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# Just Independence Wars and the October 7th Massacre

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**Abstract:** This essay explores a view held by many critics of Israel, which posits that the October 7th massacre is a war crime that is part of a just war of independence, fought by Palestinians against Israel for over a century. Raef Zreik recently presented such a view in these pages. However, this essay argues that a proper understanding of traditional just war theory renders this view false. Even if Zionism is considered a colonial wrong, Palestinians did not have a just cause for war against Zionism until after the Six-Day War in 1967 and perhaps later. Furthermore, the essay contends that the massacre is not a part of this war, as Hamas lacks the moral power to represent the Palestinian people and to fight in their name.

**Keywords:** just cause for war; legitimate authority in war; colonialism; independence war; Benny Morris; *War by Agreement*

## 1 Introduction: The Anti-Israeli Narrative

Most critics of Israel recognize the brutality of October 7th for what it is: a series of horrible crimes against innocents. However, many of them believe these crimes to be *war* crimes and, as such, elements of a just independence war that Palestinians have been fighting against the Zionist movement for more than a hundred years.<sup>1</sup> Specifically, Hamas' attack on Israel on October 7th was part of an armed resistance against one of the few settler colonialism projects that survived the 20th century. As a representative of the Palestinian people, Hamas is authorized to use force in protecting the Palestinians' right to self-determination and to recruit individuals to fight for this cause (Zreik 2024, 197–199). In this view, Hamas' moral failures on October 7th resemble the moral failures of Ukraine in its war against Russia. Ukraine committed war crimes against Russian troops and Russian civilians.

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<sup>1</sup> A recent articulation of this view can be found in Zreik 2024.

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These war crimes should not change our view of their wars in general. Ukraine's war against Russia is a just defensive war.

This perspective on the October 7th massacre relies on the distinction between *jus in bello* and *jus ad bellum* (Walzer 1977, 34–41). A just war (i.e., a war that meets the *jus ad bellum* conditions) can be fought unjustly if, for example, combatants fail to respect the basic *jus in bello* requirement of civilians' immunity. Famously, the traditional just war theory stresses that, with rare exceptions, targeting civilians as a means to achieve the just goal of a defensive war is forbidden. Conversely, an unjust war can be fought justly: an aggressor can use legitimate means (such as targeting only military objectives) to unjustly conquer the territory of another state. Thus, many critics of Israel argue that Hamas is fighting a just independence war by using unjust means.

Some critics go a step further.<sup>2</sup> Hamas is defined as a terrorist organization because it systematically violates the *jus in bello* rule of civilian immunity. Yet, over the last 20 years or so, revisionist theorists have argued that the sweeping legal immunity of civilians in war is morally baseless. In revisionist just war theory, civilians responsible for aggressive threats might be liable to killing. Interestingly, Osama Bin Laden adopted this line of argument: he suggested that American non-combatants might be permissible targets in the war of Muslims against the US because they are responsible for the aggressive wars that their governments fight in their name. After all, civilians vote for those governments, pay the taxes that buy their weapons, and produce, sustain, and support the combatants who do the fighting. In response to Bin Laden's letter to the American People, the leading revisionist Jeff McMahan argues that responsibility must rise to a higher level to justify liability to be intentionally killed in war (McMahan 2009, 232–3). But as Seth Lazar shows, this "claim about responsibility thresholds is inconsistent with revisionists' other arguments, according to which unjust combatants' slight degree of moral responsibility is sufficient for liability" (Lazar 2010, 212). So, in what follows, I will set aside revisionist just war theory and analyze the October 7th massacre from the perspective of traditional just war theory.

Critics often take it as self-evident that the Palestinian people have a right to fight an independence war against Israel. Why? The usual answer combines a historical narrative about Zionism – hereinafter referred to as 'the anti-Israeli narrative' – with a set of normative propositions based on just war theory. The narrative portrays Zionism as a colonial project aimed at establishing a Jewish nation-state over all of Palestine, expelling some Arab Palestinians, and oppressing the rest by reducing them to a national minority with inferior political standing. Moreover,

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<sup>2</sup> See Zreik 2024, 205, who cites the revisionist writers, McMahan and Frowe, but does not seem to pursue the revisionist logic to its final conclusions.

for anti-Israelis, even if Zionism had been minimalist, aiming only at establishing political autonomy *in* Palestine, it would still be considered wrongful colonialism. Palestine belongs to the Palestinians, and no Palestinian should have to struggle for inclusion in a Jewish nation-state established on their territory.<sup>3</sup>

The anti-Israeli narrative further asserts that post-1967, Israel became a colonial power in the West Bank and Gaza, with no plan to secure political rights for the Palestinians living in those territories. On the contrary, Israel sustains and extends illegal settlements and pursues a policy of house demolition and expulsion in those territories. Finally, many critics of Israel believe that since the mid-1970s, Palestinians and the Palestinian people have become increasingly accommodating and peace-seeking. This tendency became visible when the Palestinian Authority negotiated with Israel during the Oslo era (1993–1996). During those years, the PLO recognized Israel and deleted those articles in its charter that denied Israel's right to exist. In effect, the Arab world (as a whole) was ready for peace and normalization with Israel on the condition of establishing a Palestinian state.

Against this factual background, the verdicts of traditional just war theory are quite clear. Colonization is an act of aggression against a stateless nation. “Liberation movements were ... fighting a war of self-defense against the metropole on behalf of a nation that pre-existed colonial rule” (Von Bernstorff 2019, 54, quoted in Zreik 2024, 196). Thus, the colonized people have a just cause for war, and the colonizer/aggressor has no right to self-defense. Importantly, though, freedom fighters who fight with a just cause might fight unjustly. They might violate the *jus in bello* code, in which case colonizers would gain the right to use force in preventing or undoing the violation of their *in bello* rights. That is, many critics of Israel seem to admit that Israel has a right to prevent and undo the wrongs innocent Israelis suffered on October 7th.<sup>4</sup>

One aim of this essay is to challenge the (just war theory-based) normative analysis that critics base on the anti-Israeli narrative. I will offer ‘a balanced narrative’ (extracted from Morris’s 2009, 28–160, which I will entitle the ‘anti-Palestinian narrative’) and argue that it is more or less as probable as the anti-Israeli narrative. I will further argue that in such epistemic circumstances, where no narrative is obviously more accurate than competing narratives, traditional just war theory implies a clear and plausible verdict: whatever the just outcome is, it should not

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<sup>3</sup> In Zreik 2024, 192–6, this narrative is very sketchily presented, and presumed to be true, with no argument, or any recognition that it is controversial.

<sup>4</sup> Strikingly, Zreik 2024, 207–9 and others (e.g., Wide 2023) deny that Israel has a right to self-defense. For the moral worries that this disturbing view raises, see Heyd 2024. Note that even the writers of *Open letter by Oxford Researchers (2023)* and the founder of the revisionist just war theory, Jeff McMahan (who signed the letter) concede that Israel has a right (and a duty) to defend its innocent citizens.

be pursued by the use of force. It follows that pre-1967, the Palestinian people had no just cause for war against Israel. Palestinians should have struggled for their national rights by peaceful means like non-violent resistance, diplomatic pressures, boycotts, etc., but not by war. I will concede, however, that since 2009, when Benjamin Netanyahu became the major political leader of Israel, and more so after the 2023 election where most Israelis voted for a racist government, the Palestinian people have a just cause for an independence war against Israel. My second aim is to show that the October 7th massacre is *not* part of this just war because Hamas has no moral right to wage war on behalf of the Palestinian people. While, as a national group, Palestinians have a just cause for war, Hamas' attack on October 7th is nothing more than mass murder. The analogy to Ukraine's just war against Russia is false and misleading.

## 2 The Balanced Narrative

### 2.1 Morris on the Zionist Approach to the Arab Problem

Here is a summary of Benny Morris's analysis of the Zionist approach to the 'Arab problem'. Political Zionism emerged in Eastern Europe in the early 1880s, spurred by a new and deadly wave of pogroms. The intellectual environment that shaped the movement included nationalism, romanticism, liberalism, democracy, socialism, and modernization. As romantic nationalists, many Zionists believed that there was, and always had been, a Jewish people to whom the land of Israel – specifically the territory of the Davidic kingdom – belonged. The Davidic kingdom extended east of the Jordan River. Accordingly, Chaim Weizmann, a major Zionist leader in the 1920s, envisioned a national home for the Jews that included Transjordan. Other prominent Zionist leaders, such as David Ben-Gurion and Yitzhak Ben-Zvi, outlined the same boundaries in a book on Palestine's geography published in 1918 (Morris 2009, 39–40). They regarded Transjordan as historically, geographically, and economically connected to Palestine, being the place where the tribes first settled. Despite their romantic views, these leaders were minimalists. They acknowledged that the Arabs of Palestine had a distinct national identity and that they were entitled to self-determination in the land of Israel. Weizmann accepted the victors' reduction of Palestine, as formalized in Churchill's White Paper of 1922 (*ibid.*). The Zionist movement also included influential maximalist factions. Ze'ev Jabotinsky founded 'the Revisionist Movement' largely in response to mainstream Zionism's acceptance of the loss of Transjordan. A decade later, in April 1931, his

movement resolved to establish a state with a Jewish majority in the Land of Israel, encompassing both sides of the Jordan (Morris 2009, 43–4).<sup>5</sup>

For a long time, maximalist Zionists remained a minority. The 1917 Balfour Declaration, which Weizmann orchestrated and fully embraced, clearly reflected his minimalism: it called for the establishment of a national home (rather than a state) for the Jewish people in Palestine (rather than over all of it). The Balfour Declaration and the 1922 Mandate for Palestine, which adopted it, became a cornerstone of the standard justification for Zionism (Morris 2009, 38). Weizmann drafted a constitution in the early 1930s based on political parity between the Arabs and Jews of Palestine (*ibid.* 36). In the same vein, Ben-Gurion proposed creating a federal state in Palestine based on national cantons. The country would be governed by the council of the federal union, consisting of two houses: the House of Peoples, where Jews and Arabs would be represented equally, and the House of Residents, where representatives of the cantons would sit, with their number determined by the size of the respective population. Decisions would require the approval of both houses (Shapira 1999, 189).<sup>6</sup>

The Arab revolt of 1936 drastically changed the minimalists' approach to the Arab problem (Shumsky 2018, 209–10). Minimalists replaced the idea of binationality with a two-state solution. Zionist leaders accepted the principle of partition as outlined by the Peel Commission, which was sent by the British in November 1936 to investigate the causes of the Arab Revolt and to suggest solutions. Realizing that the Jews and Arabs of Palestine could not coexist under one political roof, the commission recommended that the Arab area eventually be merged with Transjordan to create a 'Greater Transjordan' under the rule of the Hashemite prince Abdullah (Morris 2009, 61). The Zionist Congress accepted the principle of partition. The two-state solution endured through WWII and the Holocaust. After the UN Assembly adopted a modified version of it, Ben-Gurion argued that "the UN decision ... is an act of historical justice that at least partially compensates for ... what was done to the Jewish people in our generation and previous generations" (quoted in Morris 2009, 78).

The same minimalist approach guided Israel in addressing the Arab problem after 1948. In practice, Israel relinquished the West Bank and East Jerusalem. Israel adhered more closely to the Peel partition plan – which envisioned the core Arab area of Palestine eventually joining Jordan – than to the UN partition resolution, which prescribed a separate Palestinian Arab state alongside Israel. The official

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<sup>5</sup> Jabotinsky believed that his nationalism and liberalism were compatible.

<sup>6</sup> Indeed, "... Zionists had initiated a proposal acknowledging the equal right of the Arabs to Palestine. The parity plan presented the vision of two autonomies, developing separately, side by side." (Shapira 1999, 192)

policy of successive Labor-led Israeli governments was to maintain this territorial division. Indeed, Israel made no effort to annex the West Bank or Gaza Strip, despite the violent clashes that occurred there (Morris 2009, 80).

Jabotinsky's followers did not embrace minimalism. In 1950, the poet Uri Zvi Greenberg wrote, "When we reach the Euphrates, we shall sing a song of the nation." The extreme right-winger Yisrael Eldad wrote: "The Kingdom of Israel from the Euphrates to the Nile is not only possible; it is also necessary" (quoted in Morris 2009, 74). The Six-Day War in 1967, during which Israel conquered Sinai, the West Bank, and the Gaza Strip, marked the beginning of the end for the dominance of Zionist minimalism. The military achievements transformed many Israeli intellectuals and leaders into maximalists. While now-retired Ben-Gurion, Prime Minister Levi Eshkol, the young writer Amos Oz, and the leading intellectual Yeshayahu Leibovitz immediately recognized how tragic and dangerous the occupation and annexation would be, most Israelis did not. Settlements in the occupied territories were approved by the Labor Party (Morris 2009, 83). A decade later, in 1977, Menachem Begin, a follower of Jabotinsky and the leader of the main right-wing party Likud, became the Israeli prime minister. He allowed a small orthodox messianic interest group to gain disproportionate influence within Israeli politics. As a result, a significant amount of state resources was allocated to strengthening settlements in the West Bank and to establishing an autonomous religious education system that promotes the vision of Greater Israel. Begin believed it should be "inconceivable" to "hand over to any form of Gentile rule ... even one inch of our country" (86).

Zionist minimalism returned to power with the Yitzhak Rabin government (1992–1996) and again in 1999 with the Ehud Barak government. Both focused on advancing the peace process with Palestinians. Rabin allowed the PLO leadership to return to Palestine. He supported the creation of a Palestinian Authority, which he and many others viewed as the government of the future Palestinian state (Morris 2009, 127). Collaborating with President Bill Clinton, Ehud Barak continued this approach (134). In between, Benjamin Netanyahu (Israel's prime minister from 1996 to 1999) accepted the Oslo Accords and directly negotiated with the PLO leader Yasser Arafat. Ariel Sharon and Ehud Olmert promoted a two-state solution in different ways – Sharon advanced unilateral disengagement from Gaza and parts of the West Bank. He fully realized that subjecting Palestinians to the state of Israel would be destructive, either because the resulting regime would be an apartheid state or because it would involve ethnic cleansing. Unlike Sharon, his successor Ehud Olmert believed in the Oslo process and, following Ehud Barak, pursued very ambitious two-state solutions. Both Barak and Olmert failed. Since the Likud party returned to power in 2009, maximalism has dominated Israeli society, despite Netanyahu's lukewarm commitment to the two-state solution, as expressed in the Bar-Ilan speech in 2009.

The narrative presented here, whose factual claims are mostly drawn from the Morris anti-Palestinian narrative, emphasizes that the Zionist movement and the state of Israel were largely minimalist before the 1967 occupation. It further suggests that, since 2009, Israel's main political leader has been determined to bury the Palestinian issue and use both soft and hard power to achieve this goal. Israeli and Palestinian minimalists failed to promote peace before the Netanyahu era for various reasons, including the maximalist agendas on both the Palestinian and Zionist sides.

## 2.2 Modifying Morris on the Palestinian Approach to the Jewish Problem

The following factual statements about the Palestinian approach to the Jewish problem are all drawn from the Morris narrative. Yet 'the balanced narrative' I base on these propositions differs from his. The balanced narrative gives serious consideration to Palestinian minimalism, while Morris views it as shallow and hypocritical. Based on a careful reading of his texts, I believe that the Morris interpretation of the facts that he lists is under-argued.

Since the emergence of a distinct Palestinian national identity in the 1920s, the Palestinian Arab national movement has largely been maximalist, rejecting any notion of sharing the land with the Jews. The Third Palestine Arab Congress (Haifa 1920) called on the new British rulers to establish a government "to be chosen by the Arabic-speaking people who had lived in Palestine before the beginning of the [world] war". In a letter to the Colonial Secretary, they argued that "the supposed historic connection of the Jews with Palestine rests upon very slender historic data. The historic rights of the Arabs are far stronger ..." The Jewish settlers were coming 'to strangle' the local Arab population, and the British support of Zionism would mean the Arabs' "extinction sooner or later" – "the disappearance or subordination of the Arabic population, language, and culture" (quotes are from Morris 2009, 88–9).

The most powerful leader of the Arab local community until the late 1940s, Haj Amin al- Husseini, opposed a bi-national state, which "can only work if a certain spirit of cooperation and trust exists and if there is an underlying sense of unity to neutralize communal differences. But that spirit does not exist in Palestine" (quoted *ibid.* 96). To give the Jewish minority a political status equal to that of the majority was essentially undemocratic, especially if the minority used its power to override the will of the majority (97). It is unsurprising that Husseini and the Arab Higher Committee (AHC) later rejected the Peel Commission's recommendations. Other Arab leaders, such as Iraq's Prime Minister Hikmat Sulaiman, went a step further: any Arab "who makes a conciliatory move or does anything short of

rejecting the partition scheme as impossible may expect to find himself denounced as a traitor or exposed to terrorism” (quoted *ibid.*, 100). Arab leaders not only aimed to stop Jewish immigration but also sought to dismantle and destroy the Yishuv.

There were, though, Arab minimalists who supported Jewish autonomy in Palestine. While Morris finds their public expressions unreliable, the balanced narrative renders (e.g.) Musa al-‘Alami’s (a senior Mandate government official) public support in the canonization of Palestine authentic: “The Jews may then bring any number of immigrants they like to that canton and may pass any legislation which they consider suits them best” (quoted *ibid.*, 92). The Peel Commission’s recommendations did have some Arab supporters. Abdullah favored the plan because it proposed merging the Arab part of Palestine with his emirate. Additionally, throughout the 1920s and 1930s, the Nashashibi clan, led by Ragheb Nashashibi, the mayor of Jerusalem from 1920 to 1934, challenged the dominance of the Palestinian Arab national movement led by Husseini. They primarily did so by aligning with Abdullah’s more conciliatory stance towards Zionist ideas (100).

After the defeat in the 1948 war, Palestinian politics were dead for more than a decade. But in 1964, Egypt arranged the convocation of a Palestine National Council, which first met in Jerusalem. At that meeting, the PNC set out its maximalist political goals in a document entitled “The Palestinian National Charter” (Morris 2009, 108). The Covenant defines Zionism as “a colonialist movement, aggressive and expansionist in its goal, racist in its configuration, and fascist in its means and aims.” “Jews of Palestine origin are considered Palestinians if they are willing to live peacefully and loyally in Palestine ... The partitioning of Palestine which took place in 1947, and the establishment of Israel are illegal and null and void ... The Balfour Declaration ... [is] null and void.” Later, it was clarified that “the liberation of Palestine aims at the elimination of Zionism in Palestine,” and that “[the] military defeat [of Israel] is not the only aim of the Palestinian liberation war but also the elimination of the Zionist character of the occupied homeland both human and social” (108–9).

The balanced narrative views the mid-1970s as a turning point in the Palestinian leadership’s approach to Israel. During this time, Yasser Arafat, Husseini’s successor, moderated his stance as his declaration at the UN shows: “[I] dream [of] a peaceful future in Palestine’s sacred land ... when we speak of our common hopes for the Palestine of tomorrow, we include in our perspective all Jews now living in Palestine who choose to live with us there in peace and without discrimination”. Thus, Arafat seemed to have abandoned the National Charter’s provision regarding the illegitimacy of the Jewish presence in Palestine after 1917. The 1988 ‘Palestinian Declaration of Independence’ formulated by the PNC has been read as implying acceptance of Israel’s existence. “This was the first official Palestinian recognition of the legitimacy of the existence of a Jewish state and the first unequivocal, explicit



PLO endorsement of a two-state solution to the conflict.” (quotes are from Morris 2009, 127–8)

Palestinian minimalism became more evident in the early 1990s. By May 1993, Israel and the PLO exchanged letters of mutual recognition. The PLO “recognize[s] the right of the State of Israel to exist in peace and security... [and] accepts UN Security Council resolutions 242 and 338”. It commits itself “to a peaceful resolution of the conflict,” and affirms that the articles in the charter that denied Israel’s right to exist “are ... inoperative and no longer valid” (Morris 2009, 127). On 24 April 1996, the PNC met in Gaza and decided to amend the charter in line with Arafat’s commitments. For Morris, the fact that Farouk Kaddoumi, the PLO’s foreign minister, argued that while “some articles are no longer effective ... they were not changed” is quite significant (128).

Doubts about the sincerity of these gestures continued, intensifying in early summer 2000 when Clinton invited both Israeli and Palestinian leaders to a secluded venue to negotiate a comprehensive agreement. Ehud Barak presented numerous offers for a Palestinian state in exchange for peace, including a compromise on Jerusalem. Arafat consistently rejected these proposals without presenting any counteroffers. Meanwhile, a second intifada erupted (Morris 2009, 134). The failure of the Barak/Clinton initiative was disastrous, as it stymied both Palestinian and Israeli minimalism for an extended period. The rise of Hamas (the Islamic Resistance Movement) and its terrorism, particularly the adoption of suicide bombings by Fatah as well, cast a long shadow over both Palestinian and Israeli politics, creating an atmosphere of terror in Israel (150). In those years, Hamas gained more and more power, and its extremist Covenant, dated 18 August 1988, became more important in the Palestinian politics. In the January 2006 general elections, Hamas won control of the Palestinian parliament and established a Hamas-dominated government. Later, in June 2007, it physically took over the Gaza Strip.

Hamas is a hateful and anti-Semitic movement. Its covenant says that “Israel will exist and will continue to exist until Islam will obliterate it just as it obliterated others before it” – a reference to the Crusader kingdoms of the Middle Ages. The drafters target the Jews as such: “The Prophet ... has said: ‘The Day of Judgment will not come about until Moslems fight the Jews ... when the Jew will hide behind stones and trees. The stones and trees will say O Moslems O Abdulla there is a Jew behind me come and kill him.’” Citing at one point ‘The Protocols of the Elders of Zion,’ the covenant charges that the Jews “with their money ... took control of the world media, news agencies, the press, publishing houses, broadcasting stations ... The Zionists aspire to expand from the Nile to the Euphrates ... [Later] they will aspire to further expansion” (quoted *ibid.* 157). For Hamas, the destruction of the Jewish state is Allah’s command.

## 2.3 Summary: The Balanced Narrative

As my occasional comments on the Morris narrative indicate, Morris views any instance of Palestinian minimalism as merely tactical and insincere. In this regard, his anti-Palestinian narrative is similar to the anti-Zionist narrative articulated by Rashid Khalidi (1997) and Shlaim (2001), among others. In their historiography, any signs of egalitarian and humanistic principles from Zionist leaders, particularly Ben-Gurion, are seen as tactical and hypocritical.

I am not asserting that the anti-Israeli or anti-Palestinian narratives are false. Rather, I contend that the balanced narrative – that depicts both communities (the Arabs and Jews of Palestine) as comprising both minimalists and maximalists – appears to be a plausible interpretation of the undisputed factual propositions presented by Morris. Given these facts, the balanced narrative is at least as credible as the anti-Israeli and anti-Palestinian perspectives. My narrative acknowledges that the post-2009 Netanyahu governments have increasingly integrated racism, populism, and messianic expansionism into Israel's political framework. However, it also notes that even today, a two-state peace camp within Israel continues to persist.

As noted, the balanced narrative differentiates between maximalists and minimalists among the Arabs of Palestine and their leaders. Figures like Haj Amin al-Husseini and Hamas's leadership are manifestations of Palestinian/Arab anti-Semitism. In contrast, the balanced narrative views King Abdullah's politics, along with his Palestinian supporters, and later, the approach of Arafat and the Palestinian Authority during the Oslo era, as examples of Arab minimalism. Particularly, the last decades of the 20th century saw Arafat engage in negotiations with Rabin in the early 1990s, talks with Netanyahu in the late 1990s, and summits with Barak and Clinton in the early 2000s. Some of Arafat's contemporaries were clearer minimalists. Mahmoud Abbas, the current leader of the Palestinian Authority and one of the architects of the Oslo accords, exemplifies a longstanding commitment to minimalism.<sup>7</sup>

In the following discussion, I will first assume that the balanced narrative is at least as plausible as its competing narratives. Secondly, I will assume that this implies a reasonable normative disagreement about the justice of Zionism. Based on these assumptions, the traditional just war theory, as reconstructed in *War by Agreement* (Benbaji and Statman 2019, hereinafter WBA), suggests that the Palestinian people had no just cause for an independence war until it became sufficiently clear that an Israeli government was about to undermine, through either soft or

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<sup>7</sup> I take the Cohen historiography (Cohen 2008) to be a version of the balanced narrative.

hard power, any prospect for a peaceful and stable (though not necessarily just) arrangement that would secure Palestinians' individual, political, and collective rights.

### 3 The Justice of the Palestinian Independence War: The Traditional Account

#### 3.1 A Just Cause for Independence War

How would the just war theory embedded in the UN Charter address the circumstances described in the previous section? Two key questions arise. Maximalist Palestinians contend that minimalist Zionism wrongs them.<sup>8</sup> Jews had no right to establish political autonomy within Palestine. Zionists disagree. This disagreement regards distribution of territorial rights and of rights to national self-determination within Palestine. These issues are intricate, and the disagreement is reasonable: the mistake made by one side does not stem from irrationality, stupidity, or wickedness. Under what conditions might Arab Palestinians be justified in using force to rectify what they perceive as a colonial wrong?

A second question arises: according to the anti-Israeli narrative, Zionists aim to expel some Arab Palestinians and reduce others to second-class status in a Jewish nation-state. In contrast, the Morris anti-Palestinian narrative contends that all segments of Palestinian leadership intended to destroy the Yishuv and, later, to destroy the state of Israel. The balanced narrative seeks a middle ground. Suppose the disagreements over the intentions of Palestinian leaders concerning the Zionist project and the intentions of Zionists regarding the Arab problem are reasonable (rather than a result of irrationality, stupidity, or wickedness). How would traditional just war theory address such reasonable disagreements?

Before answering these questions, let me sketch the *War by Agreement* interpretation of the just war theory that the UN Charter embeds (Benbaji and Statman 2019, 71–92). WBA suggests that the Charter is a contract between decent states. In subjecting themselves to a legal system that prohibits crimes against peace, the parties to this agreement try to minimize the use of force in the society of states. The United Nations aims to “maintain international peace and security” by radically limiting the means by which international disputes are resolved. In jointly pursuing this end, states undertake the duty set out in Article 2(4) not to use force against the territorial integrity and sovereignty of another state. In the language of the 1928

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<sup>8</sup> See responses to this view in Gans 2008; Benbaji 2020; 2021.

Paris Pact, the Charter “condemn[s] recourse to war for the solution of . . . controversies [between states] and renounce[s] it as an instrument of policy in their relations with one another.”

In rare cases, wars aimed at achieving a fairer distribution of vital resources (such as just subsistence wars), territories, or sovereignty are pre-contractually just. However, decent states forgo their moral right to initiate even such pre-contractually just wars. Similarly, while waging a preventive war to eliminate an emerging threat may be pre-contractually permissible, states relinquish their right to fight such wars, for epistemic reasons. The parties assume that standard cost-benefit analyses typically reveal that most wars are worse compared to many peaceful alternatives. Additionally, moral assessment often shows that wars are not a lesser evil in terms of justice and rights protection. Unfortunately, when deliberating whether to enter a specific war, most leaders and citizens are likely to misjudge resort to force as beneficial and just. To overcome the biases and information problems that commonly arise in circumstances of heated international disputes, states should adhere to a legal framework that mandates avoiding war in almost all circumstances.

The ‘inherent right to self-defense’ is the sole exception to the Charter’s prohibition on the use of force. Since the international community lacks central political authority, the Charter relies on self-help; it permits states to use force to defend themselves against illegal acts of aggression. It follows that states are entitled to defend their borders, even if those borders are morally unjust; indeed, the Charter’s focus on preserving the status quo ante does not evaluate its desirability or justice. Aggression is viewed as a disruption of this status quo through warfare but the peace that the Charter seeks to uphold is just a peace, not necessarily a just peace.

The just war theory outlined above systematically discriminates against non-state actors in general and stateless nations in particular (Benbaji and Statman 2019, 89–95). By sanctifying the territorial integrity of existing states, the war agreement overlooks the pre-contractual right to self-rule held by individuals belonging to stateless nations. Without their own state, these nations lack borders that could be crossed to justify use of force, which, on the surface, means their oppression does not constitute a just cause for war. Consequently, the Charter appears to unfairly deny stateless nations their pre-contractual right to use proportionate force in the pursuit of self-determination.

WBA provides a more charitable interpretation of the legal framework established by the Charter. It suggests that some wars of independence may be permissible yet, like states’ right to use force, the right of stateless nations to initiate a war of independence is restricted. The severe consequences of independence wars and the normative uncertainty surrounding their objectives entail that, *ex ante*, it is prudentially and morally preferable for all parties involved to resolve disputes through

negotiations rather than through war. The death and destruction associated with wars of independence often outweigh the potential benefits sought by stateless nations. Moreover, many disputes over the rights of stateless nations involve significant normative uncertainty. For instance, whether collectives have a right to their own state is often a controversial and unresolved issue. Not every ethnic, national, or religious group automatically has the right to political self-determination. Even when a stateless nation does have a claim to political independence, this claim is typically a *pro tanto* one that must be balanced against other moral considerations. Furthermore, for groups with a right to self-determination, achieving political independence does not necessarily require the formation of a fully sovereign state; greater autonomy within their current state may suffice.

Therefore, national groups seeking greater autonomy should usually pursue their goals through nonviolent means. When might a national group have the right to use force to defend its collective rights? WBA's answer: a national group has a just cause for war against a state if the state in question uses force to suppress the group's (just or unjust) national aspirations. In such cases, the group is permitted to fight back even if it does not have a right to an independent state. This interpretation closely follows the principle outlined in WBA regarding conflicts between states: the initial use of force against a group seeking political independence is considered a crime against peace. This crime, in turn, justifies the group's right to use defensive force in their pursuit of independence.

### 3.2 Did the Palestinians Have a Just Cause for War Against Israel?

Turning to the Jewish-Arab conflict over Palestine and the first question outlined in the previous section (3.1). Maximalist Palestinians argue that minimalist Zionism wrongs them, asserting that Jews had no right to establish political autonomy within Palestine. Zionists, on the other hand, reject this claim. Let's assume, albeit counterfactually in my view, that the maximalist Palestinians are correct. Did they have a just cause for war? The Charter's just war theory, as rearticulated in WBA, provides a clear negative answer. The disagreement between Palestinian maximalists and Zionist minimalists over territorial rights and national self-determination is a reasonable one. As with all reasonable international disputes, such disagreements should not be resolved through use of force. Of course, Palestinian opponents of minimalist Zionism are not obligated to remain passive. They reasonably believe that they are victims of distributive or historical injustice, so they are entitled to resist the Zionist agenda through peaceful means such as boycotts, strikes, economic sanctions, and diplomatic pressure.

Turn to the second question. Many Palestinians, both minimalists and maximalists, adhere to the anti-Israeli narrative, which portrays Zionism as a maximalist movement. This narrative suggests that the Arabs of Palestine have a just cause for war against Zionism. To understand why, consider the following points. According to the anti-Israeli narrative, Zionists aimed to establish a Jewish nation-state over all of Palestine and they view the initial Zionist land purchase and settlement as the first step in this broader plan. The narrative asserts that settlers advance this agenda using ‘soft’ power derived from economic inequalities. Arguably, any unilateral settlement supported by a foreign legal system, with the goal of expulsion and oppression, should be considered an act of aggression. Thus, in response to the Zionist settlement, the Arabs of Palestine might have had a right to use force to protect their land and their right to self-determination. The 1948 expulsion (the Nakba) and Israel’s refusal to allow the return of Palestinian refugees back to their homes after the war ended in 1949 are seen as a continuation of the Zionist colonial project, shifting from soft to hard power. The occupation of Gaza, the West Bank, and Sinai in the Six-Day War of 1967, along with subsequent Jewish settlement in these territories and the violent repression associated with these settlements, are viewed as further stages in this plan. Finally, the increasingly rightist and racist policies of the Netanyahu governments since 2009 have made the grand plan even more explicit.

Yet, if the balanced narrative sketched above is as plausible as the anti-Israeli narrative, then, according to the WBA interpretation of the Charter, Palestinians would not have had a just cause for war against the Yishuv or Israel prior to 1967. This is because, under WBA’s framework, no party – whether a state or a national liberation movement – should resort to war based on uncertain factual assumptions. Palestinians would only have had a just cause for war if, counterfactually, it was clear that the anti-Israeli narrative is true. To better understand the idea underlying this interpretation of traditional just war theory, consider the prohibition on preventive wars. WBA argues that the Charter bans preventive wars to mitigate epistemic problems: identifying immature aggressive threats involves attributing intentions to political leaders and predicting how their policies might evolve. These attributions and predictions are often uncertain and susceptible to various biases. The parties to the war agreement assume that most preventive wars will fail to be a lesser evil regarding protection of human and political rights. Therefore, the *casus belli* requirement is designed to be as clear and enforceable as possible. Under this framework, just causes for war – such as imminent threats to territorial integrity or the use of force against liberation movements – should be relatively evident.

An obvious objection merits attention. It might be argued that, morally, the just side to an international disagreement should avoid using force only when the likelihood of peaceful means being effective is substantial. However, this objection overlooks the principle underlying the Charter. Many injustices can, in theory,

be corrected through force. Nevertheless, the Charter prohibits wars regardless of their objectives because wars often bring about greater injustices. WBA argues, then, that states and non-state actors, who seek to be part of the international community, ought to agree to forgo their right to engage in a pre-contractually just war, if the arrangement that prohibits such wars is overall fair and beneficial. Admittedly, like any consequence-based system, the Charter may, in rare instances, entrench injustices that favor stronger parties, even if it is generally beneficial and fair.<sup>9</sup>

The epistemic circumstances began to shift after 1967, as Israeli intellectuals and political leaders from the center started showing support for religious and messianic settlements in densely populated Arab areas of the West Bank and Gaza. Despite the growing influence of ultra-religious, non-democratic, and messianic forces in Israeli politics, three prime ministers – though politically weak – offered two-state based practical solutions to the Palestinian problem. Thus, the Palestinian people might have had a just cause for pursuing independence by use of force only during the period between 2009, when Netanyahu emerged as the major political leader of Israel, and 2023, when Israeli politics became racist and messianic.

To summarize, the normative view critics base on the anti-Israeli narrative suggests that the violence carried out by Palestinian organizations against Israel was justified, provided Palestinian militants adhered to the *jus in bello* rules (adapted for asymmetric conflicts and civil wars). This view is based on two propositions. First, minimalist Zionism is wrongful – Jews had no right to establish political autonomy in Palestine, and thus Palestinians had the right to oppose it through war. Second, Zionism is a predominantly maximalist movement with the goal of conquering all of Palestine, establishing a nation-state there, and either expelling Arab Palestinians or relegating them to second-class status. This type of colonization is a just cause for war.

In response, I have argued that these conclusions do not follow from the traditional (and most plausible) just war theory, as reconstructed and defended in WBA. First, using force to advance distributive or historical justice is impermissible. Hence, a war against *minimalist* Zionism is unjust, even if minimalist Zionism turns out to be a wrongful colonialism. Second, the reasonableness of the balanced narrative suggests that, for a long period, it was unclear whether Zionism was using soft power to pursue a maximalist agenda. In such epistemic circumstances, the use of force is unjustified. So, the popular belief that Hamas continues the just war that Palestinians were fighting since the 1920s is unfounded. Prior to 2009, Israel had the right to use force against the *unjust* violence perpetrated by Palestinian militants,

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<sup>9</sup> Were the Palestinians the weaker side in the early 1960s? This wasn't necessarily evident at the time. With the backing of the Arab world and the geopolitical tension between East and West, they were significant actors on the global stage.

even if these militants targeted only military objectives and fully respected civilian immunity according to the *jus in bello* rules.

### 3.3 The Right Intention Requirement and the October 7th Massacre

Turn to the October 7th massacre and to the way it is portrayed by anti-Israelis – a wrong terror attack in a Palestinian just war of independence. Anti-Israelis are right that Palestinians have a just cause for war against Israel: the condition was met somewhere between 2009 and 2023, given the religious, messianic, nationalist, and populist radicalism of the Israeli governments in those years. Was the massacre part of this *just* war of independence? While the answer I will offer (in the next subsection) is negative, in this subsection I will discuss an inconclusive argument for such an answer.

We saw that a war of independence has a just cause if it is waged against a colonizer that uses force to repress the non-violent resistance of the colonized people. The right intention requirement dictates that wars are just only if they are fought with the right intention, meaning that the intention of the just side must align with the just cause of the war. In the case of Hamas, a jihadist, anti-Semitic movement with a declared aim of ethnic cleansing, the intention behind its actions does not align with the just cause of self-defense or national independence. Therefore, Hamas's war is unjust, not only because of the severe violations of civilian immunity but also because it fails to meet the fundamental *jus ad bellum* condition of right intention.

While the argument might seem plausible, it is inconclusive. To understand why, observe that one of Hamas's multiple aims includes national independence. Hamas's war is also an armed resistance against Israel's oppression. In fact, Hamas's primary goal is to combat Israel's occupation and ongoing aggression against the Palestinian people. As I have argued elsewhere (Benbaji 2022), in rare circumstances, armed attacks that have both a just and an unjust aim might be permissible. Minimalists may permissibly collaborate with maximalists in promoting minimalist aims. One obvious condition that this collaboration must meet to be permissible (presumably, there are more) is that minimalists ensure that the maximalist agenda is thwarted.

Consider the other side of this conflict and the complications it raises. Most observers, including those critical of Israel, would agree that, soon after October 7th, the IDF was engaged in a defensive war against Hamas's *in bello* crimes. Israel is obligated to protect its innocent civilians from the war crimes Hamas is likely to commit. Yet, some IDF soldiers, high-ranking officers, and key ministers in Israel's extremist government view this defensive war as a means to settle and annex Gaza



and to ethnically cleanse Arab Palestinians from the area. Is it permissible to collaborate with soldiers and political leaders whose aims are both self-defense (right now) *and* ethnic cleansing (later)? This is a hard question. Clearly, though, whatever the other conditions are, collaboration is impermissible, unless minimalists are sufficiently certain that they will be able to stop the ethnic cleansing that maximalists intend to pursue.

### 3.4 Hamas and the Legitimate Authority Requirement

This subsection shows that the moral standing of the October 7th massacre depends on another important (under-explored) *ad bellum* condition, vis., the requirement of legitimate authority (hereafter ‘the Requirement’). I will argue that on October 7th, the Requirement has not been met and discuss the moral significance of this fact. Having explored this theme elsewhere (Benbaji 2018), I will only sketch my analysis here.<sup>10</sup>

The Requirement was originally introduced in the writings of Augustine, Aquinas, and Pufendorf. Their assertion that “the right of initiating war ... lies with the sovereign” (quoted in Fabre 2008, 967) suggests that the right to resort to war is enjoyed by entities that effectively rule by law in a certain territory. As it should be understood today, the Requirement can also be satisfied by non-state actors. This extension reflects a recognition of the possibility of just independence and civil wars. Political movements are entitled to fight in the name of the communities they lead for national liberation, decolonization, and basic human and civil rights.

Arguably, wars fought by stateless nations (which claim to be wrongfully denied the attributes of state sovereignty) meet the legitimate authority requirement if the subgroup that conducts the war (the leadership) ‘represents’ the community in whose name and on whose behalf it fights. The Requirement distinguishes between functioning states, such as Israel and Turkey on the one hand, and states like Lebanon or Yemen, on the other, which fail to effectively represent their citizens. It also differentiates between movements like the Taliban or al-Qaeda, which are generally not considered legitimate representatives of any community, and movements like the Palestinian Liberation Organization (PLO) or the African National Congress (ANC). The latter were (or were reasonably assumed to be) genuine representatives of the stateless or oppressed political societies they led.

To explain and defend these distinctions, we need to address three related themes: representation, the moral authority to represent, and the relationship between these concepts. Roughly, a state represents its citizens if generally, it acts

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<sup>10</sup> I believe that the analysis in Benbaji 2018 is merely an uncontroversial articulation of the way the Requirement is conceived in the literature.

on their behalf, so that its policies typically align with their interests, and it is usually responsive to their preferences and core values. This relationship grounds a moral fact: when I act on your behalf, I generally have the right to impose certain costs on you (see Viehoff 2022). For instance, a parent, acting in the best interest of their child, may permissibly discipline the child or use some of the child's resources. While states that represent their citizens tend to act for them and in their name, they might fail to do so, due to honest mistakes, negligence, or corruption. A war fought to protect a state's territorial integrity may fail to meet the Requirement if the territory is of little importance to its citizens or if the cost of defending it is excessively high. Despite having a just cause for the war, if the state is not acting in the best interest or on behalf of its citizens, it lacks legitimate authority to resolve the conflict by use of force.

The second element of the Requirement – the moral component – is equally important. A state possesses the moral power to act on behalf of its citizens only if it meets basic moral standards. To understand this claim, consider an analogy. Arguably, if a lawyer becomes a serial killer, sexual abuser, or thief, they lose the moral right to represent their clients. Even if the lawyer continues to care for their clients and seeks to advance their interests, their moral failings disqualify them from acting on their behalf. This failure means the lawyer no longer has the right to impose any costs on their clients. Regardless of how distinguished the lawyer's education or how dedicated they are to their clients most legal systems would justifiably revoke their license to practice law due to their moral failings.

I argue that, for similar reasons, states that fail to adhere to a basic moral standard lose their authority to represent their citizens. Saddam Hussein's Iraq eventually reached such a point. In 1991, when the international community, led by the US, went to war against Iraq with Security Council approval, the UN should have made it clear that its grievance was not with the citizens oppressed by Saddam. A comparable situation exists with Iran. Political leaders in Western countries should emphasize that their conflict is with the Iranian regime, not with the Iranian people, whom the regime arguably fails to represent. These states fall short of basic moral standards, and their commitment to acting on behalf of their citizens is severely compromised.

The moral component of the Requirement also explains the Allies' treatment of al-Qaeda and ISIS. Al-Qaeda often frames its conflict as an anti-imperialistic struggle, claiming to represent the Ummah of Islam (the global Muslim community) in its fight against 'Western imperialism.' Suppose that al-Qaeda's cause is just – say, that U.S. support for certain dictators justifies military resistance (Gunaratna 2005). Even if this were true, al-Qaeda would still need to fight on behalf of the larger group it claims to represent. However, it fails to do so because al-Qaeda lacks the moral power to wage war in the name of any group. As a movement, it is both murderous

and oppressive. Its war is therefore unjust, regardless of the supposed justice of its cause or its adherence to the *in bello* rule of civilian immunity.

In sum, states and non-state actors represent the community they aim to govern and lead only if (first) they tend to act for members of this community and on their behalf, and (second) they satisfy minimal moral requirements. Note, however, that there is, in fact, an asymmetry between recognized states and non-state actors concerning the Requirement. The international community presumes that most wars waged by states, whether just or unjust, satisfy the legitimate authority requirement. In contrast, no such presumption exists for non-state actors, particularly in cases of independence or civil wars. Importantly, though, the presumption that an internationally recognized state is inherently just enough to represent its citizens is defeasible, as illustrated by examples such as Nazi Germany, Stalin's USSR, Iran, Saddam's Iraq, and North Korea.

Is the presumption in favor of states justified? Yes, for several reasons. A state is generally well-positioned to determine whether the public good it seeks to defend is sufficiently important to its citizens and whether those citizens are willing to bear the costs of defending it. States are made up of institutions that both govern and are governed by the law. Typically, legal rules are accepted because they align with the interests of the citizens. Additionally, state institutions have a history; they are founded and sustained through the cooperation of many individuals over time. This collective agency fosters a shared interpretation of the law, one that fits the interests and values of the people subject to it. In contrast, the relationship between national liberation movements and the communities they represent is far less structured. The procedures used by the leadership to secure political participation from the individuals they aim to lead are often underdeveloped, making their ability to act on behalf of their communities less certain.

Importantly, the presumption that states represent their citizens applies even to a functioning, non-democratic, non-liberal but decent state, like Rawls's example of Kazanistan. Kazanistan is governed by a hierarchical, undemocratic regime whose legal system aligns with the religious and patriarchal community it serves. Its institutions act on behalf of its reasonable but illiberal citizens. In the real world, undemocratic states such as Jordan, Morocco, China, Cuba, and Egypt are regarded as legitimate members of the UN. Similarly, democratic states like the USA and Israel are also considered legitimate members of the international community, despite the injustices they may cause or perpetuate. The moral authority to represent their citizens rests on their minimal morality: they protect basic human rights and generally act in the interest of their citizens.

I argue that Hamas lacks the moral authority to represent the Palestinians and therefore does not fight for them or in their name. Among other issues, Hamas is

a terrorist organization. The regime by which it governs Gaza is clearly undemocratic, despite the 2006 election. However, as we have seen, these facts alone are not enough to disqualify its power to represent Palestinians. After all, terrorism, which violates the *in bello* rule of civilian immunity, has been committed by many legitimate states. Additionally, as shown by the cases of Cuba and Egypt, democracy is not a prerequisite for representation. Hamas, however, lacks the moral authority to represent the Palestinian people because, like al-Qaeda and ISIS, it falls far below the relevant moral threshold. It is a jihadist, genocidal, and anti-Semitic organization. Unlike the moral failings of both the PLO and Israel, Hamas's transgressions are so extreme that its war against Israel cannot be considered a war fought for the Palestinian people.

It might be argued that Hamas differs from al-Qaeda and ISIS because it enjoys significant popular support in the occupied territories, both in Gaza and the West Bank. However, this view misunderstands the moral element of the Requirement. While it is true that al-Qaeda has never had political standing in any organized community, and its war against the U.S. was not actively supported by individuals within the Ummah of Islam, Hamas and its military activities are indeed popular among many Palestinians. Nonetheless, popular support is irrelevant. Hamas lacks the moral authority to fight for the Palestinian people, not due to a lack of support or authorization, but because of its profound moral failures.

A natural extension of a previous analogy may be helpful. John is a wealthy 17-year-old whose parents have just died. Bill, a gangster who regularly kills people, is also John's loyal, dedicated, and skilled lawyer. John is aware of Bill's criminal activities and even admires him for them. While killing is part of Bill's 'job description,' he does everything he can to help John lead a normal life. However, John's desires, consent, and endorsement of Bill's role in his life are irrelevant to the moral relationship between them. Despite John's consent and authorization, Bill lacks the moral authority that lawyers typically have over their clients. A murderous lawyer has no moral right to represent clients. Because of this moral fact, authorities should deny him the attorney-client privilege, which protects the confidentiality of communications between a lawyer and their client. Similarly, organized drug cartels often function as landlords in various territories, providing food, education, protection, and other services to those who cooperate with them. However, due to their moral failures, they have no right to act on behalf of the people in their territories and thus no moral right to 'tax' them or impose other costs on those they supposedly serve.

Critics of Israel suggests that the brutality of October 7th is a war crime committed within the broader war the Palestinian people are fighting for their independence. We have seen that while the Palestinians undoubtedly have a just cause in their fight for independence, the crimes committed by Hamas are distinct from

that cause. Indeed, some wars that have a just cause are unjust due to their failure to meet the other conditions ad bellum conditions. Hamas brutality is no such a war. Hamas crimes on October 7th are not at all part of a Palestinian war and cannot be morally tied to the broader struggle for Palestinian freedom. The massacres are nothing but large scales crimes, morally equivalent to the large-scale crimes of drug cartels committed in south America and other places.

## 4 Conclusions

This essay assumes that, despite its strong presumption against the use of force, traditional just theory grants stateless nations in general – and the Palestinian people in particular – the right to fight an independence war against Israel. It stresses, though, that contrary to a view shared by many critics of Israel, the Palestinians gained this right quite late, long after Arab Palestinians and Arab states initially resorted to war against Israel. Second, critics of Israel frame the unspeakable crimes committed by Hamas on October 7th as a war crime within a just independence war. I argued that since Hamas is a thoroughly corrupt and anti-Semitic movement, it has no authority to fight on behalf of the Palestinian people. If I am right, the October 7th massacre is nothing more than a series of brutal mass murders, perpetrated by an organization whose moral standing is equivalent to that of al-Qaeda or ISIS. Israel and the international community are entitled to treat Hamas just as they treat these organization and as they treat powerful drug cartels.

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