

Learning the law

Deuteronomy 16:18

שִׁפְטִים וְשֹׁטְרִים תִּתֶּן-לָךְ בְּכָל-שְׁעָרֶיךָ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ לְשִׁבְטֶיךָ וְשִׁפְטוּ אֶת-הָעָם מִשְׁפָּט-צֶדֶק:
 You shall appoint magistrates and officials for your tribes, in all the settlements that your God
 יהוה is giving you, and they shall govern the people with due justice.

Nechama Leibowitz

Law must be administered and executed by the institution whose establishment is mentioned at the beginning of our sidra. (above)

Read Deuteronomy 19:1-7

19:4

וְזֶה דְּבַר הַרָצֹחַ אֲשֶׁר-יִנָּוֵס שָׂמָּה וְחָי אֲשֶׁר יָבִיחַ אֶת-רֵעֵהוּ בְּבִלִּי-דָעַת וְהוּא לֹא-שֹׂנְאָ לּוֹ מִתְּמַל שְׁלֵשָׁם:
 Now this is the case of the killer who may flee there and live: one who has slain another
 unwittingly, without having been an enemy in the past.

Adin Steinsaltz

The punishment for murder is limited, but not negated, by the existence of cities of refuge. This is the matter of the murderer, who shall flee there and live. He, the murderer who is protected by a city of refuge, is one who will kill his neighbor without knowledge, premeditated intent, and he does not hate him previously. Rather, the unfortunate incident was a complete accident. In many cases where someone kills his enemy, **even if there is no evidence that he did do so intentionally, presumably, it was not completely unwitting. There is no asylum for a murderer under those circumstances.**

Rashi on verse 5

ונשל הברזל מן העץ — Some of our Rabbis say that this means that the iron (axe) flew off from its handle (העץ); but some of them say that it means that the iron made a splinter of wood fall off from the tree which was being chopped, and it sprang off and killed him.

Rashbam

The scenario described by our verse is that the axe while hitting the wood it splits sends a piece of that wood sailing through the air, with fatal consequences for the victim it hits. This is clearly something that was entirely unplanned by the person swinging the axe.

Rashbam on verse 6:

פן ירדוף, these words refer back to the need to establish three such cities as outlined in verse 2. If there were to be only one such city of refuge, the avenger in his pursuit would be more likely to succeed.

Chizkuni on verse 6:

ולו אין משפט מות, “while he was not deserving of the death penalty;” this teaches that even an intentional killer who has not been sentenced to death by the court (for some technical reason connected to the evidence presumably) may still be subject to death at the hands of the blood avenger.

Deuteronomy 19:11-12

וְכִי־יִהְיֶה אִישׁ שֹׂנְאָ לרֵעֵהוּ וְאַרְבַּ לֹּץ וְקָם עָלָיו וְהִכָּהוּ גִפְשׁ וַיָּמָת וַיָּסֵ אֶל־אַחַת הָעָרִים הָאֵלֶּה:

If, however, a man who is the enemy of another lies in wait and sets upon [the victim] and strikes a fatal blow and then flees to one of these towns,

וְשָׁלְחוּ זִקְנֵי עִירוֹ וְלָקְחוּ אֹתוֹ מִשָּׁם וַיָּבִיאוּ אֹתוֹ בְּיַד גֵּאֲלֵ הַדָּם וַיָּמָת:

the elders of his town shall have him brought back from there and shall hand him over to the blood-avenger to be put to death;

Rashi

BUT IF A MAN HATE HIS FELLOW [AND LIE IN WAIT FOR HIM] — It is through his hatred that he comes to such a point as to “lie in wait for him”. From here they (the Rabbis) derived their statement: If a man transgresses a light command he will in the end transgress a weighty command; — because he transgressed the command (Leviticus 19:17) “Thou shalt not hate thy brother in thine heart”, he will in the end come to such a point as to shed blood. It is for this reason that it is stated here, apparently redundantly, “but if a man hate his fellow [and lie in wait for him]”, for it ought to have written only: “But if a man rise up and lie in wait for his fellow and smite him mortally” (Sifrei Devarim 186:2).

What question do we need to ask about the text?

Numbers 35:12

וְהָיוּ לָכֶם הָעָרִים לְמִקְלָט מִגֹּאֵל וְלֹא יָמוּת הַרָצֵחַ עַד-עֲמֻדוֹ לִפְנֵי הָעֵדָה לְמִשְׁפָּט:

The cities shall serve you as a refuge from the avenger, so that the killer may not die unless he has stood trial before the assembly.

Luzzatto on Numbers 35:12 (cities of refuge)

In early times before the establishment of a stable government under a king, princes, judges and law enforcement officers, each family executed its own private vengeance, the next-of-kin of the murderer being obliged to avenge personally his death.

The Torah appointed judges and officers and took vengeance out of the hands of individuals, entrusting it to the whole community, Now when the murder was deliberate, it was conceivable to quiet the blood-avenger by saying to him: leave it to the judges, they will investigate and bring him to justice if he is guilty. But when manslaughter was involved it was not possible to quiet the blood-avenger and force him to see the murderer of his father go unpunished. For that would be regarded by himself and his friends as if he was lacking in love towards his father in not avenging his death.

This attitude could not be eradicated all at once. Divine wisdom realised that if the blood-avenger were punished by death for avenging the inadvertent slaying of his relative, not all nor even the majority of blood-avengers would be deterred from wreaking vengeance for their relatives. In this way, unnecessary bloodshed would ensue and the suffering and harm caused to a single family would be aggravated. For since one mischance had happened in the family in one of its members being accidentally slain, yet another would suffer the death penalty for avenging his brother's death. It would also not be improbable that when the blood-avenger was being executed the whole community would rise up against the judges resulting in a national upheaval. What did the Torah therefore do? It allowed the blood avenger the privilege of avenging the death of his kinsman, but fixed a place of refuge for the murderer to flee where the blood-avenger could not reach him to slay him.

Adin Steinsaltz on Deuteronomy 19:11-12

But if there will be a man who hates his neighbor, and he ambushed him and rose against him, and smote him mortally and he died and he, this intentional murderer, **flees to one of these cities** of refuge, where he is legally entitled to temporary asylum until he stands trial;

the elders of his city shall send and take him from there to face justice, and will place him into the hand of the blood redeemer to stand trial as demanded by the victim's relative, who seeks justice on his behalf, **and he**, the murderer, **will die**, once his death sentence has been pronounced.

The court will make the ruling, and let the blood-avenger execute justice.

Deuteronomy 19:13

לֹא־תַחֲסֹם עֵינֶיךָ עָלָיו וּבְעֵרְתָּ דָם־הַנֶּקִי מִיִּשְׂרָאֵל וְטוֹב לָךְ: {ס}

you must show him no pity. Thus you will purge Israel of the blood of the innocent, and it will go well with you.

Rabbeinu Bahya on 19:13

עליו לא תחוס עינך עליו,"your eye shall not pity him," that you refuse to hand him over to the blood-avenger. You should not argue: "what is the point in another person being killed seeing the first one cannot be brought back." This is one instance when pity is not only misplaced but is a form of cruelty.

Ramban

THINE EYE SHALT NOT PITY HIM. "This means that you shall not say, 'The first person has already been killed. Why should we kill him also, with the result that two people will be killed?'" This is Rashi's language quoting the Sifre. The meaning thereof is that you should not say, "Rather than having pity on the blood of the slain it would be better to have pity on the blood of the living one."

The correct interpretation of the verse is as follows: Scripture has commanded concerning those liable to death, *so thou shalt put away the evil from the midst of thee*, this being a positive commandment. But in matters of prevalent danger [to society], He warned further with a negative commandment that [the murderers] not be spared from [punishment at] our hands, neither on account of fear of them nor because we might show them mercy.

What are the goals of the Torah regarding the cities of refuge?