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Queries and Prospects

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CHAPTER TWO

QUERIES AND PROSPECTS



Judging righteously involves asking broad policy questions, requesting answers to specific interrogatories, spotting significant issues, and exposing and examining presumptions, all while being patiently optimistic that something good will be accomplished in the process. Before we turn to the legal cases in the Book of Mormon, it will be helpful to lay similar groundwork by addressing some preliminary questions and exploring a few basic methodological issues. By so doing, I hope to clarify the basic assumptions and methods I have used in seeking to understand the legal system that operated in the Nephite world and to establish certain limitations and bearings to aim this research toward attainable conclusions.

How Do Lawyers Think?

First, lawyers recognize that it is difficult, even under the best of circumstances, to give an accurate and persuasive opinion concerning the state of “the law” at any given time in any society. Modern attorneys find it challenging and often controversial to determine what the law truly is on a particular subject, even though innumerable volumes of cases, statutes, regulations, and law review articles have been written and a host of other resources are available to assist in legal research. The problem of ascertaining the law becomes even more perplexing when one tries to determine what the law was in an ancient society and how it might have functioned, especially where only scant information pertaining to the legal system in question has survived. Despite the numerous excellent books and articles that have been written about biblical law in recent decades, one may still agree with the sentiments expressed by popular Jewish writer George Horowitz: “About the early Hebrew law as about the beginnings of Jewish history, we know little that is certain.”¹ Similarly, Arthur Hoyles warns,

1. George Horowitz, *The Spirit of Jewish Law* (New York: Bloch, 1953), 8. See Robert R. Wilson, “Israel’s Judicial System in the Preexilic Period,” *Jewish Quarterly Review* 74 (October 1983): 229, 231.

“The attempt to discover what the Bible has to say on any particular subject is likely to be frustrating.”² If biblical scholars encounter difficulties such as these in their study of biblical law, where extensive sections of legal materials are available in the Bible and cognate literatures to shed light on numerous jurisprudential topics, readers of the Book of Mormon should expect to encounter at least as many questions in connection with legal matters in the Nephite record.

These problems, however, should not dissuade us. A degree of indeterminacy is simply in the nature of the law. In the face of these difficulties, lawyers have developed conventional practices to analyze legal situations and to form acceptable professional judgments. Biblical law scholars likewise have developed methods by which to evaluate and qualify their findings. Good legal analysis involves spotting issues, formulating justiciable claims, marshaling all available relevant evidence, and weighing alternatives. Applying the techniques of legal analysis, it is possible for a reader to think like a lawyer when approaching the narratives in the Book of Mormon, just as legal scholars have done with respect to the Bible.

For readers who have not studied or practiced much law, let me sketch generally what lawyers mean by the phrase “thinking like a lawyer.” Legal analysis in all legal systems and especially in the United States tends to be built on what might be called substantive rules, procedural practices, the formulation of legal issues arising out of individual cases, and the resolution of those issues by the imposition of appropriate remedies.³

Substantive rules. Lawyers usually begin their analysis by identifying rules of substantive law. These rules deal with relations between human beings. They may define rights and duties regarding property, personal injury, contracts, commerce, criminal conduct, and other such subjects. They may be particular and specific, or they can be broad and general. Some of these rules are clear authoritative statements, while others emerge from precedents, customs, moral principles, or societal norms.

2. J. Arthur Hoyles, *Punishment in the Bible* (London: Epworth, 1986), vii.

3. See generally Oliver Wendell Holmes, *The Path of the Law* (Bedford, MA: Applewood Books, 1996); David S. Romantz and Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skills* (Durham, NC: Carolina Academic Press, 1998); Patrick M. McFadden, *A Student's Guide to Legal Analysis: Thinking Like a Lawyer* (Gaithersburg, MD: Aspen Law & Business, 2001); Sarah E. Redfield, *Thinking Like a Lawyer: An Educator's Guide to Legal Analysis and Research* (Durham, NC: Carolina Academic Press, 2002); and Irvin C. Rutter, “Law, Language, and Thinking Like a Lawyer,” *University of Cincinnati Law Review* 61 (1993): 1303–60. For an effort to relate biblical principles to the process of thinking like a lawyer in understanding pleadings, detecting verbal traps, negotiating dispute resolutions, and proceeding fairly, see Alfred R. Light, “Civil Procedure Parables in the First Year: Applying the Bible to Think Like a Lawyer,” *Gonzaga Law Review* 37 (2001–2002): 283–313.

Accordingly, a lawyer's mind notices in the record of King Benjamin's speech (Mosiah 1–6), the case of Seantum (Helaman 9), or the discourse of Amulek (Alma 34) rubrics or maxims that reflect substantive rules of law that would have been known to those speakers and their audiences. For example, Amulek's theological argument about the atonement in Alma 34 reflects an absolute and well-known prohibition in Nephite criminal law against vicarious punishment in cases of capital homicide: "Now, if a man murdereth, behold will our law, which is just, take the life of his brother? I say unto you, Nay" (v. 11). Ancient Nephites or Israelites did not formulate legal concepts or rules into positive laws, nor did they articulate binding judicial instructions or follow legal precedents as judges do today, but certainly substantive rules existed in some form and can be discerned in their writings that shed light on their legal systems and cultures.

Procedural practices. Secondly, lawyers think in terms of judicial procedure. Just because a law is on the books does not mean that it will or can always be enforced; or if it is to be enforced, it is not always apparent how or by whom it will be administered. Laws of civil procedure and administrative practice define jurisdictional powers, rules of evidence, and other practices essential to the administration of justice. Lawyers learn to think in terms of the legal options that are open to members of society, how the legal system works, and how to implement in a practical manner the substantive legal rules in the living context of their particular judicial system. Accordingly, a lawyer cannot read the experiences and trial of Abinadi in Mosiah 11–17 without wondering about such matters as what modern diction would call the jurisdiction of the priests, the absence of a right against self-incrimination, the use of various forms of dispute resolution, and the scope of judicial discretion open to the priests as judges.

Individual cases and conflicts. Next, while legislators and jurisprudential philosophers think of law in the abstract, lawyers work with law in terms of individual cases. Each case begins with a story that tells of the situations, relationships, circumstances, and motivations of each of the parties involved in the action. Each story is somewhat unique, and thus each case poses a distinct and different conflict. Not all social conflicts, of course, amount to legal conflicts, but when a case or controversy involves subjects that are typically or exclusively resolved by judicial intervention, or when the consequences of the case are so dramatic or irreconcilable that the individual parties or the society cannot afford to have the issue settled by the parties privately, the matter presents what lawyers call a justiciable controversy—one that can and ought to be decided by a court. Lawyers think in terms of identifying these justiciable legal issues and

refining their meaning so that the issues can be analyzed in terms of discrete, somewhat abstract legal principles, while at the same time never forgetting that doing justice in a particular case requires meticulous attention to the particular details of the case.

Thinking like a lawyer requires readers to understand the nature and origin of the conflicts or controversies between parties, their unique factual circumstances, and the key legal issues evoked by each case. Accordingly, while Alma's religious problems with the people in Ammonihah may, at one level, be understood simply as a theological dispute, at another level numerous legal issues and justiciable controversies immediately surfaced when that heated discussion escalated to include issues of jurisdiction, civil disobedience, apostasy, imprisonment, expulsion, and execution. The hostility that erupted may certainly have had something to do with the fact that, eight years earlier, Alma had been the very judge who had convicted and executed Nehor, the religious hero of the people of Ammonihah (Alma 16:11).

Deciding cases and fashioning remedies. Finally, lawyers and judges ultimately think of ending each case by assessing the strengths and weaknesses of the parties' cases and then by demanding, finding, and fashioning appropriate punishments or remedies. For example, if a law prohibits a person from "stealing," it becomes important for a lawyer to examine how the law defines theft (as distinguished, perhaps, from taking something by mistake or failing to return something legitimately borrowed). In drawing such lines, lawyers often must make fine distinctions and in some cases will place high value on the letter of the law. At the same time, the spirit of the law is important in every legal system, and lawyers must think in terms of balancing competing values, protecting the interests of highest social value, making trade-offs, judging righteously, reaching negotiated settlements, and so on when trying to resolve or settle a case. Likewise, as lawyers examine the legal cases reported in the Bible or in the Book of Mormon, they can detect indications of things that mattered most to those people and the relative abilities of those people to assert their positions even in the most trying of forensic circumstances.

Above all, thinking like a lawyer, in a modern setting, demands reasoning, explaining, justifying one's position, and appealing to the strongest authorities in support of a particular result. While legal reasoning in antiquity valued logic, the ancient jurist or litigant placed greater weight on reaching immediate practical outcomes, making efforts to please God, and following a more amorphous sense of doing justice while still showing mercy. Thus, while the reasons given for judicial outcomes may vary

from one civilization to another, thinking like a lawyer requires all people to reach practical outcomes while simultaneously remaining true to more general feelings or policies valued by their society.

In reading the Bible or the Book of Mormon like a lawyer, it is not necessary to think that everything in those books is legal in nature. Lawyers are sometimes tempted, almost irresistibly, to see everything in legal terms. As is often said, to a man with a hammer in his hand, everything looks like a nail. To my mind, however, it does not invalidate or weaken the primary purpose of sacred texts for their readers to notice their secondary characteristics, purposes, or features, such as its literature, culture, geography, or law. Almost every story in the Bible or Book of Mormon tells readers something about the society, rules, ethics, jurisprudence, statutes, judgments, and laws, both of God and of those people. One of the strengths of the Book of Mormon is the fact that its writers could weave into their records so many accurate and consistent details about their legal and political institutions without diverting the reader's attention from the main religious purpose of the book. Indeed, a close examination of the secondary features of the Book of Mormon may prove to enhance its self-stated purpose of convincing readers of the validity of its primary message. As Elder B. H. Roberts once wrote, "Secondary evidences in support of truth, like secondary causes in natural phenomena, may be of first-rate importance."⁴

Can the Narratives in the Bible or Book of Mormon Be Read as Legal Cases?

The present study turns on close readings of cases in the Bible and Book of Mormon. The primary source for jurisprudential information regarding Israelite law is the Bible itself, and the authoritative source for understanding Nephite law is the Book of Mormon. The analysis of each topic must rise or fall by carefully ferreting out each bit of legal information possible.

This effort requires—and often rewards—a closer reading than people usually give to these books, which are usually read for other purposes. But legal cases need to be analyzed step by step, even word by word; and narratives involving the commissions of crimes or the instigation of legal actions need to be dissected point by point. In reading these texts, I try to discern the legal significance of each element. Sometimes the meaning

4. Brigham H. Roberts, *New Witnesses for God* (Salt Lake City: Deseret Book, 1909), 2:viii; quoted and discussed in John W. Welch, "The Power of Evidence in the Nurturing of Faith," in *Echoes and Evidences of the Book of Mormon*, ed. Donald W. Parry, Daniel C. Peterson, and John W. Welch (Provo, UT: FARMS, 2002), 25.

may be obvious; other times the legal content is more subtle, found in circumstantial evidence and the implications of contextual patterns or interrelationships. A strong reading of any text strives to give that text the best and fullest reading possible, to draw out of the text all the meaning with which it may be saturated. Perceiving the legal nuances behind the otherwise generally plain prose of the historical or legal materials in the Bible or Book of Mormon requires attention to detail. Otherwise, readers may not spot even the most basic legal issues, let alone fully assess their import.

Of course, neither the records of the Book of Mormon nor the books of the Bible were written as legal texts per se. Those scriptures were written for religious and ethical purposes that pertain to a different sphere than does the law. The linguistic and literary conventions used today in drafting well-defined legislation, in writing bureaucratic regulations, and in reporting judicial decisions with exhaustively reasoned opinions are, for the most part, modern inventions. No one in the ancient world spoke or wrote about law in such modes as we do today, but embedded in the narratives, instructions, prophecies, orations, and poems from any ancient society are reflections of that culture's legal principles and judicial practices, from which many interesting conclusions about the law in that civilization can be derived.

Since legal cases in the Bible and Book of Mormon are reported as stories, an initial challenge is to extract legal data from these narratives. Fortunately, several techniques have been developed and used by biblical scholars, such as David Daube, Bernard Jackson, Pamela Barmash, and Pietro Bovati, for drawing legal insights out of ancient Israelite narratives.⁵ For example, Daube strives to “reconstruct ancient Hebrew law

5. See, for example, David Daube, *Some Forms of Old Testament Legislation* (Oxford: Oxford Society of Historical Theology, 1945); Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947; New York: KTAV Publishing House, 1969); Bernard S. Jackson, “Reflections on Biblical Criminal Law,” *Journal of Jewish Studies* 24 (1973): 8–38; Jackson, “Review of *The Laws of Deuteronomy*,” *Journal of Jewish Studies* 27 (1976): 84–87; Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible* (Sheffield, England: Sheffield Academic Press, 1994); and Pamela Barmash, “The Narrative Quandary: Cases of Law in Literature,” *Vetus Testamentum* 54, no. 1 (2004): 1–16. While acknowledging that “literature is only incidentally about law” and that narratives may not always accurately portray legal subjects, Barmash makes a strong appeal for the claim that “narrative texts are indispensable for the study of biblical law. The analysis of literary texts is necessary for reconstructing legal practice and the perception of how law operated. Statutes only tell us so much” (p. 2). See the recent dissertation of Assnat Bartor, “Reading Law as Narrative—a Study in the Casuistic Laws of the Pentateuch” (PhD diss., Tel Aviv University, 2005), building on the law and literature approaches of scholars such as Robert Cover, Peter Brooks, Martha Nussbaum, and Stanley Fish, some of which was reported by Bartor at the annual meeting of the Society of Biblical Literature, 2006, in a paper entitled “The Representation of Speech in the Casuistic Laws of the Pentateuch—the Phenomenon of ‘Combined Discourse.’”

with the help of the sagas and annals preserved in the Bible.”⁶ He typically begins with legal texts and then highlights legal language and circumstances found in the narratives that correspond with those legal texts. His reading of the story of Jacob’s sons presenting Jacob with Joseph’s torn and bloodied coat is enriched by connections with the shepherd laws in Exodus 22:10–13 that would absolve the sons of any legal responsibility for Joseph’s death and disappearance. Both the law and the narrative are better understood by reading both together.

Emphasizing the point that ancient laws were not technically defined rules, Jackson seeks to determine instead the “typical image(s) . . . the words of [a] rule evoke.”⁷ He uses narratives to substantiate interpretations for laws by fleshing out the contexts in which the laws were intended to apply.

Barmash uses legal narrative to recover an expansive view of the law by placing the law in the comparative contexts of the societies in which laws operated. Narrative situations that have no counterparts in the legal texts are especially interesting in filling in gaps in our understanding of those legal systems.

Bovati extracts information about judicial procedures from the patterns of simple vocabulary words, such as *take*, *move*, or *stand*, in narratives about actions before judges. Thus narrative accounts of the execution of Naboth by wicked King Ahab (1 Kings 21), of the proceeding initiated by Boaz at the town gate against his kinsman (Ruth 4), and of the indictment of Jeremiah by the priests and princes in Jerusalem for false prophecy (Jeremiah 26)⁸ have been profitably studied by biblical historians from a legal perspective—even though none of these stories found their way into the Bible for the purpose of serving as a handbook of legal instructions.⁹

Similar techniques can be applied successfully to the narratives of the Book of Mormon. Following Daube’s illuminating approach, we see that the ancient Near Eastern laws concerning the duties of shepherds say something about the story of Ammon defending the flocks of King Lamoni (Alma 17), and the laws concerning blasphemy and false prophecy shed

6. Daube, *Studies in Biblical Law*, 3 (in 1969 reprint edition).

7. Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 24–25.

8. See, for example, John W. Welch, “The Trial of Jeremiah: A Legal Legacy from Lehi’s Jerusalem,” in *Glimpses of Lehi’s Jerusalem*, ed. John W. Welch, David Rolph Seely, and Jo Ann H. Seely (Provo, UT: FARMS, 2004), 337–56.

9. For a lucid statement of methodological procedures and terminological issues, see James K. Bruckner, *Implied Law in the Abraham Narrative: A Literary and Theological Analysis* (Sheffield, England: Sheffield Academic Press, 2001), 51–123.

light on the cases of Sherem (chapter 5 below) and Abinadi (chapter 6 below). Employing the semiotic tools that generated many of Jackson's insights, readers of ordinary narratives in the Book of Mormon may begin to get a feel for the typical meanings of certain legal obligations or of civil rights and duties in Nephite or Lamanite or Nehorite mindsets. Using comparative and cultural analyses as Barmash does, we find that the narratives about Alma and Amulek's treatment in Ammonihah (Alma 9–14) or about the Gadianton robbers (Helaman 1–2, 6; 3 Nephi 3–4) can fill in our understanding of how criminal law operated in Nephite society. Following Bovati's lead, we notice patterns of particular words such as *take*, *bind*, and *carry* in the accounts of the legal cases of Abinadi, Nehor, Alma and Amulek, or Korihor, which raise significant prospects and possibilities for reconstructing Nephite law in general and reading these narratives in particular.

Once a reader becomes aware of the legal dimensions of these narratives, it is difficult to read these accounts again as simple stories. For example, consider the cry against the people of Sodom in the Abraham narrative. As James Bruckner skillfully demonstrates, an abundance of legal referents in the narrative regarding the inquest against the Sodomites shows, among other things, the existence of "a juridical process of inquiry and decision between competing jurisdictions and rights" in Genesis 18:16–19:38.¹⁰ He also shows that a legal reading of Genesis 20:1–18 clarifies the legal, moral, and cosmological issues in the conflict regarding Sarah's residence in Abimelech's tent.¹¹ Once their legal backgrounds are clarified, these stories make much better sense to the modern reader. Likewise, in reading the stories of Joseph in Egypt in the book of Genesis, a lawyer may readily wonder about the Egyptian legal circumstances involved in binding Joseph and throwing him into prison (39:20), the execution of the baker but the release of the butler (40:21–22), the nature of the agency powers given to Joseph by Pharaoh (41:40),¹² the conventional punishments that would have been applied to someone convicted as a spy in a foreign land (42:14), or the fate of one who was discovered to possess the silver cup of another in one's own sack under strongly suspicious circumstances (44:12). Stories such as

10. Bruckner, *Implied Law in the Abraham Narrative*, 124.

11. Bruckner, *Implied Law in the Abraham Narrative*, 171–98.

12. For the legal text installing the Vizier of Egypt under Thutmose III, about 1490–1436 BC, approximately the era of Joseph in Egypt, see James B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. (Princeton: Princeton University Press, 1975), 212–14.

these in the Abraham narratives and in the Joseph cycle are more than fictional folktales; they reflect legal and historical realities.

As we will see, the same can be said of the accounts in the Book of Mormon. The abundance of legal terms and referents in its narratives bespeaks the existence of a traditional judicial system and suggests that the events reported arose in real-life settings, with high stakes, in powerful legal places. These texts can be seen through a legal lens, and once their legal layers are uncovered, these texts spring vividly to life.

How Else Has the Study of Biblical Law Been Approached?

In light of the complex and often difficult nature of biblical law, it is not surprising that scholars have attempted many other approaches to enhance the understanding of law in biblical times. Because no single approach has dominated or controlled the field of biblical law, and because many approaches have valuable insights to contribute, I have made use of various methodologies used by biblical scholars, and I have found that each of these can be applied profitably to the Book of Mormon as well as to the Bible.

Consider the richness of this collection of approaches. Beginning with Albrecht Alt,¹³ some biblical scholars have used literary tools to study the formalistic and structural composition of bodies of biblical law, and such tools elucidate legal formulations in the Book of Mormon.¹⁴ Other scholars, such as Reuven Yaron,¹⁵ approach biblical law using historical tools, carefully analyzing various periods in legal history and the importance of time factors in evaluating comparative legal information. David Daube,¹⁶ Victor Matthews,¹⁷ and others explore such social dimensions of the law

13. Albrecht Alt, "The Origin of Israelite Law," in *Essays on Old Testament History and Religion* (London: Oxford University Press, 1996), 79–132.

14. For a correlation of the legal topics found in the Code of the Covenant and also in the various law lists in the Book of Mormon, see chart 127 in John W. Welch and J. Gregory Welch, *Charting the Book of Mormon* (Provo, UT: FARMS, 1999). Apodictic ("thou shalt not . . .") and casuistic ("if a man . . .") legal formulations were integral not only to legal language in biblical law but also in the Book of Mormon. See 2 Nephi 26:32 for a Nephite law list in the apodictic form, and see Alma 30:10 and 34:11 for the Nephite use of casuistic formulations.

15. Reuven Yaron, "Biblical Law: Prolegomena," in *Jewish Law in Legal History and the Modern World* (Leiden: Brill, 1980), 27–44.

16. For example, David Daube, *The Scales of Justice* (London: W. Green & Sons, 1946); *The Culture of Deuteronomy* (Ibadan, Nigeria: University of Ibadan, 1969); and *Civil Disobedience in Antiquity* (Edinburgh: Edinburgh University Press, 1972).

17. For example, Victor H. Matthews, *Manners and Customs in the Bible* (Peabody, MA: Hendrickson, 1991), and two papers he presented at meetings of the Society of Biblical Literature: "The Social Context of Law in the Second Temple Period" (*Biblical Theology Bulletin* 28 [1998]: 7–15) and "Kings of Israel: A Question of Crime and Punishment" (*SBL Seminar Papers* [Baltimore: Scholars Press, 1988], 517–26).

as economics, power structures, liminality of marginal groups, and the use of shame or other values implicit in legal systems. Writers such as Zeev Falk,¹⁸ Dale Patrick,¹⁹ and Eckart Otto²⁰ have much to say about theology, philosophy, and the moral dimensions of biblical law.²¹ Raymond Westbrook²² and Bernard Levinson²³ are among those who have explored the oral, scribal, social, and archetypal features of biblical law.²⁴ Bernard Jackson, Calum Carmichael, James Watts, and others have developed tools to help readers understand how biblical law worked narratively,²⁵ semiotically,²⁶ sapiently,²⁷ literarily,²⁸ didactically,²⁹ practically,³⁰ and politically;³¹ these laws gave legal warnings, social exhortations, judicial

18. For example, Zeev W. Falk, "Testate Succession in Jewish Law," *Journal of Jewish Studies* 12 (1961): 67–77.

19. For example, Dale Patrick, "Studying Biblical Law as a Humanities," *Semeia* 45 (1989): 27–47.

20. Eckart Otto, *Theologische Ethik des Alten Testaments* (Stuttgart: Kohlhammer, 1994).

21. See also David Noel Freedman, *The Nine Commandments: Uncovering a Hidden Pattern of Crime and Punishment in the Hebrew Bible* (New York: Doubleday, 2000); Frank Crüsemann, *The Torah: Theology and Social History of Old Testament Law* (Minneapolis: Fortress, 1996); J. G. McConville, *Law and Theology in Deuteronomy* (Sheffield, England: Sheffield Academic Press, 1984); and Rousas John Rushdoony, *The Institutes of Biblical Law* (Phillipsburg, NJ: Presbyterian and Reformed Publishing, 1973).

22. For example, Raymond Westbrook, "Biblical Law," in *An Introduction to the History and Sources of Jewish Law*, ed. N. S. Hecht et al. (Oxford: Oxford University Press, 1995), 1–17.

23. For example, Bernard M. Levinson, "'The Right Chorale': From the Poetics of Biblical Narrative to the Hermeneutics of the Hebrew Bible," in *"Not in Heaven": Coherence and Complexity in Biblical Narrative*, ed. Jason P. Rosenblatt and Joseph C. Sitterson (Bloomington: Indiana University Press, 1991), 129–53; and Levinson, "The Case for Revision and Interpolation within the Biblical Legal Corpora," in *Theory and Method in Biblical and Cuneiform Law*, ed. Bernard M. Levinson (Sheffield, England: Sheffield Academic Press, 1994), 37–59.

24. See also Joe M. Sprinkle, *The Book of the Covenant: A Literary Approach* (Sheffield, England: Sheffield Academic Press, 1994); and Jay W. Marshall, *Israel and the Book of the Covenant: An Anthropological Approach to Biblical Law* (Atlanta: Scholars Press, 1993).

25. Jackson, *Wisdom-Laws*, 23–39.

26. For example, Bernard S. Jackson, *Studies in the Semiotics of Biblical Law* (Sheffield, England: Sheffield Academic Press, 2000); Jackson, "Towards an Integrated Approach to Criminal Law: Fletcher's Rethinking Criminal Law," *Criminal Law Review* (1979): 621–29; Jackson, "Structuralism and the Notion of Religious Law," *Investigaciones Semióticas* 2, no. 3 (1982–83): 1–43; and Jackson, *Semiotics and Legal Theory* (London: Routledge, 1987).

27. Calum Carmichael, *The Spirit of Biblical Law* (Athens, GA: University of Georgia Press, 1996); and Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (Sheffield, England: Sheffield Academic Press, 1999).

28. Discussed in Jackson, *Wisdom-Laws*, 16–24.

29. James W. Watts, *Reading Law: The Rhetorical Shaping of the Pentateuch* (Sheffield, England: Sheffield Academic Press, 1999).

30. For example, Anthony Phillips, *Essays on Biblical Law* (Sheffield, England: Sheffield Academic Press, 2002).

31. For two very different approaches, see Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes Press, 1995); and Harold V. Bennett, *Injustice*

guidance, as well as ritual regulations. As recently as 1980, Yaron could rightly state, “There are very few legal historians who specialize in the field of biblical law.”³² In the intervening decades, however, that situation has changed, with contributions being made by many scholars very profitably employing a wide variety of techniques and approaches.³³

Each of these approaches offers tools that help identify ways in which laws functioned in the ancient world; and if the law functioned in a certain way in ancient Israel, the possibility can be readily entertained that the law functioned in a similar manner among the Nephites. As the following analyses of the legal cases in the Book of Mormon show, each of these approaches to biblical law opens new prospects for reading and understanding the legal issues, legal vocabulary, and legal precepts in the Book of Mormon. Many of these investigators have placed me in their debt.

Comparisons between the Bible and Book of Mormon, however, should not be taken too far. A comparison is only a comparison. Similarities do not constitute identity. Each legal system will be to some extent unique. The laws of neighboring states within the United States have points of uniqueness even though they share many broad features. I assume that biblical law was, to some degree, unique among the legal systems in the ancient world, although perhaps not as unique as some people may have uncritically assumed. I also assume that Nephite law was somewhat unique and distinct from Israelite law, although its general dependence on biblical law is explicit and lineal. Thus, as in any other endeavor of comparative law, comparison of biblical law with other ancient Near Eastern laws, and also comparison of law in the New World with law in the Old World, requires a careful balance between noting similarities and realizing differences. As Jonathan Z. Smith rightly observes, the postulation of some difference between biblical and ancient Near Eastern law is, in fact, ironically necessary in order to make comparison of similarities at all possible and “interesting (rather than tautological).”³⁴ Indeed, as he

Made Legal: Deuteronomic Law and the Plight of Widows, Strangers, and Orphans in Ancient Israel (Grand Rapids, MI: Eerdmans, 2002).

32. Yaron, “Biblical Law: Prolegomena,” 31.

33. For three excellent assessments of approaches taken in the study of biblical law, see “The History of Research on the Covenant Code,” in John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford: Oxford University Press, 2003), 8–46; “Some Recent Approaches to Old Testament Law,” in Fitzpatrick-McKinley, *The Transformation of Torah*, 23–53; and Raymond Westbrook, “The Laws of Biblical Israel,” in *The Hebrew Bible: New Insights and Scholarship*, ed Frederick E. Greenspahn (New York: New York University Press, 2008), 99–119.

34. Jonathan Z. Smith, *Imagining Religion* (Chicago: University of Chicago Press, 1982), 35.

says, a bit of “magic” and not just “science” exists in any process of comparison as we draw the various legal systems close enough to each other to make them relevant in illuminating each other, while at the same time methodologically maintaining some distance between the two in order to then bridge that “gap in the service of some useful end.”³⁵

How Relevant to the Bible and Book of Mormon Are the Laws of the Ancient Near East?

The practice of comparative law has been another major area of interest for biblical law scholars, and although to a lesser degree than for biblical law, the laws of the ancient Near East also aid in the understanding of the legal milieu that stands behind the cases in the Book of Mormon. The laws of the Babylonians, Hittites, Assyrians, and many others arose in lands that were not far from the Levant, and they use several cognate legal terms and address many of the same subjects that one also finds in the Bible.³⁶ Moreover, a fair degree of consistency among the ancient Near Eastern laws shows the considerable legal stability that often prevailed even in the midst of social upheavals spanning the course of many centuries. All of these points of commonality and continuity lend credence to the assumption that insights gained by studying one ancient Near Eastern legal system may shed light on another. Such benefits may come in the form of recognizing and understanding direct borrowings of words and phrases, the meaning of shared customs, and other similarities.

The further one moves in either direction from 600 BC, however, the less probative the earlier or later materials become for Book of Mormon purposes. For example, the great Babylonian lawgiver Hammurabi lived over a thousand years before Lehi, while the Talmud was compiled or written by Jewish rabbis around a thousand years after Lehi. Nevertheless, direct dependence and identical meanings can still be seen in some cases within the Old World texts that span these two thousand years. On other occasions, direct dependence may still be evident, even though new interpretations or different applications were followed. Comparing these bodies of law, even though they span great periods of time, can be very instructive. For example, when biblical law is silent on a particular rule of

35. Smith, *Imagining Religion*, 22, 35.

36. Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1995). For an exhaustive exposition of the legal systems of the ancient Near East, see Raymond Westbrook, *A History of Ancient Near Eastern Law*, 2 vols. (Leiden: Brill, 2003), with ancient Israel covered by Tikva Frymer-Kenski, 2:975–1046. On required criteria, see Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (Neukirchen-Vluyn: Butzon and Bercker Kevelaer, 1990).

Ancient Collections of Laws outside Israel	Approximate Dates BCE
Laws of Ur-Nammu	2100
Laws of Lipit-Ishtar	1930
Laws of Eshnunna	1770
Laws of Hammurabi	1750
Hittite Laws	1650–1300
Middle Assyrian Laws	1076
Neo-Babylonian Laws	700
Laws of Gortyn (Crete)	600–400
Roman Twelve Tables	450

law, but the same principle is found in ancient Near Eastern sources and also the Talmud (such as the law of purchasing stolen goods from the thief or the rights of an absentee husband), a reasonable conclusion may be drawn that biblical law also dealt with that same principle of law and most likely conformed to the general ancient Near Eastern policies, as Yaron has cogently demonstrated.³⁷ Carefully applied comparisons may be useful in filling holes in our knowledge about various principles of biblical law.

Thus, in examining the legal cases in the Book of Mormon, ancient Near Eastern legal provisions are occasionally cited not because there is any possibility that Sherem or Alma was directly aware of the Hittite or Assyrian laws, but because this broad base of cultural data helps to establish the persistence and prominence of certain jurisprudential concepts and concerns throughout this sphere of civilization and its progenies. Any such comparisons, of course, can commence only after the text of the Book of Mormon has been examined on its own terms. Alexander Rofé’s advice is equally applicable to the present endeavor: “Study of biblical law [or, equally, law in the Book of Mormon] should first base itself on inner, independent interpretation before it can be completed by comparison with Ancient Near Eastern laws and/or by Rabbinic sources.”³⁸

37. Yaron, “Biblical Law: Prolegomena,” 38–41; and Yaron, “The Evolution of Biblical Law,” in *La Formazione Del Diritto Nel Vicino Oriente Antico* (Naples: Edizioni Scientifiche Italiane, 1988), 77–108.

38. Alexander Rofé, “Methodological Aspects of the Study of Biblical Law,” in *Jewish Law Association Studies*, ed. Bernard S. Jackson (Atlanta: Scholars Press, 1986), 2:1.

How Relevant to Biblical Law or to the Book of Mormon Are Later Jewish Laws?

Another issue that has arisen in the study of biblical law is the relevance of passages from the later texts of the Dead Sea Scrolls or the Talmud, especially when they speak on issues of law not found either in the Bible or in ancient Near Eastern law. Here it is possible that the Talmud or the Qumran scrolls alone preserve an oral or alternate tradition that extends back as far as the seventh century BC, and in that case back far enough to be helpful in understanding biblical law as it existed in Lehi's day. It is also possible, however, that such provisions are unique Essene interpretations or late Talmudic inventions. But even in those cases, the method or general principle involved in such an invention may be helpful in the quest for understanding the way in which Book of Mormon law may also have changed.

Four general observations apply to the use of Jewish law as a legal source in studying the Book of Mormon:³⁹

1. *Antiquity of oral law.* With respect to the use of later rabbinic and Jewish traditions that were first committed to writing long after Lehi left Jerusalem, it is still possible that those rules and regulations found in the oral law dated back to the time of Lehi, even though the archaic written sources may be silent on the particular point involved.

2. *Nephite corroboration.* If materials found in the oral Jewish traditions are similar to factors found in the Book of Mormon, this corroboration makes it more plausible that those oral law traditions dated back far enough for them to have been known by Lehi, although one cannot rule out the possibility that the Jewish and Nephite practices simply developed independently along parallel lines.

3. *Chronological terminology.* To avoid overstating or understating the possible significance of Jewish law comparisons in probing the Book of Mormon, I identify the time period from which each piece of evidence derives by using the following terms:

- The terms *biblical* and *Israelite* are used in speaking of the earliest and therefore most relevant texts and evidences, which are typically pre-exilic.

39. For a discussion of these principles in connection with King Benjamin's speech in the context of ancient Israelite festivals and laws relating to annual gatherings at the temple, see Terrence L. Szink and John W. Welch, "King Benjamin's Speech in the Context of Ancient Israelite Festivals," in *King Benjamin's Speech: "That Ye May Learn Wisdom,"* ed. John W. Welch and Stephen D. Ricks (Provo, UT: FARMS, 1998), 147–223.

- The word *Jewish* is used to refer to materials that come from the Second Temple period (536 BC to AD 70), Qumran (200 BC to AD 66), the Mishnah (first and second centuries AD), and Talmud (second through fifth centuries AD). Being later than Lehi, they constitute secondary evidence.
- Terms such as *Jewish traditions* or *customs* refer to sources that date to more recent times and thus are less probative, but they still may prove interesting and supportive for Book of Mormon purposes.

Readers are free to weigh these bits of information as they wish in determining the degree to which these details from Jewish law shed light on the legal practices of the Nephites.

4. *Varieties of Judaism.* In allowing comparisons between law in the Book of Mormon and Jewish law, one should not forget that early biblical law and Jewish law are not necessarily the same. Concerns about how many steps one may take on the Sabbath or whether turning on a light switch is “kindling a fire” are much later Jewish developments. Several varieties of Jewish law proliferated among various Jewish communities several centuries after Lehi left Jerusalem and on down to the present day. The Pharisees, Sadducees, Samaritans, and Essenes each understood the law in their own ways, and the works of Philo of Alexandria show that Hellenistic Jews understood the law in yet other ways.⁴⁰ Thus, saying that the Nephites observed the law of Moses does not mean that Lehi’s views were necessarily those of a rabbinic Jew from any later time in Jewish history.

What Was the Law of Moses Like in Lehi’s Day?

These chronological and comparative issues also require readers of the Book of Mormon to ask, What was the state of the law of Moses in Jerusalem in the seventh century BC? Indeed, a basic point of departure for studying law in the Book of Mormon is trying to understand the law of Moses as it existed in Lehi’s day. I assume that the more we can learn about the law of Moses at that time, the more we will understand Lehi and Nephi and the branch of Israelite law that they brought with them from Jerusalem, adapted to their situation in the New World, and set in motion down through the generations that followed them. Determining the state of the law in Jerusalem in Lehi’s day, however, has proven in biblical studies to be a very difficult task, to say the least; but this quest, as arduous as it might be, bears useful and enjoyable rewards.

40. Daniela Piattelli and Bernard S. Jackson, “Jewish Law during the Second Temple Period,” in Hecht et al., *Introduction to the History and Sources of Jewish Law*, 19–56.

In terms of textual sources available to them, Lehi and Nephi would have begun any legal discussion with an examination of the law of Moses contained on the plates of brass. Knowing that Nephi had risked his life to obtain the plates of brass, and knowing of the conflicts between the Nephites and Lamanites over the possession of those plates, one may safely assume that these records would have been regularly consulted and were highly valued by the Nephites as a source of legal information and instruction. To a high degree, the Nephites labored under the specter that they would dwindle and perish in unbelief if they did not have and keep the law of Moses (e.g., 1 Nephi 5:19–22). These plates were used not only to bring people to repentance and to the knowledge of their Lord God but also to “enlarge the memory” and to “convince many of the error of their ways” (Alma 37:8, 9). Alongside the prophetic texts found on the plates of brass, the legal texts also functioned in didactic and inspirational settings, helping people to remember important principles and correcting errors by delineating right from wrong.

The plates of brass contained “the five books of Moses” (1 Nephi 5:11). Accordingly, Nephite jurists, judges, and elders had at their disposal not only the Ten Commandments (Mosiah 12:33–36; 13:12–24) but also the law “codes” as they existed at that time embedded within the books of Exodus, Leviticus, Numbers, and Deuteronomy. Although we need not assume that the version of these texts on the plates of brass was exactly the same linguistically as our version of the five books of Moses (i.e., the Pentateuch, the first five books in the Bible), evidence within the Book of Mormon indicates that the Nephites’ version of the legal provisions found in the five books of Moses was probably similar to the traditional text that has come down to us in the Bible. Because many paraphrases of or allusions to biblical law are found throughout the Book of Mormon, a reliable working assumption can be made that the Nephites were familiar with the basic corpus of biblical law much as it exists in the Bible today. Biblical laws, however, are rarely quoted in the Book of Mormon, the one notable exception being Abinadi’s quotation in Mosiah 13 of the Ten Commandments from Exodus 20.

This discussion, of course, raises the question of when the five books of Moses, as found on the plates of brass or in the Bible, were actually written. Unfortunately, this is a general problem in biblical studies. It is unclear when any book in the Bible was originally written or when it took its final form. It is popular among scholars to date sections of the Pentateuch over a fairly wide range of centuries, even though orthodox Jewish traditions attribute the writing of all of this material personally to Moses at the time of the Israelites’ exodus from Egypt and their forty years in the wilderness.

The claim of exclusive Mosaic authorship, however, is complicated by several factors. For example, significant sections of the law of Moses are typical of ancient Near Eastern laws in the second millennium BC (the broad period in which Moses is thought to have lived), which points to outside influences in the assembling of laws such as those found in the Code of the Covenant in Exodus 21–23. Moreover, several provisions and phrases found in the Pentateuch appear to have arisen well after Moses’s death, during time periods after the conquest of Canaan by Joshua. Apparent contradictions, duplications, and stylistic differences have opened up arguments about possible editorial modifications and contributions. Thus one must always be alert to the possibility that any law originally given by Moses may have been edited, emended, modified, supplemented, or transformed by later Israelite leaders or writers in certain respects as time went on and as the needs of society changed.⁴¹

Indeed, Latter-day Saint scripture provides evidence that not all of the words in the first five books of the Bible have been preserved exactly as Moses originally gave them. As is apparent to Latter-day Saints from Joseph Smith’s revision of the Bible (in which the first three chapters of Genesis, for example, receive much fuller expression in the extract known as the Book of Moses in the Pearl of Great Price), the Hebrew scriptures saw various changes and deletions (some perhaps inspired but most probably not) during the six (often apostate) centuries between Moses and the time of Lehi.

At the same time, those modifications need not have been extensive. The change or deletion of a word here or there typically would have served most needs of redactors or revisionists. Indeed, in some quite dramatic cases, close textual parallels between biblical laws and early Babylonian and Hittite laws show that those provisions in the law of Moses bear the unmistakable stamp of early antiquity (compare the ox laws in Exodus 21:28–32 with the similarly worded Babylonian ox laws of Eshnunna 53–55,⁴² or the incest laws of Leviticus 18 and 20 with a similar list of

41. For a convenient overview of theories and evidences regarding authorship of the Pentateuch, see Richard Elliott Friedman, “Torah (Pentateuch),” in *The Anchor Bible Dictionary*, ed. David Noel Freedman (New York: Doubleday, 1992), 6:605–22.

42. Regarding the ox laws, “anyone looking at the two texts without preconceived notions will see at once how closely they resemble each other, not only concerning the actual solution laid down, but beyond that in the mode of formulation.” Yaron, “Biblical Law: Prolegomena,” 34. Sections 53–55 of the law of Eshnunna (ca. 1770 BC) read, “If an ox gores an(other) ox and causes (its) death, both ox owners shall divide (among themselves) the price of the live ox and also the meat of the dead ox. If an ox is known to gore habitually and the authorities have brought the fact to the knowledge of its owner, but he does not have his ox dehorned, it gores a man and causes

prohibited relationships in the Hittite Laws 187–195). An effective and inspired lawgiver such as Moses, who led Israel for forty years, certainly had the time and ability to bring together all of the essential legal materials found in the Pentateuch; some provisions could have been initially written during the early years of the exodus, and others could have been formulated near the end of those years in the wilderness, thus accounting for many of the stylistic differences.

For Book of Mormon purposes, however, many of the text-critical issues conventionally associated with the so-called Documentary Hypothesis are somewhat moot. This is because many of the textual uncertainties that biblical scholars argue about deal with possible layers of editing and redacting that would have occurred, in any event, before the time of Lehi. Whatever the very ancient history of the emergence of the textual units of the Pentateuch may have been during the six hundred years between the time of Moses and the time of Lehi,⁴³ most of the Hebrew text of the core legal codes was probably in place by the years 620–610 BC, when by my reckoning the plates of brass were fashioned.⁴⁴

The subject of dating the laws in Exodus 21–23 has been hotly debated, especially in the last forty years, with several scholars tracing the Covenant Code to very early times⁴⁵ and others dating its composition to the time of the exile of the Jews in Babylon.⁴⁶ With regard to the Covenant Code, I find Bernard Jackson's coverage of the issues most impressive. He demonstrates that modern scholarship "overwhelmingly favors" the view that the Covenant Code existed as a written text before it was

(his) death, then the owner of the ox shall pay two-thirds of a mina of silver. If it gores a slave and causes [his] death, he shall pay 15 shekels of silver."

43. I remain impressed by the arguments advanced by U. Cassuto, *The Documentary Hypothesis and the Composition of the Pentateuch* (Jerusalem: Magnes Press, 1983), raising doubts about source criticism in pentateuchal studies.

44. My reasons for this are given in "Authorship of the Book of Isaiah in Light of the Book of Mormon," in *Isaiah in the Book of Mormon*, ed. Donald W. Parry and John W. Welch (Provo, UT: FARMS, 1998), 430–32.

45. For example, on the early, more traditional side, arguing that the Sinai documents in the legal corpus of the Bible "have an indubitable fourteenth/thirteenth century [BC] format," see K. A. Kitchen, *On the Reliability of the Old Testament* (Grand Rapids, MI: Eerdmans, 2003), quotation on p. 289.

46. On the far edge of the revisionist side, arguing that the Covenant Code was written by a single author during the captivity of Judah in Babylon during the sixth century BC, see Van Seters, *A Law Book for the Diaspora*. This strident book and several others in this field have provided grist for the academic mill as the relevant textual and historical details have been ground, reground, sifted, and evaluated. See further entries in the CD-ROM publication of John W. Welch, comp., *Biblical Law Cumulative Bibliography* (Winona Lake, IN: Eisenbrauns; Provo, UT: BYU Press, 2005).

“incorporated into its present narrative context”⁴⁷ and that although “both the dating and function of the earliest written redactions must necessarily remain speculative,”⁴⁸ there is ample evidence of scribal activity in the seventh and eighth centuries BC, during which time, at the latest,⁴⁹ various biblical law collections, such as not only the *mishpatim* in the Covenant Code in Exodus 21:1–22:16 but also the Holiness Code in Leviticus 17–27 and other legal and prophetic scrolls, could well have been compiled essentially into their nearly final forms.⁵⁰

Similarly, materials underlying the book of Leviticus are traced by many scholars to pre-exilic times⁵¹ and thus would have been known in some form to Lehi, even though debates still exist over the dating of various parts and also the final form of that book. Portions of the Priestly Code dealing with the descendants of Aaron and Levi, of course, would have been considered largely inapplicable among the Nephites, in whose party there were no Levites. The Nephite priesthood looked back beyond Aaron and Moses to Melchizedek in the days of Abraham for the paragon of their priestly order (Alma 13:14–19).⁵² Nevertheless, legal precedents and ceremonial instructions concerning the Day of Atonement (Leviticus 16), blasphemy (Leviticus 24), the jubilee (Leviticus 25–26), and other passages in the book of Leviticus seem to have been adequately familiar to Lehi’s posterity.⁵³

With the discovery (or production) of a scroll of the law during the renovation of the temple in Jerusalem at the beginning of the reign of Josiah (640–609 BC) (2 Kings 22:1–23:30; 2 Chronicles 34:8–33), the book of Deuteronomy either entered or reentered the corpus of ancient Israelite

47. Jackson, *Wisdom-Laws*, 9.

48. Jackson, *Wisdom-Laws*, 69.

49. See generally Jackson, *Wisdom-Laws*, 69–70, and sources cited.

50. David P. Wright dates the writing of the Covenant Code to the end of Isaiah’s era, about 710 BC; see his “The Laws of Hammurabi as a Source for the Covenant Collection (Exodus 20:23–23:19),” *Maarav* 10 (2003): 50–51. Jacob Milgrom, *Leviticus 17–22* (New York: Doubleday, 2000), 1361–63, dates most of the Holiness Code in Leviticus 17–27 as “preexilic.”

51. For the best examination of the terminology in Leviticus, demonstrating that the Priestly sources in that book are pre-exilic, see Jacob Milgrom’s three-volume magnum opus, especially the discussions of the issues surrounding the antiquity of P in *Leviticus 1–16* (New York: Doubleday, 1991), 3–35, and of the pre-exilic dating of the Holiness writings in *Leviticus 17–22* (New York: Doubleday, 2000), 1345–67.

52. See further John W. Welch, “The Melchizedek Material in Alma 13,” in *By Study and Also by Faith: Essays in Honor of Hugh Nibley on His 80th Birthday*, ed. Stephen D. Ricks and John M. Lundquist (Salt Lake City: Deseret Book and FARMS, 1990), 2:238–72.

53. Welch and Szink, “King Benjamin’s Speech in the Context of Ancient Israelite Festivals,” 147–224.

law around 623 BC, which was during Lehi's lifetime.⁵⁴ Many factors in the Book of Mormon indicate that certain parts of Deuteronomic law and theology profoundly influenced Nephite law on such subjects as social justice and generosity (Deuteronomy 15:13–14; compare Mosiah 4:16–23), limitations on kingship (Deuteronomy 17:14–20; compare Mosiah 2:11–14), destruction of apostate cities (Deuteronomy 13:12–16; compare Alma 16), punishment of false prophets (Deuteronomy 18:20), and rules of warfare (Deuteronomy 20).⁵⁵ These points of legal intersection do not necessarily mean that Lehi agreed with the agenda of the Deuteronomic reformers in all respects, and indeed Margaret Barker and Kevin Christensen have spelled out several reasons for thinking that Lehi may well have disagreed with certain political trajectories in Jerusalem promoted by those aggressive Deuteronomists during and after the reign of Josiah.⁵⁶ At the same time, the affinities between the Book of Mormon and the book of Deuteronomy also make it clear that Lehi was conversant with the vocabulary, the rhetoric, and the legal topics that were in vogue in Jerusalem in the last decades of the sixth century, and that Lehi and his righteous posterity followed the spirit of ethics and justice, if not all the politics and excisions, that grew out of the Deuteronomy reform movement.

Efforts to determine the original forms and purposes of these legal materials or to puzzle over the reasons and manners in which these bodies of law became incorporated into the books of the Pentateuch are fascinating academic pursuits,⁵⁷ but at least for dating purposes, these issues mainly involve developments that would have predated Lehi and Nephi. The process of archiving, compiling, narratively contextualizing, editing, supplementing, and officially canonizing the biblical legal texts

54. Discussed further in Marvin A. Sweeney, *King Josiah of Judah: The Lost Messiah of Israel* (Oxford: Oxford University Press, 2001), 137–77; see also Welch and Hunt, "Culturegram: Jerusalem 600 B.C.," and Margaret Barker, "What Did King Josiah Reform?" in Welch, Seely, and Seely, *Glimpses of Lehi's Jerusalem*, 32–33, 523–42. For good descriptions of the Deuteronomic movement, see Raymond F. Person Jr., *The Deuteronomic School: History, Social Setting, and Literature* (Atlanta: Society of Biblical Literature, 2002).

55. Compare the discussion of these and other rules of martial law in John W. Welch, "Law and War in the Book of Mormon," in *Warfare in the Book of Mormon*, ed. Stephen D. Ricks and William J. Hamblin (Salt Lake City: Deseret Book and FARMS, 1990), 46–102.

56. Kevin Christensen, "The Temple, the Monarchy, and Wisdom: Lehi's World and the Scholarship of Margaret Barker," and Barker, "What Did King Josiah Reform?" in Welch, Seely, and Seely, *Glimpses of Lehi's Jerusalem*, 449–542. One need not subscribe to all of Barker's views in order to appreciate that Lehi probably was not in complete agreement with the Deuteronomists, for otherwise they would have been his ally and he would not have been met with such opposition from the controlling parties in Jerusalem.

57. For the most recent and best surveys of these issues in recent biblical scholarship, see Jackson, *Wisdom-Laws*, 3–74; and Fitzpatrick-McKinley, *The Transformation of Torah*, 23–53.

undoubtedly spanned several centuries; but legal systems in general are fundamentally conservative, and so those changes probably occurred incrementally, not radically. Thus the basic texts of the books of Moses that would have governed in Lehi's day are probably adequately represented by the texts of the Pentateuch as those five books have long been known and as they still exist today.

Therefore, unless a good reason exists for doubting that the Nephites knew a particular passage in the first five books of the Bible, I have assumed in the following analyses of the Nephite legal cases that the Nephite jurists had access to and felt a pious obligation to actually follow⁵⁸ their version of the law. In other words, I proceed, for purposes of investigation, on the premise that the Nephites had the five books of Moses in some form that modern readers would essentially recognize. I find confirmation of this hypothesis in the light that this approach sheds on the general legal theory and particular legal rules implicitly standing behind many passages in the Book of Mormon itself.

How Would Lehi and His Posterity Have Understood and Kept the Law?

The mere fact that Lehi had the law written on the plates of brass, however, does not answer the questions of how much of that law he and his posterity actually understood and how they interpreted it. In addition to having the words on the plates of brass, how did they understand the customs, policies, practices, and procedures of biblical law as a whole? How would Lehi and subsequently his posterity have understood and kept that law?

Ample evidence supports the general idea that Lehi and his family were deeply familiar with the world of Jerusalem. Born around 650 BC, Lehi was a mature, longtime participant in the public life of Jerusalem. As a wealthy man, apparently a merchant and landowner, he would have participated in public life, negotiated business transactions, witnessed coronations, and probably observed legal proceedings such as the one that led to the execution of Urijah ben Shemaiah (Jeremiah 26:23). He himself was accused of the crime of false prophecy under Deuteronomy 13:5 or 18:22, and so he would have had personal familiarity with the risks involved in being subjected to prosecution in Jerusalem over such a charge.

58. I concur with Jacob Milgrom that, in addition to being used for religious instruction, "there is every likelihood that [biblical legal precepts] were actually carried out. . . . It may be concluded that the Torah's laws, far from being [merely] a guide for behavior, were, at least in part, the living code of Israel." Milgrom, *Leviticus 17-22*, 1348.

Much comparative, biblical, and archaeological evidence indicates that Lehi was an astute observer of his surrounding world.⁵⁹ Yet one need not assume that he knew or accepted everything about the laws and legal institutions of Jerusalem, let alone of all the surrounding peoples in neighboring lands in the ancient Near East and Arabia. Indeed, he probably hoped to forget many wicked and perverse practices that he opposed in Jerusalem and may have encountered among other peoples. Nevertheless, he would have known and taught to his family and followers many things that were important to the legal legacy that he brought with him from the Old World, and he would have passed the wisdom of his civilization on to his posterity as best he could.

At the same time, we must frequently remind ourselves that the law of Moses has never been easy to understand completely. Various branches of Judaism, ancient and modern, in the center at Jerusalem and abroad in the Jewish Diaspora, have struggled mightily and in good faith, between themselves and even among themselves, to interpret and apply this extensive and detailed body of law. It is true that the priests of Noah misunderstood the law of Moses; but even the people of ancient Jerusalem could be accused of not understanding it very well either (Mosiah 13:32). And so, while one may assume that Lehi and his posterity in the New World understood the law in light of their own revealed insights and prophetic worldview, we must exercise caution, realizing that numerous views about the law certainly existed in ancient times and that the technical meanings formerly attributed to many details in the law of Moses are now lost or at least obscure to modern readers.

Above all, however, it is clear that the Nephites viewed the law of Moses as the foundation of their law and legal system. They understood that the purpose of the law was to foster obedience: “And for this intent we keep the law of Moses, it pointing our souls to [Christ]; and for this cause it is sanctified unto us for righteousness” (Jacob 4:5); “The Lord God saw that his people were a stiffnecked people, and he appointed unto them a law, even the law of Moses” (Mosiah 3:14).

Explicit statements by Nephi (2 Nephi 5:10), Jarom (Jarom 1:5), Alma (Alma 30:2–3), and others demonstrate beyond any doubt that for six centuries the Nephites saw themselves as strictly observing the judgments, statutes, commandments, and ordinances of God in all things according to the law of Moses until the coming of Christ. For example, in laying the legal foundation of his fledgling kingship, Nephi conformed to a traditional Israelite

59. See generally Welch, Seely, and Seely, *Glimpses of Lehi's Jerusalem*.

pattern when he assured that his people “did observe to keep the judgments, and the statutes, and the commandments of the Lord in all things, according to the law of Moses” (2 Nephi 5:10; compare the order issued by King David to his successor-son Solomon in 1 Kings 2:3). In King Benjamin’s day the people “took of the firstlings of their flocks, that they might offer sacrifice and burnt offerings according to the law of Moses” (Mosiah 2:3, ca. 124 BC). In Alma’s day “the people did observe to keep the commandments of the Lord; and they were strict in observing the ordinances of God, according to the law of Moses; for they were taught to keep the law of Moses until it should be fulfilled” (Alma 30:3, ca. 74 BC; see 34:13). Even the Lamanites who were converted by Nephi and Lehi a few years before the birth of Christ “did observe strictly to keep the commandments of God, according to the law of Moses” (Helaman 13:1), for which Samuel the Lamanite praised them in contrast to the less obedient Nephites: “And I would that ye should behold that the more part of them are in the path of their duty, and they do walk circumspectly before God, and they do observe to keep his commandments and his statutes and his judgments according to the law of Moses” (Helaman 15:5). Once the sign of the birth of Jesus was seen, some “began to preach, endeavoring to prove by the scriptures that it was no more expedient to observe the law of Moses” (3 Nephi 1:24); their understandable but erroneous contentions make no sense unless one presumes that the law of Moses was being followed programmatically down to that day. These emphatic statements, together with the total Nephite history until the appearance of Christ among those people, are all the more remarkable because of their prophetic knowledge of the “deadness of the law” (2 Nephi 25:27).

Indeed, the Nephites realized that the law of Moses was given by faith (Ether 12:11) and that a time would come when the purpose of the law would be fulfilled. From the outset, Nephi reported that, notwithstanding their belief in Christ, his people kept the law of Moses until it should be entirely fulfilled (2 Nephi 25:24). Likewise, Abinadi insisted to the priests of Noah in the second century BC, “If ye teach the law of Moses, also teach that it is a shadow of those things which are to come—teach them that redemption cometh through Christ the Lord, who is the very Eternal Father” (Mosiah 16:14–15). The people of God in the land of Nephi were taught by Ammon to “keep the law of Moses; for it was expedient that they should keep the law of Moses as yet, for it was not all fulfilled. But notwithstanding the law of Moses, they did look forward to the coming of Christ, considering that the law of Moses was a type of his coming, and believing that they must keep those outward performances until the time that he should be revealed unto them. Now they did not suppose

that salvation came by the law of Moses; but the law of Moses did serve to strengthen their faith in Christ” (Alma 25:15–16).

The Nephites observed the law not just perfunctorily but meaningfully and meticulously. Amulek taught: “Therefore, it is expedient that there should be a great and last sacrifice, and then shall there be, or it is expedient there should be, a stop to the shedding of blood; then shall the law of Moses be fulfilled; yea, it shall be all fulfilled, every jot and tittle” (Alma 34:13).⁶⁰ Moreover, Alma affirmed that the Nephites were “*strict* in observing the ordinances of God, according to the law of Moses” (30:3; emphasis added), and Jarom stated even further that their observance of these laws was “*exceedingly strict*” (Jarom 1:5; emphasis added).

Regarding the laws of sacrifice, while the Nephites most probably would not have observed the ritual laws in the same way as did the Jews in the Second Temple period in Jerusalem, one should not imagine that they did not observe the laws of sacrifice at all. As shown elsewhere,⁶¹ it seems probable that the Nephites offered some kind of sacrifice not only on special days, such as the holy Day of Atonement or the Feast of Tabernacles (Mosiah 2:3), but also on each regular day (13:30–31). In whatever way they understood the rules of the law of Moses, they observed them accordingly, including the laws of sacrifice. As discussed above, even though the Nephites knew the deadness of the law, which was given life only through Christ (2 Nephi 25:24–27), they still lived the law of Moses (5:10).

This blending of elements from both the old and new covenants is one of the most distinctive characteristics of the Book of Mormon. Essentially, the Nephite record bridges both Jewish and Christian backgrounds. The world of the Book of Mormon is neither Jewish nor Christian but both—if both those terms are properly understood. Unlike some Jews who looked “beyond the mark” (Jacob 4:14) or who became overly concerned about the letter of the law, the Nephites saw themselves as following in the tradition of other ancient Israelites, such as Melchizedek, who knew

60. The Book of Mormon further records the changing of the law as a result of Christ’s atonement: 3 Nephi 9:17, “and in me is the law of Moses fulfilled”; 3 Nephi 15:2, “And it came to pass that when Jesus had said these words he perceived that there were some among them who marveled, and wondered what he would concerning the law of Moses; for they understood not the saying that old things had passed away, and that all things had become new”; 3 Nephi 15:4, “Behold, I say unto you that the law is fulfilled that was given unto Moses”; and 4 Nephi 1:12, “And they did not walk any more after the performances of the law of Moses; but they did walk after the commandments which they had received from their Lord and their God, continuing in fasting and prayer, and in meeting together oft both to pray and to hear the word of the Lord.”

61. See my discussion in “The Temple in the Book of Mormon,” in *Temples of the Ancient World*, ed. Donald W. Parry (Salt Lake City: Deseret Book and FARMS, 1994), 305–9.

the messianic gospel and embraced the order of the priesthood “after the order of [the] Son” (see Alma 13:7–9, 18), thus understanding and keeping the performances and ordinances of the law of Moses in light of their knowledge of Christ (2 Nephi 25:24).

The righteous Nephites knew that obedience and remembrance were among the indelible principles of the gospel (Mosiah 2:31–41; 4:30; 5:11; 3 Nephi 12:1; 18:10; 4 Nephi 1:12). They scrupulously remembered and obeyed the laws they had been given until they were fulfilled. It appears also that Jesus himself continued to observe the law of Moses in Galilee and Jerusalem until it was all fulfilled.⁶² Of course, the manner in which Jesus observed every provision of the law is unknown; moreover, it is clear that he disagreed with some interpretations of the law advocated by other people in his day. But Jesus kept every jot and tittle of the law (Matthew 5:18), however he understood those provisions. By suggesting that the Nephites were true to their word and were strict to observe the law of Moses, I mean to imply that the Nephites were no more or less committed to the traditions of Israel than was Jesus himself.

To be sure, the law of Moses was a high-principled schoolmaster. It taught, at its root, such important virtues as sacrifice, obedience, modesty, chastity, holiness, generosity, and gratitude. Indeed, the law of Moses was profoundly based on important eternal principles. The underlying purpose of the law of Moses was to make the faithful “an holy people” (Deuteronomy 7:6; see Exodus 22:31; Leviticus 19:2) and to prefigure the coming of Christ through various patterns and concepts such as the scapegoat and the city of refuge. The law of Moses contains some of the greatest commandments and principles ever revealed by God. It contains much of the spirit of moral judgment and practical wisdom. When Jesus was asked about the greatest commandment (Matthew 22:36–40), he turned to the Pentateuch for his answer: “Thou shalt love the Lord thy God with all thy might, mind, and strength,” which is based on Deuteronomy 6:5, and “Thou shalt love thy neighbor as thyself,” found in Leviticus 19:18. Laws or teachings regarding doing good to one’s enemy (Exodus 23:4), obeying and taking care of one’s parents (20:12), and showing kindness to the widow and fatherless child (22:22–24) teach powerful lessons of generosity, social justice, and pure religion undefiled. In some ways, my favorite commentary on the book of Deuteronomy is Hugh Nibley’s essay entitled

62. Welch, “Temple in the Book of Mormon,” 313–14, see pp. 309–19 for a similar discussion of surrounding materials in this section.

ironically “How to Get Rich.”⁶³ Nibley shows that the book of Deuteronomy, a quintessential restatement of the law of Moses, is essentially an exposition of and elaboration on the law of consecration. The book of Deuteronomy presents us with celestial precepts that are in many respects highly relevant to contemporary society and the restored gospel in the dispensation of the fulness of times.

At the same time, the law of Moses is often a misunderstood schoolmaster. Even the much-maligned biblical law formula “an eye for an eye” may convey eternal values. While this expression’s exact meaning in antiquity is unknown, it may well have meant something to the effect of “be fair” or “let the punishment suit the crime.” Biblical scholars have pointed out that this talionic formula may have been a limiting factor (in other words, no more than an eye for an eye), and the rabbinic tradition explained that it really meant money, or in other words “the value of an eye for an eye” (see chapter 13 below). Be that as it may, in the Book of Mormon the principle of divine justice is clearly understood as one of “restoration” as taught in Alma 41:13–15 and elsewhere. The concept of divine justice there teaches that people will receive from God as they have imparted (Mosiah 4:21–22), will be forgiven as they forgive (3 Nephi 13:14–15; compare Matthew 6:14–15), and will be judged as they have judged (3 Nephi 14:2; compare Matthew 7:1). Thus even God restores justice for justice, mercy for mercy, goodness for goodness, as well as evil for evil, carnal for carnal, and devilish for devilish (Alma 41:13)—in principle, an eye for an eye.

In other words, people should not think that the law of Moses is just a religious system of “thou shalt nots,” as Christians are often inclined to do. This law also calls for positive righteousness. Consider the inward morality required by the curses expressed in Deuteronomy 27 that place woes on people who do evil in secret and who think they will not get caught. The law of Moses is much more than the law of sacrifice. Given the comprehensive coverage of the law of Moses, its long-standing value in applied practice, and its divine origins, it is easy to see why the prophet Lehi would have thought so highly of the law and why he risked so much to have a copy of it for his people. In sum, law loomed large in Nephite life as that civilization changed from generation to generation, as had also been the case in pre-exilic Israel. The ancient concept of law was broader than is the modern concept of law. Modern society tends to view law in a positivist way, assuming that laws are only those specific commands given

63. Hugh W. Nibley, “How to Get Rich,” in *Approaching Zion*, ed. Don E. Norton (Salt Lake City: Deseret Book and FARMS, 1989), 178–201.

by a sovereign body coupled with a specific remedy or punishment. Federal and state constitutions also act to limit the scope of governmental authority, and hence to limit the breadth of the concept of law itself. The Nephites, however, like most other ancient peoples, understood law in broad cultural terms. They spoke of laws, statutes, ordinances, customs, commands, and teachings, giving to all of these norms and practices the moral imprimatur or sanction of law. The word *torah* itself comes from the Hebrew word meaning “to teach” and may be loosely defined as simply “the right way to live.”⁶⁴ Little distinction was made between civil law and religious law in ancient societies, and the distances between the modern domains of politics, statecraft, commerce, morals, family, and purity were scarcely noticeable. Indeed, many other elements of the modern worldview, such as an understanding of the physical laws of cause and effect, the physiology of sickness or well-being, and notions about human responsibilities and divine intervention, were understood in completely different terms by ancient peoples. Thus one should not assume that a narrow, modern concept of law operated in ancient Nephite jurisprudence.

Did the Nephites Change or Adapt the Law of Moses in the Course of Their History?

While most parts of the law of Moses would have readily applied to life in the New World, some parts of that law probably did not. Laws for the designation of specific towns in Israel as cities of refuge, for example, would obviously have been in need of modification in order for them to make any sense in the new world of the Nephites, or perhaps they were simply ignored. But most provisions in the law of Moses speak to generic human situations and cover a full spectrum of what lawyers call civil, criminal, religious, political, and administrative legal issues. Because of its broad scope to social and personal life, the law of Moses would easily have applied to most parts of Nephite life and civilization.

However, no legal system remains completely static over time. Biblical law in the tenth century BC was not exactly the same as biblical law in the seventh century BC.⁶⁵ Lehi undoubtedly made certain legal adaptations at the outset, as his new circumstances mandated. For example, Lehi significantly forbade polygamy and concubinage among his sons (Jacob 2:27, 34; 3:5),

64. *Reexploring the Book of Mormon*, ed. John W. Welch (Salt Lake City: Deseret Book and FARMS, 1992), 62–63.

65. Giuseppe D’Ercole, “The Juridical Structure of Israel from the Time of Her Origin to the Period of Hadrian,” in *Populus Dei: Studi in onore del Card. Alfredo Ottaviani per il cinquantésimo di sacerdozio: 18 Marso 1966*, ed. Henri Cazelles (Rome: Communio, 1969), 389–461.

even though Deuteronomy clearly allowed such practices (Deuteronomy 21:15), if not done to excess (17:17). Lehi's ruling must have made especially good sense in a very small society that would have been short on women and where Lehi did not want his sons marrying women from Arabia or elsewhere from outside the clan unless God specially commanded it (Jacob 2:30). Moreover, Nephite law developed in certain other respects over its thousand-year history. Even though we cannot know the intricacies of these developments in all respects, readers should always be alert to the possibility of cultural changes, especially when compiling and comparing the evidence in one section of the Book of Mormon with evidence about legal situations in other parts of that text.

Based on the descriptions given within the Book of Mormon itself, it appears that the major Nephite legal developments came primarily in the form of administrative changes rather than substantive law reforms. Thus, for example, even though Mosiah changed the government from a kingship to a judgeship, which consequently changed the procedural rules of Nephite legal practice dramatically, he charged the people to choose judges "that ye may be judged according to the laws which have been given you by our fathers, which are correct, and which were given them by the hand of the Lord" (Mosiah 29:25), and he held the new judges responsible to decide cases "according to the law which has been given" (v. 28). At the same time, Mosiah condemned any king who "teareth up the laws of those who have reigned in righteousness before him" and "trampleth under his feet the commandments of God" and instead "enacteth laws, and sendeth them forth . . . after the manner of his own wickedness" (Mosiah 29:22–23). Accordingly, although the legal system in Nephite civilization developed to some extent, it appears that the underlying substantive Nephite law was essentially conservative, staying as close to the pentateuchal laws as possible.

As a general matter, particularly important moments in the history of any people are marked by fundamental changes in their legal system.⁶⁶ Thus, in reconstructing the legal history of the Book of Mormon, I have assumed that every time a law was introduced, modified, or significantly challenged, Nephite jurists were required to revisit many basic questions regarding the impact of these new developments on their overall legal system.

Legal changes create profound problems not only as people think through the meaning of a new legal provision itself but also as they

66. For a succinct and insightful summary of this history by political scientist Noel B. Reynolds, see "Government and Legal History in the Book of Mormon," in *Encyclopedia of Mormonism*, ed. Daniel H. Ludlow (New York: Macmillan, 1992), 1:160–62.

contemplate its relevance to situations that were probably not imagined at the time of enactment. From a legal point of view, much of what is happening in the trials of Nehor and Korihor, and much of what stands behind the questions of religious independence raised by the members of the apostate order of Nehor in Ammonihah, reflect this precise problem: How would the law reforms of King Mosiah (enacted in Mosiah 29) actually be construed in the society, and what were the implications of that new law with respect to old religious regulations? It should come as no surprise that the law reforms of Mosiah, constituting the largest law reform in the history of Nephite civilization, were immediately followed by the most intense period of judicial action recorded in the Book of Mormon. Nor should it be surprising that the outcomes were all conservative.

Throughout the Book of Mormon, evidence shows that the Nephites placed a high value on retaining the integrity of their basic legal system while accommodating only a moderate degree of change. The preservation of the status quo was a fairly standard Nephite attitude toward the law. They revered, read, studied, and even memorized their primary legal texts. For example, Nephi's account of the slaying of Laban in 1 Nephi 4:6, 11 shows that he knew well the specific criteria and precise language of the legal code in Exodus 21:13–14.⁶⁷ Benjamin's paraphrase in Mosiah 2:12–14 of material from the "Paragraph of the King" in Deuteronomy 17:14–20 shows that he knew and followed the law on the plates of brass, which he expressly affirms he had taught his sons to read and to appreciate (Mosiah 1:2–7).

While certain things changed as Lehi and his posterity applied the law of Moses in the New World, many other things stayed the same, preserving an overriding legal presence. Modern readers often skip over the legal sections of the Pentateuch, scarcely reading the book of Leviticus, but these legal texts would have loomed much larger on the religious landscape for the Nephites. Much of the Old Testament and all of the New Testament, to say nothing of the Doctrine and Covenants and other scripture in our possession today, were unknown to the Nephites. Children growing up as Nephites had far less scripture to learn than do the youth of today. The percentage of ancient scripture dedicated to the law that a person such as Benjamin taught his sons was far higher than a modern reader might casually assume.

67. John W. Welch, "Legal Perspectives on the Slaying of Laban," *Journal of Book of Mormon Studies* 1, no. 1 (1992): 119–41; and Welch, "Introduction," *Studia Antiqua* (Summer 2003): 9–12.

What Analytic Problems Arise from Layers of Authorship, Abridgment, and Translation?

Questions of authorship, of course, have plagued the study of biblical law. Theories about when, why, and by whom the Covenant Code, the Holiness Code, or virtually any other part of the Hebrew Bible was originally written and subsequently revised have been strenuously debated.

As with the Bible, the compositional history of the Book of Mormon is also complicated by the fact that many authors have contributed to the record, but in different ways. For one thing, the Book of Mormon is much more self-conscious about its multiple authorship, keeping track of various records, sources, and abridgers contributing to the final text. Although Nephite culture reflects broad interest in the law generally, some Book of Mormon writers spoke more directly and extensively on legal topics than others did. For example, Alma, who served professionally as the chief judge in Zarahemla for eight years, provides a considerable amount of legal detail in his narratives and speeches, while Nephi and Jacob give less attention to legal matters. Those two earlier Nephite writers lived in a smaller, clan-based community that was far less regulated by legal institutions than was Alma's world in the land of Zarahemla, and they wrote their records not on the large political plates as did Alma but on the small plates that were dedicated to select sacred topics. Nephi expressly states his theological reasons for saying little about the law: he and his people placed greater emphasis on belief in the Messiah and less weight on the eternal efficacy of the law of Moses (2 Nephi 25:24–27).

In addition to the words spoken or written by various original authors, several intermediary compilers also influenced and shaped the texts of the Book of Mormon as we have them. Consider, for example, the textual history of the account of the trial of Abinadi found in Mosiah 11–17. How many people might have influenced or contributed to the speaking, writing, recording, compiling, structuring, editing, or abridging of this account? (1) Abinadi, (2) the people, (3) Noah, and (4) the priests all spoke as the case developed. (5) Alma, one of the priests, who was expelled from the court because he favored acquitting Abinadi, went into hiding where he wrote “all the words which Abinadi had spoken” (17:4). However, Alma was not present in court during the final day of this trial, and he “went about privately among the people, and began to teach the words of Abinadi” (18:1), presumably putting himself in contact with (6) other people who could have told him about the final events in Abinadi's life. Additionally, (7) a royal record of the trial was kept by the government and shared with Ammon (8:5), perhaps conveying additional information about this

trial. (8) King Limhi, the son of Noah, might have brought this record with him or might have told this story when he and his people returned to Zarahemla. Eventually, of course, (9) someone sat down to write the book of Mosiah. Alma the Younger is a leading candidate as the architect of this book, which features prominently the conversion of Alma's father during the trial of Abinadi. Finally, four centuries later, (10) Mormon found the book of Mosiah on the large plates of Nephi, which he abridged, perhaps supplementing the book with additional sources that he had at his disposal. The textual history of most cases is not as complicated as this one, but in order to reach sound legal conclusions, each report of any legal proceeding in the Book of Mormon must be approached astutely, considering to the extent possible how and why the record was shaped as it was.

Overarching the textual history of the Book of Mormon are Mormon's purposes in compiling and editing the final form of the book. Certain objectives guided his abridgment and thus add another layer of selection through which modern analysts must filter the underlying data that he included. Mormon's abridgment was not done for legal purposes. He and his son Moroni abridged and wrote the Book of Mormon for the three stated purposes of (1) showing the great things the Lord had done for the house of Israel (2) teaching people the covenants of the Lord and (3) convincing all peoples that Jesus is the Christ (Book of Mormon title page). Thus readers should assume that Mormon included these legal accounts because he saw them, in some fashion, as promoting one of these purposes, not because they were primarily of some detached historical or legal interest. Indeed, Mormon may not have understood (or cared about) the legal rules or conventions used five hundred years earlier by the righteous judge Alma in the city of Zarahemla (Alma 1), let alone the policies or legal strategies employed by the wicked priests in the courts of Noah (Mosiah 11) or the overreaching lawyers of Ammonihah (Alma 11–14). The law of Moses, under which those courts putatively, to some extent, operated, had been abrogated by the words of Jesus Christ at the temple in Bountiful when he explained, "I am he that gave the law, and I am he who covenanted with my people Israel; therefore, the law in me is fulfilled, for I have come to fulfil the law; therefore it hath an end" (3 Nephi 15:5). Thus "they did not walk any more after the performances and ordinances of the law of Moses" (4 Nephi 1:12). Accordingly, Mormon would have little motivation to dwell in any detail on the particulars of the law in his telling of or inclusion of the Nephite legal cases.

One should not assume, however, that just because Mormon did not give extensive information about a subject, the subject was not important

to the earlier Nephites or uninteresting to Mormon as historian. The Book of Mormon as it now exists is not an all-encompassing record. Other important records existed in Nephite times, but space limitations on the plates and the particular purposes for his prophetic abridgment led Mormon to include certain things and to exclude others. In leaving out many details, including those touching on the law of Moses and the legal practices of the Nephites, Mormon and his son Moroni may simply have assumed that their modern readers would have the Old Testament and other records of the Jews (Mormon 7:8; Ether 1:3) from which to draw background information, including legal principles and their implications and correspondences.

More problematic for this investigation than Mormon's influence as an abridger is the fact that the Book of Mormon exists only in English and its subsequent translation into other modern languages. This is not the case with the Bible. But just as biblical scholars wrestle endlessly over the technical meanings of many cryptic words and legal phrases in Hebrew and other ancient languages, no translator, including Joseph Smith, could be expected to represent completely in English many important legal nuances exactly as they were understood in Nephite culture. Thus modern readers are handicapped by not having access to the paleo- or proto-Hebrew language of Jacob in early Nephite days,⁶⁸ the reformed Egyptian script used in Nephite archives,⁶⁹ the dialect spoken by Alma in the days when Nephite civilization had merged with the Mulekites, or the final vernacular spoken by Mormon, which again had undergone changes from earlier centuries (Mormon 9:13).⁷⁰

While this language barrier does not pose significant problems to readers in sections of the Book of Mormon text that deal with common human experiences, technical vocabulary becomes a matter of great concern in conducting specific legal analysis. Fortunately for purposes of textual analysis and argumentation, recent examinations of the original manuscript of the Book of Mormon have yielded evidence that Joseph

68. For informative discussions of Israelite language at the time of Lehi, see Dana M. Pike, "Israelite Inscriptions from the Time of Jeremiah and Lehi"; and William James Adams Jr., "Nephi's Written Language and the Standard Biblical Hebrew of 600 B.C.," in Welch, Seely, and Seely, *Glimpses of Lehi's Jerusalem*, 193–244 and 245–58.

69. See the various insights of John S. Thompson, "Lehi and Egypt," of John Gee, "Egyptian Society during the Twenty-Sixth Dynasty," and of Aaron P. Schade, "The Kingdom of Judah: Politics, Prophets, and Scribes in the Late Preexilic Period," in Welch, Seely, and Seely, *Glimpses of Lehi's Jerusalem*, 267, 282–83, and 318, with accompanying notes.

70. For a philological and comparative discussion of stylistic evidences of this change, see Adams, "Nephi's Written Language," 245–58.

Smith's dictation came forth "word for word and even letter for letter."⁷¹ As I have discussed elsewhere, "several factors indicate that [Joseph's process brought forth] quite a precise translation," although not slavishly literalistic; several textual details "strongly suggest that the meaning of something on the plates gave rise to each element of meaning in the translation."⁷² Fortunately, in this process the translation drew upon the English vocabulary of the King James Bible, which is typically quite closely aligned with the underlying ancient Hebrew and Greek vocabularies, although several Elizabethan expressions were more commonly used and understood in Joseph Smith's day than they are today.⁷³ For this reason I have used the King James Version in the discussions below unless that translation is legally imprecise, in which cases I offer my own translations.

This utilization of recognizable King James phraseology allows modern readers of the Book of Mormon to hypothesize that when English words are used in comparable settings in both the Book of Mormon and the King James Old Testament, those translated words probably derive from a common Hebrew word or idiom. This hypothesis is especially plausible in legal settings, for legal language tends to be very conservative and slow to change in most cultures. Over the centuries in the ancient Near East, for example, certain terms have remained constant in legal usage; and over the centuries in Jewish law, key words have persisted without great modification. As Nephite history moves further away from its roots in Jerusalem, of course, one must allow some latitude for the development of independent Nephite legal terminology, vocabulary, and meanings. But in most cases—as I believe the following case studies will bear out—when the Book of Mormon uses such terms as *blasphemy* or *robbery*, we may learn much about their meanings in that context by studying their biblical Hebrew counterparts, even though verbal nuances are never identical from one context to the next.

A Word of Caution about Things We Do Not Know

In spite of our best efforts, many things in the study of ancient law will always remain beyond our reach. While Nephite law was largely

71. Royal Skousen, "History of the Critical Text Project," in *Uncovering the Original Text of the Book of Mormon*, ed. M. Gerald Bradford and Alison V. P. Coutts (Provo, UT: FARMS, 2002), 18.

72. See the chapter on Joseph Smith and the translation of the Sermon at the Temple, in John W. Welch, *Illuminating the Sermon at the Temple and Sermon on the Mount*, 2nd ed. (Provo, UT: FARMS, 1999), 179–98, quotations on pp. 189 and 190.

73. Royal Skousen, "Towards a Critical Edition of the Book of Mormon" (FARMS paper, 1990); see generally Skousen, "Translating the Book of Mormon: Evidence from the Original Manuscript," in *Book of Mormon Authorship Revisited: The Evidence for Ancient Origins*, ed. Noel B. Reynolds (Provo, UT: FARMS, 1997), 61–93.

autonomous and independent, since the Nephites rejected the wickedness of the people in Jerusalem, one should not assume that they rejected everything they left behind. But how much they drew on their northern Israelite backgrounds, as members of the tribes of Manasseh and Ephraim, is unknown.

While knowing more about the rules, words, and concepts of biblical law proves helpful in understanding the Book of Mormon, the meaning of Hebrew legal terminology is not always apparent. When the law prohibits “murder” or “bearing false witness,” exactly what was meant? When the biblical text speaks of situations in which “mischief [would] follow” (Exodus 21:23) or gives prohibitions not to “seethe a kid in [its] mother’s milk” (23:19), exactly what did the ancient lawgivers have in mind? Definitive meanings are often lost in the distant past.

Modern readers must be especially sensitive to legal euphemisms. For example, phrases such as “contend with,” “come near to,” or “be in the way with” may or may not signify the commencement of a legal action. In addition, the meanings of words may have changed from one era to another. The terms *robber* and *lawyer*, for instance, have definite meanings in modern society, but they presumptively meant something quite different in the ancient world in which robbers had no guns and lawyers were not advocates for individual clients.

Moreover, biblical law rarely explains who is to carry out these rules and what punishments should apply. Sometimes the text, as is the case in Exodus 22:1–4 dealing with theft, states what the punishment should be, but how should we understand, in a legal sense, the prohibition “Thou shalt not covet” when no penalty is mentioned? It is often difficult to tell what really happened in ancient legal proceedings, and it is frequently impossible to know how rules were actually enforced. No original judicial records have survived from ancient Israel.⁷⁴

How are modern readers to understand ancient legal formulas such as “thou shalt not . . .” or “if a man . . .”? Were these rules promulgated as ideals binding on all people, as covenant obligations applicable only to people who voluntarily assumed these responsibilities, as binding instructions to judges, or as guiding principles for judges to apply in their discretion? Are they describing individual outcomes of specific cases intended to serve as precedents in future cases? Or do they reflect individual out-

74. Jackson, *Wisdom-Laws*, 52; Jackson, “Ideas of Law and Legal Administration: A Semiotic Approach,” in *The World of Ancient Israel: Sociological, Anthropological and Political Perspectives*, ed. R. E. Clements (Cambridge: Cambridge University Press, 1989), 185; and Robert R. Wilson, “Israel’s Judicial System in the Preexilic Period,” 230.

comes of prior experience that are interesting for judges or elders but not compelling in the sense of modern legal precedent? Raymond Westbrook and others have promoted a legal model, seeing biblical laws essentially in the positivist legal tradition, in which these laws are to be seen as laying down rules to be followed by judges in resolving legal disputes.⁷⁵ Bernard Jackson argues that biblical laws should be understood as narrations of wisdom values aimed at teaching people to avoid judicial controversies by drawing on divine mediation at the outset.⁷⁶ Each of these views may be, in some important sense, correct. Regardless of how these legal statements originated, all of them came to be used in ancient times to meet a variety of needs that inevitably arose in many contexts over greater ranges of application.

In light of these difficulties, I have found it best to proceed by placing the Book of Mormon and the Bible on an equal footing. Each may shed needed light on the other. While biblical texts often illuminate the sense of a passage in the Book of Mormon, the Book of Mormon may also be vital in bringing the essence of the law of Moses to life.

Where Might This Study Lead?

Finally, I hope that studying the principles of biblical law and the legal cases in the Book of Mormon will serve many constructive purposes for several kinds of people.

For readers who may not know very much about the Book of Mormon, these case studies can provide a portal of entry. Reading the Book of Mormon for the first time can be somewhat intimidating, even (as it was put by one prominent Old Testament scholar on an SBL panel) “bamboozling.” It is a complicated book in many respects, with names, wars, prophets, dates, and records that are otherwise unfamiliar. But with a bit of explanation, this book becomes personally engaging. After discussing chiastic structures in the Book of Mormon with me and then reading Alma 36 with its impressive literary composition in mind, David Noel Freedman turned to me and thoughtfully said, “Mormons are very lucky. Their book is very beautiful.” Similarly, understanding the legal substructure of Nephite society can help modern readers to grasp and appreciate many of the basic societal concerns and worldviews propounded and promoted by the Book of Mormon.

75. For instance, Raymond Westbrook, “Cuneiform Law Codes and the Origins of Legislation,” *Zeitschrift für Assyriologie* 79 (1989): 202; and his “Biblical and Cuneiform Law Codes,” *Revue Biblique* 92 (1985): 256.

76. Jackson, *Wisdom-Laws*, vii, 23–36.

For readers who may have read the Book of Mormon many times, a new look at the Book of Mormon through the lens of the law illuminates the significance of numerous details that might otherwise have appeared irrelevant or tangential or might have gone unnoticed altogether. By striving to think more like an ancient Israelite or a Nephite, readers of the Bible and Book of Mormon can see consequences, implications, problems, values, mores, and norms implicit in the religious and doctrinal teachings of these scriptures. For example, appreciating the legal connotations that words such as *covenant*, *property*, *witness*, or *redeem* would have communicated in ancient times sheds light on metaphors used by writers in the Bible and Book of Mormon in communicating important theological messages. God meets people on their own terms. Latter-day Saints believe that he spoke to the Nephites in their own language and culture, as he does to all peoples (2 Nephi 29:11–12; Doctrine and Covenants 1:24).

For all readers, another payload comes in the form of literary criticism. Examining legal themes helps in the analysis of literary genres and compositional organization of the Book of Mormon. A good example of this comes from the book of Alma, which abruptly and stunningly begins with the trial of Nehor (discussed in chapter 7 below). By giving such attention to the trial and execution of this popular challenger to the Nephite order, the authors and abridgers of the book of Alma send a conspicuous signal that the overriding leitmotif of the book of Alma will be the Nephite struggle against dissenters and opponents during the initial years of the reign of judges. Throughout the book of Alma, one encounters the repeated legal attempts of the Nephites to deal with the dissensions of Nehor and the Nehorites, the Ammoniahites (chapter 8 below), the Zoramites, Korihor (chapter 9 below), the Amalickiahites, and others. In a similar fashion, the book of Helaman, right after the book of Alma, begins with the rebellion of Paanchi (chapter 11 below), ushering in the next era in Nephite history, a period characterized by social banditry, the Gadianton robbers, violence, insurrection, and political instability in the land and capital city of Zarahemla.

For those who are interested in the historical origins of the Book of Mormon, the study of its legal materials can help to assess and, I believe, to affirm the historical core of the records that stand behind Mormon's abridgment and the English translation of the Book of Mormon, which was published in upstate New York in 1830. The Nephites' extensive use of biblical law is consistent with the claim, made at the outset by the Book of Mormon itself, that Lehi and his people left Jerusalem around 600 BC. In large principles and small details, their legal system is technically accurate,

legally plausible, and consistent with that point of departure. Even though Joseph Smith had at his disposal biblical texts from the King James translation, perceptively using those legal materials presumes a level of comprehension and familiarity with biblical law that exceeded the articulated knowledge of biblical scholars in the nineteenth century, let alone the comprehension of the young Joseph Smith. Most ancient Near Eastern legal materials were unknown or unavailable to him, for the Laws of Hammurabi, the Hittite Laws, the Middle Assyrian Laws, and so on were first discovered by archaeologists in the twentieth century, and most of Jewish law materials were not translated and published in English until the end of the nineteenth century or later. And yet, whoever wrote the Book of Mormon appears to have been intimately familiar with the workings of ancient Israelite law as well as with the Nephite legal system that putatively derived from it.

Personally, my effort to bridge the gap between the ancient world and our day is impelled by a belief that Lehi, Nephi, Benjamin, and Alma were real people who lived in a real world. This conviction is strengthened when their words and experiences fit understandably into an ancient legal setting.

Admittedly, the study of law in the Book of Mormon remains explorative. Much remains to be examined. Still, I hope that the conclusions advanced in this book are cogent and that this approach will inspire people to think more about what it means to judge righteously. In the Bible and Book of Mormon, readers find strong examples of successes and failures of righteous judgment by judges, rulers, litigants, and ordinary people. By pondering the legal cases in these scriptures, people can grasp contours of righteous judgment in principle as well as in practice.