

PARASHAT HASHAVUA

PARASHAT MASEI

The Inadvertent Murderer and the Cities of Refuge

By Dr. Jonathan Grossman

Translated by David Silverberg

The end of this week's parasha - and thus, the end of Sefer Bemidbar - presents a lengthy discussion of the laws regarding the establishment of the cities of refuge (arei miklat) and the inadvertent murderer. Wherein lies the relevance of these laws to the conclusion of Sefer Bemidbar? One would have expected this section to appear in the legal portions in Chumash, such as Parashat Mishpatim. (In fact, a brief reference to the cities of refuge does actually appear in Parashat Mishpatim - Shemot 21:13.) Why does the Torah introduce the cities of refuge in our parasha?

Given the context of this section, I would suggest that the presentation of the laws of the inadvertent murderer in our parasha focuses not on the murderer himself, but rather on the ramifications thereof to the LAND. The preceding section deals with the precise borders of the Land of Israel and the method of its distribution among the twelve tribes as well as the Tribe of Levi. In this context, the Torah reminds us that several cities are to be designated for the benefit of accidental killers. It is therefore not surprising that the section concludes: "You shall not defile the land in which you live, in which I Myself abide, for I God abide among the Israelite people" (35:34). This verse forms an appropriate conclusion for the regulations involving the conquest, occupation and distribution of the Land.

Nevertheless, the dominating characteristic of this section is clearly its strictly legal quality. In this sense, it differs substantially from the other two discussions of the arei miklat in Chumash. First, let us briefly review the various references to arei miklat in the Torah.

The concept of the city of refuge for inadvertent murderers appears in the Torah for the first time (as noted earlier) very briefly in Parashat Mishpatim: "He who fatally strikes a man shall be put to death. If he did not do it by design, but God lead him to it, then I will assign you a place to which he can flee" (Shemot 21:12-3). We encounter these laws once again in our parasha, in the context of the division of the Land, and lastly in Parashat Shoftim, where the Torah goes through this topic at length (Devarim 19.)

In order to determine the unique characteristic of these halakhot as presented in our parasha, we must first take note of the varying points of emphasis in the different presentations of the cities of refuge. A careful comparison between the Torah's discussion here and that in Sefer Devarim reveals several key differences between these two presentations of the cities of refuge:

With regard to the status of the cities themselves:

Our parasha describes the murderer's escape to the city of refuge as an integral part of the legal process, which culminates with his court hearing in the city of refuge. His hearing determines the length of his stay in the ir miklat: "The cities shall serve you as a refuge from the avenger, so that the manslayer may not die until he has stood trial before the assembly" (35:12). The verses then outline the procedure after the murderer's acquittal, once the court has established that the victim was, indeed, killed accidentally: "The assembly shall protect the manslayer from the blood-avenger, and the assembly shall restore him to the city of refuge to which he fled..." (35:25). The people are responsible to return the inadvertent perpetrator to the city of refuge where he must remain, apparently as a penalty for his carelessness. This idea is reinforced later in the parasha, where we read of the prohibition to accept monetary payment in place of the slayer's residence in the ir miklat:

You may not accept a ransom for the life of a murderer who is guilty of a capital crime; he must be put to death. Nor may you accept ransom in lieu of flight to a city refuge, enabling one to return to live on his land before the death of the priest (35:31-2.)

The Torah here equates the ransom in place of capital punishment for premeditated murder with that in place of fleeing in the city of refuge for accidental murder. Clearly, the requirement of moving to the city of refuge constitutes part of the legal process mandated upon the inadvertent murderer.

The discussion in Devarim, by contrast, mentions nothing about legal procedures. It presents the ir miklat as simply a means of saving oneself from the fury of the avenger: "Otherwise, when the distance is great, the blood-avenger, pursuing the manslayer in hot anger, may overtake him and kill him.... That is why I command you: set aside three cities" (Devarim 19:6-7.)

With regard to the blood-avenger

The section in Devarim depicts the avenger as an angry relative seeking revenge. The operative expression here is "in hot anger." In his potentially uncontrollable fit of vengeful rage, the relative may come to kill the inadvertent murderer, and for this reason the cities of refuge must be established. Our parasha, too, begins in a similar vein: "The cities shall serve you as a refuge from the avenger...." However, as we mentioned, the murderer's stay in the city relates directly to his impending trial - "...until he has stood trial before the assembly." Then, within the discussion of the inadvertent killer the Torah introduces laws regarding the intentional murderer, specifically the procedure by which the court determines that the killing was in fact done on purpose. The Torah specifies that at times the object used indicates the murderous intentions of the perpetrator—

If he struck him with an iron object so that death results...If he struck him with a stone tool...if the object with which he struck him was a wooden tool... (35:16-19)

and occasionally the situation itself proves the guilt of the suspect - "So too, if he pushed him in hate... or if he struck him" (35:20-1). In both instances, the AVENGER HIMSELF administers capital punishment (verses 19; 21). In contrast to the enraged out-of-control relative of Sefer Devarim, from whom we try to protect the killer, the avenger in Sefer Bemidbar plays a critical role in the process of law enforcement.

It should be noted that this law of the avenger's killing the intentional murderer appears in Devarim as well, but only in the following unit, after the discussion of the inadvertent killer. Whereas here in Parashat Masei, the Torah speaks of a single process, which determines that the murder was done either intentionally or accidentally, the parasha in Devarim relates to two entirely different procedures. We will elaborate on this distinction later in the shiur[.

With regard to the perpetrator

The section in Sefer Devarim never even alludes to any mandatory requirement on the part of the killer to remain in the city of refuge. Residence in the ir miklat remains an option for his protection from the avenger. In our parasha, however, the Torah clearly demands that he remain away from home, in the city of refuge. We have already seen that "the assembly" restores him to the ir miklat after his trial and that he may not pay money in exchange for his right to return home. Perhaps even stranger is the Torah's requirement, "For he must remain inside his city of refuge until the death of the high priest; after the death of the high priest, the manslayer may return to his landholding" (35:28). Why can't the killer - who has long been acquitted - go home whenever he wishes? Even if the avenger has died or moved far away, thus eliminating any potential danger for the inadvertent killer, the latter must still remain in the city of refuge. Whatever the reason (which will be discussed later), this depiction of the city of refuge as a prison of sorts for inadvertent killers appears only here, and not in Sefer Devarim.

A final distinction between the two parshiyot relates to a basic question already posed by Chazal. Yisrael were to designate six cities of refuge, three on the eastern banks of the Jordan River - the territory of Reuven, Gad and half of Menashe - and three in "mainland" Israel, on the western side of the Jordan - the home of the rest of Benei Yisrael (Bemidbar 35:14). This distribution seems sorely unbalanced. Why should the region inhabited by nine and half tribes receive the same number of arei miklat as the territory settled by two and a half? (See Sifrei, Parasha 160; Masekhet Makkot 10a). Rashi cites Chazal's answer that there was a disproportionately high number of murderers among the tribes living on the eastern side of the Jordan, thus warranting three cities of refuge. It seems, however, that this answer does not suffice. Firstly, how could it have been known that murderers would always proliferate throughout the region of Transjordan? Was there some kind of decree that the inhabitants of the eastern banks of the Jordan were destined to become killers? Secondly, as the Ramban asks, the cities of refuge serve in cases of accidental murders, which do not at all relate to genetically determined personality traits.

It would seem that the explanation behind the unfair distribution of arei miklat is provided in Sefer Devarim, in the parallel discussion of the cities of refuge:

Otherwise, when the distance is great, the blood-avenger, pursuing the manslayer in hot anger, may overtake him and kill him.... That is why I command you: set aside three cities. And when the Lord your God enlarges your territory, as He swore to your fathers, and gives you all the land... then you shall add three more towns to those three. Thus blood of the innocent will not be shed, bringing bloodguilt upon you in the land.... (Devarim 19:6-10.)

Thus, the apportioning of the cities of refuge is to be conducted according to the sizes of the various territories, not by population. Given the urgency of the inadvertent killer's need for escape, the cities must be allotted in such a manner that he would never have to flee for

too long before finding refuge in an ir miklat. The population size of a given area is therefore of no consequence in this regard. (The Ramban's explanation, in our parasha, follows this line of thought).

The parasha in Devarim calls for other measures, as well, to facilitate a smoother escape for the inadvertent murderer: "You shall prepare the way, and divide into three parts the territory of the country" (Devarim 19:3). This requirement involves either signs along the highways (Masekhet Makkot 10a; Rashi, Ramban) or the paving of wide and comfortable roads for easy travel (Ibn Ezra; Chizkuni). Similarly, the parasha in Sefer Devarim specifies that the cities must be equidistant to one another, further ensuring a quick flight to the ir miklat.

These differences between the two presentations of the cities of refuge suggest two distinct - albeit concurrent - functions served by these cities.

The function of the arei miklat of Sefer Devarim is clear and straightforward - to provide REFUGE for the murderer from the avenger. That parasha therefore stresses the issues relevant to the murderer's successful escape and the security afforded to him by the city. Accordingly, the avenger emerges here as a frenzied and erratic vigilante, from whom refuge must be provided. For the same reason, nowhere in Sefer Devarim is there a reference to any legal process associated with the cities of refuge. Residence in the city is simply an option open to the inadvertent murderer for his safety.

Our parasha presents a more novel, less intuitive aspect of the cities of refuge, one of EXILE. It emerges as an integral part of the legal process to be undergone by the murderer, and he therefore does not have the option of leaving. He not only escapes to the ir miklat, but, after he has been acquitted from premeditated murder, the court forcefully returns him to the city, since he did, after all, kill, albeit accidentally. He must remain there until the death of the high priest and may not be released on bail. In this parasha, the avenger fills an official role, that of the court executioner, if warranted. It now becomes clear why in Sefer Bemidbar, as opposed to Sefer Devarim, the laws involving the intentional murderer are intertwined with the procedures involving the accidental killer. A moral complaint is brought against both. Although their punishments understandably differ from one another, both cases appear here as two instances of a similar scenario, and both require penalty and atonement.

It should be noted that Chazal excuse from exile to an ir miklat one who killed under circumstances beyond his control. A certain degree of carelessness is needed to force one to a city of refuge, a qualification corresponding to the theme of the presentation in our parasha. Similarly, the Gemara questions whether atonement is achieved through the actual residence in the ir miklat or the death of the high priest. The clear implication is that the accidental killer requires atonement.

One final question remains: why must the inadvertent killer be punished? Why must he leave his family and bring his career and general life routine to a sudden halt?

The concluding verses of the section dealing with the inadvertent murderer in our parasha seem to provide the answer:

Nor may you accept ransom in lieu of flight to a city of refuge, enabling one to return to live on his land before the death of the priest. You shall not pollute the land in which you live; for blood pollutes the land, and the land can have no expiation for blood that is shed on it, except by the blood of him who shed it. You shall not defile the land in which you live, in which I Myself abide, for I God abide among the Israelite people (35:32-34.)

The killing of another person defiles the land. Whether the victim's life is taken intentionally or inadvertently, the land is defiled. Since the land cannot suffer the presence of a person who spilt the blood of another, the accidental murderer is exiled to the city of refuge, symbolizing a temporary migration from the land. In this land where God "abides," there exists a unique sensitivity for killing on the one hand, and on the other a recognition of tragic, human error. The land demands the execution of one who spilt blood ("the land can have no expiation for blood that is shed on it, except by the blood of him who shed it"), but legal ethics cannot allow capital punishment for an accidental murder. The inevitable compromise is the murderer's symbolic detachment from the land and atonement through the death of the high priest. After atonement has been achieved, the inadvertent murderer may then return to the land.