

## 5

Cosmopolitanism and Wars  
of Self-Defence\**Cécile Fabre*

We no longer fought for Hitler, or for National Socialism, or for the Third Reich, or even for our fiancées or mothers or families trapped in bomb-ravaged towns. We fought from simple fear . . . We fought for ourselves, so that we wouldn't die in holes filled with mud and snow; we fought like rats.<sup>1</sup>

Guy Sajer, *Le Soldat Oublié*

## 5.1 Introduction

The vivid assertion which I use as my starting point is drawn from the memoirs of a French Alsatian combatant who enlisted in the German Army during WWII. It provides a striking example of war's animalistic features. And yet, combatants are not motivated to fight and kill solely by the desire to survive: the sense that they are fighting for a just and noble cause, together with intense loyalty to their comrades, is also a driving force which partly explains why they endure the horrors of war.<sup>2</sup> The defence of the homeland has become the paradigmatic example of a cause which is

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<sup>1</sup> Guy Sajer, *Le Soldat Oublié* (Paris: Robert Laffont, 1976). See Anthony Beevor, *The Fall of Berlin 1945* (London: Penguin, 2002), 11, for the English translation quoted here.

<sup>2</sup> For a superb example of the complex motives which prompt combatants to fight, in this instance in the context of the American Civil War, see James McPherson, *For Cause and Comrades: Why Men Fought in the Civil War* (Oxford: Oxford University Press, 1997). For the First World War, see, e.g., Alexander Watson, *Enduring the Great War: Combat, Morale and Collapse in the German and British Armies, 1914–1918* (Cambridge: Cambridge University Press, 2008).

standardly deemed just and noble—so just and so noble that, as Horace memorably puts it, ‘it is sweet and fitting’ to die for it. Granted, we may perhaps want to counter Horace’s exalted stance with Wilfred Owen’s bitter denunciation in his poem *Dulce et Decorum Est*.<sup>3</sup> Nevertheless, the intuition that a politically sovereign community which is a victim of unwarranted aggression has a just cause for defending its rights to self-determination and territorial sovereignty by military force remains compelling indeed—so much so that the intuition is regarded by many as a fixed point in our moral thinking, and that a normative theory of international relations which could not provide a justification for it would be deemed a non-starter.

The latter claim, if true, might seem particularly worrisome for one such normative theory—and a rather dominant one at that in the contemporary theoretical landscape—to wit, cosmopolitanism. Cosmopolitanism is wedded to the view that human beings are the fundamental and primary *loci* for moral concern and respect and have equal moral worth. It is individualist, egalitarian, and universal, and insists that the mere fact that individuals belong to a particular group rather than another has no bearing on their basic moral entitlements. It is committed to the following two theses: (1) essentially collective goods such as territorial integrity and political self-determination—sovereignty for short—have value only to the extent that they promote some aspect of individuals’ well-being; (2) individuals are legitimate targets in war in virtue of what they do, and not in virtue of their membership in a political community.

It would seem, from that brief sketch, that cosmopolitanism cannot accommodate the view that a politically self-determining community may wage a war of self-defence. For at the bar of cosmopolitan morality, it is not clear why the sovereignty rights held by citizens of aggressed country V (henceforth, citizens<sub>V</sub>) should promote their well-being to such a degree as to warrant killing individual combatants from aggressor

<sup>3</sup> *Dulce et decorum est pro patria mori:*

*mors et fugacem persequitur virum  
nec parcat inbellis iuventae  
poplitibus timidove tergo.*

How sweet and fitting it is to die for one’s country:  
Death pursues the man who flees,  
spares not the hamstrings or cowardly backs  
Of battle-shy youths.

Horace, *Odes*, III, ii, 13.

Contrast with the last few words of Owen’s poem:

If you could hear, at every jolt, the blood  
Come gargling from the froth-corrupted lungs,  
Obscene as cancer, bitter as the cud  
Of vile, incurable sores on innocent tongues,  
My friend, you would not tell with such high zest  
To children ardent for some desperate glory,  
The old Lie: *Dulce et Decorum est  
Pro patria mori.*

country A, given that combatants<sub>A</sub>' individual contributions to V's loss of sovereignty seems too marginal to warrant killing him or her deliberately.<sup>4</sup>

Faced with this challenge, cosmopolitans have three options. They can embrace pacifism with respect to collective self-defence; or they can develop an alternative framework for justifying those wars which does not appeal to the importance for community members of their country's sovereignty but, instead, conceives of wars against aggressors as operations of law enforcement rather than wars of defence; or they can attempt to show that, contrary to expectations, cosmopolitanism is, in fact, compatible with the view that wars of self-defence can (at least sometimes) be permissible.

In this chapter, having first outlined an account of the value of political self-determination for individual members of sovereign communities which is compatible with the fundamental tenets of cosmopolitan morality (section 5.2), I reject the second option (in section 5.3). I then offer a (partial) defence of the third (section 5.4). More precisely, I defend the view that under certain conditions, to be specified below, combatants<sub>V</sub> are justified in killing those members of A who violate their sovereignty rights. I do so by distinguishing between three different kinds of aggression and identify when combatants<sub>V</sub>, when invited to sacrifice the collective goods of political self-determination and sovereignty, are justified in using lethal force against the rights-violators.

I thus take it for granted that the first option is a non-starter. This might seem odd: one might think that cosmopolitans ought to expend their philosophical energies on the radical task of showing that the homeland is simply not worth defending by force and that the costs of endorsing that view are not unacceptably high, rather than on the conservative endeavour of strengthening the communal values which they otherwise seem at pains to reject. My intuition, however, is that those costs are unacceptably high; at the same time, cosmopolitanism strikes me as too powerful and plausible an account of political morality to warrant abandoning. As we shall see, although the version of cosmopolitanism which I briefly defend below is radical in many respects (particularly with regard to distributive obligations), it has more in common with non-cosmopolitan accounts of international morality than might be supposed, particularly with respect to the moral status of borders. This, in turn, means that it has more in common with those accounts than might be supposed with respect to national defence. This should not count against it, unless we think that it should be a radical theory in every way: quite why we should think that is not altogether clear to me.

Some caveats before I begin. First, in the just war tradition, it is standardly claimed that a war is just only if it meets a number of conditions, such as, *inter alia*, the just

<sup>4</sup> The objection is pressed, *inter alia*, by Seth Lazar, and Toby Handfield and Patrick Emerton, chapters 2 and 3 in this volume. There is another dimension of wars of collective self-defence which cosmopolitan morality must tackle, namely the extent to which combatants are permitted to give preferential treatment to their fellow citizens over foreigners in general, and enemy foreigners in particular, when fighting such a war. I set this issue aside, though I address it at some length in my *Cosmopolitan War* (Oxford: Oxford University Press, 2012), esp. section 2.4.

cause requirement, the requirement of last resort, the requirement of proportionality, and so on. In this chapter, I focus on the issue of the just cause. Second, at various points, I speak of combatants<sub>v</sub> killing wrongdoers<sub>A</sub>, as distinct from combatants<sub>A</sub>, for as we shall see, successful attacks on sovereignty rights need not take the form of a military invasion. Even when they do, pondering on whether it would be permissible to kill attackers if they were not armed with guns enables us to focus on the good of collective self-determination without being distracted by our strong natural responses to the acts of killing which an aggression normally consists in.

Third, the chapter only provides a limited justification for the intuition that the defence of sovereignty rights warrants the use of military force. The justification so provided is limited in the following three respects. For a start, I strive to defend only the claim that under appropriately defined conditions, combatants<sub>v</sub> have a justification for killing wrongdoers<sub>A</sub>: I do not tackle the considerable difficulties raised by the infliction of collateral damage on enemy non-combatants. In addition, I show that violations of sovereignty rights do not always provide their victims with a just cause for war: whilst I reject pacifism, the position I endorse is certainly less permissive (of national communities' right to defend themselves by force) than many would accept.

Finally, at the bar of the cosmopolitan principles which I outline in section 5.2, the world order as we know it is clearly unjust. More specifically, territorially bounded states as we know them are guilty of gross derelictions of duty towards non-members. One might wonder whether political self-determination directed to wrongful ends and territorial integrity wrongfully acquired or maintained can warrant defending by force in such a world, particularly when the use of force results in the deaths of innocent noncombatants. I set that issue aside here. Work still needs to be done to show that a global order organized on cosmopolitan principles can make space for those collective goods, and to ascertain why, in such a global order, the use of force against those who wrongfully threaten those goods is sometimes justified.<sup>5</sup>

## 5.2 Political Self-Determination, Territorial Integrity, and Cosmopolitan Morality

Across its many variants, cosmopolitanism is the view that the mere fact that individuals belong to one particular group rather than another should have no bearing on their basic moral entitlements. Put differently, for cosmopolitans, political borders are irrelevant from a moral point of view in the sense that whatever goods and freedoms are

<sup>5</sup> I address the issues of collateral damage and of illegitimate states' right to go to war in chapter 2 of my book, *Cosmopolitan War* (Oxford University Press, 2012). I tackle cases where attacks on a community's ability to determine its own future are legitimate in chapter 5 of that book, where I argue in favour of military intervention against grossly unjust regimes. On the former point: a cosmopolitan argument to the effect that military aggression on current states' integrity is *prima facie* a just cause for self-defensive war would need to show that the minimization of injustice sometimes warrants the use of lethal force in general, and the infliction of collateral damage in particular. At first blush, such a view does not strike me as incoherent.

owed to individuals at the bar of justice are owed to them wherever they reside; moreover, obligations to provide those goods and secure those freedoms fall not merely on individuals' compatriots but on outsiders as well. Finally, essentially collective goods such as political self-determination have value only to the extent that they promote some aspect of individuals' well-being.

That last point notwithstanding, it might seem that cosmopolitans cannot confer any value at all on political self-determination and the preservation of the territorial integrity of one's country. For as long as individuals' rights are preserved, presumably it should not really matter who their government is. Or so one might think. The worry, note, is not that cosmopolitans cannot provide a coherent account of political rights. For it is entirely open to cosmopolitans to insist that all individuals should have the right to participate, to an equal degree, in the political institutions whose directives are binding on them, for the following reason: substantive justice (the goods and freedoms which people should enjoy) is not the only thing that matters; procedural justice matters too—to wit, who makes decisions as to whether people should have that which substantive justice gives them; and it matters for reasons similar to those adduced in support of, e.g., letting needy individuals decide whether or not to accept material assistance (as opposed to forcibly feeding them or housing them). The worry, rather, is that cosmopolitans have no reason to endorse the territorially bounded state as the most just of all possible political structures; and if that is the case, then it is hard to see (to anticipate the remainder of the chapter) why they would have any reason to endorse the view that the defence of the territorially bounded state is a just cause for killing those who attack it as well as those whose death is an unavoidable side-effect of such a war.

Now, it might be that the territorially-bounded state is not the only or the best way to bring about justice—however we define the latter—and that supra-national institutions would in fact do the job better. Note, however, that the aforementioned proviso, 'as long as their rights are preserved', is crucial. For it may well be the case that individuals' rights to freedom and resources are best protected and promoted by territorially bounded and politically sovereign states (subject to the latter being suitably constrained by supra-national institutions), for two related reasons: first, the closer recipients of help and donors of resources are to one another, the lesser the transfer costs; second, what kind of resources individuals require as a matter of justice partly depends on the local conditions under which they live. Special relationships between fellow citizens, in other words, might be the best way to instantiate general obligations of justice. Were it so, the aforementioned communal goods would be valuable—contingently so perhaps, but valuable nonetheless.<sup>6</sup>

<sup>6</sup> For arguments along those lines, see, e.g., Robert E. Goodin, 'What Is So Special About Our Fellow Countrymen?', *Ethics*, 98/4 (1988), 663–86 and Henry Shue, 'Mediating Duties', *Ethics*, 98/4 (1988), 687–704. If the points made in this paragraph are sound, they may well offer a response to Rodin's challenge, in this volume, that there is nothing particularly special about the state, as contrasted with, e.g., private companies, which warrants defensive force.

Moreover, cosmopolitanism is a thesis about the scope of justice (as extending across borders), which is neutral with respect to the content of its substantive requirements, provided that those requirements do not violate the view that all individuals should be deemed as having equal moral worth. Accordingly, radically egalitarian cosmopolitan theories of justice are unlikely to confer on sovereignty any value other than contingency on the realization of justice. But more moderate theories of justice can accept the following view as one of their principles: all individuals, wherever they are, have the resources needed for a minimally flourishing life; further, and provided that they fulfil their distributive obligations, they have the right to associate with one another and form politically independent and sovereign communities based on shared cultural norms and understandings. On those more moderate views, it is conceivable that membership in a given political community should have intrinsic value for individuals, independently of the fact that it also better enables them to have the resources which justice gives them.

On all those accounts, then, individuals have what one may call sovereignty-rights—on the one hand, rights to shape their collective future in such a way as to bring about justice for all and (on more moderate accounts) to promote their shared cultural identity, and on the other hand, rights to govern over a given territory. Those rights are collective rights in the sense that they are held in respect of collective goods, but they nevertheless are held by individuals *qua* members of the relevant political community.<sup>7</sup>

### 5.3 The Norm-Enforcement Model

Suppose, then, that A's army invades V's territory without just cause. It is natural to describe this act as a collective violation by A's soldiers of the sovereignty-rights of V's members, and to describe the decision by V's leaders to repel the invasion by force as an act of collective self-defence—in this instance, the defence of the sovereignty-rights of V's members. However, some philosophers and cosmopolitan theorists have recently argued that the right to wage war should not just be seen as a right to kill in defence of

<sup>7</sup> For defences of this account of collective rights (whereby such rights are held by individuals *qua* group members and not by the group *qua* group), see, e.g., Peter Jones, 'Group Rights and Group Oppression', *Journal of Political Philosophy*, 7/4 (1999), 353–77; Jeremy Waldron, 'Can Communal Goods Be Human Rights?', in his *Liberal Rights* (Cambridge: Cambridge University Press, 1993), 339–69. Those rights are held in respect of a given territory because individuals cannot have a flourishing life unless they have a reasonable guarantee that they will be able to stay where they are. Provided that they have not come to be where they are as a result of their own wrongdoing, there is a strong case for letting them stay and make a life there, both individually and collectively. Here I follow Anna Stilz, 'Nations, States, and Territory', *Ethics*, 121/3 (2011), 572–601, and her piece in chapter 9 of this volume. My account differs from hers in the following respect: whilst I claim that sovereignty rights, which include territorial rights, are held by individuals *qua* group members, she claims that the occupancy rights which ground states' territorial rights are held by individuals *qua* individuals. Incidentally, assuming for the sake of argument that territorial rights are not necessary for effective political self-determination, it is an interesting question (though one which I will not tackle here) whether my argument for rights of collective self-defence applies to non-territorially bounded but nevertheless self-determining communities. My hunch is that it does.

one's collective rights but, also or indeed mainly, as a right to stop ongoing violations of fundamental and universal norms—in this instance, the norm of non-aggression. As Michael Walzer puts it (though starting from non-cosmopolitan premises),

the victim of aggression fights in self-defence, but he isn't only defending himself, for aggression is a crime against society as a whole. He fights in its name and not only in his own. Other states can rightfully join the victim's resistance; their war has the same character as his own, which is to say, they are entitled not only to repel the attack but also to punish it.<sup>8</sup>

More strongly still, in his influential *War and Self-Defence*, David Rodin rejects the view that there is such a thing as a right of collective self-defence and argues instead that 'in fighting in aggressive war, combatants are doing something wrong and it may, therefore, be possible to justify the violence inflicted on them in the course of defensive wars as law enforcement or punishment'.<sup>9</sup> On Rodin's view, however, this requires that a minimal world state be established, with the authority to enforce the law and to mete out punishment.

It is easy to see why cosmopolitans might (indeed do, sometimes) find this strategy appealing: in defending their community, citizens do not defend that which is important to them; rather, they defend norms which are universal in scope and which we all have an interest in upholding. In so doing, they act on behalf of humanity as a whole, to an end (the preservation of sovereignty) which transcends existing political borders. And yet, I do not think that the strategy succeeds. As a preliminary point, it bears noting that norm-enforcement typically consists in both forcibly preventing agents from breaching the law, and in punishing them *ex post* for behaving unlawfully. Accordingly, a war of norm-enforcement either punishes wrongdoers for violating certain moral norms (in this instance, the norm against unwarranted aggression), or aims at stopping ongoing violations of those norms by applying coercive force against wrongdoers: it is either a punitive war, or what we may call a war of interposition. Although punishment and interposition are standardly invoked together as if there were interchangeable, they are subject to rather different norms and thus ought to be treated separately.

<sup>8</sup> The view that war can be seen as an operation of norm-enforcement has been expressed by Walzer. See Jeff McMahan, 'Self-Defence and the Problem of the Innocent Attacker', *Ethics*, 104/2 (1994), 252–90; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th edn (New York: Basic Books, 2006), 59. For a critique of Walzer's argument, see Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford, Oxford University Press, 2005), 195–6. For a view similar to Walzer's and Rodin's, see A. J. Coates, *The Ethics of War* (Manchester: Manchester University Press, 1997), 127. For cosmopolitan endorsements of the model, see, e.g., Mary Kaldor, *New & Old Wars*, 2nd edn (Cambridge: Polity, 2006), esp. ch. 5; David Held, 'Violence, Law and Justice in a Global Age', *Constellations*, 9/1 (2001) 74–88, <http://essays.ssrc.org/sept11/essays/held.htm> (accessed 2 July 2013); Iain Attack, *The Ethics of Peace and War: From State Security to World Community* (Edinburgh: Edinburgh University Press, 2005); Helen Dexter, 'The "New War" on Terror, Cosmopolitanism and the "Just War" Revival', *Government and Opposition*, 43/1 (2008), 55–78.

<sup>9</sup> David Rodin, *War and Self-Defence* (Oxford, Clarendon Press, 2002), 174.

Now, the just war tradition has almost uniformly deemed it justifiable for states to use war as a means to punish other states or communities for acting wrongly.<sup>10</sup> Lately, some commentators have argued that recent conflicts, particularly NATO's strikes against Serbia in 1999 and the military operations conducted in Afghanistan and Iraq by US-led coalitions in 2001 and 2003 respectively, have the flavour of punitive action directed against, respectively, Slobodan Milosevic, the Taleban, and Saddam Hussein.<sup>11</sup> However, cosmopolitans cannot regard the right to wage war as an instance of the right to punish. Two conditions must be met in order for an agent to be liable to punishment: first, he must have committed the act for which he is charged (the requirement of *actus reus*); second, he could reasonably have been expected to foresee and intend the consequences of that act, and to know that the act is a crime (the requirement of *mens rea*).<sup>12</sup> Whether or not an agent meets those two conditions must be ascertained through largely fair, impartial and deliberate procedures. However, whether combatants who carry out an aggression against another party meet those conditions cannot be determined without careful scrutiny of evidence relating to, e.g., whether their cause was just, whether they could reasonably have been aware that they were committing a wrongdoing, whether they were subject to exculpatory duress, and so on. To kill those combatants before reaching such a judgement is *not* to mete out punishment legitimately. To be clear: my concern here is with the conditions which an agent must meet in order to be liable to punishment; it is not with those which he must meet to be liable to defensive force. Incidentally, the claim that the right to wage war is an instance of the right to punish seems to imply that the death penalty is an appropriate punishment for combatants who take part in an unjust war, since even though it is not inherent in war that combatants should kill one another, it is more likely than not that they will do so. Opponents of the death penalty must reject the punishment variant of the model.

Does the interposition model fare any better? It draws on familiar intuitions regarding domestic law-enforcement: when policeman P uses force to prevent A from (wrongfully) beating up V, P may plausibly be thought to enforce the prohibition on assault. The model is intuitively appealing to cosmopolitans, since it rests on the view, which they cherish, that there are universal moral norms which all individuals and groups should respect. However, the interposition variant suffers from a number of weaknesses. First, as Rodin approvingly concedes, it requires a neutral enforcer of norms, in that instance a minimal world state, or similar institutions.<sup>13</sup> Suppose,

<sup>10</sup> See, e.g., T. Aquinas, *Summa Theologia*, ed. T. Gilby (Cambridge: Cambridge University Press, 2006), II-II, Q. 40; Vitoria, *On the Law of War*, ed. A. Pagden and J. Lawrance (Cambridge: Cambridge University Press, 1991), I-2; H. Grotius, *The Rights of War and Peace*, ed. R. Tuck. (Indianapolis, IN: Liberty Fund, 2005), Bk II, Ch. I.

<sup>11</sup> See, e.g., Anthony F. Lang, 'Punitive Intervention: Enforcing Justice or Generating Conflict?', in Mark Evans (ed.), *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005), 51–70.

<sup>12</sup> This is an extraordinarily simplified description of those conditions. See, e.g., Andrew Ashworth, *Principles of Criminal Law*, 5th edn (Oxford: Oxford University Press, 2006); A. P. Simester and George R. Sullivan, *Criminal Law: Theory and Doctrine*, 2nd edn (Oxford: Hart Publishing, 2003).

<sup>13</sup> David Rodin, *War and Self-Defence*, ch. 8.



however, that there is no such enforcer, and that community V decides to repel A's aggression by force. To claim that V would act unjustly in that case strikes me as highly counter-intuitive since it implies, e.g., that (neutral) Belgium lacked a justification, in the summer of 1914, for resisting the German army's invasion of its territory. Yet, if any country ever had a case for going to war, Belgium in 1914 certainly did. Or at any rate, it seems rather odd to hold that it lacked a justification for resisting just in virtue of there being no world state. In addition, whilst I am sympathetic to Rodin's claim that a world state would be able to reach impartial judgements to a greater degree than parties in the conflict, the claim that states cannot be judges in their own cases (which underpins his defence of the world state) risks proving too much: by that token, states would not have the right to punish wrongdoers for a number of offences traditionally deemed to wrong the community itself, such as counterfeiting money or high treason. Should those offences fall within the remit of an international court?

Perhaps the model might concede that V may justifiably go to war but still insist that its war is best understood as a means to enforce the prohibition against unwarranted aggression. This, in fact, is what Walzer seems to have in mind when he writes that a victim's war is exactly the same as the same war waged against this particular aggressor by third parties. On that view, V stands in exactly the same position, vis-à-vis A's actions, as some other party: if the justification for war is that A acts wrongly and may be stopped, then V has no stronger a moral reason than anyone else to wage war against A. As I argue elsewhere at length, however, victims have a special, agent-relative justification for killing their attacker, to wit, that *their* rights are at issue. The interposition variant of the norm-enforcement model cannot account for the importance *for V* of being able to block A, and for the surely plausible thought that V's special stake in blocking A provides her with a moral justification for so doing.<sup>14</sup>

I shall return to victim-centred justifications for self-defensive killing in section 5.4. Meanwhile, note that even if the interposition variant is correct in asserting that V's special stake in blocking A plays no part in justifying V's right to kill A, it is vulnerable to the further charge that it must still account for the thought that combatants<sub>V</sub> are permitted to *kill* combatants<sub>A</sub> for the sake of enforcing important moral norms—in this instance, the norm against unwarranted military aggression. To the extent that those norms are couched in terms of universal human rights by proponents of the norm-enforcement model, the latter must show why one has the right to kill other combatants for the sake of those rights. In this particular respect, the interposition

<sup>14</sup> See Cécile Fabre, 'Permissible Rescue Killings', *Proceedings of the Aristotelian Society*, 109 (2009), 149–64, for a longer argument to that effect. Some might object that V's special stake in blocking the attack provides her with stronger prudential reasons for killing A than would be available to neutral third parties R, but that the moral (non-prudential) justification for killing A is the same for V and for R. As I argue in that article, however, the fact that V's life, and not R's, is at stake may well give her greater latitude than he would have vis-à-vis innocent bystanders who might be at risk; it also gives her decisive say over whether or not the attack should be blocked (assuming that she is the kind of agent whose consent ought to be sought or ascertained). These differences between V and R are not prudential considerations.

model really is not distinguishable from more conventional understandings of war as the use of force in self- or other-defence.

Finally, the norm-enforcement model, in either of its variants, does not adequately capture what is at stake in combatants' confrontations with their enemy on the battlefield. In the course of rejecting the view that war killings are best thought of and justified as defensive killings, Rodin claims that although war is about killing in defence of rights, it is not about killing in defence of one's or others' lives, except in the unusual case of a genocidal aggression, by which he means (using the term 'genocidal' in a wider sense than is the norm) a war which 'threatens the vital interests of all, or a significant proportion, of a group of people'.<sup>15</sup> In such cases, he notes, the right can be understood as a right to personal self-defence, held and exercised by individuals who fight for their lives. But in other cases, he insists, the right to wage war must be justified by appealing to values other than the right to protect one's life—a task which (in his view) the norm-enforcement model does better.<sup>16</sup> However, genocidal wars are not the exception to that particular rule: for although not all wars are genocidal in that sense, all wars involve some individuals posing a lethal threat, either ongoing or imminent, to other individuals as a means to defend some other good(s): combatants too literally fight for their life, however few of them they are, and it is hard to see, thus, how one can hope to justify their acts of killing without in any way assessing whether they have the right to defend themselves.

## 5.4 Justifying Wars of Defence

That said, combatants clearly do not only defend their lives when attempting to repel an invader. Where, then, does rejecting the enforcement model leave us? Back to square one, it seems—to the point where we must show why preserving the communal goods of political self-determination and territorial integrity (sovereignty, for short) by force is justified. In particular, we must explain why individual combatants from the aggressed community are justified in killing agents who undermine those communal goods, given that those agents' contributions to the loss of sovereignty are exceedingly marginal when taken individually. I begin with a summary of the account of justified defensive force which underpins this chapter, before outlining various ways in which A's agents might threaten citizens<sub>v</sub>' sovereignty-rights and citizens<sub>v</sub>' permissible responses to those violations.

<sup>15</sup> Rodin, section 4.4 in this volume, my emphasis. He defines vital interests as follows: by 'vital interests' I will mean those centrally important interests, the unjust threat to which can justify lethal force in a domestic context of self-defence. These are: 'threat to life, substantial threat to bodily integrity (including loss of limb, torture, and rape), profound attacks on liberty such as slavery, and permanent or long-standing displacement from one's home'.

<sup>16</sup> Rodin, *War and Self-Defence*, 139–40. See also Richard J. Norman, *Ethics, Killing, and War* (Cambridge and New York: Cambridge University Press, 1995), 192.

#### 5.4.1 *Justified self-defence: a short sketch*

In section 5.2, I claimed that agents have a special, agent-relative justification (or personal prerogative) for killing their attacker—to wit, that *their* rights are at issue. Yet the fact that an agent's right not to be killed is under threat is not enough to provide him with a justification for using self-defensive lethal force—for if it were, this would license the killing of bystanders just in case such killing serves to save the agent's life. An account of self-defensive killing to which the notion of the personal prerogative is central must thus provide an explanation of features of attackers which differentiate them from bystanders. Put differently, it must show what it is about attackers which makes them legitimate targets of victims' use of force—more specifically, 'legitimate targets' in the sense that they have lost their right not to be killed.<sup>17</sup>

Now, I noted in section 5.3 that for cosmopolitans, agents' basic entitlements are not dependent on their membership of one given political community rather than another. Cosmopolitans' insistence that membership should be deemed irrelevant in that sense is rooted in the deeper underlying view that individuals in general ought not to be denied rights on the basis of who they are but, if on any basis at all, on something they do. It stands to reason, thus, that agents can be deemed to have lost their rights only in virtue of something which they have done, not in virtue of who they are: a cosmopolitan theory of the just war which would reject that claim would contradict the deeper view from which key cosmopolitan principles of justice flow. Accordingly, from a cosmopolitan standpoint, agents can be deemed to lose their right not to be killed only if they act in a relevant way. Posing or contributing to posing an unwarranted lethal threat to some other party is one such act.

That said, the deepest controversies in the relevant literature pertain to the mode of threatening agency which individuals must display in order to be legitimate targets in self- or other-defence. One such controversy revolves around the degree to which agents must contribute to a wrongful lethal harm, as distinct to actually posing it, in order to be deemed a legitimate target. In the context of war, it seems plausible to hold that munitions factory-workers are not liable if their only contributions to war killings consist in putting two screws on a machine gun; one might also think that political leaders are liable if their contribution consists in planning the invasion. The underlying thought is that agents in general and combatants in particular are legitimate targets only if they meet a certain threshold of contributory responsibility for wrongful harm.<sup>18</sup>

<sup>17</sup> I say 'legitimate targets in the sense that they have lost their right not to be killed' so as to allow for the possibility that individuals can sometimes be legitimate targets even though they have not lost that right—for example, in cases where targeting a very small number of bystanders would save the lives of vast numbers of other bystanders.

What follows in this subsection is a summary of a long argument I develop in my *Cosmopolitan War*, section 2.2. There are a number of objections to this argument, some of which I tackle therein.

<sup>18</sup> See Cécile Fabre, 'Guns, Food, and Liability to Attack', *Ethics*, 120/4 (2009), 36–63. For problems with thresholds, see Seth Lazar, 'The Responsibility Dilemma for Killing in War', *Philosophy & Public Affairs*, 38/2 (2010), 180–213.

Another contentious issue is that of agents' moral responsibility for the wrongful lethal harms which they inflict on others. On some accounts, such as deployed by Jeff McMahan and Michael Otsuka, attackers have lost their right not to be killed only if they are morally responsible for the fact that they are (contributing to) posing such a threat.<sup>19</sup> On other accounts, it is not necessary that they should exercise agency in any meaningful sense: it is enough that they be a threat, as in Judith Thomson's well-known example of the fat man who is pushed off a cliff and who will crush some other person to death.<sup>20</sup> For reasons I set out in *Cosmopolitan War*, I agree with Thomson's conclusion that culpable attackers, morally innocent attackers, and morally innocent threats may be killed as a matter of right, in so far as they represent an objectifiably unjustified threat to their victim. For generally (I argue therein *verbatim*) agents have a personal prerogative to confer greater weight on their own projects and goals than on other agents' similar projects, which in turn sets limits to the sacrifices which they can be expected to make for the sake of others. I submit that agents may not be expected to sacrifice their life for the sake of another person's life when that person unjustifiably creates a situation of forced choice between lives. Whilst the prerogative thus does not permit them to kill a bystander in their own defence, it does confer on them the right to kill their attacker if the latter, whatever might be said about their lack of moral responsibility for the situation of forced choice between lives, nevertheless subjects them to a wrongful lethal threat.<sup>21</sup>

One might think that my account cannot apply to the use of force in defence of others, for if agents have a *victim*-centred justification for killing *their* attacker as a matter of right, then (it is sometimes averred) it is unclear how potential rescuers could be justified in killing those attackers on their behalf.<sup>22</sup> The issue is crucially important in the context of war, for combatants typically kill not merely in defence of their own rights but also in defence of the rights of their fellow-citizens. The personal-prerogative account of the right to kill in war must thus show how one can move from the claim that citizens of a wrongfully aggressed country have an agent-relative justification for killing enemy combatants in self-defence to the claim that combatants of that country also have the right to fight and kill in their defence. Victims, I argued above, sometimes have the prerogative to confer greater weight on their own goals and projects—that

<sup>19</sup> See, e.g., Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); Michael Otsuka, 'Killing the Innocent in Self-Defence', *Philosophy & Public Affairs*, 23/1 (1994), 74–94.

<sup>20</sup> Judith Jarvis Thomson, 'Self-Defence', *Philosophy & Public Affairs*, 20/4 (1991), 283–310. For decisive criticisms of Thomson, see Otsuka, 'Killing the Innocent in Self-Defence' and McMahan, 'Self-Defence and the Problem of the Innocent Attacker'. The best recent article on the ethics of defensive killing is (in my view) Jonathan Quong, 'Killing in Self-Defence', *Ethics*, 119/3 (2009): 507–37.

<sup>21</sup> C. Fabre, *Cosmopolitan War*, section 2.2. By 'unjustified' I mean 'objectively unjustified', whatever attackers themselves might think of the moral status of their actions. I shall take this as read throughout this chapter.

<sup>22</sup> See Nancy Davis, 'Abortion and Self-Defence', *Philosophy & Public Affairs*, 13/3 (1984), 175–297; McMahan, 'Self-Defence and the Problem of the Innocent Attacker'. The argument for permissible rescue killings which I sketch out in this paragraph is drawn from my 'Permissible Rescue Killings'.

is, on their own interests—than on their unjustified attackers' similar interests. In other words, they have a second-order interest in protecting their first-order rights by force, and that second-order interest itself is sometimes protected by rights—in that instance a right to kill. Interests are not just protected by rights, however. They can also be protected by what Hohfeld calls powers—to wit, the legal or moral ability to transfer rights, liberties, liabilities, and indeed powers themselves, to other parties. Now, it is entirely coherent, analytically speaking, on the one hand to hold that X has a right to  $p$  and thus that third parties are under a duty not to interfere with her  $p$ -ing (or, as the case may be, a duty to provide her with  $p$ ), and on the other hand to deny that X has the power to transfer her right to  $p$  to third parties. By way of example, it is entirely coherent, analytically speaking, to say that X has a right that third parties not interfere with her decision to kill herself and yet to deny that she has the power to transfer that right to her physician: this, in fact, is the legal situation in those jurisdictions where physicians are prosecuted if they provide a consenting adult with the means to commit suicide. In many cases, however, adequately respecting and promoting someone else's interest requires not merely abstaining from interfering, or providing them with the relevant resources; it also requires granting them the competence to transfer their rights, permissions, and indeed powers to third parties. Thus, adequately respecting and promoting agents' interest in deciding whether to live or die does require granting them the power to grant a physician the right to help them die if they so wish (though we may of course subject the conferral of that power to certain conditions such as the patient being of sound mind, not being unduly pressured by greedy relatives, and so on.)

Similar considerations apply to self-defensive and other-defensive force. I argued earlier that victims' second-order interest in defending their first-order rights is deemed important enough to be protected by a right that third parties not interfere with their self-defensive steps. The rationale for granting them such a right, to wit, that their interest in remaining alive in the face of an unjustified attacker is important enough to impose on others a duty not to interfere, also supports granting them the power to transfer that right to third parties. To claim otherwise would be to impose an arbitrary restriction on their ability to promote this fundamental interest of theirs. As applied to war, then, combatants<sub>V</sub> do not kill combatants<sub>A</sub> just in virtue of a personal prerogative to confer greater weight on their own interests, both as combatants and members of V, than on combatants<sub>A</sub>' similar interests; they do so in virtue of citizens<sub>V</sub>' rightful exercise of a power to transfer to them their right to kill.

On this account of defensive rights, the fact that combatants<sub>A</sub> violate some of the rights of V's members provides the latter with a justification for killing them as a matter of right. This in turn implies that combatants<sub>A</sub> are under a duty not to kill combatants<sub>V</sub> in their own defence, but instead must surrender. On that account, which enjoyed some pedigree in the pre-modern era and has been revived recently

by Jeff McMahan, Tony Coady, and David Rodin, whether combatants are morally permitted, indeed have the right, to kill enemy combatants in war largely depends on the justness of their cause.<sup>23</sup> By contrast, in modern just war theory (which has the status of orthodoxy), the just cause is irrelevant to the conferral on combatants of the permission and right to kill enemy combatants. My concern here is not to defend the pre-modern, neo-classical account against its critics. Rather, it is to bring it to bear on the issue of wars of self-defence.

Suppose, then, that A's leaders annex V territory without just cause. Suppose further, as I shall do throughout the remainder of this chapter, that citizens<sub>V</sub> enjoy the right collectively to determine their own future and that they have that right in respect of V's territory. By implication, those citizens' collective political decisions meet the requirements of justice set out in section 5.2, since they would not otherwise enjoy that right.<sup>24</sup> A's act can thus be described as a collective violation by A's leaders and combatants of the sovereignty-rights of V's members. But we must distinguish between different ways in which wrongdoers<sub>A</sub> violate V's sovereignty rights: (a) by way of an armed invasion in the course of which combatants<sub>A</sub> kill V's members as they advance through A's territory without first inviting their victims to surrender; (b) by way of a bloodless attack, in the course of which wrongdoers<sub>A</sub> do not kill V's members nor threaten to do so as a means to get them to surrender; (c) by threatening to kill V's members unless the latter surrender. The first scenario presents little difficulty for cosmopolitan morality: in so far as V's individual members are straightforwardly subjected to a wrongful attack by A's individual combatants on their life, they have the right to kill the latter in self-defence (subject to the requirements of proportionality and necessity). In the remainder of this chapter, I focus on the second and third cases.

#### 5.4.2 *The problem of bloodless aggressions*

In *War and Self-Defence*, David Rodin argues that it is not necessary for a state V to have a right of collective self-defence—at least in international law—that the aggressor should threaten the lives of its citizens: even if the aggressor invades a remote and inhabited part of V's territory, or mounts incursions in its airspace or territorial waters without killing anyone, V nevertheless has the right to exercise defensive force.<sup>25</sup> Rodin concludes that the right to wage a war of collective self-defence cannot be grounded in a right to kill in defence of the lives of one's fellow citizens. I shall return to small-scale

<sup>23</sup> C. A. J. Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2008); McMahan, *Killing in War*; Rodin, *War and Self-Defence*. The premodern view, more precisely, is that combatants are under a duty to ponder on the justness of the cause for which they are asked to fight, and must not fight if that cause is manifestly unjust. See, e.g., Vitoria, *On the Law of War*. I say 'largely' because combatants who have a just cause overall can sometimes be deemed to violate enemy combatants' right not to be killed (for example, when they kill enemy combatants in furtherance of a subsidiary cause which is itself unjust).

<sup>24</sup> Remember that in this chapter, I do not address aggressions on communities whose members do not in fact have sovereignty-rights.

<sup>25</sup> Rodin, *War and Self-Defence*, 131–2.

and bloodless aggressions later in the chapter. Here, I wish to challenge Rodin's conclusion, and at the same time broaden the range of what counts as a bloodless aggression. Beforehand, however, it is worth noting that even if one is sceptical that a bloodless aggression could ever take place, such cases are a useful heuristic device for helping us discern whether the violation of sovereignty-rights per se warrants the use of force, or whether it does so only when it proceeds by means of violations of citizens<sub>v</sub>' and soldiers<sub>v</sub>' right not to be killed.<sup>26</sup> Suppose, thus, that as they advance through V's territory, combatants<sub>A</sub> can neutralize soldiers<sub>v</sub> by using a wholly incapacitating gas, with no long-term physical effects on their victims. Or suppose that A's regime orders its top-flight IT specialists to paralyse V's whole military and governmental computer network, as a result of which V's regime is no longer in a position to carry out the essential tasks of government and surrenders to A: strictly speaking, A's agents are not invading V, but they are certainly attacking it (hence my use of the phrase 'bloodless aggression' instead of the more standard label 'bloodless invasion'). Indeed, suppose that voting in V's elections takes place over the internet and that A's IT specialists manage to hack into V's computer system and subvert the election's outcome in such a way as to install a puppet regime. Suppose finally that A's leaders and agents can do all of that without killing or grievously maiming a single person within V. On what grounds, if any, may V's armed forces retaliate by killing wrongdoers<sub>A</sub>?

At first sight, on none. Consider an individual case. A citizen of country V—call her Vivien—is hampered in her exercise of her right to take part in her community's collective decision-making by an attacker—call him Arnold—in the following way: somehow, without even threatening to kill her, he makes it impossible for her to go to the polling booth; when she tries to vote by post, he intercepts her voting slip; if she tries electronic voting, he hacks into her computer and modifies her choice; moreover, he scrambles her television receptor and internet connection, so that she has very little access to information about the various political parties and their manifestos. Suppose further that she has no recourse whatsoever against him, and that the *only* way for her to exercise her right to political participation would be to kill him. Few would argue that she has the right to do so—on the grounds that, however malicious his intentions, for her to cause him to lose his life as a means to ensure that she can participate in her community's elections would be a disproportionate response to his wrongdoing. But if that is correct, on what grounds, then, do combatants<sub>v</sub> have the right to kill wrongdoers<sub>A</sub> in the aforementioned cases? It would seem that the bloodless loss to citizens<sub>v</sub> of their sovereignty-rights cannot possibly warrant killing combatants<sub>A</sub>, for those rights themselves are not important enough to justify the taking of lives.<sup>27</sup>

In a relatively recent article on proportionality, Hurka counters that there is an important difference between cases such as Vivien's and cases where the sovereignty of

<sup>26</sup> For the view that bloodless aggressions are not as far-fetched a prospect as many might assume, see Lazar's piece in chapter 2 of this volume.

<sup>27</sup> See, e.g., Norman, *Ethics, Killing, and War*, 128ff; Rodin, *War and Self-Defence*, 133–8.

political communities whose members enjoy the right to vote is under a similar threat, namely that there is a very high number of victims in those cases *and* that they suffer the rights-violation for a much longer period of time. Whilst the fact that many agents suffer the violation of a right lesser than the right to life does not justify the conclusion that they may kill the wrongdoer, it often permits the use of greater force than is permitted of one individual. As he puts it, ‘When a nation faces aggression, the threat is to an immense number of people’s rights for an immense period of time. Even if this does not by itself justify killing, it justifies more force than is permitted to protect one person’s one-time exercise of her right to vote.’<sup>28</sup>

I agree with Hurka that it matters how many individuals are subject to the rights-violations, though there are serious difficulties with aggregation; it also matters how many wrongdoers together carry out the rights-violations and how many wrongdoers, thus, one might be led to kill in defence of one’s rights.<sup>29</sup> But I also think that under some circumstances Vivien does have the right to kill Arnold, on grounds which also support conferring on combatants<sub>V</sub> the right to kill wrongdoers<sub>A</sub> under relevantly similar circumstances. Suppose that, as a result of not being able to participate in this particular election, Vivien would be at serious risk of suffering *further* rights-violations at the hands of either Arnold himself or of his associates. For example, she would be at serious risk of being tortured, raped, or wrongfully imprisoned for many years. Those rights themselves warrant the use of lethal force. The reason why that it is so lies in their very rationale, which they share with the right not to be killed. Deliberately killing someone who has not acted in such a way as to warrant being killed is to make use of them in such a way as to wholly deny their humanity. Likewise, I submit, with raping them, torturing them, enslaving them, indeed brainwashing them to the point where they no longer have the capacity for rational and moral agency. If killing is an appropriate response to a threat to one’s life precisely in virtue of the importance for agents of not being so treated, then it is an appropriate response to threats to one’s bodily integrity (of the kind that occurs in rape and torture) and the complete denial of all of one’s rights (as occurs in enslavement).<sup>30</sup> If Vivien is at serious risk of being subject to rights-violations of that kind, then it would seem that she does have the right to kill Arnold for forcibly bringing about the conditions under which she will be thus harmed.

At this juncture, it has been objected to me that my argument in favour of Vivien’s right to kill Arnold, and by implication of combatants<sub>V</sub>’ right to kill wrongdoers<sub>A</sub>, presupposes that they actually enjoy sovereignty rights; for if they do not enjoy those rights, then we cannot say that combatants<sub>A</sub> are violating those rights, and thus we

<sup>28</sup> Thomas Hurka, ‘Proportionality in the Morality of War’, *Philosophy & Public Affairs*, 33/1 (2005), 34–66: 54.

<sup>29</sup> For an extended treatment of the relevance of numbers to the problem of lesser aggressions, see Jeff McMahan’s piece in this volume. For a critique of this solution to the problem of political aggression, see Lazar, this volume.

<sup>30</sup> I develop that point in *Cosmopolitan War*, sections 2.3.1 and 7.2.



cannot say that combatants<sub>v</sub> are defending the means by which their more fundamental rights are made secure. I do not think that this objection works. What matters is not whether or not agents actually enjoy the rights which are under threat: rather, what matters is whether they have a right against their attacker that he not harm them in the relevant ways. Suppose that someone—Violet—is being kidnapped by Andrew at time  $T_1$ , as a result of which she cannot procure the drug which she needs to take every day if she is to remain alive. Suppose further that a third individual, Alf, kills Andrew at  $T_2$  and keeps Violet locked up (he too would like to extract ransom money from her parents, etc.). Granted, Alf is not depriving Violet at  $T_2$  of a freedom which she had at  $T_1$ . But we can still say that she has a right not to being kidnapped which Alf violates, and that if she were to kill him she would defend her right to freedom of movement, which is, *inter alia*, a means to her getting her life-saving drug.

The foregoing remarks on Arnold and Vivien suggest that we must distinguish between two kinds of bloodless aggression: an aggression which is itself carried out without loss of blood and which will not result in or lead to dehumanizing rights-violations (let us call this the pure case), and an aggression which is itself carried out without loss of blood but thanks to which its perpetrators and/or their acolytes will subsequently commit such rights-violations (let us call this the mixed case).<sup>31</sup> Let us first consider the mixed case. Suppose that A's agents attack sovereign community V bloodlessly, for example by incapacitating V's army with nerve gas, or by means of a cyber-attack. Suppose further that V's leaders and citizens have very good reasons to believe that if the invasion is successful, A's leaders will instate a regime which will commit dehumanizing rights-violations against them. In that case, they have the right to resist wrongdoers<sub>A</sub> by using lethal force. Combatants<sub>v</sub> themselves have the right so to act both in virtue of their own personal prerogative, as citizens of V, to defend those fundamental rights, and (as we saw above) in virtue of their compatriots' rightful transfer of that right to them.

In this variant of the bloodless aggression problem, combatants<sub>v</sub> have the right to attack wrongdoers<sub>A</sub> on the grounds that the latter, by threatening citizens<sub>v</sub>' secure enjoyment of their sovereignty rights, ultimately threaten their more fundamental rights. As I observed two paragraphs ago, this justification for combatants<sub>v</sub>' right to kill wrongdoers<sub>A</sub> in the mixed case supposes that violations of rights lesser than the right not to be killed (such as rights not to be tortured, raped, etc.) can sometimes be met with lethal force. Moreover, it also assumes that agents sometimes have the right to kill pre-emptively in defence of those rights. For in both the individual and collective cases, at the point at which Vivien and combatants<sub>v</sub> kill Arnold and wrongdoers<sub>A</sub> respectively, the latter are only violating their victims' right to shape their community's future. They are not yet violating their rights not to be killed, tortured, raped, etc.

<sup>31</sup> A point of clarification. In the pure case, not only is the aggression itself carried out bloodlessly; in addition, attempts by citizens<sub>v</sub> to expel A's occupying forces and officials are themselves quashed bloodlessly, and A's policies themselves respect and promote the rights of citizens<sub>v</sub>.

I shall revisit the issue of lesser rights and the question of pre-emptive killing below. Meanwhile, some might object at this juncture that in many cases, the agents who carry out the initial attack will not necessarily be the same as those who will commit subsequent dehumanizing rights-violations. Thus, it is by no means certain that the soldiers who overcome *V*'s armed forces by using gas, let alone cyber-attackers<sub>A</sub>, will subsequently rape and kill *V*'s members. Given that their wrongdoing (participating in an unjust bloodless aggression) does not *by itself* warrant killing them, it is not clear at all that they are liable to being killed if that is their only contribution to citizens<sub>V</sub>' predicament.

To drive the objection home, suppose that as a result of Arnold's bloodless violation of Vivien's right to vote, Vivien is at a very high risk of being tortured six months thence by Arnold's friend Bernie, and that Vivien stands a very high chance of blocking that threat by killing Arnold. I suspect that many would balk at the thought that Vivien has the right to kill Arnold even if the latter is fully aware of Bernie's plan—indeed, even if he acts with a view to enabling Bernie to torture Vivien. In fact, I too balk. And yet, the following point might suggest (though perhaps not decisively) that we ought not to balk. Recall that on my account of defensive rights, it is not a necessary condition for agents to lose their right not to be killed that they themselves unjustifiably subject some other parties to unwarranted and severe harm: rather, it is sufficient that they make a significant contribution to such harm. The point is directly relevant to war: even if those of wrongdoers<sub>A</sub> who carry out the bloodless aggression will not themselves rape, torture, or kill citizens<sub>V</sub> once the invasion is successful, the fact remains that they unjustifiably contribute to bringing about the conditions under which those rights-violations will take place. If combatants<sub>V</sub> stand a very high chance of blocking the latter wrongdoings by killing those wrongdoers<sub>A</sub>, then (I submit) they have the right to do so. It is true, of course, that the latter's individual contributions to those rights-violations may well be very marginal when taken on their own. But that fact alone does not suffice to protect them from being a legitimate target as a matter of right—any more than the fact that a torturer only contributes 10V to the electrocution of an innocent victim by 10,000 fellow torturers protects him from being killed as a matter of right.<sup>32</sup>

Consider now the pure case of a bloodless aggression, in which the aggression itself is carried out without blood being shed and is not a prelude to dehumanizing rights-violations against citizens<sub>V</sub>. Suppose that, as Rodin suggests, A's leaders order their army to invade a small part of *V*'s territory on the grounds that they believe themselves to be entitled to govern over it—though they have no wish to subject citizens<sub>V</sub>

<sup>32</sup> See McMahan, 'What Rights May Be Defended by Means of War', in chapter 6 of this volume. Some might object that in the torturer case, it is the fact that the agents are grossly culpable which enables us to conclude that they have lost their right not to be killed even though they each marginally contribute to the victim's death by electrocution. As per my earlier argument, I think that innocent torturers have lost their right not to be killed (even if they are invincibly ignorant of the threat which they are posing. See my *Cosmopolitan War*, 60 n. 11.)

themselves to their jurisdiction, and in fact give anyone who lives on that territory the option of leaving. In addition, those who choose to leave would not become worse off as a result. In effect, A forcibly annexes part of V's territory. In this case, given that citizens<sub>V</sub> would not suffer dehumanizing rights-violations, combatants<sub>V</sub> do not have the right to kill combatants<sub>A</sub>. Moreover, and perhaps more controversially, the point applies to some cases of wholesale pure bloodless annexation. Suppose that A's leaders seize V *in toto* and subject its population to a relatively mild dictatorship. Given that the wrongdoing would consist in the (bloodless) violation of sovereignty-rights themselves, and would not lead to violations of those fundamental rights such as the rights not to be killed, tortured, raped, and enslaved, which warrant defending by lethal force, it would be wrong of combatants<sub>V</sub> to kill wrongdoers<sub>A</sub> in defence of their and their fellow citizens' former rights. Note that in so acting, combatants<sub>V</sub> would wrong agents from two different groups: combatants<sub>A</sub> themselves, but also their fellow citizens—at least if the commission of those acts of killing is likely to invite a further, and this time lethal, response from combatants<sub>A</sub>, thus escalating the conflict in a way that might well be severely detrimental to those citizens.<sup>33</sup>

The claim that wrongdoers who carry out a bloodless aggression in the pure sense are not liable to being killed by their victims is wholly compatible with the view that they are liable to non-lethal force: nothing I say here denies that forceful resistance to the imposition of a relatively mild dictatorship (if such thing can exist) which falls short of actually killing the dictator and his agents is permissible as a matter of right. That said, the claim is likely to elicit considerable scepticism—so much so, in fact, that *if* cosmopolitan morality as articulated here is indeed committed to that claim, many will regard this as a good reason to reject the former. I believe that this would be too hasty a move. For whilst it is theoretically possible to mount a pure bloodless aggression, not only is there no recorded instance of it in practice: in addition it is extraordinarily unlikely that it will ever happen. The point is not so much that bloodless cyber-attacks or gas attacks are impossible: the point, rather, is that attackers who wish durably to impose their rule by force on another community are extraordinarily unlikely to be able to do so without committing dehumanizing rights-violations.

True, cosmopolitans must reject national defensive rights in the pure case, and, true, this is a profoundly revisionist position. But if this is the only case of invasion defence against which cosmopolitan morality cannot justify, then I surmise that we ought not to worry too much about the latter's prospects as a plausible moral theory, particularly

<sup>33</sup> By implication, then, I disagree with Kutz's contention that Americans would have the right to kill Canadian soldiers if the latter were to invade the US at the government's behest on the grounds that Canada would be able to promote US citizens' right to health care much better than the American government seems able or willing to do. (Kutz, 'Democracy, Defence, and the Threat of Intervention', chapter 10 in this volume.) That said, recall that my focus here is on soldiers. Suppose however that V's leaders could put a stop to the (pure) bloodless aggression by killing A's prime minister (in other words, by carrying out an act of political assassination). Would non-dehumanizing rights-violations carried out against very many people—such as the imposition of a relatively mild dictatorship—warrant killing a single (albeit significant) wrongdoer? I must confess to being torn on this point.

in the light of its overall credentials as a normative account of international relations—any more than conceding the permissibility of torture in ticking bomb scenarios should lead us to reject deontic constraints on torture in general.<sup>34</sup>

### 5.4.3 *Collective self-defence and conditional threats*

But perhaps the pure case is not the only scenario which should lead us to ponder whether to reject cosmopolitanism at the bar of the value of collective self-defence. For consider a different and much more plausible scenario, whereby A's leaders order the invasion of V's territory though they lack a just cause for so doing, and instruct their combatants to kill any and all members of V who refuse to surrender and whose refusal takes the form of attacks against combatants<sub>A</sub>. Although the aggression is in one sense bloodless—for blood will not be shed if V surrender—it proceeds through a threat of shedding blood. Do combatants<sub>V</sub> have the right to refuse to surrender and thereby trigger a lethal confrontation in the course of which they will kill combatants<sub>A</sub>? It is sometimes said that whether they do or not depends on whether rights lesser than the right to life warrant defending by lethal force. The claim that they do has some plausibility if the rights in questions are rights such as the right not to be raped, tortured, enslaved, and so on. As we saw, this is, in fact, what justifies killing combatants<sub>A</sub> in some cases of *mixed* bloodless aggression. More strongly still, some argue that sovereignty-rights themselves are important enough to justify the recourse to lethal force.<sup>35</sup> As we saw above, however, this is not the case: combatants<sub>V</sub> lack the right to kill combatants<sub>A</sub> if the latter 'purely bloodlessly' threaten their sovereignty-rights or, for that matter, threaten rights which though important nevertheless do not warrant the use of lethal force. The crucial question, then, is not whether sovereignty-rights themselves warrant defending by force; rather, it is whether combatants<sub>V</sub> are under a duty to surrender those rights as a means to save their life and as an alternative to killing combatants<sub>A</sub>.

On one influential view, as articulated by Richard Norman and David Rodin, they are under such a duty, for agents have the right to kill their attacker only if they are forced to choose between the latter's life and theirs—a condition which combatants<sub>V</sub> in the case under consideration do not satisfy. Norman makes his case by way of the following example: if V is attacked on the way home by someone who threatens to kill her unless she gives him fifty cents, then V ought to give him the fifty cents; it is absurd, Norman writes, to suppose that V's right to hold on to the 50 cents coin is important enough to justify killing A, even if A's threat is entirely credible.<sup>36</sup> Suppose, thus, that

<sup>34</sup> Remember that my focus is on defensive counter-attacks against aggressors; and that I set aside here the problem of collateral damage. For the view that extremely stylized and/or empirically rare scenarios, such as the ticking-bomb scenario, offer very limited scope for generalizing, and thus have limited force, see David Luban, 'Unthinking the Ticking Bomb', in Charles R. Beitz and Robert E. Goodin (eds.), *Global Basic Rights* (Oxford: Oxford University Press, 2009) and Henry Shue, 'Torture in Dreamland: Disposing of the Ticking Bomb', *Case Western Reserve Journal of International Law*, 37 (2006), 231–9.

<sup>35</sup> See Hurka, 'Proportionality in the Morality of War', 55–6; Jeff McMahan, 'Innocence, Self-Defence and Killing in War', *Journal of Political Philosophy*, 2/3 (1994), 193–221: 196.

<sup>36</sup> See Norman, *Ethics, Killing, and War*, 130–1.

Arnold accosts Vivien as she is making her way to the polling station on election day, and orders her at gunpoint to turn around and remain at home until the polling station closes. Suppose further that Vivien has every reason to believe that Arnold's threat is credible: he will kill her just if she refuses to surrender and even if her refusal takes the form of a non-lethal and proportionate attack. This, I think, is a highly plausible construal of what would happen in wars of aggression. Suppose that defenders, instead of immediately killing their aggressors as the latter advance through their territory were to, e.g., hit them with non-lethal wax bullets aimed at causing pain or, at worst, small non-life threatening injury; or suppose that they were to target their (unmanned) military equipment. I find it utterly unimaginable that armies as we know them would not retaliate with lethal force. It is true that, as Lazar notes, the British Army's rules of engagement stipulate that the taking of life is permissible only as a necessary means to defend the lives of British soldiers and innocent third parties. But it is crucial to ascertain why such killing is necessary: those rules of engagement clearly do not stipulate (nor could they) that British soldiers must make sure that they themselves do not render killing necessary, e.g. by laying down their arms instead of (wrongfully) escalating the violence by violently responding to the enemy's non-lethal resistance.

Now, on Norman's view so constructed, given that Vivien can save her life by not exercising her right to vote, she ought to do so instead of killing Arnold. I disagree. For a start, Vivien does not owe it to Arnold to give up her right to vote since *ex hypothesi* he wrongs her by acting as he does at  $T_0$ . This in turn implies that she may, indeed has the right (certainly vis-à-vis him), to mount at  $T_1$  an attack which is proportionate to his action—for example by attempting to force her way through or to kick him in the groin, or something along those lines. Moreover, she has the right to do so even if she knows that she will thereby trigger an escalation in their conflict in the course of which, responding to his own threat to her life at  $T_2$ , she will kill him. It is after all within his control to decide how to respond at  $T_2$ . If he chooses to threaten her life at this point, then according to my account of defensive rights, her use of lethal force is entirely warranted. In fact, if she stands a higher chance of surviving the attack by killing him pre-emptively (as is likely to be the case), then I submit that she has the right to do so, since the threat to her life, whilst not ongoing strictly speaking, is nevertheless imminent. The traditional worry about the permissibility of pre-emptive killing, most notably the fact that such killings target agents who appear not to have done anything wrong yet, can be set aside here, for the attacker has already acted wrongfully, not merely by attempting to coerce the victim to hand over her money, or her vote, but by doing so at gunpoint.<sup>37</sup>

That latter point is crucial. Norman's view is appealing if one construes Arnold's threat as just a threat to Vivien's right to vote. But this mis-characterizes the threat. To threaten to kill someone as a means to force them to relinquish one of her rights,

<sup>37</sup> See also McMahan, 'Innocence, Self-Defence and Killing in War', 196.

and in so doing to make that person's survival conditional upon her relinquishing that right (be it to her vote or to her purse) is not tantamount to making an actual threat of a lesser harm and backing that actual threat with a future threat of a greater harm (to her life). Rather, it is tantamount to making an actual threat of lesser harm and backing it with an actual threat of a future lethal harm.<sup>38</sup>

If, as I have argued, Vivien is not under a duty to surrender her right to vote to Arnold as a means to save her life and as an alternative to killing him, then combatants<sub>V</sub> are not under a duty to surrender their sovereignty rights to the enemy. Nor are their fellow citizens under such a duty either. Further, if combatants<sub>V</sub> stand a higher chance of surviving combatants<sub>A</sub>' attack by killing them first as the latter make their way through V's territory, then they have the right to do so. But note an important difference between the bloodless aggression case and the case of conditional threats. In the former, combatants<sub>V</sub> have the right to kill combatants<sub>A</sub> only if the loss of their sovereignty-rights would in all likelihood lead to the violation of those rights, defence of which warrants recourse to lethal force—such as the rights not to be killed, raped, tortured, and enslaved. In the latter, the seriousness of the rights-violations which the invasion both consists in (violations of the right to territorial integrity), and if successful leads to (violation of the right to self-determination, or indeed of other important rights such as rights to fair trial, equal opportunity rights, etc.) is not a relevant consideration. For as long as combatants<sub>A</sub> can be reasonably deemed to pose an unjustifiable threat to the lives of combatants<sub>V</sub> as a means to get the latter (and indeed their leaders) to surrender, they lose their right not to be placed in a situation where they might end up being killed. This particular difference between bloodless aggressions and conditional threats is not unique to war. For let us accept that (as I suggested above) V does have the right to kill her thief pre-emptively if he threatens her life as a condition to get her to give him money; this is compatible with the surely plausible view that V does not have the right to kill him if he seeks to get hold of her money simply by grabbing her handbag and if his act of theft does not lead her to suffer further dehumanizing rights-violations. In neither case is V under a duty to relinquish her right to the money. In the latter, however, whilst she may chase after the thief (and thus perhaps cause him to stumble and sustain some injury) or try to grab her bag back, for her to kill him, e.g. by shooting him in the back as he runs away, would be a disproportionate response.

<sup>38</sup> For a fascinating discussion of conditional threats, see Gerard Øverland, 'Conditional Threats,' *Journal of Moral Philosophy*, 7/3 (2010), 334–45. For a sceptical take on the degree to which such threats warrant lethal defensive force, see Lazar's contribution in chapter 2 of this volume. For a good, recent discussion of pre-emptive killing which distinguishes future threats of harm and actual threats of future harm, see Suzanne Uniacke, 'On Getting One's Retaliation in First', in David Rodin and Henry Shue (eds.), *Preemption: Military Action and Moral Justification* (Oxford: Oxford University Press, 2007), 69–88. Uniacke characterizes the former as a case of pre-emption (and rejects it as wrong), and assimilates the latter to a case of self-defence (and accepts it as permissible). It seems to me that both cases involve retaliation. I defend the view that placing a gun to someone else's head as a means to secure their compliance constitutes an actual threat in my 'Internece War Killings', *Utilitas*, 24/2 (2012), 214–36.

The claim that combatants<sub>V</sub> have the right to kill combatants<sub>A</sub> pre-emptively in the case of conditional threats to their life might be thought vulnerable to the following two objections. First, the claim has the following perverse implication: A's army have an incentive to carry out a bloodless aggression rather than issue conditional threats. For in the former case, their combatants would be immune from being killed, at least in those cases where the invasion is not meant to lead to dehumanizing rights-violations; if, then, combatants<sub>V</sub> resist, combatants<sub>A</sub> may kill them in self-defence and in so doing prosecute their unjust war effectively.<sup>39</sup> By way of reply, that army A would have the incentive so to act is one thing. Nevertheless it would remain impermissible for them to do so, particularly as a way to manipulate combatants<sub>V</sub> into subjecting them to a threat of lethal harm as a means to win the war. To be sure, it would also be impermissible for combatants<sub>V</sub> (in that case) to respond by using lethal force, and were they to do so, combatants<sub>A</sub> would be permitted to kill them in self-defence—just as the not-lethally violent thief would be permitted to kill V if the latter seeks to recover her handbag by shooting him, even if he snatched her handbag, as opposed to threatening her with his gun in the first instance, as a way to give himself the permissible option of killing her. It is after all up to V to decide how to respond to his non-lethal violence—just as it is up to combatants<sub>V</sub> to respond to combatants<sub>A</sub>' pure bloodless aggression. It is worth noting, in that vein, that it would be permissible for combatants<sub>V</sub> to attempt to block a pure bloodless aggression by using force short of war—a show of force to which combatants<sub>A</sub> themselves would not be permitted to respond by lethal means.

Second, one might also object that the claim presents a difficulty for the view, which I defended in section 5.4, that combatants<sub>V</sub> have the right to kill their enemy in what I have called mixed bloodless aggression cases. A mixed bloodless aggression, you recall, is one which combatants<sub>A</sub> carry out without shedding blood but which if successful will lead to the violation of those fundamental rights of citizens<sub>V</sub> which warrant defending by lethal force. In such cases, some might argue, combatants<sub>V</sub> are not killing combatants<sub>A</sub> *pre-emptively*, for the threat which the latter pose to those rights is not imminent at all: it is in fact conditional upon the success of the invasion, and accordingly, combatants<sub>V</sub> do not have the right to kill combatants<sub>A</sub> (in this case).

The view that one has the right to kill a wrongdoer only if the latter poses an *imminent* threat of lethal harm is widely accepted. It informs much scepticism about the permissibility of preventive, as distinct from pre-emptive, war, where prevention is understood as action to block a non-imminent threat.<sup>40</sup> Yet there are some grounds for rejecting the imminence requirement—or at least, for not interpreting it purely in temporal terms. By way of a domestic analogy, consider women who have been subject for years to increasingly violent domestic abuse, and who justifiably believe that the only way they can save their life is by killing their partner while he is defenceless—for

<sup>39</sup> The objection was put to me by Lazar.

<sup>40</sup> See, e.g., Walzer, *Just and Unjust Wars*, ch. 5; David Rodin, 'The Problem with Prevention', in David Rodin and Henry Shue (eds.), *Preemption*.

example, asleep—even if they have no evidence for believing that he will threaten them with lethal force *as soon as he is awake*. Most jurisdictions do not accept a plea of self-defence in such cases precisely because the woman is not subject to an imminent attack at the point at which she kills, but some are beginning to do so. Of the many reasons which are advanced in support of such a move, one is particularly relevant to war. Imminence, it is sometimes said, is a proxy for both the degree of probability of V incurring a (lethal) harm and (inversely) her ability to escape the attack without killing her attacker: the more imminent an attack, the more likely it is that V will incur a harm unless she acts. In some cases, however, V may well satisfy the necessity or high probability requirements even though the attack is not imminent. In so far as it is necessity and probability that matter, one should not insist on imminence *as such*. By parity of reasoning, combatants<sub>V</sub> have the right to kill combatants<sub>A</sub> in a mixed bloodless aggression to the extent that the latter are in all likelihood making a significant contribution to de-humanizing rights-violations.<sup>41</sup>

## 5.5 Conclusion

I began by characterizing cosmopolitanism as the view that individuals all have equal rights to certain freedoms and resources, and are under duties to one another to secure those freedoms and resources irrespective of borders. On such a view, I noted, it might seem that there can be no such thing as a right to wage a war of collective self-defence, not least because cosmopolitanism seemingly cannot give a satisfactory account of the value of political self-determination. To compound the difficulty, in so far as cosmopolitanism is committed to the view that individuals can only lose their fundamental rights in virtue of what they do, and in so far as soldiers' individual contributions to aggressions on another community's political self-determination are marginal, it is hard to see how a cosmopolitan could ever condone the acts of killing which soldiers carry out in defence of their homeland. The view that soldiers do have those rights is deeply entrenched, however, so much so as to constitute a fixed-point in common sense morality about international relations and as to provide a reason for rejecting cosmopolitan morality altogether if the latter cannot accommodate it.

In this chapter, however, I have argued that there is space for political self-determination in moderate versions of cosmopolitan morality; I have also argued that the right to wage a war of self-defence can coherently be understood and justified as a right to kill attackers in defence of one's life and/or fundamental interests in e.g.,

<sup>41</sup> For an analysis of the imminence requirement in the criminal law of murder, and its implications for domestic violence, see, e.g., Fiona Leverick, *Killing in Self-Defence* (Oxford: Oxford University Press, 2006), ch. 5. For arguments in favour of preventive war in general, see, e.g., Allen E. Buchanan, 'Justifying Preventive War', in Rodin and Shue (eds.), *Preemption*; David Luban, 'Preventive War', *Philosophy and Public Affairs*, 32/3 (2004): 207–248; Jeff McMahan, 'Preventive War and the Killing of the Innocent', in David Rodin and Richard Sorabji (eds.), *The Ethics of War—Shared Problems in Different Traditions* (Aldershot: Ashgate, 2006), 169–90.



not being raped, tortured, severely maimed, etc., not merely in ‘standard’ cases of invasion, but also in some cases of bloodless aggression. Some, but not all: as we saw, a pure bloodless aggression, one which is carried out without shedding blood and which will not lead in the future to dehumanizing rights-violations, may not be resisted by killing its perpetrators. But as I have intimated, if that is the only instance in which moderate cosmopolitanism would deny national defensive rights, then, given how unlikely it is that such aggressions could ever occur, we need not reject it.