

Shoftim 5799

The concept of the *'arei miklat'* (Cities of Refuge) for inadvertent murderers, obligates us to designate three cities in Transjordan (established by Moshe) and three in Israel (established by Joshua). These are first mentioned, albeit very briefly, in Mishpatim: *"He who fatally strikes a man shall be put to death. If he did not do it by design, but G-d lead him to it, then I will assign you a place to which he can flee"* (Shemot 21:12-3).

Chazal ask why the region inhabited by 9.5 tribes (in Israel) received the same number of *arei miklat* as the territory settled by 2.5 (built in Transjordan)? (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 3 cities of refuge. This seems problematic. 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.

We encounter more details on *'arei miklat'* in Mas'ei (Bamidbar 35) and in Shoftim (Devarim 19). A comparison of their descriptions suggests differences in the perceptions of the institution of *arei miklat* and may provide an answer. Sefer Bamidbar confirms that the *ir miklat* have legal significance serving two functions. Firstly, as a sort of detention centre, 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 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 blood who is threatening him. Yet the *ir miklat* 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 *ir miklat*. *"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." However, 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 punishment. It would seem, according to the Torah's approach in Barmidbar that a person is always held responsible for causing another person's death, even if he did so unintentionally. 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 parasha Shoftim it seems that the *ir miklat* is not a punishment but, on the contrary, a privilege for the unintentional slayer. The city serves as a place of protection for unintentional slayers, 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 (and sometimes visa versa). It is this point that represents the most significant difference between the two parashot. While in Mas'ei we are told that if the avenger kills the slayer, "he is not guilty," in Shoftim 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 there.

It is in Shoftim alone that the Torah calls for measures 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).

Returning to Chazal's question on the split of the six cities we see a reference that size of territory seems key *"Otherwise, when the distance is great, the blood-avenger, pursuing the manslayer in hot anger, may overtake him and kill him..."* ([Devarim 19:6](#)). 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.