contains discussions of many issues besides those tackled here. It is also clearly and authoritatively written. I would admit to agreeing with many of the specific conclusions that Gilbert draws along the way. However, I remain unconvinced by the argument that the solution to the horrors of war lies in replacing the politics of identity with that of role, even if only for the simple reason that the former is not about to disappear. We cannot wish it away, but must learn to cope with it. Rather than replacing identity with role, the way forward must surely be to educate people to redefine both, so that they come to determine their roles and identities in ways that make them respect the dignity of others. Then, there might be some hope for peace.

Paul Robinson, Department of Politics and Institute of Applied Ethics, University of Hull, Cottingham Road, Hull, HU6 7RX, UK, paul.robinson@hull.ac.uk

NOTES
5 This thesis is outlined in Sabrina P. Ramet, Nationalism and Federalism in Yugoslavia, 1962–1991, 2nd edn. (Bloomington and Indianapolis, IN: Indiana University Press, 1992), and Bogdan Denitch, Ethnic Nationalism: The Tragic Death of Yugoslavia (Minneapolis, MN: University of Minnesota Press, 1994). Simply put, the argument is that communism did not permit ‘normal’ politics, but its federal power-sharing structures did permit politics on national lines and forced people to split down ethnic lines.

Defending the Indefensible?

DAVID RODIN

Like many writers on the ethics of war, Paul Gilbert believes that war achieves its paradigmatic justification when it is an instance of rightful self-defence. Moreover, Gilbert holds a strong form of this view, according to which the right to engage in a defensive war by a state or political community is ‘an example’ of people’s right to defend their own lives and significant rights, not simply an analogue of it (p. 24). Despite its familiarity and apparent transparency, the right of self-defence is a complex normative mechanism with a number of competing historical and theoretical justifications. The basic contours of the right are uncontroversial and easily described: defensive force may only be used against an attack that is both immanent and not itself morally justified. The harmfulness of the defensive measures must not be disproportionate to
the harm one is seeking to avert, and the defensive force must be necessary in the sense that there is no less morally costly way to achieve the same result.

But what is it that underlies the moral permission to use force (including lethal force) in self-defence, given that self-preferential killing is strictly prohibited in almost all other contexts? There are at least five different theoretical answers to this question.

1) Perhaps the oldest is to see acts of self-defence as a psychological necessity for which agents should not be held morally responsible. On this view, self-defence functions as an excuse rather than a justification, and its scope is exceptionally broad in one sense and rather narrow in another. It is broad in that it would seem to excuse any action an agent reasonably believes necessary to save his life. It is narrow in that it only covers defence of the agent’s own life, or at best that of family and loved ones, for only in such cases does a defender face an overwhelming psychological necessity of action. So, on this account the defence of third party strangers seems to be counter-intuitively omitted from the right of defence.

2) Thomas Aquinas famously invented the doctrine of double effect to explain self-defence. On this view (which is still maintained by certain catholic thinkers) one may never intentionally kill another person, even in self-defence. But one may perform necessary and proportionate defensive actions which one foresees will cause the death of the aggressor as an unintended side effect.

3) The ‘forced choice’ account starts from the observation that a victim of aggression faces (through no fault of his own) a situation in which someone will die no matter how he acts. If the victim kills the aggressor in self-defence, therefore, responsibility for this death lies not with the victim but with the person causally responsible for the situation of forced choice — the aggressor himself. Like the necessity account, this view construes self-defence as an excuse rather than a justification.

4) For consequentialists, self-defence is explained as justifiable preference for the lesser evil: the death of a culpable aggressor rather than the innocent victim.

5) Finally, a rights-based view sees self-defence as an exceptional moral liberty to kill, which is derived from the fact that an aggressor, because he has engaged in an unjust attack, no longer possesses the right not to be killed by the victim.

Each view has characteristic difficulties, and each locates self-defence in a particular normative context, which has significant consequences for any morality of war based upon it. My own view is that the rights-based approach provides the best overall account of defensive rights as they characteristically operate in moral and legal systems.¹

Which view of self-defence does Paul Gilbert endorse, and how does this affect his understanding of the ethics of war? At times, he suggests that he is working with the double effect understanding of self-defence: ‘a person or group’s right of self-defence in law allows them to kill an attacker so long as this is not directly intended and is their only method of defence’ (p. 24). As a reading of standard legal interpretations of self-defence, however, this claim seems incorrect. Most criminal jurisdictions place no limits on the intentional character of a defender’s actions, while the Laws of Armed Conflict grant combatants the right to kill enemy combatants as the necessary and proportionate means to the attainment of a legitimate military objective. At other times Gilbert suggests a different view of self-defence: that right, he says ‘is an acknowledgement of the fact that people will, if possible, resist an attack which threatens these vital goals [life, liberty and livelihood]’ (p. 24). Taken literally, this observation could not provide a justification...
of action. People will, if possible, perform all kinds of wrongful acts that moral and legal codes do not and should not condone; murder, aggression and genocide are among them.

But read more charitably, this claim suggests a necessity understanding of self-defence. Humans are psychologically constituted in such a way that they will inevitably defend their lives and community. Given this, a humane and compassionate normative system ought not to hold persons responsible for harmful acts they could not abstain from performing. As I suggested above, this view has a number of significant consequences. One is that self-defence is counter-intuitively construed as an excuse for what remains wrongful action, rather than as a full justification. An ethics of war constructed on this understanding of self-defence, therefore, would not yield a just war theory, but at best an *excusable* war theory.

In fact Gilbert nowhere explicitly commits to a specific explanatory account of self-defence and it would seem that he treats self-defence largely as a primitive and un-analysed concept. This is a pity, because making clear what he takes the normative structure and theoretical basis of the right of self-defence to be might help to resolve some difficult issues about the account of the rights of war that he takes to derive from it. One such issue concerns the rights or goods that may be proportionately defended with lethal force. Because Gilbert believes that defensive war is an example of the ordinary defensive rights of persons, this question is broadly equivalent to specifying the *jus ad bellum* condition of proportionality. Gilbert suggests that the right of personal defence encompasses at least the defence of life, liberty, property and livelihood (pp. 24–25). But if one starts from our ordinary conception of self-defence as expressed in the criminal law, only the first of these would uncontroversially count as proportionate ends to be defended with lethal force. Defending liberty with lethal force may be proportionate if the attack on liberty were extreme — for example if it consisted in enslavement or a long period of wrongful incarceration. However, the use of lethal force to defend one’s property, livelihood or against less serious infringements of liberty would not normally be considered proportionate acts of self-defence.

Another difficulty is that Gilbert holds that the appropriate rights of persons may be defended through war, not only when those rights are attacked directly, but also when they are attacked indirectly. For instance, he thinks that the political sovereignty and territorial integrity of a state can be defended in war, even if the life and livelihood of no citizen is directly threatened by an aggressive attack. This is because sovereignty and territorial integrity are ‘expressions of the routine ways in which persons lives and livelihoods are protected within states’ (p. 25). This indirect claim seems dubious if it is meant to reflect our ordinary conception of self-defence. Insurance schemes are also one of the routine ways in which person’s lives and livelihoods are protected; yet we do not normally think that it is permissible to use lethal force to prevent an insurance fraud, or even to prevent the collapse of the insurance system itself.

A similarly problem arises when Gilbert provides his account of the traditional just war claim that war must be waged under an appropriate authority; for if the right to engage in a defensive war is really an example of people’s ordinary rights of self-defence, then it is unclear why there should be any requirement of proper authority at all. Certainly, there does not appear to be an independent requirement of authority implicit in the right of personal self-defence as classically conceived. It would be very peculiar to say, ‘he acted in defence against an immanent unjust attack using force that was both necessary and proportionate, but he acted wrongly because he lacked authority’.
The authority to act in cases of personal self-defence seems to be implicit in the circumstances of rightful defence itself: anyone who is capable of undertaking a rightful act of defence is authorised to do so. Gilbert may be driven to the assertion of a strong condition of authority despite its uneasy fit with an account of war built on the right of persons to self-defence, because of his animosity to cosmopolitan theories of international right. For if the rights of war are really an extension of ordinary rights of self and other-defence, then (as many writers with cosmopolitan leanings have noted) humanitarian intervention becomes a constant moral possibility by any actor capable of effectively protecting basic and universally recognised rights. This in turn is difficult to square with the prohibition on intervention that is the bedrock of defensive just war theory.

Each of these three issues — the understanding of proportionality, the permissibility of defending rights ‘indirectly’, and the need for a condition of authority — identify significant tensions between the permissions and limitations contained in the right of personal self-defence and the permissions and limitations ascribed within just war theory.

The self-defence account of war is but one of many important themes discussed in New Terror New Wars. Nonetheless, it is a crucial. The ‘defensive just war theory’ is meant to provide an uncontroversial example of justified war in stark contrast with the dubious ethical claims of new wars fuelled by a ‘politics of identity’. Yet defensive just war theory (as developed not only by Paul Gilbert but by many other theorists also) has considerable conceptual problems of its own. It may be possible to derive an account of just war with its familiar permissions, its condition of authority and its conception of proportionality from the ordinary right of self-defence. But the self-defensive acts of individuals and small groups differ in numerous and important ways from the wars of nations and states. Considerable argumentative work is required to show how the ordinary right of self-defence and the practice of war are even compatible, let alone to show that the later is a comprehensible form or logical extension of the later.

David Rodin, Oxford Uehiro Centre for Practical Ethics, Littlegate House, St Ebbes Street, Oxford, OX1 1PT, UK, david.rodin@philosophy.ox.ac.uk

NOTE

1 I defend this view in my book War and Self-Defense (Oxford: Oxford University Press, 2002), especially Chapter 4. [See review, this issue (ed.).]