

## THE CITIES OF REFUGE

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### INTRODUCTION

The subject of the cities of refuge in Israel, though mentioned prominently in the Pentateuch and the Book of Joshua, as well as in 1 Chronicles, has received scant attention at the hands of investigators. Nicolsky<sup>1</sup> claims that the problem of the refuge cities belongs to that group of least investigated subjects of the Old Testament. For him it is one of the few questions in the social history of Israel for which the Bible offers definite, if not very considerable, material. Klein<sup>2</sup> makes mention of three specific treatments of the subject. (1) In 1895 S. Ohlenberg took the ground that refuge cities may have existed in the Biblical period. His view was not well received by scholars. (2) Hoffmann, in his opposition to the Graf-Wellhausen hypothesis, stated that our original concepts in the matter were correct, and brought forth indications of the existence of Levitical cities in the period of the first temple, with the possibility of a few cities for Levites during the time of the second temple. This view did not find general acceptance. (3) In 1930 Max Lohr issued his article on "Asylwesen im Alten Testament." He sought after the historical foundations of the cities of refuge, and held that according to scientific excavations in Asia Minor the concept of refuge prevailed in eastern countries a long while before the Israelites came to Palestine, and that remnants of the primitive regulation are to be found in the books of the law. With regard to the six refuge cities of

<sup>1</sup>"Das Asylrecht in Israel" in *Zeitschrift für die Alttestamentliche Wissenschaft*, 1930, p. 146. The article is a German translation of the Russian original.

<sup>2</sup>*The Cities of the Priests and the Levites and the Cities of Refuge* (in Hebrew), 1934.

Numbers and Joshua, he maintained that the context of the passages may be of a later date, but that the essence of the tradition, insofar as it deals with the names of the cities and their functions, appears to be very ancient and to have historical basis. He placed the time of the existence of these cities in the reigns of David and Solomon. He agreed with Ohlenberg that the Levitical cities served as refuge cities.

The phrase עֲרֵי מִקְלָט is itself interesting. The only other derivative from this root in the Old Testament is קָלוֹט in Leviticus 22:23: "Either a bullock or a lamb that is prolonged [has anything, superfluous] or dwarfed, you may offer for a freewill-offering; but for a vow it shall not be accepted." It may mean a place of reception rather than place of refuge, a place set apart for receiving fugitives. Joshua 20:9 has עֲרֵי הַמְּוֵעָדָה, the cities of appointment or appointed cities.

### DENIAL OF THE EXISTENCE OF SUCH CITIES

There have not been lacking those who claim these cities never existed, while others feel the matter is doubtful. Gray<sup>3</sup> holds: "But this history is fictitious. Levitical cities in the meaning of the law never existed; they were merely the objects of desire in certain circles. Like the strip of country across the centre of Canaan which Ezekiel (48:8-14) designed for the priests and Levites, these cities never passed out of the realm of theory into that of fact." Moore notes: "Jewish scholars, with some plausibility, maintain that, besides those, all the other Levitical cities, of which there were 44, many of them seats of ancient sanctuaries, possessed the right of asylum in a lower degree. Whether this system was ever actually introduced in its whole extent is doubtful. Neither in the brief years between Josiah's reform and the fall of the Judaeian kingdom nor after the restoration did Judah possess more than a small part of the territory contemplated by these laws." Bissell quotes Bernhard Stade as

<sup>3</sup> *The Book of Numbers* (the *International Critical Commentary Series*), p. 465.

<sup>4</sup> "Asylum" in *Encyclopaedia Biblica*, Vol. I, p. 378.

stating that the asyla and the Levitical cities are an absolutely unhistorical phantasy (*ein vollig unhistorisches Phantasiestuck*).<sup>5</sup> Bissell himself tries to prove the existence of the cities from a negative argument. Says he, "We may ask how it could happen, in the supposed absence of this regulation, that there were in Israel no such deadly feuds as the blood-revenge begat among the Arabs, and no such abuses of the altar as an asylum as we find among the Greeks and Romans."<sup>6</sup>

#### THE BIBLICAL REFERENCES

The first mention of asylum in the Old Testament is Exodus 21:13, 14. It reads: "And if a man lie not in wait, but God deliver [his neighbor] into his hand; then I will appoint you a place whither he shall flee. But if a man come presumptuously upon his neighbor to slay him with deceit; you shall take him from my altar, that he may die." The passage cites the instance of one who has unintentionally slain another; for such, a place is to be provided. But, on the other hand, if he came with presumption and guile and slew another, he is to be taken from the altar to die. In Numbers 35:9-34 we have a more extended passage which contains a number of interesting details. Among other features this passage makes mention of the לָגֵל. With this word are bound up the concepts of the right of redemption, the practice of levirate marriage, and the duty of blood-revenge. With the last only do we deal here. Blood revenge prevailed as an institution among early peoples of all races.<sup>7</sup> Jacobson notes that "the Arab is always in constant fear of vengeance, for no tribe is without its hereditary blood feud. . . . There is evidence that blood revenge is a universal custom among all primitive groups." It is found among nations not at all related to the Hebrews or the Arabs. Blood revenge

<sup>5</sup> *The Law of Asylum in Israel*, p. 42, footnote.

<sup>6</sup> *Op. cit.*, p. 73.

<sup>7</sup> A. P. Bissell, *op. cit.*, p. 50.

<sup>8</sup> *The Social Background of the Old Testament* (1942), p. 250.

rests on the basis that one who has willfully taken another's life has forfeited his own. The nearest relative of the murdered person immediately becomes the avenger of the family right. Bissell observes that "the Hebrew idea of God and of man's relation to him gave a peculiar form and force to this institution among them. Man is God's image. God is the Creator, and consequently the Lord of human life. A blow at this life is a blow at God himself."<sup>9</sup> Blood revenge becomes a religious duty, not merely a matter of honor.<sup>10</sup> God is also considered a blood relation, hence He is a לָאֵל, Genesis 9:5 and 2 Kings 9:7, 26 (He avenges murder; He avenges His servants the prophets).

Numbers 35:12 makes mention of הַקָּהָל. What is the meaning of this term? Moore thinks it is "the religious community of the post-exilic Jerusalem (Num. 35:12-24 f.)." Gray holds that it is not clearly known of what the הַקָּהָל consisted. Nicolsky gives us a more extended treatment of the word. He claims that the הַקָּהָל in the Book of Numbers must have had the right to demand the deliverance of the culprit to them and must have possessed judicial and police power to carry out its full authority. He thinks the הַקָּהָל not the community of the asylum (Baentsch), nor that of the manslayer (Weismann), because in the Bible the community of a city is never so designated. In pre-exilic times the term was seldom used and that in a special sense--of the general gathering of feudal dignitaries at special occasions, like the choice of a king (1 Kings 12:20), the dedication of the new temple (1 Kings 8:5); in the so-called Priest Code the expression means at one time the whole community (*Gemeinschaft*) of Israel, at another time a general assembly (*die allgemeine Versammlung*) of all the children of Israel. In the period of the monarchy, he contends, it was not customary to convene general gatherings, but it is applicable in the nomadic period. It is possible that such mentions of the congregation as in Judges 20:1 and 21:10, 13 (the conflict

<sup>9</sup> *Op. cit.*, p. 51.

<sup>10</sup> Instances in the Bible of blood revenge are to be found in 2 Samuel 2:12-23; 2 Kings 14:5-6; and 2 Chronicles 24:20 ff.

with the tribe of Benjamin) reach back to the earliest period of the use of the expression." In what sense is it to be taken in our case? Is it a survival from an earlier usage when the conflict between manslayer and blood avenger was settled at a tribal gathering, or do we have merely a project for the further restriction of the right of blood revenge and a regulation of the law of asylum, which provides in general form the arrangement of a central legal authority which was to be instituted after the restoration (that is, in post-exilic times) for the decision of a whole series of law-suits? Undoubtedly, in the latter sense, says Nicolsky. In the period of the monarchy the  $\text{הַדָּבָר}$  was employed to speak of a feudal assembly for the determination of constitutional questions. He thinks that so private and insignificant a business as murder would not belong to the sphere of this body. In the last analysis the  $\text{הַדָּבָר}$  is part of a plan which could hardly have been put into effect, because the community of the second temple knew no  $\text{הַדָּבָר}$  as a permanent judicial and administrative authority. The Sanhedrin served this purpose. Indeed, Nicolsky asks whether all the regulations of Numbers 35 (with the possible exception of verse 15) are not to be taken as projects, which never saw actuality. His conclusion is that they are all projects or plans which remained only on paper.

Gray finds that the law recorded in Numbers modified previous custom in three ways:<sup>12</sup> 1. Life is to be taken only in case of wilful murder. Distinction is made between accidental and intentional homicide. No such distinction, he claims, was made before this; loss of life had to be compensated for in kind. Evidence of intention, which marked the difference between murder and manslaughter, came from (a) the nature of the instrument causing death and (b) the previous feelings between the two parties involved. 2. By implication the law holds that the life of the murderer alone is forfeit. Previously any member of the family could be

<sup>11</sup> N. M. Nicolsky, *op. cit.*, p. 165.

<sup>12</sup> *Op. cit.*, pp. 464-476.

held liable. Cf. 2 Samuel 21:1 ff. (the case of Saul and the Gibeonites). 3. A forfeited life cannot be bought by money (bloodwit). The payment of a כֶּפֶר (ransom) is allowed only in the case of death by the goring of an ox (Exod. 21:29 ff.).

The legislation in Numbers 35:25 stipulates that the manslayer must remain in the city of refuge until the death of the high priest, after which he may return to his former home. There are those who think the death of the high priest marked the end of a legal period of limitation;<sup>13</sup> that is, "The accession of the new High Priest, like the accession of a new sovereign, was regarded as the beginning of a new era, into which many of the legal penalties incurred in the preceding period did not reach."<sup>14</sup> Morgenstern thinks the death of the high priest was regarded as a substitute for the death of the manslayer himself.<sup>15</sup> Nicolsky, discussing this feature of our subject at greater length, comes to the same conclusion as Morgenstern. He asks how the land could be cleansed (since any shedding of blood polluted the land, Num. 35:33) of the blood spilt by the involuntary manslayer. The only natural answer is: a bloody, vicarious sacrifice must be brought, just as in the case of the one found dead in the field, slain by an unknown hand (Deut. 21:1-9). The view taken is that a vicarious human sacrifice was also possible, as in the case of Jonathan in 1 Samuel 14:45. He argues from the close bond between high priest and people (Lev. 4:3, 12, 13-21) that the uncleanness of the land, caused by the manslayer, is cleansed by the premature (*vorzeitig*) death of the high priest, who is responsible to God for the sins of the people." He cites the tradition of Rabbi Judah who told of the material support of the manslayer by the mother of the high priest, so that the manslayer might not pray for

<sup>13</sup> J. D. Prince, "Avenger of Blood" in *The Jewish Encyclopedia*, Vol. II, p. 345.

<sup>14</sup> A. P. Bissell, *op. cit.*, p. 67.

<sup>15</sup> "The Book of the Covenant III" in the *Hebrew Union College Annual*, Vol. VIII-IX (1931-32), p. 87.

<sup>16</sup> *Op. cit.*, p. 170.

the death of the high priest. His conclusion is: "The Deity is not converted into a, even if but temporary, protector of recognized criminals, but he punishes in a peculiar way even the involuntary manslayer. Death for a death; and if the manslayer does not die, then another dies for him--the priest consecrated to the Deity, while he simultaneously liberates the physical author of the bloodshed."<sup>17</sup>

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<sup>17</sup> *Op. cit.*, p. 175.

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