age, beauty etc.).14 She should pick one of them without attending to such features. Now, if this is the resolution of the good guys’ variation, then, should Alice be impartial in Case D1, she would be entitled to pick either Danny or Bob. Let us stipulate, however, that in this case, Alice does not have to be impartial: Alice loves her brother, Bob became aggressive as a result of indoctrination and cognitive limitations, and Alice believes she can convert him to minimalism. Bob’s survival is in her legitimate interest too. He will protect her in case that the Capulets impose an unjust threat on her. Since Alice’s agent-relative reasons to prefer Bob are morally acceptable, she may kill Danny in Bob’s defense. Admittedly, her collaboration with Bob will endanger innocent Capulets—and this fact is a major consideration against collaborating with him. Yet, killing Bob in Danny’s defense will endanger innocent Montagues. Unless Bob and Danny are so bad that Alice ought to let them kill each other, Alice may prefer her brother to her enemy.

Turn to a clearer permissible dirty hands case, *Case D2*. Bad Danny Capulet attacks good Alice Montague from a strategic point on a high hill. Alice fights back, but—without bad Bob Montague’s help—Danny is likely to kill her. Not knowing that Alice is in danger, Bob will help her only if she explicitly asks him. Alice does so, knowing that Bob will use the strategic hill, which they will conquer while repelling Danny’s attacks, in promoting his maximalist agenda. Bob and Alice collaborate in killing Danny, and while Alice goes out of her way to convert Bob into minimalism, he uses the strategic advantage he achieved thanks to his collaboration with Alice in order to kill good Clara Capulet.

Is it permissible for Alice to ask Bob to join her in attacking Danny? Is there a difference between Case D2, and Case C2 offered above? (Recall that in Case C2 Alice provides munition to Bob, knowing that Bob will use it first to kill innocent Clara Capulet, and then, to kill the aggressor Danny Capulet in her defense.) Yes there is. In Case C2, Bob Montague’s aggression against Clara is close to being the means by which Alice defends herself and therefore Clara’s death is not a mere side-effect
of Alice’s defensive actions. In contrast, in Case D2 here under discussion, if Bob will be successful in killing Clara, despite Alice’s efforts, Clara’s death would be an unintentional and, as such, a proportionate side-effect of Alice’s collaboration with Bob.15

Consider Case D3. Two Montagues, good Alice and bad Bob, collaborate in attacking a bad Capulet, Danny. Alice attacks him in self-defense. Bob’s reasons for attacking Danny are mixed. His first priority is to preempt Danny’s future attack on Alice. In addition, Bob’s hatred further motivates him to kill Danny. Something similar happens on the other side: Danny and Clara Capulet collaborate in attacking Bob Montague. Clara does so in self-defense, while Danny does so both in Clara’s defense and also because he wants to kill all Montagues.

Clara and Alice justifiably believe that their brothers’ fire is directed against the aggressor, while they both know that their aggressive brothers look for opportunities to attack innocents on the other side. There is, though, an asymmetry between Alice and Clara: unlike Alice’s beliefs about Bob, Clara’s justified beliefs about Danny turn out to be false. It turns out that merely by attacking Bob, Clara enables Danny, her bad brother, to aggress against Alice; by attacking Bob, Clara blocks Bob’s attacks on Danny, and so, Danny can attack Alice, while being as effective in attacking Bob. Alice realizes that she would reduce the level of threat Danny imposes on her if she enables Bob to attack Clara by providing him the means to do so.

Is attacking Clara permissible? Does Clara lose her right against Alice’s defensive attack in virtue of innocently elevating the level of threat that Danny imposes on Alice? Some philosophers would argue for a negative answer. This is because, in the evidence-relative sense, Clara’s attack on Bob is permissible. She justifiably believes that her attack does not further endanger Alice. These philosophers argue that evidence-relative justification exempts Clara from liability; Alice’s justification cannot appeal to the fact that Clara inflicts an unjust threat on her.

I side with McMahan’s responsibility account of liability. Consider a careful driver who “voluntarily engages in a permissible but foreseeably risk imposing activity [viz.,] driving a car.” In a sense, the driver will be “responsible” for the harm he is about to cause even if “contrary to reasonable expectation and through no fault on the part of the agent, that activity creates a threat or causes harm to which the victim is in no way liable.”16 According to McMahan, even if the driver is in no sense negligent, he is liable to defensive harm if he creates a threat. This is because the driver voluntarily engaged in an activity that might become dangerous, and therefore should pay its price if it did. My intuition is that if, by attacking Bob, Clara unjustly endangers Alice, Alice may collaborate with Bob in attacking Clara. This is because, like the careful driver, even if Clara cannot know that her attacks on Bob will enable Danny to unjustly threaten Alice, Clara knows that there is a slight chance that Danny will take advantage of her assistance. Clara is therefore the agent of the injustice that her defensive actions cause, and as such, similarly to McMahan’s driver, is liable to defensive harm. Because of this, Alice is permitted to attack Clara.
Consider, finally, a different case that at least some theories render a permissible case, *Case D4*. In Case D4, Danny is bombing Alice’s apartment in the Montague castle from somewhere in the Capulet castle. In order to stop Danny’s aggression, Alice should reveal to Danny that she has missiles and that she knows how to use them. Once Danny realizes that Alice is able to effectively fight back, he would abort his attacks on Alice in order to watch the Capulet castle more carefully. In order to survive, Alice must bomb the Capulet castle, and partly destruct it. She does have a choice, though: she can bomb Danny’s apartment in the castle, or Clara’s. Further, Alice knows that both Danny and Clara are trapped in the castle and that her bombing would kill one of them. Yet, at the time she must bomb the castle in order to survive, Alice cannot locate them. She justifiably believes that she targets the aggressor’s apartment, but she cannot be sure. To repeat, whomever she kills, she would eliminate the threat that Danny imposes on her, merely by showing off her military competence. Is it permissible for Alice to kill either Danny or Clara, without making sure that the individual whom she targets is liable?

My intuition is that subject to the proportionality constraint, bombing the Capulet castle is permissible. Some theories of self-defense support this intuition. Suppose that, despite her efforts, Alice targets Clara. Alice cannot know that the person she targets is innocent and has a valid reason to believe that this person (Clara) is liable to harm. Therefore, morally speaking, her killing is equivalent to the unintentional killing of a person whom she knows to be innocent. That is, she does not “breach the prohibition on intentionally killing the non-liable, but instead inflicts ‘collateral damage’”, viz., “[a] foreseeable but unintended effect of the effort to kill those who are liable.”

Or consider a variant of Case D4, *Case D4*\(^*\), in which Alice must collaborate with Bob in order to survive Danny’s attacks. This is because she knows how to produce the missiles but does not know how to fire them, while her aggressive brother knows how to use them but not how to produce them. Alice knows that unlike her, Bob would be happy to target innocent Clara. Doesn’t his malign intention corrupt Alice’s collaboration with him? I think not. Alice does not enable him do something that she wouldn’t have done. To the contrary, she enables him to do exactly what she would have done if she had the technical knowledge. Therefore, Bob’s malign attitude is not manifested in Alice’s actions. True, Bob aims to ethnically cleanse all Capulets, and this desire is satisfied by killing either Clara or Danny. Still, Alice used his technical knowledge to fulfill her intention, and her actions would have been the same regardless of Bob’s intentions. Hence, while Bob is a villain, by letting him do what he wishes, she does not *accede* to his wishes.

**Intermediate Conclusion**

The permissible cases offered above show that sometimes, good Montagues may join their bad brothers and sisters in fighting an interfamily war against the Capulets, even in cases in which they have to unintentionally target defenders on the other side and/or enable bad Montagues to do so. The impermissible cases shows that this
permission—viz., the right to join one’s bad brothers and sisters—is sharply restricted. Imagine that (good) Alice and Clara face a general dilemma. They must decide, once and for all, whether to fight an intrafamilial war against their bad siblings, or an interfamly war against the other family. I tentatively suggest that if defenders justifiably predict that the non-discriminatory actions necessary for their self- and other-defense resemble the permissible cases offered above, they might rightfully prefer the interfamly war to the intrafamilial war. Otherwise, they should either fight the interfamly war or stay passive.

III. A Four-Sided Ethnonational Conflict

In the overarching hypothetical that I presented in the introduction, the Capulets and the Montagues are stateless families that live in a no man’s land. In analyzing such situations, I have implicitly assumed that international morality and international law are inapplicable to such micro circumstances, and that therefore, the cases analyzed above raise no political issues. Let me now reshape the overarching hypothetical. Suppose that the Capulets and the Montagues are stateless ethnonational groups, which, under the current legal regime, possess a collective pro tanto right to national self-determination in a nation or multinational state. Additionally, suppose that the size of the Montague-Capulet territory is substantial enough to contain either one binational state or two nation-states. The territory is a “political vacuum,” since no existing state has a moral, political, or legal claim on the huge areas surrounding the Montague and the Capulet castles. (Imagine that an empire colonized the territory; arguably, it had a duty to see to it that a successive legal regime was in place before it ended the occupation, but it refrained from doing so, and simply “cut and ran.”)

In this new setting, the four-sided war is, in fact, an armed conflict between two stateless ethnonational groups, whose members are convinced that the nation to which they belong has a historical (i.e., moral) right over the disputed territory. Bad Montagues believe that their historical right over this territory includes a right to expel the Capulets from it. Unlike their bad brothers and sisters, good Montagues find the Capulets’ view reasonable, and the ethnic cleansing that aggressors plan, morally abhorrent. Good Montagues aim to achieve a just peace, based on a compromise that respects good Capulets and their (mistaken) view about the disputed territory.

How would the morality of the UN Charter and of the international law address a conflict between stateless ethnic nations over a “politically empty” territory? In particular, how do the principles underlying the prohibition on non-defensive wars and the jus in bello regime apply to a four-sided ethnonational conflict?

Two observations suggest themselves. First, the morality of the international law would condemn maximalist agendas. The jus in bello principles that the international law adopts aim to protect innocents. The law would condemn Bob Montague’s plan to expel or to kill all Capulets. The second observation is based on the conclusion of the previous part, according to which, in some circumstances, minimalists might
permissibly collaborate with their maximalist brothers and sisters in defending themselves and others. If true, a further question suggests itself: What should minimalists in a four-sided ethnonational conflict aim to achieve by force and coercion, besides self- and other-defense?

The second observation is this. Read literally and narrowly, the Charter’s *jus ad bellum* that prohibits crimes against peace provides no answer to this question. The law characterizes crimes against peace as a violation of the territorial integrity of existing states. Legally, aggression is a disruption of the status quo ante, which constitutes an established, conventional, widely accepted arrangement that makes for regional (or global) peace.\(^{21}\) Therefore, one aim of (legally permissible) defensive war would be restoring the status quo ante. The Capulets and the Montagues live in the state of nature; there are no legitimate borders between them whose transgression the Charter’s just war theory renders a crime against peace.

This section outlines a theory of the just aims that minimalists should pursue in a four-sided ethnonational conflict (besides self- and other-defense) by employing Arthur Ripstein’s Kantian interpretation of the principles underlying the legal prohibition on unilateral use of force.\(^{22}\) The importance of the Kantian interpretation for my purposes is its starting point. It condemns the state of nature itself, because in the state of nature, conflict resolution involves unilateralism and force. Indeed, stateless individuals are subject to the duty to exit the state of nature, because, absent a legitimate sovereign, there is no procedure by which their disputes can be resolved on their behalf. Whatever the resolution of a dispute in the state of nature, the process that led to it is “barbaric.” Hence, the state of nature is inherently defective. Importantly, in one case only, private force in the state of nature might be acceptable (although, not fully justifiable), namely: when it is a necessary means for founding a legitimate state. Indeed, in case one’s neighbor in the state of nature refuses to join a local political society, one ought to “force her to be free.”\(^{23}\)

The international community forms a politically decentralized society. Nevertheless, according to the Kantian interpretation employed here, states ought to found a network of transnational legal institutions empowered to resolve (on their behalf) any disagreement that they might face. States’ aggression is prohibited precisely because the aggressor aims to resolve its dispute with the defender by force, rather than by bargaining, mediation, or negotiations. Force and unilateralism are unacceptable, even if a state uses them in pursuing a noble end like subsistence, realization of its historical rights, or correction of past injustices. Use of force is barbaric regardless of the moral standing of the user’s ends.\(^{24}\) There is an exception; contrary to an aggressive state, a defending state uses force solely because it refuses to allow might to make right. Thus, the ideas of barbarism and unilateral force underlie the duty to exit the state of nature, the right to force individuals to fulfill this duty, the prohibition on aggression and the right to fight a defensive war.

Let us turn to the reshaped hypothetical. Ripstein’s Kantian view suggests that besides self- and other defense, minimalists in a four-sided ethnonational armed
conflict should pursue peace as a precondition to a just resolution of their various territorial disputes. This general duty includes a more specific duty, namely, the duty to set up a rightful condition, viz., a sustainable state that has the means to resolve the inherent defects in the natural state.

Now, suppose that minimalists permissibly collaborate with their brothers and sisters in promoting their minimalist agenda, and particularly, in pursuing self- and other-defense. This collaboration is likely to block collaboration between minimalists in founding a shared legitimate state, which appropriately represents all parties. Given the maximalists in their midst, with whom they collaborate from time to time, minimalists won’t be able to collaborate with the minimalists on the other side in founding a shared political society. Good Capulets cannot expect political institutions that adequately represent Montagues to represent them and to act on their behalf. Mutatis mutandis, the same is true of good Montagues. Suppose, in other words, that due to the dominance of the maximalists and their collaborations with the minimalists, Montagues and Capulets could not live under one political roof. In such circumstances, the minimalists’ only realistic prospect of success in founding a functioning rightful condition is to unite, not with everyone on the territory, but with the maximalists on their side.25

Thus, the Kantian duty to set up a functioning rightful condition requires each group of minimalists to set up its own rightful condition. I further suggest that it entitles each group of minimalists to use force in resisting attempts to interfere with that effort where necessary to do so. This right seems a direct implication of the right of individuals in the state of nature to use force in founding a political society. Indeed, if a separation of the warring ethnonational groups is the only way to secure the legitimacy of the new states in the territory surrounding the castles, minimalists on each side are entitled to pursue a two state solution by forced ethnic separation. Minimalists ought to establish two separate and autonomous nation-states each containing and governed by one of the two groups.

To see the role of the other Kantian duty—the duty to resolve disputes in a non-barbaric way—observe that after fulfilling the duty to enter the civil conditions, the parties to the conflict face another crucial question. How should the disputed territory be divided between these two states? Answer: whatever the substantively just solution is, the parties are under a duty to resolve their dispute in a legitimate way. The two-state solution is what minimalists ought to pursue in the just four-sided ethnonational armed conflicts also because it is the only way to resolve it on behalf of all involved individuals. After all, these states are empowered to establish a transnational political body that adequately represents both groups, and, as such, is entitled to deliberate (on their behalf) on a permanent just resolution of the conflict. Once a partition is achieved and the safety of the distinct ethnonational states is secured, both groups could (and therefore should) fulfill their ongoing duty to negotiate a permanent solution for the disputed territory.

To sum up the argument so far, I suggest a Kantian interpretation of the moral
principles underlying the UN Charter’s prohibition on use of force, and apply it to a four-sided ethnonational conflict as follows. In the reshaped hypothetical, the parties to a dispute ought to reach peace by forcing a two-state solution. This peace is just a peace rather than a just peace. Hence, the Kantian interpretation further requires peaceful negotiations between the two states that minimalists should have established.

This argument raises new versions of old questions. The traditional just war theory entitles the defending state to use force in protecting its territorial integrity. One fundamental difficulty that this theory faces regards the relation between the rights of states and the rights of individuals. Is it permissible to kill in defense of the territorial integrity of a state? Similarly, according to the Kantian analysis offered here, minimalists in a four-sided conflict may use force in pursuing a two-state solution and a political framework that secures procedural justice in resolving their territorial dispute. Can such a good justify the infringement of basic rights like the right to life? Are minimalists allowed to kill individuals in promoting these political purposes? Is such a war proportionate? I will not be able to analyze the issues that the proportionality of four-war conflicts raises.

IV. The 1948 War over Palestine as a Four-Sided Ethnonational Armed Conflict

Probably, no historical circumstances perfectly match the overarching hypotheticals discussed in the previous sections nor the more concrete cases that these hypotheticals allow. Still, following prominent historians, this section presents the 1948 war that was fought in Palestine between Arabs and Jews as a four-sided ethnonational conflict. According to the (quite controversial) narrative I adopt for the sake of my argument in this section, Zionist Jews were divided into two groups, minimalists and maximalists, just like the Arabs in and outside Palestine, who saw Palestine as their historical homeland, or as part of it.

According to the narrative that interests me here, Ari Shavit is right in stating that some Zionists desired to expel the Arabs from Lydda and other Arab cities in Palestine. This has been their “dark secret” long before the armed conflict in Palestine erupted in 1948: “[t]he truth is that Zionism could not bear Lydda. From the very beginning, there was a substantial contradiction between Zionism and Lydda. ... Lydda was an obstacle blocking the road to the Jewish state and ... one day Zionism would have to remove it.” Yet, while Shavit characterizes Zionism as a maximalist movement, according to the narrative I adopt here, it was the agenda of only some Jewish maximalists.

This maximalist agenda has been manifested in the ideology of two underground military organizations, IZL and LHI, and, particularly, in the way they planned and fought the Deir Yassin battle. On April 9, 1948, militants decided to conquer the village of Deir Yassin (located near Jewish Jerusalem) and to expel its inhabitants. “[T]he fighting had been accompanied, and followed, by atrocities....”; after the battle, “[a] few villagers may have been trucked into Jerusalem and then taken back
to Deir Yassin and executed...”29 The IZL leader at the time, Menachem Begin, condemned any instance of intentional killing of innocent civilians as a war crime. He nevertheless argued that the Deir Yassin battle has promoted “terror and dread among the Arabs in all the villages around... that facilitates the renewal of [Jewish] road communications... between the capital [that is, West Jerusalem] and the rest of the country.”30 Begin’s apology illustrates the ends that these organizations pursued and the means that they were willing to use in achieving them. For him, expulsion was a legitimate aim, and terrorizing civilians was one of the means by which it can be promoted.

The historiography I present here insists, however, that other Zionists adopted a minimalist egalitarian agenda. Like their maximalist co-nationals, Jewish minimalists were permanently attracted to the West Bank of the Jordan River. They conceived Judea, Samaria, and Jerusalem’s Old City as the historic heartland of the Jewish people. Unlike them, minimalists understood the moral significance of the fact that these areas are highly populated by Arab Palestinians. Accordingly, minimalist Zionism was engaged in promoting two limited political goals: “nurturing of the particular national language and culture” and establishing “territorial autonomy in [some of the] regions defined as [the Jewish] historic homeland...”31 They struggled for “autonomous self-rule” or national self-determination, “as part of a broader sovereign framework.”32 Indeed, the most important leaders of the Zionist movement, viz., David Ben-Gurion and Chaim Weizmann, supported a state or a sub-state unit, “[with] a Jewish majority, [which] should also be founded as a multinational democracy rather than a centralized mono-national state.” In the early thirties, “[Ben-Gurion] believed that the Arab minority that would be formed in the future would have collective national rights rather than only individual civil rights.”33 As far as the minimalist vision of the early thirties is concerned, "the state of Israel would have arisen with a large Arab minority, which would ... have constituted an organic part of the state.”34

Yet, later, minimalists adopted the conclusions of a report (published ten years earlier, on July 7th, 1937) by a commission (headed by Lord Peel) that examined the future of the British control in Palestine. The commission argued that “the Jews and the Arabs could not live under one political roof.”35 The commissioners offered a two-nation state solution: a small Jewish state and a large Arab state as a means for achieving safety and stability in the region. Following this recommendation, Jewish minimalists in 1947 supported a partial separation between the communities.

Arabs were divided to minimalists and maximalists as well. King Abdullah of Transjordan is the best representative of Arab minimalism. Before the Deir Yassin battle, his official goal was a (peaceful) takeover of the core Arab area of Palestine, rather than an attempt to expel the Jewish residents of Palestine or to subject them to an Arab regime. He pointed to the massacre at Deir Yassin “as one of the reasons he was joining the invasion and why he could not honor his previous assurances of nonbelligerency vis-à-vis the Yishuv.”36 Still, the aim that he set for the Jordanian army was minimalist, i.e., to gain control over parts of the West Bank of the Jordan
River which were highly populated with Arabs.\textsuperscript{37}

Arab maximalists were explicit in supporting “the elimination of the [future] Jewish state.”\textsuperscript{38} An Egyptian politician stated that, “it does not matter how many Jews there are. We will sweep them into the sea.” Similarly, the Syrian president declared, “[o]vercoming the Crusaders took a long time, but the result was victory. There is no doubt that history is repeating itself.”\textsuperscript{39} Before the UN decided on another partition plan for Palestine in 1947, Abba Eban, a Zionist diplomat, engaged in a last-minute attempt to find a peaceful solution. He met Azzam Pasha, the Arab League’s first secretary-general, in London, and “proposed a concrete plan for cooperation and compromise between Jews and Arabs in Palestine.”\textsuperscript{40} Azzam’s reply was typical to Arab maximalists: “[t]he Arab world is not in a compromising mood. The proposed plan [the partition of Palestine] may be logical... but [you] will achieve nothing with talk of compromise and peace.” \textsuperscript{41}

How should minimalists behave in such situations? Jewish minimalists collaborated with their maximalist brothers and sisters in one period, but also fought against them in another. After the Holocaust and in response to a British anti-Zionist policy, Ben-Gurion initiated “a Hebrew Resistance Movement which united underground movements of the Hagana, the IZL, and LHI. It cooperated from October 1945 to July 1946.”\textsuperscript{42} Most importantly, in the 1948 war, Jews fought together against the Arab forces that tried to conquer Palestine. And yet, interestingly, there was a period that, in response to the IZL and LHI’s terrorism, Ben-Gurion commanded “a Sezon” (hunting season), which included “the handing over of underground members to the British security police.”\textsuperscript{43}

Our discussion strongly suggests that in some cases, minimalists may permissibly collaborate with maximalists in defending the innocents. And, if permissible dirty hands cases (where the minimalist may join forces with their maximalist kin against the other group) are common, then, probably, minimalists could not ally with minimalists on the other side. In such a case, minimalists should pursue a two-state solution, just as the Peel commission thought. This solution might have required a justifiable or excusable forced separation between Jews and Arabs.

\textbf{V. Conclusion}

I have argued that in the state of nature, four-sided ethnonational armed conflicts over a disputed territory seem to be governed by the following principles. Minimalists are entitled to defend their lives and their homes and to struggle for political freedom within one or two legitimate states. Additionally, minimalists ought to found such a state (or states) as a means for peaceful negotiations on the permanent solution for the disputed territory. Unfortunately, these principles leave crucial questions open. We have seen that in some cases, minimalists are allowed to collaborate with maximalists in advancing their minimalist purposes. Yet, we have also seen that they ought to fight \textit{against} their maximalist co-nationals in other cases. Now, clearly, for
any war to succeed, the warring party must develop a strong sense of “us.” Hence, typically, minimalists must decide, once and for all, whether they collaborate with their maximalist co-nationals or with minimalists on the other side. They cannot choose their allies on a case-by-case basis. These normative and factual truths strongly suggest that typically minimalists might permissibly collaborate with their maximalist co-nationals. Further, these truths suggest that the partition of the disputed territory—viz., a two nation state solution for the disputed territory—might be the only feasible solution in many ethnonational conflicts.

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Notes and References

1. This paper was presented in a workshop organized by Helen Frowe and Derek Matravers, in the Stockholm Center for War and Peace, and in West Point’s 2021 Ethics of War and Peace Conference. I thank the participants in these events for their useful comments. I am especially indebted to Arthur Ripstein for written comments on previous drafts and to Barak Abarbanel for excellent research assistance. The Israeli Research foundation supported this research (grant number 396/18).


3. These situations were first analyzed in Michael Walzer, Arguing about War, (New Heaven: Yale University Press, 2004), 114-15.

According to the conceptual framework that McMahan elaborates, the bad guys are engaged in unjust wars.


7. Due to space limitation, I cannot elaborate an argument in support of this intuition.

8. Following Cecile Fabre (See her “Guns, Food, and Liability to Attack in War,” *Ethics* 120 (2009): 36-63), I tend to deny the moral significance of the distinction between produced goods that directly contribute to the aggressor’s violence (i.e., gun factory) and those that would have been produced for human subsistence (i.e., food).

9. This is a direct implication of Judith Thomson’s theory in her “Self-Defense.” Thomson’s theory is considered to be the most permissive view of the right of self-defense, and even she won’t allow Alice to kill Clara in Bob’s defense.

10. In the philosophical literature, Jonathan Bennett is one of the first to mention the intentional/foreseeable distinction. See Jonathan Bennett, *Morality and Consequences: The Tanner Lectures on Human Values* (Cambridge: Cambridge University Press, 1980), 95. For more recent arguments in defense of this distinction, see e.g. William FitzPatrick, “The Intend/Foresee Distinction and the Problem of ‘Closeness’,” *Philosophical Studies* 128 (2006): 585–617. Proportionality is nicely defined as follows: “An act is wrong if the relevant harm it will cause is out of proportion to its relevant good”; See Thomas Hurka, “Proportionality and the Morality of War,” *Philosophy and Public Affairs* 33 (2005): 34-66, at 38.


12. Bazargan, “Moral Coercion,” 2. Alice is an enabler, rather than an allower: “If A enables e, then she provides another agent with the means to commit e, who does so. If A allows e, she has the power to prevent another agent from committing e but refrains from exercising this power” (2).


15. For an argument that defends the distinction between Case D2 and Case A2 without appealing to the doctrine of double effect, see Yitzhak Benbaji and Susanne Burri, “Civilian Immunity Without the Doctrine of Double Effect,” *Utilitas* 32 (2020): 50-69.

17. Thus, killing the aggressor is not a necessary means for promoting self-defense. Danny would watch the castle more carefully even if Alice ruined an unoccupied part of the castle.


20. “In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and [. . . ] accordingly shall direct their operations only against military objectives. [. . . ] The civilian population as such, as well as individual civilians, shall not be the object of attack.” (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977 (AP I), articles 48 and 51(2)).

21. Walzer, Arguing about War, 18.


23. See the discussion in Anna Stilz, “Provisional Right and Non-State Peoples,” in Kant and Colonialism: Historical and Critical Perspectives, eds. Katrin Flikschuh and Lea Ypieds (Oxford University Press, 2014), 211.

24. I believe, though, that Ripstein leaves the critical question unanswered: why is force such an objectionable means? I can see why using a person as a means, or violating one’s freedom, are unconditionally prohibited. In contrast, it is hard to understand why violation of territorial integrity is prohibited even if it promotes political and distributive justice and involves no killing and maiming. Elsewhere I have argued that the prohibition is justified based on the empirical assumption that the rights’ violations that most wars involve are unlikely to be lesser evil. I developed the answer in War by Agreement, Chapter 4.

25. I owe this move to Arthur Ripstein (personal communication).


27. The Kantian approach to the proportionality constraint in a just war theory is unclear. Take, e.g., Stilz’s “Why Do States have Territorial Rights?” Stilz argues
that while states do have the right to go to war whose aim is to correct past territorial injustice, they must give it up, since a war “jeopardizes individual freedom and independence...” (207). Cf. her “Territorial Rights and National Defense,” in The Morality of Defensive War, eds. Fabre and Lazar (Oxford: Oxford University Press, 2014).


31. Dmitry Shumsky, Beyond the Nation State: The Zionist Political Imagination from Pinsker to Ben-Gurion (Yale University Press, 2018), 6.


33. Ibid, 21.


36. Ibid, 127.

37. Ibid, 189.

38. Ibid.

39. Ibid.


41. Ibid.

42. Anita Shapira, Land and Power, 292.

43. Ibid, 350.