

The Israel Koschitzky Virtual Beit Midrash

Parshat HaShavua
Yeshivat Har Etzion

This parasha series is dedicated
in memory of Michael Jotkowitz, z"l.

PARASHAT MISHPATIM

This shiur is dedicated in memory of Nathan (Naftali Chaim ben Akiva) Wadler z"l,
whose yahrzeit will be observed on the twenty-ninth of Shevat.

Murdering with Guile

By Rav Yaakov Medan

"He who strikes a person such that he dies, shall surely be put to death. But if he did not lie in wait for him, only God made it happen, then I will appoint you a place to where he shall flee. And if a person comes brazenly upon his neighbor to kill him with guile - you shall take him from My altar to die." (21:12-14)

Halakha generally recognizes two types of murderers: one who murders knowingly and with premeditation and one who kills unwittingly. But from the above verses a third type arises: one who kills "with guile". In the simple understanding of the halakha, the special law of "You shall take him from My altar to die" is applied to any intentional murderer, but the sources apply it specifically and exclusively to the person who murders with guile. This will be the subject of our *shiur*.

There are two types of murder "with guile":

a. A person may deceive his neighbor into trusting him and letting down his guard, thus enabling him to carry out the murder without having to contend with any self-defense on the part of the victim. Concerning this type of deceit Yirmiyahu declares (9:7-8):

"... He speaks peaceably to his neighbor with his mouth, while in his heart he lies in wait for him. Shall I not punish them for these things, says God? Shall My soul not be avenged for such a nation?"
(*Yirmiyahu* 9:7-8)

A perfect biblical example of this sin is presented in the story of the murder of Gedalia ben Achikam by Yishmael ben Netanya - a murder which led to the downfall of the last remnant of Yehuda:

"It was in the seventh month that Yishmael ben Netanya ben Elishama, of royal lineage, and the chief officers of the king, and ten men with him, came to Gedalia ben Achikam at Mitzpa. They ate bread together there at Mitzpa. Then Yishmael ben Netanya and the ten men who were with him arose and struck Gedalia ben Achikam ben Shafan by the sword, killing the one whom the King of Babylon had appointed governor over the land. And Yishmael slew all the Jews who were with him, with Gedalia at Mitzpa, as well as the Kasdim who were there, and the men of war... Then Yishmael ben Netanya came out from Mitzpa towards them, walking and weeping as he went. When he met them he said to them: Come to Gedalia ben Achikam. But when they entered the city, Yishmael ben Netanya slew them [and cast them] into the pit - he and the men who were with him." (*Yirmiyahu* 41:1-7)

This interpretation of "murder with guile" does not sit well with the order of the verses in our *parasha*. One would think that this murder is even more abhorrent than regular premeditated murder. The order of the verses should progress either from the most severe to the least severe or vice versa. How are we to understand the order as it appears in the text: first a premeditated murder, then homicide, and then murder with guile? Moreover, what is the nature of the special punishment reserved for one who murders with guile - that he is taken to die [even] from the holy altar?

b. The first type of murderer we discussed is concerned about the victim's potential of self-defense. A second type of murderer "with guile" is worried about the punishment that a *beit din* will mete out to him because of the blood that he has spilled. There are two subcategories here: one does everything in his power to cover up any trace of his involvement with the murder; the other claims that he acted unwittingly or lawfully.

The murderer who seeks to erase all traces of his deed will follow the example of the first murderer - Kayin, who killed his brother Hevel:

"God said to Kayin: Where is Hevel, your brother? And he said: I do not know; am I then my brother's keeper?!" (*Bereishit* 4:9)

Perhaps God revealed Himself to Kayin while he was offering his sacrifice - as is the case in many other revelations in *Tanakh*. Kayin killed his brother in order to "force" God, as it were, to accept his own sacrifice rather than that of Hevel. Perhaps, following the murder, Kayin went off to achieve his aim and to offer his sacrifice to God. And as he offers it, he protests his innocence, claiming to have no knowledge of where his brother is. While performing the very service at the altar, Kayin attempts to deceive the Receiver of his sacrifice.

God does not accept Kayin's sacrifice; on the contrary, He banishes him from the altar. Further on in the interchange, God grants Kayin a "stay of execution." He cancels the death sentence that the murderer deserves, but does not forgive the attempt to erase the traces of the sin by hiding the spilled blood in the ground:

"He said - What have you done? The voice of your brother's blood calls to Me from the ground. Now you are cursed from the ground that opened its mouth to accept your brother's blood from your hand: when you work the land, it shall no longer give its strength to you; a fugitive and wanderer shall you be in the land." (*Bereishit* 4:10-12)

In other words, even when God cancels Kayin's punishment for willful murder, He does not forego the punishment for murder with guile. Kayin is immediately banished from the ground which he used in order to hide his act.

Another *parasha* that emphasizes this point is that of the "*egla arufa*." Here the Torah describes a situation where the murderer has succeeded in erasing all traces leading to him, as though the earth had "swallowed him up" - just as the earth swallowed up all traces of Hevel after Kayin murders him. [THIS IS NOT CLEAR: IN THE CASE OF THE EGLA ARUFA THE VICTIM'S BODY IS FOUND, BUT THE MURDERER HIMSELF IS NOT.] The heifer whose neck is broken in the ravine is the complete opposite of a sacrifice slaughtered upon the altar. Its purpose is to signify that God will accept no sacrifice as atonement for the murder, nor for the guilt of the community as a whole - for the fact that the murderer goes about freely. On the simplest level, the ravine where the heifer's neck is broken is the site of the murder, and therefore it shall neither be tilled nor sown. This ground is cursed because it opened its mouth and swallowed the footsteps of the murderer - just as the ground cursed Kayin after it hid Hevel's murder. The elders of the *beit din* of the closest city must declare that they were not party to the hiding of the crime, that there has been no situation in which they came upon the murderer but guilefully took no notice of his crime.

The other type of guileful murderer seeking to avoid punishment but unable to cover up his actions, tries to camouflage his intent and to present his act as either a mistake or something that was justified and permissible.

"If a man hates his neighbor, and he lies in wait for him and comes upon him to strike a mortal blow such that he dies, and he flees to one of these cities, then the elders of his city shall send and take him from there, and give him into the hand of the avenger of blood, that he may die. You shall not look upon him with mercy; you shall rid yourself of the innocent blood of Israel, that it may be well with you." (*Devarim* 19:11-13)

This *parasha* is juxtaposed to the command concerning the cities of refuge, in order to protect those who shed blood by mistake. A willful murderer may not escape to a city of refuge, and therefore this *parasha* speaks about a person who murders with guile, seeking the protection of the elders of the *beit din* in his city against the sword of the avenger of blood. The altar, in this instance, is interpreted - contrary to the previous case, where it implied the place of Divine worship - as the place of refuge from the avenger's anger. The avenger, so the murderer believes, will never dare enter "God's altar" with a sword. Therefore the Torah commands us, "You shall take him from My altar to die".

This would appear to explain the order of the murderers listed in our *parasha*. The first is the willful murderer; he is sentenced to death. The second is someone who did not "lie in wait"; the Torah sets aside a place for him to flee to. At this stage the cities of refuge had not yet been established; the command to build them is to be fulfilled only upon reaching Eretz Yisrael. Therefore the expression, "I shall make for you A PLACE to where he shall flee" would seem to imply that the word '*makom*' (place) is used here in the same way that it is used in many other places in the Torah:

"To the PLACE of the altar which he had made there originally; and there Avram called out in God's Name" (*Bereishit* 13:4)

"On the third day, Avraham raised his eyes and saw THE PLACE from afar" (*Bereishit* 22:4)

"He came to THE PLACE and prepared to sleep there for the sun was setting; He took some of the stones of THE PLACE and placed them for his head, and he lay down at that place" (*Bereishit* 28:11)

In other words - '*makom*' means an altar, or another site devoted to Divine worship. It is to such a place that the murderer flees.

According to our interpretation, the third type of murderer is a composite of the first two types. He murders intentionally, but pretends to have done so unknowingly. It is concerning this murderer that the Torah commands that he be removed from the place of his refuge, from the 'altar,' and put to death. (This also includes the murderer who justifies his act as being permissible; we shall discuss this further below.)

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It would seem that the biblical character who best epitomizes the concept of murdering "with guile" is Yoav ben Tzeruya, the commander of David's army.

Yoav kills three people, either directly or indirectly: Avner ben Ner, Uriya ha-Chitti, and Amasa ben Yeter.

Let us examine the murder of Avner:

"Yoav, and all the soldiers that were with him, came, and it was told to Yoav saying: 'Avner ben Ner came to the king, and he sent him off, and he went in peace.' So Yoav came to the king and said: 'What have you done? Behold, Avner came to you - why did you then send him, so he is gone away? You know Avner ben Ner, that he came to seduce you, and to know your going out and your coming in, and to know all that you are doing!' And Yoav went out from David and sent messengers after Avner, and they brought him back from the well of Sira, but David did not know of it. So Avner returned to Chevron, and Yoav took him aside inside the gate to speak to him in private, and he struck him there in the belly, and he died, for the blood of Asa'el his brother." (*Shemuel II 3:23-27*)

Yoav decides to kill Avner. It is possible that he does this because he suspects that Avner will seduce David and spy against him; perhaps he does it to avenge the blood of Asa'el his brother. Perhaps he kills him for a different reason, which is not mentioned in the verses: the concern that Avner will take over his position as chief of the army as part of the agreement concerning the unification of the kingdom that is to be drawn up with David.

How does Yoav kill Avner? First, he takes him aside at the gate in order to speak with him. Avner does not suspect Yoav of any scheming against him and fails to protect himself; Yoav exploits this and deals him a mortal blow. The *Midrash* and Rashi describe the scene in more visual terms:

"He asked him, guilefully: 'A widowed woman who frees her brother-in-law of the obligation to marry her (*yevama*) - if she is a dwarf, how does

she perform the '*chalitza*' (a ritual performed with the man's shoe)?' He began telling him and showing him: 'She takes his shoe thus, with her teeth...' - and he drew his sword and killed him." (*Rashi Sanhedrin 49a* according to the *Midrash ha-Gadol, Shemot 21:14*).

While involved in discussing an halakhic question, Avner lowers his guard and does not protect himself. Yoav exploits this to kill him, in a way that is neither fair nor honorable. This is the way of guile.

But this was not the only guileful aspect of Yoav's act.

"Yoav drew him aside inside the gate, to speak with him in private' - Rabbi Yochanan said: they adjudicated the case. He (Yoav) said to him (Avner):

- Why did you kill Asa'ek?

- Asa'el was a *rodef*.

- You could have saved him with one of his limbs only wounded him)!

- No, I could not.

- You aimed precisely at his fifth rib, you couldn't have managed one of his limbs?"(*Sanhedrin 49a*)

Yoav judges Avner in accordance with Torah law, as a murderer, and he punishes him in accordance with the law of an avenger. Apparently, everything here is in order. But David, in his eulogy for Avner and in his will, treats Yoav as a murderer:

"David heard afterwards, and he said: 'I and my kingdom are guiltless before God forever for the blood of Avner ben Ner. It shall rest upon the head of Yoav and all of his father's household. May Yoav's house never lack a '*zav*,' a '*metzora*,' one who walks with crutches, one who falls by the sword, and one who lacks bread.'" (*Shemuel II 3:28-29*)

"You, too, know all that Yoav ben Tzeruya did to me - what he did to the two officers of the hosts of Israel, to Avner ben Ner and to Amasa ben Yeter, that he killed them, and shed the blood of war in peace, and put the blood of war upon his belt that was around his loins, and in his shoes that were on his feet. Act according to your wisdom, and do not let him die a peaceful death of old age." (*Melakhim I 2:5-6*)

Apparently, a person may judge his fellow in accordance with Torah law and still be considered a murderer, deserving of death. David knew that it was not the avenging of blood that motivated Yoav to kill Avner, but rather his concern that he would lose his own position as chief of the army.

This is guile of the second variety. The murderer is wary not only of the victim's self-defense, but also of his own punishment at the hands of the *beit din*. Therefore, he produces explanations and excuses that are not true, so as to satisfy the judges and assure their protection.

Yoav acts in a similar way when he kills Amasa:

"Yoav said to Amasa: Are you well, my brother? And Yoav grasped Amasa's beard with his right hand, to kiss him. And Amasa took no heed of the sword in Yoav's hand, and he smote him with it in the belly, spilling his bowels to the ground; he did not strike him again, but he died..." (*Shemuel II 20:9-10*)

There was guile involved in killing him, but in this case, too, there was seemingly a solid halakhic justification for Yoav's act:

"He said to him: "For what reason did you kill Amasa? He answered: Amasa rebelled against the king..." (*Sanhedrin 49a*)

Despite this justification, Yoav is judged as a murderer for killing Amasa. This shows that the justification was no more than an excuse to get rid of Amasa, who was appointed as commander of the army instead of Yoav after Yoav killed Avshalom, and because David wanted to make peace with the commander of his army. The excuse, then, was nothing more than guile.

Was there truly a justification for killing Uria ha-Chitti, or was the supposed justification again just an excuse? The scope of this *shiur* does not allow for discussion at length on this subject. In any event, the prophet Natan rebukes him severely. But here we are discussing not David, whose motivations and state of mind we may perhaps at least understand. Rather, we are discussing his accomplice - Yoav, who fulfilled David's orders. Fulfilling the order of the king of Israel is clearly demanded by halakha, but Yoav did not make any effort to know the limits of the law of obeying the king:

"God will return his blood upon his head for striking two men more righteous and better than he': 'Better' - because they understood the limitations [of their duty to obey: they did not kill the priests of Nov

despite Shaul's explicit order to do so], while he did not understand. 'More righteous' - because they received their [immoral] orders directly, verbally, and they did not carry them out, while he received his orders [only] in a letter, but he [still] fulfilled them." (*Sanhedrin* 49a)

The fact that Yoav was not blindly obedient towards David in other areas gives rise to serious questions as to his true intentions in the matter of Uriya.

The way in which Yoav killed Uriya was also guileful; it exploited military camaraderie and self-sacrifice in order to stab a comrade-in-arms in the back:

"He wrote in the letter, saying: Bring Uriya to the frontlines of the fiercest fighting, and draw back from behind him so that he will be struck and will die. And it was, when Yoav besieged the city, he assigned Uriya to the place where he knew that the warriors were. When the men of the city came out to do battle with Yoav, some of David's servants fell - and Uriya ha-Chitti died also. Then Yoav sent and told David all about the battle. He instructed the messenger, saying: When you finish telling the king all about the battle, then if the king's anger is aroused and he says, 'Why did you come close to the city to fight? Did you not know that they would shoot from atop the wall? Who struck Avimelekh ben Yerubeshet; did a woman not throw a millstone upon him from atop the wall, such that he died in Tevetz? Why did you approach the wall?' Then you shall say: Your servant Uriya ha-Chitti is also dead." (*Shemuel* II 11:15-16)

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Yoav's punishment is appropriate, as is fitting for one who murders with guile, concerning whom it is written, "You shall take him from My altar to die":

"Then news came to Yoav - for Yoav had followed after Adoniya, but he had not followed Avshalom - and Yoav fled to God's Tent and he grasped the corners of the altar. It was told to King Shelomo that Yoav had fled to God's Tent, and that behold, he was by the altar. Shelomo sent Benayahu ben Yehoyada saying; 'Go, attack him.' Benahayhu came to God's tent and said to him: 'So says the king: Come out.' But he said, 'No, for I shall die here.' Benayahu brought word back to the king, saying: 'Thus said Yoav, and thus I answered him.' The king said to him: 'Do as he said; strike him, and bury him, thereby removing the innocent blood spilled by Yoav from upon me and from upon my father's house. May God return his blood upon his head for killing two men more

righteous and better than he; for he killed them by the sword, and my father David did not know: Avner ben Ner, officer of the host of Israel, and Amasa ben Yeter, officer of the host of Yehuda. May their blood return to the head of Yoav and the head of his descendants forever, and may there be peace for David and for his descendants and for his household and for his throne from God forever.' Then Benayahu ben Yehoyada went up and attacked him and slew him, and he was buried in his house in the wilderness." (*Melakhim I* 2:28-34)

The *Gemara* in *Sanhedrin* and the Rambam (Laws of a Murderer, 5:14) elaborate at length on the two death sentences that Yoav deserves. The one was for rebelling against the king because he supported Adoniyahu. For this sin the altar protected him, and Benayahu was unable to kill him. The second death sentence was for spilling the blood of Avner and Amasa (the *Midrash* in the *Gemara* adds Uriya to this list). For this Benayahu took him from the altar and killed him.

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Yoav's personality is too rich and complex to discuss fully in such a short space. Let us review just a tiny sample of the sources that balance the negative picture that emerges from the discussion above:

"Rabbi Abba bar Kahana said: Were it not for David, Yoav would not have done battle, and were it not for Yoav, David would not have engaged in Torah. As it is written, 'David performed justice and righteousness for all his people, and Yoav ben Tzeruya was in charge of the army.' What does it mean that 'David performed justice and righteousness for all his people?' [He was able to,] because Yoav was taking care of the army. And what is the meaning of 'Yoav was in charge of the army?' So that David could perform justice and righteousness for all his people... 'And he was buried in his house in the wilderness' - Was his house then in the wilderness? Rav Yehuda said in the name of Rav: It was like a wilderness. Just as the wilderness is open to all, so Yoav's home was open to all (Rashi: to the poor, who were sustained by his household). Another opinion: Like a wilderness - just as a wilderness is clean of theft and immorality, so Yoav's house was clean of theft and immorality." (*Sanhedrin* 49a)

On the other hand, in this *shiur* we addressed only one aspect of Yoav: his sin of murdering with guile, and the severity of this sin and its punishment.

Translated by Kaeren Fish

