**This parasha series is dedicated
Le-zekher Nishmat HaRabanit Chana bat HaRav Yehuda Zelig zt"l.**

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**PARASHAT MATOT-MASEI**

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**The Yahrzeit shiur for Yoni Siegal '79 z"l will take place on Wednesday July**

**25th at the OU Israel Center in Jerusalem at 8pm. The shiur will be given
by Yehudah Mirsky. Friends who would like to share a few memories with the group
should please contact Alan Rosen** **rosenjer@netvision.net.il** - **the family**

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**This shiur is dedicated in memory of Rav Yehuda Leib Silverberg, whose yahrzeit falls on 22 Tamuz.**

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**The Cities of Refuge**

**By Rav Yehuda Rock**

The law of the "*go'el ha-dam* – avenger of blood," according to which a private act of killing, committed by a private individual and not within the framework of a public court of law, is justified – and perhaps even desirable – raises some perplexing problems.

Firstly, on the social and moral level – how is it possible that the Torah is advocating a mechanism borrowed from the Wild West?

Secondly, what about halakhic consistency? The Torah itself, in several places, endeavors to institutionalize and regulate the system of justice and penalization. Even within our *parasha* we find the requirement that the death penalty be meted out only on the basis of clear testimony by two witnesses. This being the case, what is the meaning of this law of the "avenger of blood," which expresses a diametrically opposed approach?

We shall attempt to answer these questions through a close study of the unit in question. First, however, we shall review the various halakhic approaches to this issue. In the halakhic formulation, the key question is whether the killing by the avenger of blood is considered a *mitzva* (a commandment), or whether it is simply permitted. This question has ramifications for two different situations: firstly, the situation of an accidental slayer who has moved out of the city of refuge; and secondly, the situation of an intentional murderer, as we shall see.

With regard to the accidental slayer who has left the city of refuge, the Tannaim are divided, as evidenced in the Mishna, *Makkot* 11b:

"[In the case of] a murderer who has left the boundaries [of the city of refuge] and the avenger of blood finds him –

Rabbi Yossi Ha-Gelili says, It is a *mitzva* for the avenger of blood [to kill him], and anyone else has license [to do so].

Rabbi Akiva says, the avenger of blood has license [to kill him]…."

The halakhic ruling in this case is clear: the halakha follows the opinion of Rabbi Akiva, according to whom the redeeming of blood in this case is permitted, but not a commandment. (We shall not address here the case of one who leaves the boundaries of the city of refuge unintentionally.) Obviously, we also need to understand the opinion of Rabbi Yossi Ha-Gelili.

However, a more important question, in terms of the broader significance of the act, would seem to concern what the avenger of blood does to an intentional murderer. In our *parasha*, the Torah states:

If he strikes him with an iron instrument, such that he dies, then he is a murderer; the murderer shall surely be put to death.

And if he strikes him by hand with a stone that can kill, such that he dies, then he is a murderer; the murderer shall surely be put to death.

Or if he strikes him by hand with a wooden instrument that can kill, such that he dies, then he is a murderer; the murderer shall surely be put to death.

The avenger of blood himself shall put the murderer to death; when he meets him, he shall put him to death."

And if he thrusts him out of hatred, or throws something at him while lying in wait, such that he dies, or strikes him in enmity with his hand, such that he dies, then he who strikes shall surely be put to death; he is a murderer.

The avenger of blood shall put the murderer to death when he meets him.

But if he thrusts him suddenly, without enmity….

(*Bamidbar* 35:16-22)

The Torah describes here two situations that are both considered as intentional murder: a situation where the murderer uses an instrument capable of killing, and a situation where the act of killing is committed against a background of hatred and intention. In both cases the assumption is that the killer intended to kill, and therefore he himself is put to death. In both cases the Torah states that it is the avenger of blood who puts the murderer to death.

The Gemara, in *Sanhedrin* 45b, records the following Baraita:

"'The avenger of blood shall put the murderer to death' – it is a *mitzva* (commandment) for the avenger of blood. And from where do we deduce that if [the victim] has no avenger of blood, then the Beit Din appoints him an avenger? As it is written: 'When he meets him' – i.e., [he is put to death by the avenger of blood] in any event, [even if there is no relative of the victim to fulfill this role]."

The plain meaning of the verses and of the Baraita indicate that the Torah commands that it is specifically the avenger of blood who should put the murderer to death. Indeed, Ramban – in his gloss on Rambam's *Sefer ha-Mitzvot* (additional positive commandment 13) – lists as a positive commandment the killing of an intentional murderer by the avenger of blood. In this context he brings the Baraita stating that the killing by the avenger of blood is so important that if there is no blood relative, the Beit Din must appoint someone to redeem the blood of the victim.

This perception naturally raises a question: how does this *mitzva* fit in with the mitzva that a Beit Din judge the murderer and put him to death? Ramban's answer is that, first of all, the commandment of the avenger of blood applies only after the murderer has been judged by the Beit Din; secondly, the proper procedure is that the avenger of blood should bring the murderer to the Beit Din, with a view to his punishment being carried out by the Beit Din. Only if the Beit Din is incapable to putting him to death does the avenger of blood kill the murderer himself.

In contrast, Rashi interprets the Baraita in *Sanhedrin* differently:

"… This killing refers to the avenger of blood putting to death an accidental slayer who has gone out of the city of refuge…."

In other words, to Rashi's view, the Baraita is talking about an accidental slayer who has gone out of the boundaries of his city of refuge (and this accords with the view of Rabbi Yossi Ha-Gelili, who maintains that in this case the avenger of blood is commanded to kill him). Apparently, according to Rashi, the above verses (19,21), indicating that the avenger of blood kills the murderer, are to be interpreted in opposition to the plain connection in the text, so as to apply to an accidental slayer.

Thus, Rashi and Ramban disagree. To Ramban's view, it is a *mitzva* for the avenger of blood to kill the intentional murderer (after he has been convicted by the Beit Din, and ideally the killing should be carried out by bringing the murderer to the Beit Din so that the Beit Din can carry out the sentence). According to Rashi, there is no such *mitzva*, nor any source indicating that the avenger of blood even has license to kill the murderer.

The Rambam's view on the matter requires closer examination. The Rambam does not count as a positive *mitzva* the killing of an intentional murderer by the avenger of blood. From this Ramban deduces that the Rambam's view accords with that of Rashi. However, the Rambam writes, at the beginning of his Laws of a Murderer (1:1-2):

"Anyone who takes the life of a Jew, transgresses a negative command…

And if he murdered intentionally, before witnesses, then he is put to death by the sword; as it is written: 'He shall surely be avenged….'

It is a commandment that applies to the avenger of blood, as it is written: 'The avenger of blood himself shall put the murderer to death'…

If the avenger of blood is not willing, or if he is unable to put him to death, or if [the victim] has no avenger of blood, then the Beit Din puts the murderer to death by the sword."

The Rambam explicitly applies the verse under discussion to an intentional murderer, in accordance with Ramban, and not in accordance with Rashi.

However, the Rambam's opinion is certainly not in complete accordance with that of Ramban – not only because he does not enumerate any such positive commandment, but also from his perception of this action. The Rambam's view states explicitly that killing by the hand of the avenger of blood – not only as the person responsible for bringing the murderer to the Beit Din, but as the direct agent – is preferable to having the murderer put to death by the Beit Din: "It is a commandment that applies to the avenger of blood… If the avenger of blood is not willing, or if he is unable… then the Beit Din puts the murderer to death by the sword." If we superimpose this over the opinion of Ramban, on the basis of the Baraita in *Sanhedrin*, stating that if there is no avenger of blood then the Beit Din appoints one, we conclude that the Beit Din will never end up putting a murderer to death by the sword! Ramban avoids this conclusion by proposing that the primary function of the avenger of blood is merely to bring the murderer to the Beit Din, and that when it comes to the direct act of putting him to death, the Beit Din have preference over the avenger of blood. But from the Rambam's words it is clear that the avenger of blood takes preference over the Beit Din with regard to directly putting the murderer to death.

We are forced to conclude that the Rambam bases his opinion on a different version of the Baraita than the one that appears above. The Rambam's reading of the Baraita apparently substitutes the words "[the Beit Din] puts to death" instead of "appoints," and does not include the words "… him a avenger" at all. The version of the Baraita that the Rambam had, then, would read:

"'The avenger of blood shall put the murderer to death' – this is a *mitzva* that applies to the avenger of blood. And from where do we deduce that if [the victim] has no avenger of blood, then the Beit Din puts him to death? As it is written: 'When he meets him' – i.e., [he is put to death] in any event."

This is the source of the law set forth by the Rambam, as cited above: "It is a commandment that applies to the avenger of blood, as it is written: 'The avenger of blood himself shall put the murderer to death'… If the avenger of blood is not willing… or if [the victim] has no avenger of blood, then the Beit Din puts the murderer to death by the sword."

Thus, the killing at the hand of the avenger of blood should not be viewed as the aspiration and goal of the Beit Din, since this eventuality is conditional not only upon there being a avenger and his being capable, but also on his willingness. The Baraita is talking about license that is extended to the avenger of blood: the Beit Din is obligated to allow the avenger of blood to avenge the murder, if he so desires (and for this reason the Rambam takes into consideration the possibility of "if the avenger of blood is unwilling" before citing the case described in the Baraita, "or if [the victim] has no avenger of blood"). This is one halakhic detail amidst the command to the Beit Din to put the murderer to death: preference is shown to the avenger of blood, if he so desires, to be the one to carry out the Beit Din's death sentence. For this reason, the Rambam does not count this as a positive commandment; instead, he includes this law within the framework of the Beit Din's command to put the murderer to death, at the beginning of his Laws of a Murderer.

To summarize the different approaches to the intentional murderer: according to Ramban, the killing by the avenger of blood is a *mitzva*, a desirable aspiration and goal, to the extent that if there is no avenger of blood, the Beit Din appoints one. To Rashi's view, there is no such commandment, and perhaps not even any license for the avenger of blood to kill the murderer. The Rambam maintains that there is no positive commandment in this regard; rather, the Beit Din allows the avenger of blood the first option of carrying out the murderer's death sentence imposed by the Beit Din.

As for an accidental slayer who leaves the boundaries of the city of refuge, Rabbi Yossi Ha-Gelili maintains that it is a commandment to kill him (which accords with the Baraita in *Sanhedrin*, according to Rashi's understanding); to Rabbi Akiva's view, and as ruled as halakha, it is permissible but not a *mitzva*.

Let us now study the verses more closely.

Firstly, the Rambam's approach – in contrast to that of Ramban – is compatible with the verses in *Devarim* 19:11-12:

"If there be a man who hates his neighbor and lies in wait for him, and rises up against him and strikes him mortally, such that he dies, and then flees to one of these cities – then the elders of his city shall send and take him from there, and deliver him into the hand of the avenger of blood, that he may die."

This tells us that the avenger of blood is dependent on the Beit Din, rather than that he is the one who brings the murderer to the Beit Din.

Looking at our own verse, cited above, it appears to according neither with the Rambam nor with Ramban. (We have already noted that Rashi certainly does not base his opinion on a literal reading of the verses, but rather interprets them as referring to an accidental slayer.) "The avenger of blood himself shall put the murderer to death; when he meets him he shall put him to death." The meaning of "when he meets him" is "when he reaches him." In other words, the avenger of blood does not act in the wake of the Beit Din transferring the murderer to him; rather, he pursues this intentional murderer – in accordance with Ramban, and not with the Rambam. Contrary to Ramban's view, however, when the avenger of blood reaches the murderer, "he shall put him to death," not bring him to the Beit Din.

The difficulty inherent in the plain reading of the verse, then, is that the verse assumes that the entire process is carried out by the avenger of the blood: it is he who pursues the murderer, creates initial contact with him, and kills him. This process contradicts not only some or other opinion of some or other commentator, but also the very concept of a death sentence by the Beit Din. What the verses here seem to imply is that it is not the Beit Din that is responsible for seizing the murderer, and not the Beit Din that puts him to death, but rather the avenger of the blood. Even if, for whatever reason, the avenger of blood did not catch the murderer, but rather the Beit Din had him brought before them from the city of refuge, the verse from *Devarim* makes it clear that the Beit Din hand over the murderer to the avenger of blood. This being the case, we must ask – what place is there for execution by the Beit Din at all, and in what circumstances is it carried out?

The key to understanding the chapter would appear to lie in verse 29:

"And these shall be for you as a statute of judgment for your generations, in all your dwelling places."

Verses in this style appear in several halakhic units in the Torah, and they always indicate a transition point between a *mitzva* applicable only to the generation of the desert and a *mitzva* for all generations.

Examples of this phenomenon include the following:

  *Parashat ha-Chodesh* (*Shemot* 12) – the unit first addresses the Pesach sacrifice in Egypt – i.e., the sacrifice that Bnei Yisrael must perform in Egypt, just prior to their departure. Thereafter we read (verse 14): "And this day shall be for you as a remembrance, and you shall commemorate it as a festival to God for your generations; as an eternal statute shall you commemorate it," and the text thereafter deals with the Festival of Matzot which is to be observed for all future generations.

  The order of the Yom Kippur service: as the Vilna Gaon explains (at the end of *Sefer Chokhmat Adam*), the first part of the unit, with its detailed description of the order of the service, is a command directed towards Aharon himself. The second part, opening with the words, "And it shall be for you as an eternal statute" (*Vayikra* 16:29), commands future generations that whoever the Kohen Gadol may be, he must perform the same actions that were performed by Aharon, every year.

  The red heifer – the first part of this unit is a command to Elazar, the Kohen, to prepare the ashes of the red heifer, without any explanation at this stage as to when and how they are to be used. The second part, starting with the words, "And it shall be for Bnei Yisrael, and for the stranger who dwells in their midst, as an eternal statute" (*Bamidbar* 19:10), deals with the laws of impurity imparted by a corpse and the process of purification, in the context of which the ashes of the heifer are used.

  The silver trumpets: the first part of the unit addresses the fashioning of the trumpets and their use by the generation of the desert. Following the connecting phrase, "And they shall be for you for an eternal statute for your generations" (*Bamidbar* 10:8), the text goes on to describe the uses of the trumpets following the entry into the land, for future generations.

The implementation of this model in our case is not a simple matter. The commandment for the generation to which it was given, in our *parasha*, is the setting aside of the cities of refuge mentioned at the beginning of the *parasha*, in verses 11-15:

"You shall appoint for yourselves cities; cities of refuge shall they be for you, that a murderer who slays a person accidentally may flee to there. And they shall be for cities of refuge from the avenger…."

The actual establishment of the cities is not an ongoing matter that must be carried out all the time; rather, it is a one-time event. Once the cities of refuge have been founded and exist, they are able to serve those who will need to flee there in all future generations. Apparently, the words, "**These** shall be for you as a statute of judgment for your generations in all your dwelling places," refer to the cities of refuge.

However, in addition to the actual founding of the cities of refuge, the first part of the unit – prior to transitional verse 29 – also includes a detailing of the laws pertaining to one who murders intentionally, as cited above (verses 16-21), and a detailing of the laws concerning accidental murder (22-28). Only the requirement of witnesses, and the prohibition against taking a ransom, are postponed until after the transitional verse. The laws concerning murderers are certainly connected to the cities of refuge, but since these laws concern the long-term use of the cities of refuge, it would seem that they should appear after the transitional verse – just as the law of testimony and the prohibition against taking a ransom (including the taking of a ransom from an accidental slayer, which would allow him to remain outside of the city of refuge), appear after the transitional verse, even though they also have some connection with the cities of refuge. In the parallel examples that we saw above, too, the *mitzvot* for future generations had a strong connection to the *mitzva* given only to that generation. Nevertheless, the Torah indicates that they are "eternal statutes" before commanding them. Is the connection between the laws of impurity of a corpse and the preparation of the ashes of the red heifer any less strong than the connection between the laws pertaining to murderers and the appointment of cities of refuge?

The explanation that seems to present itself is that the laws of murderers that appear here in the first part of our *parasha* do not express the ideal aspiration of the Torah, but rather the Torah's consideration of human need – a need that should ideally not exist, and which the Torah expects to pass from the world. The Torah recognizes the social, human reality of avenging blood, and is considerate of this need within clear boundaries. However, it is not proper to honor the consideration of such needs by elevating it to "a statute of judgment for your generations." In contrast, it is entirely appropriate that the laws pertaining to a murderer in the context of the Beit Din – i.e., the requirement of clear testimony, and the prohibition against taking a ransom – be referred to as a "statute of judgment for your generations."

In light of this understanding of the structure of the *parasha*, we can now go back and interpret the details of the laws in the first part of the unit (prior to verse 29) as laws that come to allow for avenging blood, but not to encourage it.

The basic law of the cities of refuge, which appears at the beginning of this unit (verse 11), states that a person who has killed someone unintentionally may flee from the avenger of the blood to a city of refuge. This law makes sense in light of our explanation above: the Torah allows the avenging of blood, but also – at least in the case of an accidental slaying – aspires to a situation where the revenge killing will not take place, by creating protective mechanisms for the accidental slayer.

The next law in the unit concerns an intentional murderer. As we have seen, the plain reading of the text here suggests that the avenger of blood seizes and kills the murderer. On the basis of the broader context of the unit, however, we must understand this law not as coming to establish the desirable punitive procedure, but rather as coming to anchor the "rights" of the avenger. In other words, the avenger of blood has the right to avenge the death of his relative, and in the case of the intentional murderer, the city of refuge does not take him in; rather, the avenger may seize him and put him to death.

In terms of its fundamental perception, this interpretation sits well with the opinion of the Rambam. There is no positive commandment for the avenger of blood to kill the murderer; rather, the avenger has first right to put him to death.

However, according to the Rambam, this is only after he has been judged and sentenced, after which the Beit Din hand over the murderer to the avenger – if the avenger so desires; the verses themselves, in contrast, suggest that the avenger may kill the murderer "when he meets him." This would seem to be because the verses here concern only the rights of the avenger (and the limitations of his rights in relation to the rights of the slayer – as arising from the law of absorption of the accidental slayer into the city of refuge). The second part of the unit, on the other hand, is concerned with the institutionalization of the system of justice. The requirement of clear testimony pertains, obviously, to the Beit Din. The combination of the two laws – the right of the avenger to put the murderer to death (which, taken on its own, could take place outside of the framework of the Beit Din), and the requirement of a system of justice and orderly testimony, gives rise to the verse in *Devarim*, and as codified as halakha by the Rambam: the Beit Din, following conviction of the murderer, hand the murderer over to the avenger, if the avenger of blood desires to exercise his right.

A different law pertaining to the accidental slayer appears at the end of the first part of the unit, in verses 26-27. This is the law, mentioned above, of an accidental slayer who has left the boundaries of the city of refuge and is killed by the avenger of the blood.

Rabbi Akiva's view, maintaining that this is a "permissible" act on the part of the avenger, sits well with our understanding thus far. But how are we to understand the opinion of Rabbi Yossi Ha-Gelili, who insists that it is a *mitzva* for the avenger to kill him?

In the second part of the unit, we find the prohibition against taking a ransom from the murderer. The Torah emphasizes that this prohibition applies even in the case of an accidental slayer who wishes to give a ransom instead of having to flee to the city of refuge. The prohibition is explained in verses 32-34:

"Nor shall you take a ransom for the one who flees to his city of refuge, so that he may return to dwell in the land – until the death of the kohen; so that you will not pollute the land in which you are, for the blood pollutes the land, and the land will have no atonement for the blood that is spilled in it except by the blood of he who spills it. And you shall not defile the land which you inhabit, in which I dwell, for I am the Lord Who dwells in the midst of Bnei Yisrael."

The taking of a ransom pollutes the land and requires atonement for the land – the land in which God dwells.

What this tells us is that the slayer goes to the city of refuge not only to save himself from the avenger of blood, as discussed in the first part of the unit, but also to atone for the land. The city of refuge represents not only protection, but also exile. Indeed, in rabbinical literature the term "exile" (*galut*) is often used in the context of leaving for a city of refuge.

*Chazal* also explain, in light of this perspective, the specific law pertaining to a person who must go to a city of refuge: the law that he must remain there until the death of the Kohen Gadol (verses 25,28,32). The Gemara (*Makkot* 11b) teaches: "The death of the Kohen is an atonement." While this law appears in the first part of the unit, the crux of its significance applies to the second part. It is located in the first part of the unit as a halakhic detail that is part of the more central law, in the context of the first part of the unit: the very right of the avenger of blood to pursue the accidental slayer, unless he has reached a city of refuge.

Rabbi Yossi Ha-Gelili apparently understood that not only does the stay of the accidental slayer in the city of refuge come to atone, and not only is the length of the exile linked to the death of the Kohen Gadol, but also the pursuit of the murderer by the avenger of blood – apart from representing the natural desire of the avenger, a desire which the Torah takes into consideration and allows for, within certain boundaries – also represents a desirable mechanism of law-enforcement to bringing about the exile of the accidental slayer. Since the accidental slayer knows that the avenger is able to kill him if he finds him outside of the city of refuge, we are assured that he will flee to the city of refuge and remain there.

It is possible that concerning this very point, Rabbi Akiva is in agreement with Rabbi Yossi Ha-Gelili. In other words, it is possible that Rabbi Akiva, too, maintains that the avenging of blood by the avenger is meant, inter alia, to ensure the exile of the accidental slayer. However, Rabbi Akiva maintains that to this end the Torah merely allows the avenger to kill the accidental slayer, but does not transform the avenger into a deliberate and conscious partner in the mechanism of law enforcement. Rabbi Yossi Ha-Gelili, on the other hand, maintains that the avenger of blood is commanded to kill the slayer, as part of the system of enforcement of atonement for the land.

Translation by Kaeren Fish