

## Cities of Refuge

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Much of the Mosaic legislation contained in the Pentateuch seems foreign to the modern reader. The laws concerning the priesthood, the sacrificial system, and the religious holidays are neither practiced nor paralleled in the dispensation of the church. Though they do have didactic and illustrative value as types of the work of Christ, they are often rushed over or skipped altogether in personal Bible study.

The Old Testament legislation concerning so-called moral law has received greater attention. Since it addresses many issues which are also social problems in the twentieth century, it is frequently lifted from its Old Testament context and applied to contemporary society. Provisions for dealing with cases of adultery, homosexuality, theft, and murder in Israel are a few of the regulations which commonly receive such treatment. Several minority political/religious groups even advocate a complete return to Old Testament-style political regulations and policies.

It is within the context of this debate that the Old Testament legal provisions concerning the city of refuge should be studied. These cities were designated locations to which one who was guilty of accidental homicide<sup>1</sup> could flee in order to receive legal protection and a fair trial. They were part of the ancient legal system which recognized the right and even the

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<sup>1</sup> This paper will refer to an accidental homicide as manslaughter and a deliberate homicide as murder.

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responsibility of the nearest relative of a dead victim to put the murderer to death. Since modern society is again embracing the death penalty, it will be wise to consider the function and use of the city of refuge in order to determine if it is in any way relevant for modern society.

The legislation concerning cities of refuge is found in Exodus 21:12-14; Numbers 35:9-34; Deuteronomy 4:41-43; 19:1-13; and Joshua 20:1-9. There are several relevant examples from the historical books of the concepts of refuge and blood vengeance found in II Samuel 21 and I Kings 1-2. The goal of this paper is to summarize the Old Testament legislation on this aspect of Israelite society, and then to determine if it has any applicability to the current age. To that end, the paper will first examine several critical theories both which erode the value of the Old Testament as a historical document in general and as a clear witness to the validity of this legislation in particular, and which challenge the provisions of the law as barbaric. Second, a brief summary of the teaching of the passages mentioning cities of refuge will be made, carefully noting the similarities and differences between them. After synthesizing the passages into a summary of the Old Testament teaching on the subject, its relevance for modern criminal justice will be examined. The study will be limited only to those aspects of Hebrew law which are relevant to the legislation governing the cities of refuge and will not analyze any of the other offenses for which capital punishment is mandated (adultery, dishonor to parents, etc.). Nor will it systematically compare Old Testament law to other ancient near eastern systems of law, except when relevant for the present study. Finally, no attempt will be made to explore the relationship between the six named cities of refuge in Joshua 20:7-8 and the 48 Levitical cities in Joshua 21.

## **Critical Theories**

### **Textual Development**

The legislation concerning the cities of refuge does not occur in one text of the Scriptures, nor are all the mandates listed in one scripture text. Due to this fact, it is possible to discover apparent “discrepancies” between the various pieces of legislation. For example, Exodus 21:13-14 indicates that God would appoint a place for the manslayer to flee, but that this protection would not extend to the one guilty of murder. The one guilty of murder was to be removed even from the altar of God and put to death. Though this place is distinct from the altar mentioned in verse 14, it is unclear exactly where it will be located.<sup>2</sup>

Conversely, Numbers 35 and Deuteronomy 19 speak of the establishment of cities of refuge for the one guilty of manslaughter without mentioning any altar. These variations in the texts have been exploited by source-critical scholars holding to a late date for the book of Deuteronomy in line with the theory that it was produced as a part of Josiah’s reform movement. Milgrom, for instance states,

What is the relationship between the asylum altar and the asylum cities? Most critics hold that asylum cities were designated by Israelite rulers to replace the anarchic power of the altar to grant asylum, but they are divided on when the change took place. Some opt for the reign of David and Solomon, and some for Josiah.<sup>3</sup>

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<sup>2</sup> Moshe Greenberg, “The Biblical Conception of Asylum,” *Journal of Biblical Literature* 78 (June 1959): 123.

<sup>3</sup> Jacob Milgrom, “Santa Contagion and Altar/City Asylum,” *Congress Volume Vienna 1980*, ed. J.A. Emerton.

Proponents of the theory usually note that it was necessary to eliminate the prominence of local altars as Josiah worked for religious reform since they had become centers for idol worship, and that the asylum cities were established in order to replace this one particular function of the altar. The theory holds that since Deuteronomy does not even mention the altar that, "the sole conclusion . . . is that D[Deuteronomy] no longer knew of the institution of the asylum altar. If the altar was replaced by the city, it happened long before D"<sup>4</sup> Since the Bible clearly records Adonijah and Joab requesting asylum by grabbing on to the altar in I Kings 1 and 2, the conclusion supported by this critical theory is that Deuteronomy was written no earlier than the time of Solomon.

This conclusion of critical scholarship is both wrong and unnecessary. That there is a certain evolution in the concept of asylum cannot be denied, but it is the product of progressive revelation over a relatively short period of time instead of the product of religious decline over many centuries. Exodus 21, penned at the beginning of Israel's wilderness wanderings, was written to a group of people living as nomads gathered in one central location. Presumably, an accidental murder might have been committed, in which case the guilty party would flee for protection to the altar within the camp. Exodus, therefore, merely mentions that at some future time, God will establish places for them to flee while leaving the function of the altar as a place of asylum intact. In Numbers and Deuteronomy, however, the people are on the verge of entering the land and their manner of life is about to change. They are about to be split into their tribal groups and spread throughout a large geographic area. At this point, they receive instructions concerning the number and location of the cities. They are also

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Supplements to *Vetus Testamentum*, vol. 32 (Leiden: E.J. Brill, 1981), 297.

<sup>4</sup> *Ibid.*, 304.

given laws concerning the determination of whether a killing was a murder or a manslaughter. Since Moses the lawgiver was present and acted as a judge among the people, these principles were certainly followed by him when judging such cases. Now, however, these laws are recorded in view of the impending dispersion of the people through the land. Tigay suggests this when he writes,

Exodus 21:13-14 establishes a place to which accidental killers may flee, but that intentional killers are to be denied even the time-honored asylum of the altar . . . . Numbers 35:9-34 fleshes out the law . . . . It describes circumstances which create a prima facie case that the killing was intentional and a smaller number of conditions establishing that it may not have been.<sup>5</sup>

In similar fashion, Craigie advocates that, Deuteronomy 19:1-13

seems to be an expansion of the simpler law contained in Exodus 21:12-14, where the altar (presumably that in the sanctuary of the Lord) offered protection . . . . As the Israelites took possession of the land, however, the sanctuary and its altar would be located a considerable distance away from the majority of the population”<sup>6</sup>

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<sup>5</sup> Jeffrey H. Tigay, *Deuteronomy*, The JPS Torah Commentary (Philadelphia: The Jewish Publication Society, 1996), 179.

<sup>6</sup> Peter C. Craigie, *Deuteronomy*, The New International Commentary on the Old Testament (Grand Rapids: Eerdmans, 1976), 265.

Therefore, the variations in the legislation concerning manslaughter and cities of refuge indicate the sociological transformation Israel underwent during a very short period of time. They indicate progressive revelation, not a slow, humanly-produced process of religious evolution culminating in a reform movement.

### **Status as a Humane Punishment**

The second controversy stirred by critical theorists is to consider the inherent morality of the whole concept of capital punishment and the accompanying legislation concerning the cities of refuge. The fact that someone's life is to be taken from them has been assumed to be a barbaric vestige of ancient civilization. The law, however, always fits the punishment to the crime; and since murder requires that one lose his life, it is indicative of the high regard which the Scriptures reflect for human life. This high regard is especially evident when compared to the punishments prescribed by other ancient Near Eastern cultures for similar offenses. Greenberg remarks that the insistence of life for life to the exclusion of monetary compensation—a severity unparalleled in ancient Near Eastern law and which had its counterpart in the refusal to consider any offense against property worthy of the death penalty—was equally unheard of in all Near Eastern systems but the Hittite.<sup>7</sup>

Other ancient systems of law allowed the family of the victim to receive financial compensation from the murderer. As Greenberg states,

Not the archaicism of the biblical law of homicide relative to that of the cuneiform codes, nor the progressiveness of the biblical law of theft relative to

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<sup>7</sup> Greenberg, "The Biblical Conception of Asylum," 129.

that of Assyria and Babylonia, but a basic difference in the evaluation of life and property separates the one from the others. In the biblical law a religious evaluation; in non-biblical, an economic and political evaluation predominates.<sup>8</sup>

The Old Testament law, therefore, can in no sense be viewed as an archaic and outdated barbarism. The fact that the most valuable of all commodities, human life, should be prized and protected in so many instances and taken away in other instances is certainly paradoxical to the thought processes of fallen human reasoning, but it is the only penalty for murder which is just.

The legislation regarding the cities of refuge fit in as a part of this high regard the Old Testament law holds for human life. In many ancient societies, the administration of justice was largely a private matter to be dealt with by individuals. The "aspiration [of the laws] to control vengeance by making it possible for public justice to intervene between the slayer and the avenger has long been recognized as an advance over the prior custom of regarding homicide as a purely private matter to be settled between the families of the two parties"<sup>9</sup> City of refuge legislation, therefore, was the instrument by which each accused killer had the opportunity to receive due process. Before one could be put to death, he had to stand trial before the congregation/elders and be declared guilty. It also removed the automatic protection the ancient custom of grabbing the horns of the altar provided to anyone, whether innocent or

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<sup>8</sup> Moshe Greenberg, "Some Postulates of Biblical Criminal Law," *A Song of Power and the Power of Song*, ed. Duane L. Christensen. Sources for Biblical and Theological Study, vol. 3 (Winona Lake, Eisenbrauns, 1993), 292-3.

<sup>9</sup> Greenberg, "The Biblical Conception of Asylum," 125.

guilty.<sup>10</sup> Miscarriage of justice occurs when either the guilty go free or the innocent are punished. The city of refuge legislation has the specific purpose of avoiding either extreme.

### Texts Relation to Cities of Refuge

Having examined the critical theories which challenge both the historical development of the legislation and its status as a moral and fair punishment, it is now time to examine the various passages which established the cities of refuge.

#### Exodus 21:12-14

This passage occurs in a section of laws establishing the death penalty. The general principle stated in verse 12 is that one who strikes a person so that he dies must also be put to death. The exception given for the law is in cases of premeditated murder. If the killer did not lie in wait (Hebrew **הַרְצֵחַ**), thus indicating a calculated murder, then he was to have the opportunity to flee to a place of safety. According to verse 14, the one who did act with treachery toward any comrade was a murderer and would have to be put to death. The one guilty of murder was to be taken from the altar itself and put to death.

Two curious features are present in the text. First, the exact nature of the homicide is ambiguous. It may refer to a crime of passion,<sup>11</sup> which takes place in the heat of an argument and is not premeditated. It may refer to an accidental death. The Hebrew in Exodus 21:13 states:

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<sup>10</sup> Milgrom, "Santa Contagion and Altar/City Asylum," note 84, 309.

<sup>11</sup> John I. Durham, *Exodus*, Word Biblical Commentary, vol. 3 (Waco: Word Books, 1987), 322.



וְאִשֶּׁר לֹא צָדָה וְהֵאֱלֵהִים אֹתָהּ לְיָדוֹ.

The English translation of the phrases reads “but if he did not lie in wait, but God let *him* fall into his hand.” The subject of the first phrase is the third person “he,” while the subject of the second phrase is the third person “God.” Thus the text represents the primary mover in the death of the individual as a different person in each case. As Sarna concludes, “the theological assumption is that the death of the victim occurred by the intervention of Providence; thus, the manslayer was the unwitting agent.”<sup>12</sup> Verse 14 repeats the same basic premise from the perspective of the one who is worthy of death. The Hebrew, וְכִי־יִזְדֹּ אִישׁ עַל־רֵעֵהוּ לְהַרְגוֹ בְּעָרְקָהּ, is translated “but if a man acts presumptuously against his neighbor in order to kill him with cunning.” Smith defines the meaning of the verb יִזְדֹּ as, “connected to individuals or nations who presume to have authority or rights that are not legitimately theirs. This may involve an attitude or behavior that ignores or rejects the validity of God’s authority to control Israelites by his laws.”<sup>13</sup> Thus the legislation involved in the verse is directed to anyone who takes the life of another without having the judicial authorization to do so, unless the death can be ruled an accident. The legislation would also presumably apply to a crime of passion. Even a crime of passion requires that one person find a tactical advantage against another person which he may exploit in order to kill the person. Furthermore, in the same context verse 18 stipulates regulations for reparations to

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<sup>12</sup> Nahum M. Sarna, *Exodus*, The JPS Torah Commentary (Philadelphia: The Jewish Publication Society, 1991), 122, believes that “Hebrew *makom*, like its Arabic cognate *maqum*, probably means here ‘sacred site,’ a sanctuary”

<sup>13</sup> Gary V. Smith, “יִזְדֹּ” in *New International Dictionary of Old Testament Theology and Exegesis*, ed. Willen A. VanGemeren (Grand Rapids: Zondervan, 1997), 1:1094.

be made when two men fight. If the injured man thoroughly recovers, the other party is liable only for the loss of income during the time the man recovered. The provision is valid, however, only if the man does not die. If a death occurs, then presumably the one who caused it is then liable to death. The place of asylum envisioned in the passage then is for situations of accidental, unpremeditated murder. It is not for cases of premeditated murder, regardless of the time lapse between the decision to kill another and the commission of the act.

The second issue to resolve concerns the location of the asylum which is provided as a refuge for the manslayer. Verse 13 indicates that God will appoint a "place" (מקום) to which the manslayer may flee.<sup>14</sup> The corresponding legislation of verse 14 states that one who does not meet the qualifications for innocence because he committed premeditated murder is to be taken from the altar and put to death. The perfect verb in verse 13 looks to the point in time when Israel is in the land and God will have provided a definite place for them to go to deal with such matters. Verse 14 indicates that even the time-honored asylum given by an altar will not deliver a murderer from his punishment. The passage, therefore, envisions a specific place, whether referring to a holy site or a city, to which one guilty of manslaughter must go for asylum. The exact relationship between the altar and the asylum city is never specified.

### Numbers 35:9-34

Numbers 35 is the next passage which addresses legal provisions for places of asylum. This passage, which introduces the term "city of refuge," expands greatly upon the general provisions set forth in Exodus 21:12-14. Speaking of this contrast, Ashley writes,

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<sup>14</sup> *cf. fn. 12.*

The law of Exod. 21:13-14 allowed for temporary asylum, but did not designate the place (except to say that it may be at an altar) or define how long the asylum may last. The current passage more carefully distinguishes murder from unintentional killing . . . puts responsibility for determining guilt or innocence in the hands of the congregation . . . and defines the time period of the guilty party's stay in a city of refuge.<sup>15</sup>

Apparently, the Exodus legislation sets forth the broad guideline stating that God requires Israel to make provisions for an asylum for the manslayer. God's instructions to Moses in Numbers 35 are designed to be carried out at a specific point in time as indicated by the temporal clause in v. 10 (יָד). The details outlined are to be implemented when Israel crosses into the land of Canaan.

Verses 11-15 indicate the purpose, number, and location of the cities. The city of refuge was to be a place where the manslayer who killed someone inadvertently might flee.<sup>16</sup> The manslayer was to go to the city so that he would not be put to death by the avenger<sup>17</sup> of blood until he had opportunity to

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<sup>15</sup> Timothy R. Ashley, *Numbers, The New International Commentary on the Old Testament* (Grand Rapids: Eerdmans, 1993), 650.

<sup>16</sup> The Hebrew word אֶשְׁמָרָה, meaning "unintentional," is used to "signify an inadvertent error or mistake arising from the routine experiences of daily living" Andrew E. Hill, "אֶשְׁמָרָה," in *New International Dictionary of Old Testament Theology and Exegesis*, ed. William A. VanGemeren (Grand Rapids: Zondervan, 1997), 4:42. The word is used frequently in the Pentateuch (often with the verb חָטָא, to sin) to refer to the sacrifice which must be made for sins which were not committed in defiance of God, or high-handed sins.

<sup>17</sup> According to Leviticus 25:47-49 the redeemer, who in this case acted on behalf of an impoverished Israelite, was a near relative. The responsibility of redemption or vengeance fell first to a brother,

stand trial before the congregation. Israel was to establish six such cities, three on each side of the Jordan River. They were to be for the use of any Israelite, resident alien, or sojourner.<sup>18</sup>

Verses 16-24 stipulate criteria for determining whether a killing qualifies as accidental or premeditated. The criteria for determining culpability concern the murder weapon and the killer's mental state. Several types of instruments might be used. Verse 16 states that if the killer used an iron implement, then he is a murderer and must be put to death. At this period in history, iron was employed only in the production of weapons,<sup>19</sup> which would be a certain indication that the killing was intentional. Weapons or tools of stone or wood which could be held in one's hand and were potentially dangerous were also "considered . . . [to be] murder weapon[s] by definition"<sup>20</sup> The type of weapon was important because it gave an indication of the killer's intent when he struck the victim.

Verses 20-22 indicate other possible means of death. These are means of death which do not so obviously indicate a hostile predisposition toward the victim, so the killer's psychological condition becomes a factor. If the victim was pushed to his death because of hatred, then the killing was punishable by death. If something was thrown at the victim from a concealed position (while "lying in wait"), then the killer was again judged guilty of murder since a deliberate act was involved. Verse 22 makes even the hands a possible murder

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then an uncle, then a cousin, then finally any blood relative from his family.

<sup>18</sup> The two Hebrew terms employed here, נָר and תּוֹשֵׁב may refer to resident aliens with varying levels of attachment to the community, or they may function as virtually equivalent terms (function as a hendiadys).

<sup>19</sup> Jacob Milgrom, *Numbers*, The JPS Torah Commentary (Philadelphia: The Jewish Publication Society, 1990), 292.

<sup>20</sup> Ashley, *Numbers*, 652.

weapon, providing that the killer struck down his victim because of hate.

Conversely, verses 23-24 indicate evidence which will clear one of murder charges. If the death resulted from pushing or a thrown object, but there was no history of hostility between the individuals, then the killing should be ruled accidental. If a stone object was accidentally dropped on a person so that he died, then the killing was again ruled to be accidental.

The type of the weapon used and the state of mind of the killer are the key factors to determine for the adjudication of the legal case. The provision might apply to modern cases as follows. In a case where a pedestrian was shoved into a line of oncoming traffic, the killing would be ruled accidental if the killer merely stumbled and pushed his companion into a dangerous position. Had, however, there been previous hostility between the two, then he would be judged a murderer. A contemporary illustration of this might be a death caused by a gunshot wound. It would also be considered a murder because a gun is a weapon. The only exception might be on the basis of verse 23, which allows for an accidental death caused by a deadly object of stone. A hunting accident in which the shooter did not see an improperly dressed human would be an excellent example.

The congregation is the judge in such cases according to the above mentioned ordinances (v. 24). Should the killer be found guilty of murder, then he was to be put to death. If the congregation determined that the killing was accidental, then the killer was reprimanded to the city of refuge until the death of the high priest. After the death of the high priest, the manslayer would be free to return to his home. If, however, he were to venture from the city of refuge, he could be put to death by the avenger of blood, the next of kin of the deceased.

Verses 29-33 begin with an indication that the statements given are considered ordinances or binding judicial procedures. Verse 30 requires that the death penalty not be

carried out unless there is more than one witness. Presumably this might include circumstantial evidence as well as verbal testimony,<sup>21</sup> although the text does not specifically state it. Verses 31-32 disallow any provision for a monetary settlement in lieu of the previously stated punishment for both the murderer and the manslayer. Verses 33-34 indicate that following the stipulations will be the only way to avoid polluting the land in which Yahweh dwells.

These provisions raise two questions. First, since the killing was accidental, why was the manslayer liable to any punishment at all? Greenberg explains that,

it must first be recognized that whenever an innocent man is slain, the law considers the slayer guilty in a measure. The reason lies in the ultimate respect that the Scriptures have for human life and for the land as the dwelling place of Yahweh Himself. Shedding an innocent man's blood, even unintentionally, involved bloodguilt, and no manslayer was considered clear of this guilt."<sup>22</sup>

The city of refuge therefore had a punitive as well as protective effect. This guilt is further borne out in that the man who was convicted only of manslaughter was safe from harm only as long as he stayed in the city. Were he to leave, the avenger of blood could execute him without fear of reprisal. This might also provide a necessary balance to the system. The system for determining the level of culpability relied in part upon determining the state of mind of the killer toward the victim. It is possible that hate was involved, but that it was a secret hate which was unknown to the congregation. It is therefore

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<sup>21</sup> Ralph D. Mawdsley, "Capital Punishment in Genesis 9:6," *Central Bible Quarterly* 18 (Summer 1975):22.

<sup>22</sup> Greenberg, "The Biblical Conception of Asylum," 127.

possible that a guilty person might erroneously be proclaimed innocent. If this was indeed the intent of the law, then the confinement of the city of refuge functioned as a probationary period. Vasholz comments that,

The innocence of the accused and his willingness to submit to proper authority was to be demonstrated by his remaining in the city of refuge as long as the High Priest lived . . . The Levitical city of refuge, then, was not a prison but a haven for those who could demonstrate a true regard for law and not a murderous spirit.<sup>23</sup>

It must be noted that the text nowhere states that this was the rationale for the legislation. Practically, however, the law would have had this effect.

The second question concerns the rationale for the death of the high priest marking the terminus of the confinement to the city of refuge. The most prominent theory is based on theological considerations. Since the shedding of blood defiled the land whether it was accidental or not, then a death was necessary in order to expiate and cleanse the land. Yahweh could not be satisfied in any other way. Since a person, made in the image of Yahweh, had been killed, an animal sacrifice was inappropriate. Due to his position, therefore, the high priest was the most logical candidate to secure this propitiation.<sup>24</sup> It should be noted, however, that the text does not specifically

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<sup>23</sup> Robert Vasholz, "Israel's Cities of Refuge," *Presbyterian* 19 (Fall 1993): 117. Vasholz believes this stems from the judicial function of the High Priest in Israel (cf. Deuteronomy 17:9). His death, then would signal "the end of a judicial era and thus signal . . . amnesty for those confined to cities of refuge."

<sup>24</sup> *Ibid.*, 130.

state this and it is an exception to the provision for sacrifice that God made for all other types of unintentional sins.

The other possibility rests on a more practical consideration. It is more in line with the nature of the murder, which was considered random in the case of involuntary manslaughter. Whereas “the deliberate homicide is deliberately put to death; the involuntary homicide who took life by chance must await the chance of the High Priest’s death in order to be released from the asylum city.”<sup>25</sup> This in itself would have tended to limit the claimants to the protection of a city of refuge to those who really were innocent of murder. Anyone who claimed the protection of the city of refuge was admitting his guilt and his willingness to accept a confinement to the city of refuge which might last for years. Claimants to this protection might have done so merely out of fear for their own lives, but it is more likely that the innocent, law-abiding citizen would have done so. True criminals seek to avoid any punishment.

### **Deuteronomy 4:41-43; 19:1-13**

Deuteronomy 4:41-43 is a simple historical notation that Moses set up three cities of refuge on the east side of the Jordan River. The three cities, Bezer, Ramoth in Gilead, and Golan in Bashan were assigned to the Reubenites, the Gadites, and the Manassites respectively. Their geographic distribution was therefore sufficiently wide to make them accessible to anyone on the east of the Jordan needing to use them.

Deuteronomy 19:1 begins the next relevant section with a temporal reference to the future time when Israel is settled in the land.<sup>26</sup> The command to set aside three cities of refuge on

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<sup>25</sup> Milgrom, *Numbers*, 510.

<sup>26</sup> The Hebrew, identical to Numbers 35:10, uses the subordinating conjunction ׀ to indicate the temporal clause.



the west side of the Jordan is reiterated. Verse 3 lays upon the people the additional responsibility of preparing the roads leading to the cities. This command, in conjunction with the wide distribution of the cities throughout the land, insured that they would be easily accessible to anyone needing asylum. Verses 4-6 are a parenthetical statement of the conditions under which one may be granted asylum in a city of refuge. The information given is largely similar to that contained in Numbers 35 with one exception. There is a danger that the manslayer may be put to death because the journey to the city of refuge is too long, and this is obviously meant to be a justification for the number and location of the cities of refuge. Verses 8-10 add another qualification, noting that if Yahweh enlarges the territory of Israel in response to their careful attention to the details of the covenant, then they are to appoint three more cities within their territory to be cities of refuge. Verses 11-13 repeat the qualification that one guilty of premeditated murder must be put to death in order to secure the blessing of Yahweh upon the land. Thus the major contribution of this section is the responsibility of the nation to provide adequate places for the manslayer where he could flee to safety quickly. It was a national, not merely an individual, concern.

### **Joshua 20:1-9**

In a style reminiscent of His dealings with Moses, God commanded Joshua to establish the previously prescribed cities of refuge. The purpose for the cities is again stated in verses 3-4 as providing a place of refuge from the avenger of blood for one who is guilty of manslaughter. The additional qualification is given that the one requesting such asylum must stand before the elders at the gate of the city to present his case. Whether or not an altar is involved in such proceedings is not stated. If they

determine that the slaying was indeed accidental, then he shall be granted asylum within the city.

The text then reiterates several more of the provisions of the law (the provisions protecting him from the avenger of blood and the stipulation that he may return to his own city after the death of the high priest). Verses 7-9 contain the names of the cities which were appointed as cities of refuge, including those which were appointed by Moses on the eastern side of the Jordan River. The location of each city, with the exception of the Reubenite city of Bezer, is fairly well established. They were evenly spread throughout the land and located along ancient highways. The distribution of the cities was in accordance with the Mosaic legislation and provided easy access for anyone who might need to flee to them.

### References in the Historical Books

Unfortunately, the Bible contains no references to the use of the city of refuge for a manslayer. It does, however, contain several references to the concepts of asylum at the altar and bloodguilt. The first mention of asylum requested at the altar is in 1 Kings 1:50. After Solomon was crowned king, his main rival Adonijah requested asylum by grabbing hold of the horns of the altar. Though there is no loss of life involved, Adonijah's flight to the altar is consistent with the recognized use of the altar. Gray remarks that,

the fugitive from vengeance, having thus made contact with the part of the altar where union with God was effected by the blood of sacrifice, was regarded as . . . the protected sojourner of God . . . The hand of the

avenger was thus stayed till his case was considered and settled if possible without bloodshed”<sup>27</sup>

Thus Adonijah was simply afraid for his life and claimed the protection of the altar and the right to a legal hearing of his case.

1 Kings 2:28-33 records the second case. Here, Joab requests asylum at the altar. It is possible that he requests such asylum for the same reason as Adonijah: he was part of a rival faction to the throne. If so, then the events are unrelated to the legislation concerning the cities of refuge. It is, however, possible that he feared Solomon would not hesitate as David had to act against him for the murders of Abner and Amasa (2 Samuel 3 and 2 Samuel 20). Whatever Joab’s motivation was, Solomon’s is perfectly clear. He refuses to grant asylum since Joab’s case in no way qualifies him to receive the protection of the altar. Though the events seem to be at variance with the regulations to bring the accused before the elders and try him there, it should be noted that a different system of government existed in Israel at this time. The king functioned as a judicial authority in the land,<sup>28</sup> especially concerning matters of his own court, and both David and Solomon have decreed that Joab must be put to death as a murderer.

Several passages address the related concept of bloodguilt. 2 Samuel 21 contains the record of a three-year famine in Israel. When David inquired of the Lord concerning the reason for the famine, he was told that it was because Saul had massacred a number of Gibeonites with whom Israel had a

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<sup>27</sup> John Gray, *I & II Kings*, The Old Testament Library (Philadelphia: The Westminster Press, 1976), 96.

<sup>28</sup> For example, 1 Kings 3:16-28 shows the king acting as a judge. Solomon’s decision regarding the two prostitutes is declared to be a *resha*. This word is used generally to refer to various aspects of the judicial process.

non-aggression pact dating back to the time of Joshua. The second reference to bloodguilt is made by King Solomon after he orders the execution of Joab. He notes that the execution will “take away the innocent blood, which Joab shed, from me, and from the house of my father” and that “upon David, and upon his seed, and upon his house, and upon his throne, shall there be peace for ever from the LORD.” The passages show that it was generally understood that guilt, which resulted from murder, would rob one from the blessing of Yahweh. One may conclude, therefore, that godly Israelites understood that the shedding of blood defiled the land in which Yahweh dwelled. The primary motivation for the legislation concerning murder in general and the cities of refuge in particular was theological instead of humanitarian or social.

### **Summary of City of Refuge Legislation**

It is now possible to summarize the legislation concerning cities of refuge. Altar asylum was a time-honored custom in the ancient Near East. It appears that the custom continued at least into the reign of Solomon as a claim for amnesty or protection for certain types of offenses. On the basis of Exodus 21, however, it was never to grant asylum privileges automatically. Such determinations had to be made on a case by case basis.

The city of refuge was established for the manslayer. Were one guilty of the crime, he had to immediately flee to one of six so designated cities. He may have requested asylum by grabbing hold of the altar and then being brought before the elders of the city of refuge or he may simply have gone directly to the elders as they sat in the gate (Joshua 20:4). If the elders believed he had a case which warranted granting of asylum privileges, then he was accepted into the city. He was to remain in the city until he was able to stand trial before the congregation, presumably of his own city (Joshua 20:6;

Numbers 35:24), so that he would not be put to death by the avenger of blood. The criteria used to determine the guilt of the killer were the type of weapon he used and his mental state toward the victim. Were he known to be guilty, then the elders of his own city were to send to the city of refuge and have him delivered to the avenger of blood so he would be put to death (Deuteronomy 19:12).

If he were judged to be guilty of manslaughter, then he was returned to his city of refuge, where he was to live until the death of the high priest. There was not possibility of parole from this banishment, nor was there the possibility of making a financial settlement with the family of the deceased; only the death of the high priest set him free. If he were to leave the city prematurely, then the avenger of blood could put him to death without fear of reprisal. The reason stated for the regulations is not to act as a deterrent to crime, although it certainly functioned as such. Nor is it to maintain a sense of social justice within Israel, although it certainly did that as well. The specified reason is theological. Any shedding of innocent blood would defile the land in which Yahwah dwelled. The failure to execute a murderer would defile the land, for no other punishment was fitting for this crime. The execution of a manslayer would also pollute the land in which Yahweh dwelled, unless he was put to death because he left his city of refuge. This provision had the practical effect of a probationary period to determine the true character of the accused.

### **A Tentative Modern Application**

The provision for cities of refuge has most recently been used as a justification for various sanctuary movements.<sup>29</sup> Such

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<sup>29</sup> See D. Auckerman, "City of Refuge," *Sojourners* 13 (January 1984):22-26, M. Mawyer, "Sanctuary Movements," *Fundamentalist Journal* 5 (October 1986):59-62, and William C.

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movements have provided a place of safety for those who may be in danger due to political, ethnic, or religious persecution in their own countries. The desire to protect innocent lives which motivates many members of the sanctuary movement certainly corresponds to the regulations for the cities of refuge which were designed to preserve the life of the manslayer and avoid shedding innocent blood (e.g. the manslayer was protected in the city; there were six such cities which also had to be easily accessible). God has always placed a high premium on the value of human life, so when it is endangered unjustly, it should be protected. It should be noted, however, this principle has been abused by those seeking to promote a particular political agenda in the United States.<sup>30</sup> Since the city of refuge was for the use of the manslayer in a society where certain matters of justice were left in the hands of the individual, it would seem that the asylum city best supports the concept of due process. The farther any application strays from this purpose, the more likely it is to be in error.

The most obvious application comes in the realm of our judicial system. Making such applications is difficult. It must be remembered that the law was done away with on the cross and that Israel and the Church are dissimilar in many respects. It is also very unlikely that any modern government will pattern its procedures after Biblical law, so much of what is suggested here belongs to the realm of the theoretical. It should also be remembered that as a small largely agrarian society this system of justice worked better than it would work in modern

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Ryan, "The Historical Case for the Right of Sanctuary," *Journal of Church and State* 29 (Spring 1987): 209-32 for more information on these movements.

<sup>30</sup> Mawyer, "Sanctuary Movements," 59-62.

society.<sup>31</sup> Yet the law was still the flawless revealed will of God and contains many principles which are reiterated in the New Testament. The theocracy as established by God qualifies as the best government ever established. In the one instance where God reached down into human history and established a government, this is the government that He established. It will encourage the individual Christian to see the order and justice of God as revealed in the law, as opposed to the system man has established. With these qualifications in mind, a brief analysis of modern legal concepts in light of God's can now proceed.

Modern jurisprudence is built on the belief that the accused is innocent until proven guilty. Every protection, therefore, is afforded to him. The city of refuge afforded this type of protection as well, but it was not automatic. The manslayer had to first get himself to the city of refuge. If he did not, or if he did not stay there until the death of the high priest, then he could be put to death without the avenger of blood incurring guilt. As such, confinement to the city functioned as a probationary period. Violation of the period was incurred for the simple act of leaving the city of refuge. This seems highly preferable to the modern system. The system established by God is fair to the accused without going too far to protect his rights. It realized that certain rights might be forfeited and perscribed a strong punishment if the defendant waived his protection to those rights.

The second comparison applies to certain trial procedures and the admissibility of evidence. The manslayer had to represent himself before the elders of the city of refuge and before the elders of his own city. Modern jurisprudence seeks to avoid producing incorrect verdicts by finding people

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<sup>31</sup> See Gordan J. Wenham, "Law and the Legal System in the Old Testament," *Law, Morality, and the Bible*, ed. Bruce Kaye and Gordan Wenham (Downer's Grove: InterVarsity, 1978), 44-46.

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who do not know any of the details of a case and are supposedly unbiased. This system required the participation of those who knew the killer (the elders of his own city) and those who probably knew nothing about him (the elders of the city of refuge). The judges in this case were also the jury. Though anyone is subject to rendering a false judgment, the men put in charge of these matters were the ones who had the most experience and the respect of their communities.

The major difference is seen in the motivation driving the entire legal apparatus. Modern thought is tainted by the belief in the supremacy of man. The system is built on the concept that the highest good is to avoid punishing an innocent man and in the process allows the guilty to go free. This Old Testament system is driven from start to finish by the notion that murder pollutes the land in which Yahweh dwells. This system could and did break down. It could be abused as can any system. If the people were not faithful to the God of the covenant, then any system would not have worked anyhow. That is perhaps the greatest lesson to be learned. Only one who fears God will be scrupulous to punish the guilty with the proper punishment while letting the innocent go free.

## Conclusion

City of Refuge laws were designed to punish the guilty and protect the innocent. It was important to follow the procedures laid down in order to have the blessing of God upon the nation. In practice, however, Israel probably followed this law about as well as it followed the rest of God's laws. There are ways in which the system could conceivably be abused. Abuses, however, cannot be attributed to any weakness in the system, but to the weakness of those who ran the system. On a personal level, Paul noted in Romans 7:8 that "sin, taking occasion by the commandment, wrought in me all manner of concupiscence." Israel's failures in the consistent application of



the law are an extension of the principle which is visible on a much wider level. The main contribution of a study of the Old Testament, then, should be to cause the believer to look forward to the day when Christ reigns on earth and does apply all of His laws consistently in order to establish justice on earth.