

The article under discussion started out as a paper for my course on war and ethics. In its present expanded form, it has implications for a broad range of topics, ranging from bioethics to the “civilian” right of self-defense, with little about war. It may be worth commenting from within the original context.

War differs from self-defense in at least three salient respects: 1) It is waged between nations, or other organized groups, while self-defense is the prerogative of individual and groups of individuals. Consequently the line between combatants and non-participants, among the enemy, has not always been recognized in war, while it is taken for granted in self-defense. 2) The right of self-defense, or police action on behalf of those attacked, is limited to repulsing the attack, and does not allow pursuit, while war traditionally is allowed to continue, not only until the enemy withdraws, but to victory. 3) The right of self-defense is not self-evidently symmetrical: the unjust aggressor is obligated to withdraw, but not to prolong his violent assault. In war, soldiers in an unjust cause are justified in fighting back against soldiers whose cause is indeed just.

These points fit the halakhic doctrine of war. However, it is agreed that that “discretionary war” (*milhemet reshut*) does not apply today. Thus, in effect, halakhically legitimate war may not exist today as a *sui generis* category. For that reason there is a desire among contemporary halakhic authorities, including R. Ahron Soloveichik and R. Hayyim David Halevi, to develop a doctrine of permissible war within the framework of self-defense.

The collective aspect of war is descriptive rather than prescriptive. The implication, for the status of non-combatants, is prescriptive. Modelling war on self-defense would entail an effort to minimize both civilian and military casualties. Alternatively it would require equating combatants and non-combatants, either on empirical grounds, in terms of their function, or by constructing, in effect, innovating, a conception of collective self-defense that would allow back features of traditional war that do fit traditional individual self-defense. The same considerations would affect the pursuit element in traditional war.

The moral asymmetry of war stands in a different relationship to halakhic self-defense, insofar as halakha does not assign liability to the unjust aggressor who defends himself against justified self-defense (or defense by a third party). At the same time, some philosophical arguments for asymmetry in war will not apply to individual self-defense, and it is possible that the converse is also true.

Rabbi Zuckier’s construction of a halakhic outlook emphasizes the possibility of distinguishing the perspective of the threatened individual from that of a third party. In a contemporary framework it may be valuable to further analyze the third party who is acting as an agent of the threatened party from the “independent” bystander: for example, the physician who protects the pregnant woman against the fetus; the police defending unarmed citizens; or soldiers acting on behalf of the nation.

Furthermore, one may propose a distinction I have not seen in the literature, between the right to life and the right to self-defense. If A has the right of life against B, that means that B has no right to take A’s life. If A has the right of self-defense, that means that A has the right to prevent B from taking his life. It is possible that someone has forfeited their right to life against somebody without having forfeited their

right to self-defense. For example, a criminal condemned to death has no right to prevent the executioner from performing his or her office at the appointed time and place, while yet being justified in defending himself against others. This distinction comes into play when human life itself is not held to be inviolate under all circumstances, yet particular modes of death, such as being killed without being allowed to put up resistance, are deemed undignified. In certain cultures passive submission to being killed, even when one has forfeited one's right to life, may be deemed dishonorable. I doubt that this outlook would fit halakhic norms. Yet even without a culture of battlefield honor, it may be degrading to compel an individual, in the heat of pursuit, to abandon his right to self-defense, even when his own actions have made him liable to the reprisal of others.

I would like to submit these ramifications for the attention of my fellow symposiasts and readers.