

## Self Defense in Jewish Law

by [Rabbi Dr. Nachum Amsel](#) | August 19, 2018

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We live in an age where violent crime is much more rampant than in the past. All people want and need basic safety and protection from attack. It is clear that no increase in the number of police force alone can guarantee full protection from every potential criminal, whether that victim is inside or outside one's home. How, then, is the law abiding citizen supposed to attain adequate protection? It seems reasonable to allow law abiding citizens to acquire the means to protect their lives if threatened by criminals. Certainly, most people would seem to agree that a person may retaliate if one's life is threatened. What is the Jewish view on this?

Even if a Jew is permitted to kill another person when threatened, at what point, precisely may he or she retaliate? If the victim waits until the trigger is actually pulled, then it is too late to retaliate and protect oneself. How much before the pulling of the trigger is it called a legitimate threat? Would it be permitted to shoot a potential attacker – as soon as he is in the house armed with a gun? In the house with a bat? Outside the house with a gun just prowling around? Is being robbed at gunpoint considered life threatening? Is killing a mugger trying to rob you on the street legitimate? Is a verbal threat ever grounds for self defense and killing a person? The questions are indeed sensitive, but very real, given today's society and its crime rate. We will see that Judaism has specific responses for each situation.

We know that one of the highest values in Judaism is the infinite value placed on each human life. Since life has an infinite value, it is equated with the worth an entire world.<sup>1</sup> Is it not then reasonable to assume that a Jew can protect his or her life, of infinite value, when threatened. However, if by protecting one's own life, someone else's life, also of infinite value, must be taken, then human life was not really protected. Therefore, while it is logical to assume that Judaism would allow or even demand that a person protect his or her own life, how would a Jew be able to justify killing another person in order to achieve that protection of life? That other individual, although he or she may be an attacker, also has a life of infinite value from a Jewish perspective (even if the person is evil or immoral). From one Talmudic passage,<sup>2</sup> it seems there is no justification for self defense if it causes the killing the other person since we cannot determine whose life is more valuable and is worth protecting. Paraphrasing the Talmudic expression in another context, "Who says that your blood is redder than his blood?" Since we cannot know the real value of any specific life, man cannot "play G-d" and kill one person at the expense of another. It seems that man should not be able to kill someone in self defense, according to Jewish law.

### **THE JEWISH CONCEPT OF BEING PURSUED**

It is a correct assumption in Judaism, as noted above, that man is not capable of judging whose life

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<sup>1</sup> Sanhedrin 37a

<sup>2</sup> Sanhedrin 74a

is more valuable. However, the Torah<sup>3</sup> reveals to man a *Chidush*, a new concept that goes beyond human logic. If a man finds a robber in one's basement and kills him, he is not guilty of murder. Why not? The Talmud<sup>4</sup> explains that since most robbers assume that people protect their property at home and when he or she enters a home to rob it, the robber is prepared to kill the homeowner. Therefore, the homeowner may kill the robber in self defense. Thus, Torah law establishes the legitimacy of the self defense concept in Jewish law, even without a judge and a jury.

On what basis, however, does the Torah allow the homeowner to kill the robber? In addition to the objection cited above ("who says your blood is redder?"), Maimonides<sup>5</sup> argues that it is against Jewish law to take the law into one's own hands (as would be the case when the homeowner killed the intruder). If a observer or even the entire court witnesses a murder, it is forbidden for them to kill that murderer on the spot, even if they are convinced that it is an open and shut case, but, rather, must bring him to trial and go through the legal process. Even when Pinchas halted the plague and was rewarded by G-d<sup>6</sup> by killing the Jew and Egyptian desecrating G-d's name publicly,<sup>7</sup> there were a number of Jews in authority who wanted to kill Pinchas for not going through the legal procedures of bringing these guilty people to trial.<sup>8</sup> It was only when G-d declared Pinchas' act as the correct one (and this case was the exception to the rule), that the authorities abandoned their prosecution of Pinchas. Thus, it is reasonable to deduce that a victim should not be allowed to take the law into his or her own hands and kill an attacker on the spot. By what legal right is this permitted by the Torah?

There is an obligation in Judaism to save anyone whose life is threatened, even a criminal's life.<sup>9</sup> This is true even for a murderer if it is during the trial. However, once a sentence of death has been pronounced by the court against the murderer, the status of this individual is changed to become a *Gavrah Ketilah*,<sup>10</sup> a legal dead man. In this new status, a Jew would not have to save the individual since he is considered legally dead. The *Chidush* or new concept by the Torah in the case of self defense is that the attacker has the legal status of a *Gavrah Ketilah*, a dead man, even before and without trial.<sup>11</sup> Thus, a homeowner can legally defend himself and kill the intruder without hesitation, since the intruder, by his very act of entering the house, immediately attains the status of a legally dead man.

#### **OTHER TORAH ALLUSIONS ALLOWING SELF DEFENSE**

In addition to the clear statement regarding the robber entering the home, the Torah gives numerous other references alluding to the permissibility of self defense. If two men are fighting and the wife of one person attempts to protect her husband by the killing her husband's adversary, the threatened

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<sup>3</sup> Exodus 22:1

<sup>4</sup> Sanhedrin 72a

<sup>5</sup> Maimonides, Sefer HaMitzvot 292

<sup>6</sup> Numbers 25:8 and 25:10-13

<sup>7</sup> Numbers 25:6-9

<sup>8</sup> Jerusalem Talmud, Sanhedrin 48b

<sup>9</sup> Shulchan Aruch, Orach Chaim 329:3 and Yoreh Deah 158:1

<sup>10</sup> Sanhedrin 71b

<sup>11</sup> Rashi commentary on Exodus 22:1

man may "cut off her hand."<sup>12</sup> Chinuch<sup>13</sup> explains that if the threatened man is in mortal danger, he may indeed kill her in self defense. After being attacked by the Midianites, G-d tells the Jewish people to vex and smite the Midianites for what they did in trying to seduce the Jewish people to sin.<sup>14</sup> The Meiri commentary,<sup>15</sup> based on the Midrash,<sup>16</sup> states that the Midianites habitually attacked the Jews, and it was for this reason that the Jews were commanded to defend themselves. Thus, according to Meiri, they were attacking in self defense. When Jacob was preparing to fight his brother Esau,<sup>17</sup> it was also an act of self defense. This is made clear by Rashi's comment,<sup>18</sup> where he states that Jacob was worried about accidentally killing the innocent people in Esau's camp. It is clear from Rashi that Jacob was not concerned about killing Esau himself since this would be a legitimate act of self defense. All of these sources point to the legitimacy of self defense in Jewish thought, and affirm the general concept of "if someone comes to slay you, you should slay him first."<sup>19</sup>

### **SELF DEFENSE BY "SOMEONE ELSE"**

The concept of self-defense extends even further in Judaism. Not only is a threatened person permitted to "take the law into his own hands" and kill the intruder or person threatening one's life, but onlookers are also given permission to do the same, especially when the threatened person is unable to do it himself. Jewish law not only allows an onlooker to kill the attacker but also commands the onlooker to take action,<sup>20</sup> based on the verse<sup>21</sup> that a person may not stand idly by while his brother's blood is being spilled. Therefore, it is clear that the person whose life is threatened with attack must be protected, either by the person himself or by anyone who is in a position to prevent the loss of life.

### **LIMITATIONS OF THE RIGHT TO SELF DEFENSE**

In all the situations discussed above, it is assumed that the victim's life is in danger. However, in discussing the original case of breaking into a home, the verse<sup>22</sup> continues with a different scenario, and says that if the "sun shone upon him (the intruder)," and he then kills the intruder, the homeowner is guilty of murder. The Talmud<sup>23</sup> questions the unusual use of the Torah phrase and asks: did the sun only shine on the homeowner -- didn't it shine on everyone? Therefore, the expression is not meant to be taken literally, and the Torah meant to say that if it is clear to the homeowner, like the light from the sun, that the intruder is not threatening the homeowner's life, then the intruder may not be killed, and if he is killed in that situation, the homeowner is considered a murderer. How can it be so clear to the homeowner that his life is not in danger? The Talmud here gives the example of a father who breaks into his son's home. While a

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<sup>12</sup> Deuteronomy 25:11-12

<sup>13</sup> Sefer HaChinuch, Mitzvah #600

<sup>14</sup> Numbers 25:16-18

<sup>15</sup> Meiri commentary, Sanhedrin 72b

<sup>16</sup> Midrash, Tanchuma, Pinchas 3

<sup>17</sup> Genesis 32:8-9

<sup>18</sup> Rashi commentary on Genesis 32:8

<sup>19</sup> Sanhedrin 72a

<sup>20</sup> Sanhedrin 73a

<sup>21</sup> Leviticus 19:16

<sup>22</sup> Exodus 22:2

<sup>23</sup> Sanhedrin 72a

father may rob his son, it is assumed as a principle of law that a father would never kill a child. Therefore, if the son (homeowner) sees it's his father (intruder), he may not kill him since he knows his life is not in danger. This clarity is not only in a case of father and son but in any situation where the homeowner realizes his life is not threatened. It is clear, says the Midrash,<sup>24</sup> that the entire permission to kill in self defense is in a case where there is no peaceful alternative or maiming the person is not a possibility. If there is another alternative left open to the victim other than killing the perpetrator, then killing the intruder is viewed as a sin.

Thus, the Talmud says<sup>25</sup> that if the intruder could be stopped by incapacitating him rather than killing him, killing him is not permitted. The Midrash<sup>26</sup> echoes this same idea when stating that gratuitous violence is not permitted in Judaism. Maimonides<sup>27</sup> rules that if the intended victim can stop the intruder by dismembering one of the intruder's limbs, he must do so. Killing the intruder in that situation would be considered murder. However, Maimonides also rules that if the homeowner does kill the intruder in such a situation, he is culpable only in a Heavenly court, and cannot be brought to trial in a human, Jewish court (since no court can convict an individual solely on the basis of what the person was thinking at that moment). The Tosefta<sup>28</sup> demands a graduated response. First the limbs of the intruder should be cut off. If that doesn't stop the intruder, then killing is permitted.

There is much discussion in Jewish law about which specific situations are considered life threatening and which are not. Must the intruder be inside the house, similar to the Torah verse? Must it be at night? This is not entirely clear. What is clear to all decisors, however, is that where the potential of death to the victim is a real one, then one may not only disable the attacker, but if necessary, kill the attacker without hesitation.

#### **IF THE INTENT OF THE ATTACKER IS UNCLEAR**

If a person's life is verbally threatened, would that be considered a legitimate aggression and grounds for a violent response to stop the potential attacker? It should be noted that in this type of situation a person cannot wait for final proof that the threats are indeed real, since the only conclusive proof would be the actual murder of the victim, and by that time it would be too late to respond. How early then and on what basis, may a potential killer, based on threats, be disabled?

If we know an individual's personal history and past behavior, then that may be used as a deciding factor in determining true intentions and the proper reaction.<sup>29</sup> However, that information is often very difficult to obtain or determine. A possible solution to the dilemma regarding threats may be determined with regard to the Jewish concept of "warning." Normally, for a court to prosecute an infraction in Jewish law, a warning must first be given to the perpetrator. In our case of the pursuer threatening to kill the

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<sup>24</sup> Mechilta, Mishpatim, Nezikin 13

<sup>25</sup> Sanhedrin 74a

<sup>26</sup> Mechilta, Mishpatim, Nezikin 13

<sup>27</sup> Maimonides, Hilchot Rotze-ach 1:13

<sup>28</sup> Tosefta, Sanhedrin 11:5

<sup>29</sup> See Shnaton, Mishpat Ivri, 5736-5737, vols.3-4, Eliyahu ben Zimra, pages 117-152

victim, the Talmud<sup>30</sup> states that, if possible, the pursuer should be warned that it is a capital offense to kill a human being. This insures that the pursuer is fully conscience of his crime, and this warning would also certainly establish clear intent. Rashi<sup>31</sup> says that even if the pursuer does not explicitly acknowledge the warning, he may then be killed. Clear intent would then have been established through the warning, as the person who is not really serious about murder would cease his pursuit at this point or disclaim evil intent following a warning. Maimonides<sup>32</sup> codifies this approach that is also cited in normative Jewish law,<sup>33</sup> that a warning, wherever possible, must be given. Once the warning is issued and no change in behavior is demonstrated, the pursued victim can reasonably assume that the threat is legitimate and may act accordingly.

Other commentaries go one step further, stating<sup>34</sup> that since warning is not always feasible, especially in the case of a verbal threat, the potential victim may certainly disable or even kill the pursuer, if necessary, if a warning cannot be given. This is based on the general concept of *Pikuach Nefesh*, endangerment to life, where Judaism believes that not only the actual endangerment to life permits violation of 610 of the 613 commandments,<sup>35</sup> but even potential endangerment to life demands violation of these commandments.<sup>36</sup> Thus, one should violate the Sabbath and drive to the hospital when someone is ill, even there is only a possibility of the illness developing into a life-threatening situation. Similarly, in the pursuer case, even potential endangerment to one's life, however much in doubt, justifies a reaction by the victim. It is better to err on the side of saving one's life in such cases, according to these authorities. However, there is one Talmudic passage<sup>37</sup> which seems to come to an opposite conclusion -- only when it is absolutely clear to the potential victim that the threat is legitimate may he or she kill. The reverse conclusion is drawn when examining our original source,<sup>38</sup> i.e. only when it is clear to the person that the intruder or attacker is not life threatening must the victim desist from self defense. The implication is that anything short of that clarity, i.e. when the victim is reasonably sure, but does not know with absolute certainty that his or her life is in mortal danger, the person may indeed err on the side of protecting his or her life, and disable the attacker. It seems that the decisors have overwhelmingly preferred this approach and this reaction to such a situation.

Therefore, when time is of the essence and a decision has to be made whether to disable or even kill a potential attacker, it is left up to the subjective understanding of the potential victim. If the perception of danger is real, then Jewish law demands that immediate and proper protective steps should be taken. While it would be preferred to have confirmation through a warning (or some other means) that the life threatening situation is indeed a real one, this warning, if not feasible, is not a prerequisite for taking action and defending oneself.

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<sup>30</sup> Sanhedrin 72b

<sup>31</sup> Rashi commentary on Sanhedrin 72a, s.v. "Zu Hi Hatraato"

<sup>32</sup> Maimonides, Hilchot Rotze-ach 1:7

<sup>33</sup> Shulchan Aruch, Choshen Mishpat 425:1

<sup>34</sup> Minchat Chinuch, Mitzvah #600; Responsa of the Rivash, 138

<sup>35</sup> Shulchan Aruch, Yoreh Deah 157:1

<sup>36</sup> Shulchan Aruch, Orach Chaim 328:10-11 and 329:1,3

<sup>37</sup> Pesachim 2a

<sup>38</sup> Sanhedrin 72a based on Exodus 22:1

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