

PARASHAT SHOFTIM

Cities of Refuge and Cities of Flight

By Rav Amnon Bazak

A. INTRODUCTION

Our parasha details the command to establish cities that are intended so that "anyone who has killed may flee there." The parasha is quite similar to the command to establish cities of refuge found in parashat Mas'ei (Bamidbar 35). To introduce our discussion, let us first compare the two parashot and see what is common to them and where they diverge:

The Command:

Bamidbar 35: "Speak to Bnei Yisrael and tell them: When you cross the Jordan into the land of Canaan, you shall appoint for yourselves cities – cities of refuge they shall be for you – and a slayer who has killed anybody unintentionally shall flee to there. And the cities shall be for you A REFUGE FROM THE AVENGER, that the slayer shall not die before he has stood before the congregation for judgment." (verses 10-12)

Devarim 19:

"When God will cut off the nations whose land the Lord your God is giving to you, and you drive them out and dwell in their cities and in their houses... that EVERY SLAYER MAY FLEE TO THERE." (verses 1-3)

Preparing the road:

Bamidbar 35: (no mention)

Devarim 19: "You shall prepare the way, and divide the border of your land, which the Lord your God will make you inherit, into three parts." (3)

Number of Cities:

Bamidbar 35: "The cities which you shall appoint – six cities of refuge shall you have. You shall appoint three cities on this side of the Jordan, and you shall appoint three cities in the land of Canaan; they shall be cities of refuge." (13-14)

Devarim 19: "You shall separate for yourself three cities within your land that the Lord your God gives you to inherit... And if the Lord your God will extend your border, as He promised to your forefathers, and gives you all the land concerning which He spoke, to give to your forefathers... then you shall add for yourselves another three cities in addition to these three." [1] (2, 8-9)

Definition of intentional murder:

Bamidbar 35: "If he struck him with a metal tool and he dies, he is a murderer, and the murderer shall surely die. And if he struck him by hand with a stone such that he would die, and he died, then he is a murderer; the murderer shall surely die. Or if he struck him by hand with a wooden tool such that he would die, and he dies, then he is a murderer; the murderer shall surely die. It is the avenger of blood who shall put the murderer to death; when he meets him, he shall slay him. Or if he pushed him out of hatred, or threw something at him as he lay in wait, and he dies, or if he struck him with his hand out of animosity and he dies, then he who struck him shall surely die - he is a murderer; the avenger of blood shall slay the murderer when he meets him." (16-21)

Devarim 19: (no mention)

Definition of unintentional murder:

Bamidbar 35: "If he pushed him suddenly, without animosity, or threw anything at him without lying in wait, or with any stone by which he could die but without seeing him, and it falls upon him and he dies, but he was not his enemy and did not seek his harm." (22-23)

Devarim 19: "This is the matter of the slayer who shall flee there and live, who has struck his neighbor unknowingly, and did not hate him previously; who goes with his neighbor into the forest to chop wood and his hand slips on the axe when chopping a tree, and the head falls from the handle and strike his neighbor, and he dies." (4-5)

Arrival of the slayer in the city

Bamidbar 35: "The congregation shall judge between the slayer and the avenger of blood, in these judgments. And the congregation shall save the slayer from the avenger of the blood, AND THE CONGREGATION SHALL RESTORE HIM to the city of his refuge, to where he fled." (24-25)

Devarim 19: "HE SHALL FLEE to one of these cities and live. Lest the avenger of the blood pursue the slayer while his heart is hot, and overtake him, for the way is long, and slay him – though he is not worthy of death, for he did not hate him previously." (5-6)

The slayer's departure from the city:

Bamidbar 35: "He shall dwell there until the death of the Kohen Gadol who was anointed with the holy oil. And if the slayer should go out of the border of the city of his refuge, to where he has fled, and the redeemer of blood finds him outside of the border of the city of his refuge, and the redeemer of blood kills the slayer, then he is not guilty. For he must remain in the city of his refuge until the death of the Kohen Gadol, and after the death of the Kohen Gadol the slayer shall return to the land of his possession." (25-28)

Devarim 19: (no mention)

The blood and the land:

Bamidbar 35: "You shall not take ransom for the life of a murderer, who is guilty of death, but he shall surely be put to death. Nor shall you take a ransom for one who flees to a city of his refuge, that he may return to dwell in the land, until the death of the Kohen. So that you shall not pollute the land in which you dwell, for the blood would pollute the land, and the land shall be cleansed (lit. atoned) for the blood which is spilled in it only by the blood of he who spilled it. Nor shall you defile the land in which you dwell – in which I dwell – for I, God, dwell amongst Bnei Yisrael." (29-34)

Devarim 19: "Innocent blood shall not be spilled in the midst of your land which the Lord your God gives to you as an inheritance, that blood be upon you." (10)

Despite the common subject, there are several differences between the parashot, as will be described below.

B. PURPOSE OF THE CITIES

The central difference between the two parashot seems to lie in respective perceptions of the institution of cities of refuge. In Sefer Bamidbar, our impression is that the city of refuge has legal significance, and that it serves two functions. Firstly, it serves as a sort of detention center, facilitating protection of the slayer until he is brought to justice: "The cities shall be for you a refuge from the avenger, so that the slayer shall not die before he stands before the congregation in judgment." Secondly, after the trial, it serves as a sort of prison, where the slayer must stay – even against his will – until the death of the Kohen Gadol: "The congregation shall restore him to the city of his refuge to where he fled, and he shall stay there until the death of

the Kohen Gadol." During this period, he benefits from the protection that the city of refuge provides from the avenger of the blood who is threatening him. Yet the city of refuge is also a punishment for the slayer, and even if he wishes to leave, he may not.

From that parasha, it appears that, in principle, even an unintentional slayer is deserving of death, and under certain conditions he may in fact be put to death by the court – if he leaves the city of refuge: "If the slayer should leave the border of the city of his refuge to where he has fled, and the avenger of the blood finds him outside of the border of the city of his refuge and the avenger kills the slayer, he is not guilty." Because he killed unintentionally, the Torah treats him leniently and allows him to exchange the death penalty – which he deserves – for a punishment of imprisonment. However, the avenger of the victim is still permitted to kill him, if he leaves the city of refuge, without being liable for any type of punishment.

It would seem, according to the Torah's approach in this parasha, that a person is always held responsible for causing another person's death, even if he did so unintentionally. Therefore, in this parasha the city is referred to as a "city of refuge," serving as a "refuge from the avenger." This is based on the view that an unintentional slayer needs a city where he will be protected from the avenger, who is entitled to kill him.

In contrast, in our parasha it seems that the city of refuge is not a punishment, but rather – on the contrary – a privilege for the unintentional slayer. The city serves as a place of protection for unislayers, each of whom is being pursued by an avenger who seeks to kill him, although there is no objective justification for this. Society is therefore obligated to attend to the unfortunate plight of these unintentional slayers – similarly to the institutions that exist today, such as shelters for women who fear husbands who seek to harm or even kill them. It is this point that represents the most significant difference between the two parashot. While in parashat Mas'ei we are told that if the avenger kills the slayer, "he is not guilty," in our parasha we read that the slayer "is not guilty of death"! Hence, in our parasha the city is not a "refuge from the avenger," but rather a city set aside so that a slayer in this situation can flee to there.

C. SIGNIFICANCE OF THE DIFFERENCES BETWEEN THE PARASHOT

In light of this distinction, we are able to understand the other differences between the two parashot.

1. Only in our parasha do we find the command, "You shall prepare the way, and divide the border of your land... into three parts" – meaning, as Rashi explains:

"'Prepare the way' – 'Refuge' would be signposted at the crossroads.

'Divide ... into three parts' – such that the distance from the border up until the first of the cities of refuge would be the same as the distance from this city to the next, and likewise from the second to the third, and likewise from the third to the opposite border of Eretz Yisrael."

This, then, is a public obligation: to ensure convenient access to the cities of refuge. Clearly it is appropriate that specifically our parasha, which regards these cities as obligatory assistance to an unintentional slayer, makes mention of this command.

2. Only in parashat Mas'ei is there mention of the instances in which the slayer is deserving of death, while our parasha makes no mention of these possibilities. The reason is obvious. In parashat Mas'ei, the city of refuge serves as a legal device, and one of its functions, as mentioned, is to serve as a detention center and refuge for the slayer from the avenger until the former stands in judgment. For this reason, the Torah must list here the instances in which the unintentional slayer is entitled to enjoy this protection. As the parasha following the description of the various instances emphasizes: "The congregation shall judge between the slayer and the avenger of the blood concerning these judgments" (verse 24).
3. In parashat Mas'ei, where the city of refuge also has an aspect of punishment, the Torah states that after judgment has been rendered and the slayer is declared as having killed unintentionally, "THE CONGREGATION SHALL RESTORE HIM to the city of his refuge." In our parasha, in contrast, where the text addresses only the dimension of protection offered by the city of refuge, mention is made only of the reality of "HE SHALL FLEE to one of these cities."
4. In parashat Mas'ei, we are told that the slayer must stay in the city "until the death of the Kohen Gadol." Thus, the text emphasizes the unintentional murderer's need for atonement, which is achieved with the death of the Kohen Gadol and by his inability to leave the city at will. In our parasha, no mention is made of this prohibition, and our impression is that this arrangement arises from the wishes of the slayer and his fear of the avenger; if he so wishes, he may leave the city.
5. In both parashot, the central issue is the concern for the shedding of innocent blood, but in completely different ways. In parashat Mas'ei, there is a significant comparison between premeditated murder and unintentional slaying, obligating us to refrain from taking a ransom for the life of the murderer so as to exempt him from the death penalty, and also to refrain from taking a ransom for the life of the unintentional slayer so as to exempt him from the obligation of exile:

"You shall not take a ransom for the life of a murderer who is guilty, for he shall surely die."

"You shall not take a ransom for he who flees to the city of his refuge, to return and dwell in the land – until the death of the Kohen."

This comparison reinforces our perception of the exile to a city of refuge as a punishment. Concerning both of these warnings, the Torah concludes by specifying the responsibility for acting in these situations:

"You shall not pollute the land in which you dwell, for the blood will pollute the land, and the land shall be cleansed from the blood that was shed in it only by the blood of he who shed it. Nor shall you defile the land in which you dwell, in which I dwell, for I, God, dwell amidst Bnei Yisrael."

The blood of the victim can be cleansed from the land only by the blood of the murderer, or the exiling of the unintentional slayer (together with the atonement achieved through the death of the Kohen Gadol).

Our parasha, too, concludes the discussion on this matter with a comment concerning the blood and the land: "Innocent blood shall not be shed in the midst of your land which the Lord your God gives you as an inheritance, such that blood shall be upon you" – but here it appears that the reference is not to the blood of the victim, but rather the blood of the unintentional slayer! The entire unit is intended precisely to prevent the shedding of the innocent blood of the unintentional slayer, and this is the reason for the establishment of the cities of flight and the signposting of the way to them.

D. RESOLVING THE CONTRADICTION

Ultimately, the discrepancy in the presentation of the subject in the two sources raises the question: what is the character of the cities of refuge? What is the Torah's attitude towards someone who kills unintentionally – as deserving of punishment, or as deserving of protection?

It would seem that the reason for the difference between the two parashot turns on a fundamental division between two sorts of instances. Clearly, the word "unintentional" (shegaga) covers a broad spectrum, one end of which is close to duress, while the other end borders on criminality. It would seem that the two parashot address two types of "shegaga." Those instances defined as unintentional slaying in parashat Mas'ei are: "If he pushed him suddenly, without animosity, or threw anything at him without lying in wait, or with any stone by which he could die but without seeing him, and it falls upon him and he dies, but he was not his enemy and did not seek his harm." In each of these cases, the text is describing a direct act that leads to manslaughter, but without intent. In such cases, we may speak of negligence, which requires the punishment of exile to a city of refuge.

In our parasha, however, the example that is brought is different: "...who goes with his neighbor into the forest to chop wood and his hand slips on the axe when chopping a tree, and the head falls from the handle and strike his neighbor, and he dies." Rashi quotes the dispute among Chazal: "Some of the Sages say that the [the text means that the] head of the axe falls from the handle, while others say [that what the text means is] that the axe pulls out a section of the tree that is being felled." Whichever explanation we adopt, the act here is closer to an instance of "gerama" (indirect causation); it is not a direct act of striking. For this reason, this parasha is a framework for unintentional slayers, whose situation is more accurately viewed as a tragedy

than as a result of negligence, and therefore the approach is supportive of them and not directed towards punishment.

This distinction finds halakhic expression in several places. While Chazal make no distinction between the two types of exile, they do distinguish between different sorts of unintentional perpetrators, including the type that is not deserving of exile, and the type that we are not obligated to exile. The Rambam, in his Laws Pertaining to a Murderer (beginning of chapter 6), writes:

"There are three types of unintentional slayers:

a. Someone who slays unintentionally with no intent whatsoever; concerning him it is written, 'He did not lie in wait' (Shemot 21:13). His verdict is that he is exiled to a city of refuge, and is saved, as we have explained.

b. Someone who slays unintentionally, where he is almost compelled – this is where the death involves some kind of extraordinary phenomenon that is not a regular occurrence. His verdict is that he is exempt from exile, AND IF THE AVENGER OF BLOOD KILLS HIM, HE HIMSELF IS GUILTY OF MURDER.

c. Someone who kills unintentionally, where his act is close to being intentional: it concerns a matter such as a criminal act, or that he should have taken care and he did not. His verdict is that he is not exiled; he has committed a serious transgression and exile will not atone for him, nor do the cities of refuge accept him, for they accept only those who are obligated to be exiled. Therefore, IF THE BLOOD AVENGER FINDS HIM IN ANY PLACE, AND KILLS HIM, HE IS GUILTYLESS. So what must he do? He must remain at large, and guard himself from the avenger."

According to what we have said, this division is close to the difference between the parashot. Parashat Mas'ei deals with instances that lean towards the third category defined by the Rambam, while our parasha addresses cases that fit into the second category. The correspondence is not complete - for according to what we have said above, both sources deal with accidental slayers who are exiled, while the Rambam explicitly rules that there are cases where the slayer is not to be exiled. But the actual distinction – and especially the question of the legitimacy of the avenger killing the slayer – is common to both. It is possible that the Rambam is addressing more extreme cases, of both types.

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