

IS THE
**Best
Defense**
A GOOD
BOOK?

PART

II

THE OLD TESTAMENT AND SELF-DEFENSE

DAVE KOPEL'S POPULAR FEATURE ON THE GOSPELS AND SELF-DEFENSE ("IS THE BEST DEFENSE A GOOD BOOK?," FEB.) DREW A HUGE RESPONSE FROM AMERICA'S 1ST FREEDOM READERS. HERE, KOPEL FOLLOWS UP WITH A LOOK AT APPLICABLE TEACHINGS FROM JEWISH LAW.

by DAVE KOPEL

What does the Bible say about the right of self-defense and the duty to defend others? This article examines the moral teachings of the first five books of the Bible.

These books are sometimes called the Pentateuch. Jews call them the Torah, which means "teaching" or "instruction." The Torah is by far the most important of Jewish scriptures. The Jewish Bible contains the same books as what Christians call the "Old Testament." Accordingly, the Torah is the foundation of the Christian scriptures.

The story of the Jewish people begins in the book of Genesis, with a man named Abram. God told Abram to leave his home in Mesopotamia and go to the land of Canaan (modern Israel). Abram, his wife Sarai and nephew Lot settled in the town of Sodom.

The kingdoms of Sodom and Gomorrah were overrun by invaders from Mesopotamia. Lot, along with other townspeople, was carried away captive. One prisoner escaped, "and told Abram the Hebrew" what had happened.

Although Lot had previously taken the best available land and left Abram to fend for himself, Abram immediately began a rescue mission. He

"armed his trained servants," all 318 of them. (Except as otherwise noted, this article uses the King James Version [KJV] of the Bible, the most influential translation in the English-speaking world.)

Abram procured allies from three tiny kingdoms by the Dead Sea, where Abram and Lot had been living. Abram led the combined forces in pursuit of Lot, and caught up with the captors near the town of Dan, which is near Mount Hermon

in the Golan Heights. Abram divided his forces into groups, launched a night attack "and smote them." The defeated marauders attempted to flee with their booty and prisoners, but Abram pursued them "unto Hobah" (near Damascus) and liberated all the captives and the stolen treasure.

The nearby kings went out to meet Abram after his great victory. Among these kings was Melchizedek, king of Salem, who also "was the priest of the most high God." Abram gave a tithe (one-tenth) of his property to Melchizedek the priest. When the other kings tried to bargain with Abram for the spoils of victory, Abram asked only that his allied kingdoms receive their fair share. For himself and his household and fighters, he asked only for what they had eaten.

In every respect, Abram was the model of the ideal Jewish fighter: He fought to save the innocent, not for material gain. He was a bold and successful commander who caught and destroyed enemies. He was a good diplomat who built an alliance with other victims of the aggressors. A great priest blessed him for his good works of using violence to rescue innocents. Immediately after the rescue mission, God changed Abram's name to "Abraham" and gave him the Covenant that would create the Jewish people.

Thousands of years later, after the New England settlers had won King Philip's War in 1675-76, minister Samuel Nowell preached a sermon on Artillery

Day—the day that new officers of the militia artillery were elected. His sermon set forth the main lines of New England militia preaching that would be followed into the American Revolution. Basing

(Translation by Rashi, the foremost Jewish Bible commentator.)

Instead of “armed,” the KJV uses the word “harnessed” (a word typically used for horses) as an awkward way of

where the Pharaoh demanded to be worshipped as a god, was more than the end of physical slavery. It marked the beginning of political self-rule by the Hebrews and their spiritual liberation.

Eric Voegelin, a historian of philosophy, wrote in his book *The Ecumenic Age* that the physical exodus was also a “spiritual exodus from the cosmological form of imperial rule. The sonship of God is transferred from the pharaoh to the people of Israel in immediate existence under Yahweh.” Hence, a person’s life belongs to God, not to the government.

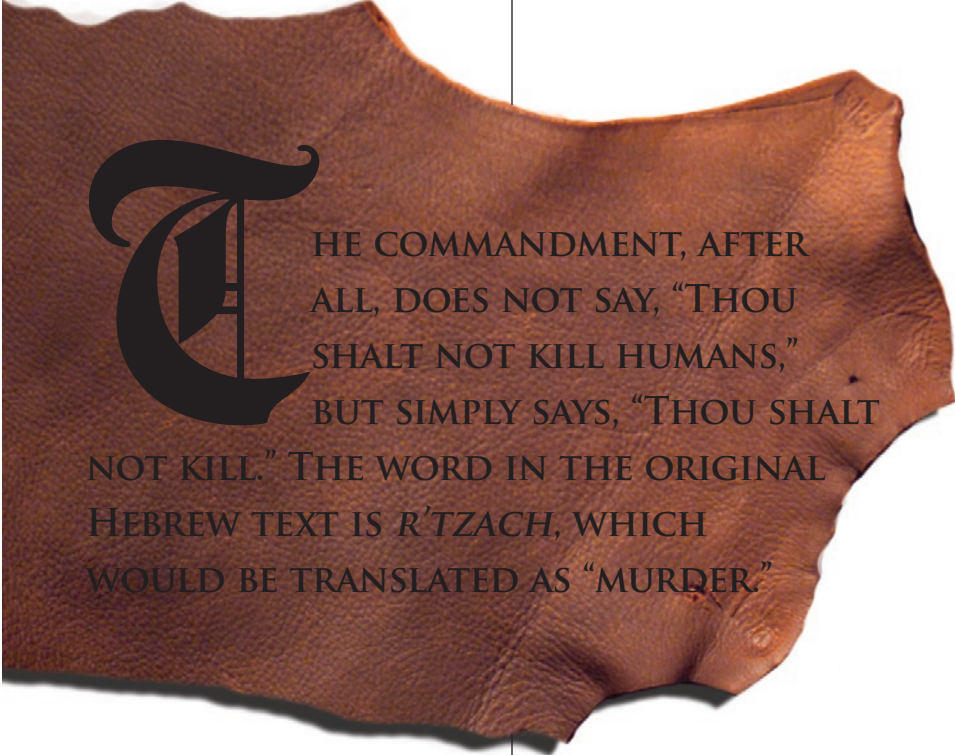
After the liberation from Egypt, God gave the Hebrews and their leader Moses the law, for now they would have to govern themselves as an independent, responsible people, rather than simply obey the dictates of slavemasters. The law required self-defense against criminal attack.

The Book of Exodus, chapter 22, absolves a homeowner who kills a burglar at night: “If a thief be found breaking up, and be smitten that he die, there shall be no blood shed for him.” The next verse states that, “If the sun be risen upon him, there shall be blood shed for him.”

Under the Mosaic law, the nearest relative of a person who was murdered was obliged to kill the murderer, providing blood restitution for the death of the innocent. But when a nocturnal burglar was killed in the act, there was no wrong-doing. Thus, his relatives had no right of restitution against the home-owner.

Similarly, the foundational Roman laws, known as the Twelve Tables, also allowed the killing of a night thief in self-defense, while requiring that in the daytime the victim first make a cry for help (to summon neighbors) before using deadly force.

One of the greatest Jewish legal scholars of antiquity was Philo of Alexandria (approx. 20 B.C.– 50 A.D.), who wrote about the Jewish law in Alexandria, Egypt, during the period when Egypt and Israel were both under Roman rule. Much of Philo’s treatise, *The Special Laws*, aimed to show that Jewish law was consistent with Roman law.



THE COMMANDMENT, AFTER ALL, DOES NOT SAY, “THOU SHALT NOT KILL HUMANS,” BUT SIMPLY SAYS, “THOU SHALT NOT KILL.” THE WORD IN THE ORIGINAL HEBREW TEXT IS *R’TZACH*, WHICH WOULD BE TRANSLATED AS “MURDER.”

the sermon on the text “he armed his trained servants,” Nowell (and countless other New England preachers) explained that God required people to defend themselves when unjustly attacked, that defensive training was a sacred obligation, and that God was a “Man of War” who would always lead them to victory if they fulfilled their duty to fight courageously.

The next book of the Bible, Exodus, tells of the liberation of the Hebrew slaves from Egypt. After the 10 plagues had finally convinced the Egyptians to let the Hebrews go, the Hebrews were allowed to take whatever they wanted from the Egyptians, because God made the Egyptians favorably disposed to the Hebrews. The Hebrew slaves thus received partial reparations for hundreds of years of slavery.

Then: “God took the people toward the way of the Wilderness to the Sea of Reeds. And the Children of Israel were armed when they went up from Egypt.”

expressing that the Hebrews marched out in military order. Other translations better express the passage’s sense that the Hebrews marched out free in glorious battle array: “And the people of Israel went up ... equipped for battle” (Revised Standard Version); “and the children of Israel went up armed” (American Standard Version); “And the sons of Israel went up in military order” (American Baptist Publication Society). The Hebrew word is *chamushim*, probably related to the Egyptian *chams*, meaning “lance.” Presumably, the weapons had been obtained from the Egyptians.

For most of human history, a distinctive feature of a free man has been that he possesses arms, while a distinctive feature of a slave is that he does not. Thus the text shows that the Hebrews were marching out triumphantly as a free people, not sneaking away surreptitiously like slaves. The Hebrew liberation from Egypt,

He argued that the Jewish law, like the Roman law, was based on self-defense, because every night burglar was a potential murderer. The burglar would be armed, at the least, with iron house-breaking tools, which could be used as weapons. Because assistance from the police or neighbors would be unlikely at night, the victim was allowed immediate resort to deadly force.

Philo thought it foolish to blame arms rather than criminals for crime: "It is a piece of folly to be angry with the servants rather than those who are the causes of ... folly ... [unless] it can be called fitting to let men go who have committed murder with the sword, and to content one's self with throwing away the sword ..."

The Talmud is a multi-layered commentary on Jewish law. New editions incorporate additional materials from new commentators. The Babylonian Talmud (first written around the sixth century by the large Jewish community that lived in what is now Iraq) explained the passages in Exodus: "What is reason for the law of breaking in? Because it is certain that no man is inactive where his property is concerned; therefore, this one [the thief] must have reasoned, 'If I go there, he [the owner] will oppose me and prevent me; but if he does, I will kill him.'" Hence: "If he come to slay thee, forestall by slaying him" (Sanhedrin 72a).

The last sentence is sometimes translated as "If someone comes to kill you, rise up and kill him first." The sentence does not delegate discretion; it is a positive command. A Jew has a duty to use deadly force to defend himself or herself against murderous attack.

The Talmud also imposes an affirmative duty on bystanders to kill if necessary to prevent a murder, the rape of a betrothed woman or pederasty (Sanhedrin 73a.)

Commentators have agreed that a person is required even to hire a rescuer if necessary to save the victim from the "pursuer" (the *rodef*). Likewise, "if one sees a wild beast ravaging [a fellow] or bandits coming to attack him ... he is obligated to save [the fellow]."

The duty to use force to defend

an innocent is based on two Torah passages. The first is Leviticus 19:16, which provides, "neither shalt thou stand against the blood of thy neighbour." Or in a modern translation, "nor shall you stand idly by when your neighbor's life is at stake." (New American Bible)

The second Torah passage comes from Deuteronomy, and explains that if a man and a betrothed (engaged) woman had illicit sex in the city, it would be presumed that she had consented, because she would have cried out for help had she not consented. But if the sexual act occurred in the country, she would be presumed to have been the victim of a forcible rape, "For he found her in the field, and the betrothed damsel cried . . . there was none to save her" (23:23-27). The passage implies a duty of bystanders to heed a woman's cries and come to her rescue. (The presumptions about consent or non-consent could be overcome by other evidence.)

One of the most important parts of Jewish Oral Law (which was eventually written down in the Talmud and in other documents) are the Mitzvot, 613 commands from God that guide Jewish life. One Mitzvot requires everyone "To save a person who is being pursued even if it is necessary to kill the pursuer." Another Mitzvot commands a person "Not to have pity on a pursuer. Rather, he should be killed before he kills or rapes the person he is pursuing."

A 1998 Israeli law, derived from Leviticus, mandates that a person aid another who is in immediate danger if aid can be rendered without danger to the rescuer. A few American states have similar laws, often called Good Samaritan Laws.

In the Talmud and elsewhere, all significant Jewish commentators have read the Exodus passage about the sun being risen on the burglar as metaphorical. "If the sun be risen upon him" means "If the burglar's intentions are plainly non-violent." Thus, if a householder is certain that a burglar will not use violence, then the householder may not kill the burglar, even at night. Conversely, if the burglar is a violent

threat to the household, then the burglar may be killed, regardless of the hour of the day (Mekhilta Nezikin 13, 3, 101).

Some pacifists take the Sixth Commandment, which is often translated as "Thou shalt not kill," as somehow negating what the rest of the Torah teaches about the duty of defending oneself and others.

Yet *no one* actually interprets "Thou shalt not kill" completely literally. The commandment, after all, does not say, "Thou shalt not kill humans," but simply says, "Thou shalt not kill." Read literally, "Thou shalt not kill" would forbid not only the consumption of meat, but also the killing of vegetable, fruit and grain plants. Likewise forbidden would be use of antibiotics, including antibiotic soap, which deliberately kills millions of bacteria.

If one is willing to depart from an absolutely literal application of the King James translation, then it is reasonable to apply the commandment according to its plain meaning in the original Hebrew. The word in the original Hebrew text is *r'tzach*, which would be translated as "murder." The Jewish Publication Society *Torah Commentary on Exodus* explains that the Hebrew verb stem "applies only to illegal killing and, unlike other verbs for the taking of life, is never used in the administration of justice or for killing in war."

Thus, the Mitzvot that implements the Sixth Commandment states that a good Jew is required "Not to kill an innocent person, as [the Sixth Commandment] states: 'Do not murder.'"

In sum, the first five books of the Bible offer nothing to support an argument that defensive violence is wrong, as many gun-banners would like you to believe. To the contrary, using force to protect oneself and other innocents is not only a right, but a positive moral duty. ☪

Editor's Note:

This article is a condensed version of Kopel's article, "The Torah and Self-Defense," published in volume 109 of the Penn State Law Review, and available at davekopel.org