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בס"ד

Parashat Mas'ei Part II Inadvertent Homicide and Cities of Refuge

1. Basic Concepts

In the penultimate passage of the book of Numbers (Num. 35:1-34) G-d commands the Israelites that upon entering the land they are to designate cities of refuge to protect an inadvertent manslayer from a possible blood-avenger (אֲדֹלָף דָּמַי – literally, “blood redeemer”). This passage constitutes the Torah’s lengthiest statement on the subject (also dealt with in Exod. 21:12-14; Deut. 4:41-43; 19:1-13) and includes a number of important comments pertaining to the larger context of the value of human life and how homicide is to be treated. Before turning to the inadvertent manslayer we will briefly discuss some of the passage’s statements concerning an intentional murderer.

The Torah describes in the direst of terms the consequences to a society that does not properly attend to cases of unlawful killing. It is taken for granted that such emphasis serves as a great deterrent to this most heinous of transgressions. It states: “You shall not pollute the land, for [shed] blood pollutes the land, and the land cannot be cleansed except with the blood of the one who shed it” (Num. 35:33). In the following verse the Israelites are adjured not to defile the land they dwell upon because it is the land, “within which I dwell, for I, Hashem, dwell among the Israelites” (v. 34). G-d will not dwell in an impure land and it will not receive His blessings.

The implications are clear. Murder is an especially egregious violation of G-d’s law, a direct affront to Him, the grantor of life. It defies His presence in the land. Land defiled by murder will not yield its productivity to the society; its population will be forced into exile. This is in accordance with the

curse G-d placed on Cain upon his murder of Abel: “Cursed are you from the earth ... When you work the earth it shall not continue to yield its strength to you” (Gen. 4:11-12). These concepts are derivatives of the principle articulated at the time of the creation of man, that man was created in the image of G-d (Gen. 1:26-27; 9:6). Accordingly, the lives of all men (of course we are speaking of men and women throughout) are of immeasurable value. And G-d demands an accounting from man for the shed blood of each human being: “As concerns your life-blood I will require a reckoning ... and from man, from every man’s brother, I require a reckoning for human life” (Gen. 9:5). This means that man is required to so structure society that it expresses a full measure of concern for each and every individual human life.

Regarding one who sheds human blood deliberately, our passage mandates a categorical and revolutionary law: “You may not accept ransom for the life of a murderer who is guilty of being put to death” (Num. 35:31). As a life is of immeasurable value, it is beyond the realm of any payment or compensation, even if the victim’s family is needy and consents to it. Such payment cheapens life and would undermine the Torah’s program to eliminate murder from human society.

To more fully appreciate the laws concerning an individual who killed inadvertently, some knowledge of pre-Torah practices is necessary. In the ancient Near East, prior to the rise of strong centralized governments and the weakening of the old cultural order, a deeply embedded and ubiquitous feature of society was avenging the death of a slain family member, even when the killing was clearly inadvertent. Members of a family who did not avenge a killing, any killing, were viewed as cowardly, disloyal to their family and disgraced. There was a pagan dimension to this practice. The belief

abounded in Mesopotamian society that human blood derived from a god within the earth, and when shed, regardless of intent, the balance of blood in the earth was disturbed. Equilibrium was not restored until the shed blood was redeemed with the blood of the perpetrator of the act. (The Torah's concept that the blood-defiled earth cannot be cleansed except with the blood of the murderer may very likely be a "sanitized" form of the pre-Torah belief.)

Pagan cultures also embraced a belief in a fatalistic interpretation of human action. When an individual killed someone, even when it clearly appeared to be unintentional, it was thought that there was something meaningful, if not necessarily destined, behind it. Deep forces in the reality of things were believed to be at work compelling human actions; to some degree humans were pawns in a larger drama. Accordingly, a killer was deemed deserving of death even if his act was "superficially" unintentional. The Torah swept away all such beliefs. In its legal philosophy one who killed inadvertently may be deemed careless and the perpetrator of a serious crime, but since he did not intend to kill he does not deserve to lose his life. Hence, he must be protected from the blood avenger and cities of refuge were established for that purpose.

2. Questions

But why did the Torah compel the inadvertent manslayer to flee to a city of refuge for protection, providing shelter only there? And why did it not straightaway prohibit blood vengeance?

Some have seen exile plain and simple as a manifestation of G-d's great displeasure with the individual who was careless with another's life to the extent that he killed him. In effect, the law placed the inadvertent manslayer under a ban from the society he was living in, disrupting his domestic life and his livelihood productivity. In this manner he would receive atonement. This appears akin to the punishment meted out to Cain, "an incessant wanderer shall you be in the land" (Gen. 4:12), although his act was a deliberate homicide.*

Some have explained exile for the inadvertent manslayer as a punishment that may provide some

satisfaction to the bereaved family. The Rambam considered the reason for it as primarily designed to keep the perpetrator of the misfortune out of the sight of the members of the bereaved family, not to cause them the further anguish of being reminded of their loss every time the killer would be seen (Guide for the Perplexed, 3:40).

But others are of the opinion that there must be more to it. The issue of exile cannot be separated from our second question above. It is difficult to comprehend that Torah law would trifle with the life of an inadvertent manslayer, introducing a system that subjects him to the possibility of being legally killed when outside the city of refuge, if not for pressing considerations. It is even surprising that the inadvertent manslayer receives a punishment that subjects his family to such dislocation and hardship that probably includes deprivation of his primary means of livelihood.

With historical perspective, S. D. Luzzato explained the background and larger context of this Torah legislation as follows (Commentary on the Torah, slightly paraphrased):

This [ancient] view was impossible to uproot in one fell swoop. Divine wisdom saw that if the law would be that the blood-avenger should be put to death for avenging the inadvertent homicide of his relative it would be ineffective to prevent blood-avengers from taking their vengeance [somehow]. The result would be many more unnecessary deaths and more anguish for the family that had already suffered a tragedy. Furthermore, when the court would attempt to put the avenger to death the public might rise against the judges and great harm might ensue in the nation. Accordingly, the Torah let stand from previous practice the legal right of the blood-avenger to kill the inadvertent killer but provided the latter the protection of cities of refuge.

With its innovative legislation, the Torah greatly restricted the scope of blood vengeance from what it previously had been. Consistent with its goal of protecting innocent life, in what is a methodologically sound manner while remaining within the general norms of ancient society, the Torah allowed blood vengeance the smallest possible area of applicability. Of course the permission granted the blood avenger to kill was limited to the inadvertent killer himself. Other members of the

killer's family cannot be targeted in his place as was the case in many neighboring societies that practiced vicarious punishment, such as allowing a man whose son or wife was killed to retaliate against the son or wife of the perpetrator.

3. Details of the Law

Six cities from those of the Levites were to be established as cities of refuge. In these cities the blood avenger was prohibited to strike at the unintentional perpetrator of manslaughter (Num. 35:6, 13-14). Were he to do so he would be declared a murderer and liable to the death penalty. Three cities on each side of the Jordan River were specified, more or less symmetrically located on two north-south lines for the benefit of the individual fleeing to one of them. Levites, so closely associated with the sanctuary and its service, were deemed to possess the necessary sensitivity and proper outlook to administer the refuge network.

Some have assumed that the selection of Levite cities to provide shelter is connected to their being viewed, by their very nature of being Levite cities, as sacred centers. In many cultures of the ancient world sacred locations were regarded as providing asylum. However, this was not officially the case in the Torah.

In the passage preceding ours (Num. 35:1-8), G-d commands the Israelites to give the Levites cities to live in, with pastureland surrounding them. It then mentions they should be six cities of refuge and "upon them give" (וְעָלֵיהֶם תִּתְּנוּ) to the Levites forty-two cities (v. 6). The sages understood this formulation to mean that all Levite cities are cities of refuge as far as providing refuge, but the six are primary as far as details related to servicing the exile (*b. Mak.* 10a; 13a).

Termed cities of *miqlat* (centers for absorbing, gathering in), these cities were expected to be welcoming and focused on receiving and protecting their new residents. As G-d elaborated to Joshua: "He shall flee to one of those cities, present himself at the entrance to the city gate, and plead his case before the elders of that city. They shall admit him into the city and give him a place in which to live

among them. Should the blood avenger pursue him, they shall not hand the manslayer over to him since it was without intention that he killed his fellow man" (Josh. 20:4-5).

Upon committing a homicide, the perpetrator is to flee to a city of refuge. A duly authorized court is to conduct a trial and determine if the homicide was intentional or not (Num. 35:24). The Torah provides guidelines to the court to help it decide this critical issue. It gives examples of the use of various implements and how they should be judged as well as criteria concerning the perpetrator's state of mind, if he struck in hatred or enmity or if the act was unanticipated by him (vv.16-23).

If at the trial the act was judged to have been intentional based on the testimony of at least two witnesses (v. 30, a requirement for all cases of capital punishment as stated in Deut. 17:6), the murderer is put to death under the aegis of the court. The victim's blood avenger is called upon to carry out the execution.** However, if the killing was deemed inadvertent, the perpetrator is returned to the city of refuge where he is to live (Num. 35:25). The Mishnah (*m. Mak.* 2:3, also see *b. Mak.* 8a) differentiates between a purely accidental killing and one that was unintentional, requiring only the latter to go to a city of refuge, while the former is declared entirely off-limits to the avenger.

Consistent with its view of the sanctity of all life and with its prohibition against shedding Israelite and non-Israelite blood, the Torah specifies that the protection afforded by the cities of refuge applies to all, irrespective of whether the manslayer was an Israelite, a sojourner or resident (Num. 35:15). Ransom cannot be paid in lieu of exile (Num. 35:32), even if the victim's family requests it, as the law is based on the immeasurable value of human life.

If the inadvertent killer leaves the city of refuge, the avenger is permitted to kill him while he remains outside, וְרָצַח גַּאֵל הַדָּם אֶת הַרָצֵחַ אִין לוֹ דָם ("and the blood-avenger kills the manslayer, there is no bloodguilt on his account" [Num. 35:27, NJPS]). Leaving the city, regardless of the duration of time that he is out of it, constitutes a waiver of his right of shelter and he becomes responsible for his own life during that time. In a Mishnah, the sages dispute the interpretation of this law. Rabbi Jose Hagalili posits that it is a misvah for the

avenger to kill the exile who left his city of refuge, while he is outside, and Rabbi Akiba rules that it is then merely permissible to kill him (*m. Mak. 2:7*).*** Of course, the allowance to kill the inadvertent killer when he is outside a city of refuge provided him great incentive to remain in one, accomplishing the purposes of the law.

The inadvertent killer must remain in the city of refuge until the high priest dies (Num. 35:25c), at which time he returns to his home and rejoins society. At that time the blood avenger is no longer permitted to strike him; doing so would be outright murder. A talmudic view appears to be that the high priest's death serves as atonement for those who killed unintentionally (*b. Mak. 11b*). The sages also make a point that the high priest is subtly connected to the homicide because had he fulfilled his responsibility in the proper manner, the careless killing might not have occurred. His responsibility included prayer for divine providence over his charges and it may have been his shortcoming that such providence was not provided. It should also be understood that his responsibility included providing the enlightened spiritual leadership to the nation such that everybody would have been more appreciative of human life and more careful with it. Careless killing might have been avoided. To some extent, the shortcomings in society are to be attributed to its spiritual leaders. (See our study on *Eglah Arufah*.)

The Rambam (who did not cite the talmudic passage concerning the high priest's responsibility, probably on philosophic grounds, undoubtedly considering it aggadic) took a different approach. The reason for release upon the death of the high priest, he explains, is that the latter is an individual expected to be respected and beloved by all and whose death would be a national tragedy deeply mourned by the whole nation. In this sorrow, the family of the slain person would be expected to finally find solace for their personal loss and be reconciled to the return of the exile to society (Guide, 3:40).

Others consider the "liberating" of the exile to be a matter of amnesty. The concept of a national pardon for various deeds on special occasions had been widely accepted in the world and could be expected

to be honored in this case. The high priest, more than anyone else, stands for spirituality and conscientiousness in action. His death is to be a reminder to all of their moral responsibility and be a prompt to them to improve their behavior. In accordance with its deeper goals, the Torah utilized the occasion of his death to conclude the term of exile for whoever was in a city of refuge for inadvertent homicide.

It should be noted that some other ancient Near Eastern nations had certain types of cities of asylum, but their systems were very different from that of the Torah. The distinctions reflect the supreme value the Torah places on life. Thus, it is only in the Torah that an intentional killer was categorically denied asylum. It is also only in the Torah that asylum was exclusively used for the unintentional killer and not for various crimes and other situations, regardless of the status of the individuals involved.

Endnotes

* Perhaps G-d's original intention was that even an intentional killer like Cain should have the opportunity for redemption and rehabilitation, which at that time was accomplished through exile. But after the Flood, in the code of law G-d gave Noah, He deemed capital punishment for murder a necessary component of the new order. Still it would seem that revelation of His original intention in the Cain story serves an important purpose for a future time when society could make redemption and rehabilitation work.

** In this regard, it appears that *בּוֹ הִפְגַּעְוּ* of our verses 19 and 21 should not be translated as "when he meeteth him" (JPS), "upon encounter" (NJPS), "when he comes upon him" (Alter), "upon meeting him," or "coming across him" (Fox). These are all legitimate meanings of the verbal phrase but each of them leaves a misleading impression that the convicted murderer was out and about, living his life in society, and was put to death at a chance encounter, an impossible scenario. (The three verses preceding verse 19 imply that it was established that the perpetrator was an intentional murderer.) Thus, *בּוֹ הִפְגַּעְוּ* should rather be rendered "when he strikes him" (as used in 1 Sam. 22:17; 2 Sam. 1:15; 1 Kings 2:25, 29, 31), understood to be under the court's auspices, in effect similar to the statement, "They shall give him into the hands of the blood-redeemer and he shall die" (Deut. 19:12). Thus, *בּוֹ הוּא מִיָּהוּ* (v. 19)

and *וּמִיֵּת אֶת הָרֹצֵחַ בְּפָגְעוֹ בּוֹ* (v. 21) would appear to mean, “When he strikes him he should kill him” (and not merely injure him), referring to when the court has the murderer prepared for his death (see Luzatto).

*** In a *baraita*, this controversy of the sages was explained as depending on the precise interpretation of the key word *וְרָצַח* (“and he kills [the murderer]”) in verse 27. Rabbi Jose Hagalili argues that since it did not state the conditional *im yirsaḥ* (“if he kills”), it implies that the avenger *should* kill him. Rabbi Akiba counters that if that was the Torah’s intention it should have been stated *yirsaḥ* (“he should kill”),

an unambiguous instruction (*b. Mak.* 12a). Their dispute concerns an official blood-avenger, a member of the immediate family. An outsider, according to Rabbi Jose Hagalili, is merely permitted to kill the inadvertent killer who exited the city of refuge, while Rabbi Akiba considers an outsider as prohibited from killing (*m. Mak* 2:7). On the latter point, some interpret Rabbi Akiba as holding that an outsider who killed the inadvertent killer, although guilty of a major transgression, is not liable to the death penalty while according to others Rabbi Akiba would consider the outsider liable to the death penalty.

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