A COMMON ELEMENT IN FIVE SUPPOSEDLY DISPARATE LAWS

by

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To David Daube on his seventieth birthday
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The five laws in Deut. xxı are invariably characterized as miscellaneous. One can see why. A law about removing the blemish to the land caused by a murder victim, the murderer not being known, is followed by one about the procedure for marrying a foreign woman captured in war and, the marriage not working out, honorable treatment on her release from it. This law is followed by an inheritance law which upholds the right of a first-born son to a double portion of his father's estate. Then comes one about a son whose disobedience to his parents brings him a sentence of death. Finally, there is a law about a criminal whose body, having been hanged on a tree after his execution, must be buried before nightfall. In terms of legal subject-matter there is no link between one law and the next. The shortcoming seems to justify the consensus of opinion that they come from different historical periods and sources and have been brought together by a haphazard editorial process. The matter, in fact, is quite otherwise. They are constructed and arranged by one lawgiver, and exhibit a most interesting common feature which accounts for their being presented together.

What we find can be stated in summary fashion. The lawgiver turns his attention to situations that have to do with death, each of which is connected with wrongdoing: the body of a man murdered in the open country might cause permanent defilement if proper recognition of the offence is lacking; a girl who has been forcibly removed from her parents has to mourn them, the situation being such that an Israelite's desire for her might prevent her from doing so, and the honor due to parents would be wanting; a father distributing his goods in contemplation of death might be wrongfully inclined to deny the claim of his first-born son; a son has to die because of his
conduct; a criminal's execution which, involving the public display of his dead body, must be handled in such a way that his body does not defile the land. No uniform feature about these deaths emerges. There is justified and unjustified death, contemplated death and death associated with war (even if we assume that the girl's parents might not have died). There is also, perhaps, in the case of the hanged criminal, the notion of intensified death ¹).

Another feature has to be found which makes sense of this one. Set against the interest in manifold types of death is a concern characterized by its conspicuous association with life: the abundantly fertile, newly possessed land; the woman about to enter a new life as a new wife of an Israelite; the birth of a first-born son; sonship; the new land. The marked, even dramatic, interplay between life and death is the common feature that links all five laws. Each will be looked at in order of its appearance in the code.

Israel's inheritance of the land means the gift of life from the deity in a number of ways. Concretely, it entails fertility in crops, animals, and human kind (Deut. vii 13, 14, viii 8, 13, xi 15). Length of days upon the land is another of its features, also peace and security, rest from enemies. The land is to be kept in a special state of preservation, and this state can be marred by certain offences committed in its midst. One of the clearest instances in which such a bad effect is created is the dead body lying on the land because of the act of some unknown assailant. The law is especially concerned to bring out the obviously abhorrent mixing of death and life as represented by the body on the land that Israel has just entered. The opening language of the law is some indication of this concern: "If in the land which the Lord thy God gives thee to possess, any one is found slain ...". The most clear-cut evidence, however, that the law gives prominence to this polar situation is seen in the ceremony required to absolve the nation of guilt for the particular offence to the land. This communal guilt is incurred because the land is gifted to Israel as a whole.

A young heifer, which has not been worked and which has not pulled in the yoke, is to be slaughtered by having its neck broken at a place in the land, which has not been plowed or sown, and where there is running water. What stands out in regard to both the heifer