

Teacher Copy

Jewish Responses to the Terror

The horrible acts of September 11 have led to the current war. Beyond prayer and theological questions, what models exist in our tradition that can direct our actions in response to September 11? How do we understand America's response in light of these sources? Issues to be addressed include: When is Violent Action Justified? Teshuvah (Repentance) as a Response to Historical Crisis.

This session has been organized by Rabbi Michael Balinsky, Director of Faculty Development and Jane Shapiro, Associate Director of the Florence Melton Adult Mini-School. The Florence Melton Adult Mini-School, a project of the Hebrew University of Jerusalem, promotes adult Jewish literacy through the interactive study of a sequential systematic curriculum based on Jewish texts. We are a global network committed to pluralism, community-building, professionalization of adult Jewish learning, evaluation, research and innovation and an Israel-Diaspora partnership.



The point of the Rambam selections is to see how Jewish tradition justifies violence as a response. I have deliberately not chosen the categories of *milhemet mitzvah*, as that addresses a Jewish state. Indeed there is halachic debate if non Jews can go to war at all. Based on my readings, I think one can begin to develop a rationale through these sources. In halachic language war requires a *mattir*, something that permits you to do it. This is the intent, to show how one can respond given the Rambam statement in 1. that killing is prohibited. The Rambam translation is from the Yale Judaica series with some small editing.

When is violent action justified? How does war "permit" one to commit homicide?

1. Rambam- Laws of Murder and Preservation of Life: Chapter 1

1. If one slays a human being, he transgresses a negative commandment, for Scripture says, *Thou shall not murder* (Exod.20: 13). If one murders willfully in the presence of witnesses, he is put to death by the sword, for when Scripture says, *He shall surely be punished* (Exod. 21:20), we have learned from tradition that this means death by the sword. Whether one slays another with an iron weapon or burns him in fire, he is put to death by the sword.

Note that all this requires proper witnesses , warning for the court to do this.

4. The court is warned against accepting ransom from a murderer, even if he offers all the money in the world and even if the avenger of blood agrees to let him go free. For the life of the murdered person is not the property of the avenger of blood but the property of God, and Scripture says, *Moreover you shall take no ransom for the life of a murderer* (Num. 35: 31). There is no offense about which the Law is so strict as it is about bloodshed, as it is said, *So shall you not pollute the land wherein you are; for blood, it pollutes the land .* (Num. 35:33)

Note the key line, unique to the Rambam, that the life of the murdered person is the property of God. Therefore the system of the application of Divine Law applies. Murderers must be brought to justice as formulated by the law. Because we are property of God, the system applies.

5. If a murderer kills willfully, he may not be put to death by the witnesses or the spectators before he is brought to court and condemned to death, for Scripture says, *That the manslayer die not until he stand before the congregation for judgment* (Num. 35: 12). The same rule applies to anyone who is liable for death at the hands of the court because he has transgressed and committed a crime. He may not be put to death until he is sentenced by the court.

War, of course, goes beyond this, we do not go to court. How it

can be justified we will see later on in the Netziv.

6. The above rule applies when the offender has already transgressed and committed the crime for which he is liable for the death penalty at the hands of the court. But if one person is pursuing another with the intention of killing him, even if the pursuer is a minor, it is the duty of every Israelite to save the pursued, even at the cost of the pursuer's life.

7. Thus, if one has been warned but still pursues the other person, he may be killed even if he does not accept the warning, seeing that he continues to pursue. If it is possible to rescue the pursued at the cost of one of the pursuer's limbs, such as by striking him with an arrow or a stone or a sword and cutting off his hand or breaking his leg or blinding his eye, this should be done. If, however, it is impossible to judge exactly and the pursued can be rescued only if the pursuer is killed, he may be killed even though he has not yet killed anyone.

This is the case of rodef, the one being pursued. War is an extension of rodef, (the enemy wants to kill me), on a broad level. War does go beyond it because I, as a soldier, put my life in danger, which in rodef, I may not be required to do.

8. This is, moreover, a negative commandment, that we have no pity on the life of the pursuer.

14. If one person is able to save another and does not save him, he transgresses the commandment, *Neither shall thou stand idly by the blood of thy neighbor* (Lev. 19:16) Similarly, if one person sees another drowning in the sea, or being attacked by bandits, or being attacked by wild animals, and although able to rescue him either alone or by hiring others, does not rescue him; or if one hears heathen or informers plotting evil against another or laying a trap for him and he does not call it to the other's attention and let him know; or if one knows that a heathen or a violent person is going to attack another and although able to appease him on behalf of the other and make him change his mind, he does not do so; or if one acts in any similar way he transgresses in each case the injunction. *Neither shall thou stand idly by the blood of thy neighbor (ibid.)*.

15. If one sees someone pursuing another in order to kill him, or sees someone pursuing a woman forbidden to him in order to ravish her, and although able to save them does not do so, he thereby disregards the positive commandment and transgresses two negative commandments, *Thine eye shall have no pity (ibid.)*, and *Neither shall thou stand idly by the blood of thy neighbor* (Lev. 19: 16).

16. Although there is no flogging for these prohibitions, because breach of

them involves no action, the offense is most serious, for if one destroys the life of a single Israelite, it is regarded as though he destroyed the whole world, and if one preserves the life of a single Israelite, it is regarded as though he preserved the whole world.

Here we have the tension, saving a life may involve the destroying of a life, but as we are the property of God, we follow these rules. Note that a version of the above, though not the Rambam, leaves out Israelite and would apply to all.

Rambam-Laws of Theft- Chapter 9

This is another example of the above, someone breaks into your house and you may kill him. He is regarded as a rodef. One could extrapolate, with limitations, a terrorist cell in our land, is like breaking into a house.

7. If a thief enters by *breaking in* (cf. Exod. 22: 1) by day or by night, there is no bloodguiltiness for him, and if the owner of the house or someone else kills him, the slayer is exempt. Everyone has the right to kill a thief, either on a weekday or on the Sabbath and in any manner whatsoever, for Scripture says, *There shall be no bloodguiltiness for him* (Exod. 22: 1).

8. It makes no difference whether the thief breaks in or is found on one's roof or in his courtyard or in his rear enclosure, whether by day or by night. Why then does Scripture mention entrance by *breaking in*? Because the majority of thieves usually enter by breaking in at nighttime.

9. Why has the Law permitted the life of a thief to be taken although he comes merely to get property ? Because it is presumed that if the owner seeks to interfere and offers resistance, the thief might kill him. Consequently, if one enters another's house to steal, he is regarded as is one who pursues another to kill him. He may therefore be killed whether he is an adult or a minor, male or female.

10. If a householder is certain that a thief who has broken in will not kill him and has come only for property, he may not kill him, and if he does so he has committed murder, for Scripture says, *If the sun be risen upon him* (Exod. 22:2), which means, "If it is as clear as day to you that the thief's intentions toward you are peaceful, you may not kill him." Therefore, if a father breaks into his son's premises, he may not be killed, for the father will certainly not kill his son; but if a son breaks in to steal from his father, he may be killed.

2. R. Naphtali Zvi Yehudah Berlin (Netziv) on Gen. 9:5.

The Netziv (1817-1893) was Rosh Yeshiva of the famed Volozhin Yeshiva for almost 40 Years until it was closed by the Russian government in 1892.

Note that here you have the prohibition to kill and the requirement to bring murderer to justice. See how he extends it to war, that one can kill because you are no longer brothers.

Tanach - Genesis Chapter 9

1. *And God blessed Noah and his sons, and said to them, Be fruitful, and multiply, and replenish the earth.*
2. *And the fear of you and the dread of you shall be upon every beast of the earth, and upon every bird of the air, upon all that moves upon the earth, and upon all the fishes of the sea; to your hand are they delivered.*
3. *Every moving thing that lives shall be food for you; even as the green herb have I given you all things.*
4. *But flesh with its life, which is its blood, you shall not eat.*
5. *And surely your blood of your lives will I require; at the hand of every beast will I require it, and from the hand of man; at the hand of every man's brother will I require the life of man.*
6. *Whoever sheds man's blood, by man shall his blood be shed; for in the image of God he made man.*

"from the hand of a person's brother"

God specified that a person is culpable at a time when brotherly conduct is called for; not so in time of war and 'a time to hate' [following Kohelet 3:8] then it is a time to kill, and there is no culpability whatever, for that is how the world was founded. Similarly we read in *Shavuot* 35: "A kingdom that kills [in war fare] one in six is not held culpable"; (beyond that he would be held culpable) and even a king of Israel may wage an optional war, even though some Jews will be killed thereby.

3. *When war is waged, what is the status of civilians caught in the way? How does Jewish tradition understand this category?*

The issue of collateral damage, civilians is a complex one, how do you define one? If one supports a war, but is not a soldier, is one really "innocent"? There is not a lot of material on this, and the Bleich quote is not a blanket justification, rather a statement that this has not been addressed and is a new category for halacha. The Maharal is of course a source, but more of a drasha that a halachic statement per se.

For a discussion of this issue, the Netziv and Lowe sources and the broader question of the relationship of halacha and morality in warfare, see the exchange between J. David Bleich and Noam Zohar in Commandment and Community : New Essays in Jewish Legal and Political Philosophy (Suny Series in Jewish

Philosophy) by Daniel H. Frank (Editor)

Rabbi Judah Lowe of Prague

This commentary is based on Genesis 32:8, where the Torah records that Jacob was both fearful and distressed in encountering his brother Esau after over twenty years. Rashi suggests that Jacob was fearful he might be killed and distressed that he might kill others if the need arose to defend himself.

Perhaps they did not come to kill Jacob; although Esau brought them with him, they had come along under duress but without intending to kill. Now Jacob, since he did not know whether or not they had come to kill, was fearful lest he unlawfully kill them, and that is why he was distressed lest he kill others. Against this, it might be claimed that we cannot have it both ways. If the law in such a case is that since they had come with one who was coming to kill, they were to be presumed to be like him then he [Jacob] need not have been concerned: since they had come along, they had brought it upon themselves. If [on the other hand] the proper presumption is that they had come under duress, and that they would surely not do anything then surely he would be forbidden to kill; there is no occasion for being "distressed," since it is forbidden to kill [them]. However, although they should be killed since they had come with Esau who was coming to kill, nevertheless he was afraid of incurring guilt, as it would be like an inadvertent sin. Jacob would have believed that they had come to kill while [in fact, perhaps,] they had not come to kill so this is an inadvertent sin.

Rabbi J. David Bleich- Preemptive War in Jewish Law

"there exists no discussion in classical Rabbinic sources that takes cognizance of the likelihood of causing civilian casualties in the course of hostilities legitimately undertaken as posing a halakhic or moral problem"

4. *What is the theological underpinning of the Rambam? Can one repent in a time of crisis if one does not feel guilt over past actions?*

Here we have some thoughts that go against the grain of many. Nonetheless, this will raise many theological questions. One could suggest that the idea of repentance should still apply even if one does not follow the Rambam model here; it may not have happened because of what we did, but given what took

place, how do we take the moment to infuse it with meaning, not to justify, but to look at ourselves. In Soloveitchik language, how do we take a shared fate and transform it into a shared destiny? If we do that, then the event is not an accident, but an important moment to confront ourselves and our society.

Rambam Fast Days- Chapter 1

1. A positive Scriptural commandment prescribes prayer and the sounding of an alarm with trumpets whenever trouble befalls the community. For when Scripture says, *Against the adversary that oppresses you, then you shall sound an alarm with the trumpets* (Num. 10: 9) the meaning is: Cry out in prayer and sound an alarm against whatsoever is oppressing you, be it famine, pestilence, locusts, or the like.
2. This procedure is one of the roads to repentance, for as the community cries out in prayer and sounds an alarm when overtaken by trouble, everyone is bound to realize that evil has come upon them as a consequence of their own evil deeds, as it is written, *Your iniquities have turned away these things, and your sins have withheld good from you* (Jer. 3:25). And their repentance will cause the trouble to be removed from them.
3. If, on the other hand, the people do not cry out in prayer and do not sound an alarm, but merely say that it is the way of the world for such a thing to happen to them, and that their trouble is a matter of pure chance, they have chosen a cruel path which will cause them to persevere in their evil deeds and thus bring additional troubles upon them. For when Scripture says, *But walk contrary unto Me; then I will walk contrary unto you in fury* (Lev. 26:27-28), the meaning is: If, when I bring trouble upon you in order to cause you to repent, you say that the trouble is purely accidental, then I will add to your trouble the fury appropriate to such an "accident."