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Judicial Punishments: Types and Rationals

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CHAPTER THIRTEEN

JUDICIAL PUNISHMENTS: TYPES AND RATIONALES



To bring this study of the legal cases in the Book of Mormon to closure, the ultimate subject of judicial punishments deserves attention. Every legal case that ended with a guilty verdict saw the infliction of some form of punishment, and judging righteously required, in the end, the application of an appropriate (sometimes legally prescribed) type and level of punishment. Picking up where the general discussion of court procedures left off in chapter 4, and consolidating the specific information about individual case results presented in chapters 5–12, this chapter considers which forms of legal punishments were typically available to judges in biblical times and when, how, and why those punishments were used by Nephite jurists.

The legal cases reported in the Book of Mormon most often resulted in the death of the convicted party. The cases of Abinadi, Nehor, Pachus (Alma 62:9–10), Paanchi, Seantum, and Zemnarihah (3 Nephi 4:28) all ended with the accused being executed under official orders. The cases of Sherem and Korihor concluded with forms of divine judgment or punishment that led to death, while Ammon (Mosiah 7:16), Alma, Amulek, Aaron (Alma 21:12–14), Nephi, and Lehi (Helaman 5:21–22) were delivered from prison before their cases had resulted in their conviction. The possibility of capital punishment was indeed common enough in all ancient legal systems, but it was not the only option open to ancient courts. In fact, actual executions may have been fairly rare, although meaningful statistical evidence in this regard is unfortunately completely lacking.

Ancient legal rules for punishing convicted offenders were often quite specific, even formulaic. Some laws included provisions about what should happen if those laws were broken. In Babylonian law, for example, section 2 in the Laws of Hammurabi provides that if a person is accused of sorcery, the accused “shall go to the holy river; he shall leap into the holy river and, if the holy river overwhelms him, his accuser shall take and keep his

house.” Likewise in biblical law, Leviticus 24:14 spells out the punishment for one who blasphemes the name of the Lord: “Let all that heard him lay their hands upon his head [apparently to transfer the impurity back to the culprit], and let all the congregation stone him.” When such legal specificity existed, it was important for ancient courts and officers to impose the prescribed form of punishment at the conclusion of a trial. Under such circumstances, little latitude was left for judicial discretion in the imposition of the conventional sanctions. Plea bargaining or grants of immunity were even less possible. Whether or not it was possible during some early eras of biblical law for convicted offenders to pay ransom (*kofer*) at the discretion of the next of kin in order to avoid capital punishment, as has been debated, even that escape route was “banned at a late stage in the development of biblical literature (represented by Numbers 35),” as Bernard Jackson explains and allows.¹ In any event, by the time of Lehi and the Book of Mormon the ban on *kofer* in Numbers 35:31–32 may have already been in place, and indeed there is no indication in the Book of Mormon that a righteous judge could give a convict the option of buying his freedom. Nehor, Paanchi, and Seantum were offered no such way out.

Over the years, ancient Near Eastern legal practice increasingly coupled specific infractions with correlative punishments. Because custom strengthened the association of certain consequences with particular transgressions, if a person committed a certain crime or caused a particular injury, society expected the respective punishment to follow, and this outcome was viewed as just. At the end of this process, rabbinic commentary became quite specific about which penalties would be appropriate for most crimes. During Book of Mormon times, however, sentencing guidelines had not yet become entirely rigid, as the novel execution of Abinadi and the extraordinary detention of Alma and Amulek tend to show.

Even where the law attempts to be precise, it will always be impossible for any legal system to enumerate every way in which people may violate the law (as King Benjamin soberly acknowledges in Mosiah 4:29) or to formulate in advance a suitable punishment for every case. Thus logic and analogy also played important roles in the development of ancient penal concepts throughout the ancient Near East and also in the Book of Mormon. Wherever possible, punishments were fashioned so as to relate logically and symbolically to the crime. Thus, under the Code of Hammurabi, a housebreaker would be hanged in the exact place where he broke in (section 21), a looter of a burning house would himself in turn be burned

1. Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 133.

(section 25), the offending tongue of an adopted son who disowned his parents was to be cut out (section 192), the breasts of a wet nurse who wrongfully replaced a child for one who died were to be cut off (section 194), the hand of a son that struck his father or that embezzled seed or fodder was cut off (sections 195, 253), and a person who was supposed to plant seed in a field but failed to do so was to be tied behind two oxen and dragged through the field unless he could pay the prescribed fine (section 256). Many more examples of “mirroring punishments” could be listed.

Ancient law often applied this balancing principle, along with other principles of justice, to fashion specific remedies in cases where no explicit form of punishment was stated. Thus, even when a court was not given the equivalent of statutory direction on what punishment to impose, the decision was not an arbitrary or unprincipled one, for the choices open to the court were limited by both conceptual and practical factors. In theory, principles such as those mentioned above provided controlling guidance, while in practice, only certain options were physically feasible or culturally acceptable in these societies.

A wide variety of punishments are mentioned in the Babylonian, Hittite, Middle Assyrian, and other Near Eastern legal corpora, many of which are completely absent in, and were presumably unauthorized under, biblical law. These include modes of execution (e.g., capital punishment by drowning, impalement, and dragging) and punishments (e.g., fines paid to the palace of the king, long-term imprisonment, branding, and extensive beating).

By contrast, far fewer options seem to have been available to courts and judges operating under biblical law and likewise in the Book of Mormon. Torture, brutality, mutilation, and prolonged incarceration are either wholly absent or only vestigially present in the biblical law codes and narratives. Compared with Assyrian practices, which could be very brutal (including impalement, cutting off noses, tearing out eyes, or castration), the Israelite system of justice appears to have been far more humane, even though Israelite law demanded strict enforcement and required that “thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deuteronomy 19:21).

According to Ze'ev Falk, the laws in the Pentateuch established “fixed forms of punishment”² for the main offenses that those laws recognized. By the time of Lehi, those forms were probably well established by several years of custom and legal experience under the judicial practices instituted

2. Ze'ev W. Falk, *Hebrew Law in Biblical Times: An Introduction*, ed. John W. Welch, 2nd ed. (Provo, UT: Brigham Young University Press; Winona Lake, IN: Eisenbrauns, 2001), 73.

during the monarchy and shaped further by the rules found in the priestly regulations and in the book of Deuteronomy. The punishments discussed below were known and utilized in the Near East around the time of Lehi and are congruently evident in Lehite societies in the Book of Mormon.

Talionic Punishments

As Jacques Mikliszanski has rightly observed, probably no Old Testament passage is more commonly associated with the law of Moses and more frequently misunderstood as endorsing barbaric vengeance than is Exodus 21:23–25: “If any mischief follow, then thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.”³ Even in cases under the law of Moses where this *lex talionis* (talionic law) was literally prescribed as punishment, scholars disagree on how this rubric was actually applied.⁴ The least ambiguous and most important use of the talionic formula can be found in the concept of divine justice—the “ultimate justice, or the effect of a cause from which one simply could not escape”⁵—and in the teachings of prophets about that justice. Warnings that God will adhere to this principle when judging human conduct are plentiful in both the Old Testament and the Book of Mormon, and it is fair to say that no principle is more fundamental to the concept of justice in biblical times than the requirement that the punishment should somehow match, relate to, or balance out the nature of the crime or wrongdoing itself. Talionic justice

3. Jacques Koppel Mikliszanski, “The Law of Retaliation and the Pentateuch,” *Journal of Biblical Literature* 66, no. 3 (1947): 295–303.

4. For some of the main studies of talion in biblical law, see Calum M. Carmichael, “Biblical Laws of Talion,” *Hebrew Annual Review* 9 (1985): 107–26, reprinted in *Witnesses in Bible and Talmud*, ed. David Daube (Oxford: Oxford Centre for Postgraduate Hebrew Studies, 1986), 21–39. Richard Haase, “Talion und spiegelnde Strafe in den keilschriftlichen Rechtscorpora,” *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 3 (1997): 195–201; Bernard S. Jackson, *Studies in the Semiotics of Biblical Law* (Sheffield, England: Sheffield Academic Press, 2000), 271–97; Hans-Winfried Jüngling, “Auge für Auge, Zahn für Zahn.’ Bemerkungen zu Sinn und Geltung der alttestamentlichen Talionsformeln,” *Theologie und Philosophie* 59, no. 1 (1984): 1–38; Philip J. Nel, “The Talion Principle in Old Testament Narratives,” *Journal of Northwest Semitic Language* 20, no. 1 (1994): 21–29; Eckart Otto, “Die Geschichte der Talion im Alten Orient und Israel,” in *Ernten, was man Sät: Festschrift für Klaus Koch*, ed. Dwight R. Daniels, Uwe Gießmer, and Martin Rösel (Neukirchen-Vluyn: Neukirchener Verlag, 1991), 101–30, reprinted in *Kontinuum und Proprium: Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments* (Wiesbaden: Harrassowitz, 1996), 224–45; Stuart A. West, “The *Lex Talionis* in the Torah,” *Jewish Bible Quarterly* 21, no. 3 (1993): 183–88; and Raymond Westbrook, “Lex Talionis and Exodus 21:22–25,” *Revue Biblique* 93, no. 1 (1986): 52–69.

5. James E. Priest, *Governmental and Judicial Ethics in the Bible and Rabbinic Literature* (New York: KTAV, 1980), 155.

achieved a sense of poetic justice, rectification of imbalance, relatedness between the nature of the wrong and the fashioning of the remedy, and appropriateness in determining the measure or degree of punishment. Both divine and human actions, as well as natural consequences, can conform to these talionic principles, so it is often difficult to determine in a given case whether divine, human, or natural justice is involved.⁶ It is important to understand talionic prescriptions in the law of Moses against the broader legal context of the time.⁷ First, the *lex talionis* originated much earlier than the law of Moses. It is not a creation of biblical law. Its roots can probably be traced into the practices of ancient nomadic tribes⁸ and into a pre-legal, “independent, oral existence.”⁹ All legal codes from the ancient Near East contain provisions that impose talionic-type punishments, even if the biblical formulation is not exactly paralleled there.¹⁰ In addition to the talionic punishments mentioned in the Laws of Hammurabi above, this code prescribes that if a physician’s hand causes death or loss of an eye, his hand is to be cut off (section 218); and if a slave does not obey (listen to) his master, his ear is to be cut off (sections 205, 282). Under the Laws of Ur-Nammu, if a female slave speaks insolently to her mistress, her mouth is to be scoured with salt (section 25). Under the Middle Assyrian Laws, if a man kisses another man’s wife, an ax blade is to be drawn across his lip (tablet A9). Under the Hittite Laws, if a man steals bees, he is to be exposed to a swarm of stinging bees (section 92). Under

6. Klaus Koch and T. A. Boogaart argue that the talion embodies a natural law in which God plays no active role. They describe acts as having “a tangible, independent existence and an efficacy all their own. Once launched, these acts return to surround the agent and determine his fate.” T. A. Boogaart, “Stone for Stone: Retribution in the Story of Abimelech and Shechem,” *Journal for the Study of the Old Testament* 32 (1985): 47, discussing Klaus Koch, “Gibt es ein Vergeltungsdogma im Alten Testament,” *Zeitschrift für Theologie und Kirche* 52 (1955): 1–42. This position seems extreme. The Book of Mormon and the Old Testament both support Towner when he says, “Like it or not, there is a notion of divine retribution in the Old Testament which presents God as one who intervenes in human affairs to punish those who anger him.” W. Sibley Towner, “Retributional Theology in the Apocalyptic Setting, Daniel 7–12,” *Union Seminary Quarterly Review* 26, no. 3 (1971): 204–5.

7. Raymond Westbrook, “Mesopotamia: Old Babylonian Period,” in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook (Leiden: Brill, 2003), 1:414 (“An underlying principle of punishment appears to have been its symbolic association with the crime, especially by talion, either in like means of death or like member of family killed [vicarious talion]”); and Tikva Frymer-Kenski, “Anatolia and the Levant: Israel,” in Westbrook, *History of Ancient Near Eastern Law*, 2:1033 (discussing talionic punishments in Israel).

8. Hans J. Boecker, *Law and the Administration of Justice in the Old Testament and Ancient Near East*, trans. Jeremy Moiser (Minneapolis: Augsburg, 1980), 174.

9. Jackson, *Wisdom-Laws*, 188.

10. Jackson, *Wisdom-Laws*, 188–89n87.

the Roman Twelve Tables, if a person maims another's limb, his limb is to be maimed unless he pays damages,¹¹ and so on.

Second, the law of Moses may have actually taken a step forward in the history of civilization by applying talionic punishments (as brutal as they may well seem) to all people equally. Except in Israel, where slavery was sharply curtailed (Exodus 21:1–11; Leviticus 25:39–55) and talionic principles applied universally, slavery and class distinctions pervaded the ancient world and the rules of talionic justice applied only “between members of the same social class.”¹² For example, under the Laws of Hammurabi (sections 198, 199, and 201), if a member of the upper class injured a person of a lower class, the offender was not required to suffer comparable injury as a judicial punishment; he only had to pay damages. In contrast, a main point in the case of the blasphemer holds that the same law should be applied to Israelites and to resident aliens alike (Leviticus 24:16, 22). Thus biblical law made all people equal in this regard before the law.

Third, any legal system that allowed retaliation in kind was undoubtedly open to abuse. Vengeance was usually carried out privately and probably unjustly in many cases (as the boast of Lamech in Genesis 4:23–24 reflects). Under biblical law, however, talionic punishment was imposed by those judging the case. Thus Israel's version of the talion “was a tremendous improvement over earlier vendetta law or differential penalties depending on the social status of aggressor and victim.”¹³ Scholars generally view Israel's application of the talion as “an amplification of the public punishment of crimes as opposed to private revenge, and inseparable from it is an intensification of equality before the law.”¹⁴

Finally, it may well have been the case that the purpose of the “eye for an eye” formula was not . . . to “*inflict* injury (as it might sound to us today) but to *limit* injury,” particularly by preventing a “spiraling of revenge.”¹⁵ Hence, Boecker and others point out that the famous talionic phrase restrictively means “only *one* eye for an eye.”¹⁶ At least in noncapital cases, scholars support the idea that the “eye for eye” punishment was probably subject to financial settlement if the injured person was willing to accept money.¹⁷

11. Jackson, *Wisdom-Laws*, 192.

12. Boecker, *Law and the Administration of Justice*, 123. See Code of Hammurabi 196, 197, 200.

13. Priest, *Governmental and Judicial Ethics*, 147n11.

14. Boecker, *Law and the Administration of Justice*, 132.

15. Boecker, *Law and the Administration of Justice*, 174–75.

16. Boecker, *Law and the Administration of Justice*, 175; and Jackson, *Wisdom-Laws*, 190n98.

17. Jackson, *Wisdom-Laws*, 192–93.

Talionic punishments have been described as identical to, mirroring, or equivalent to the crime committed.¹⁸ An identical talion was one in which the exact kind of injury or atrocity that had been committed was inflicted back upon the offender. For example, a murderer's blood would be shed because he had shed blood (Genesis 9:6). When Adoni-bezek, a Canaanite king, was captured by Judah and Simeon, they "cut off his thumbs and his great toes" precisely because he had cut off the thumbs and big toes of seventy kings whom he had reduced to servitude (Judges 1:6–7). After Samuel chastised Saul for failing to destroy Agag, the king of the Amalekites, the prophet fulfilled the very commandment that the king had been unwilling to carry out. Samuel commanded that the Amalekite king be brought before him, and he gave an explanation of the penalty before executing it: "As thy sword hath made women childless, so shall thy mother be childless among women" (1 Samuel 15:33). After Ahab arranged for the death of the innocent Naboth so that he might inherit his vineyard, the prophet Elijah prophesied that in "the place where dogs licked the blood of Naboth shall dogs lick thy blood," which cursing came to pass (1 Kings 21:19; 22:38). These kings suffered exactly the same atrocities they had inflicted upon others.

In cases of talionic mirroring punishment, the offending part of the wrongdoer's body was punished (e.g., cutting off an offending hand in Deuteronomy 25:11–12; compare Matthew 5:30). On other occasions, the punishment was designed to mimic the offender's own behavior in order to make complete compensation (e.g., if a man let his animals eat in another man's field, he had to make restitution out of the best of his own field, according to Exodus 22:5).

An equivalent talionic punishment was one that involved some characteristic of the crime or wrongdoing but did not need to mete it out as an exact retribution.¹⁹ Forms of equivalent talionic justice were less exact but no less poetic than were identical talions. Sometimes they gave effect (or opposite effect) to the offender's intent, now applied to the offender himself. Often they were the result of divine justice. Thus Haman was hanged on the gallows he had prepared for Mordecai, even though Mordecai was not ever hanged (Esther 7:9–10). Elisha's servant Gehazi experienced a form of

18. Haim H. Cohn, "Talion," in *The Principles of Jewish Law*, ed. Menachem Elon (Jerusalem: Keter, 1975), 525; and Priest, *Governmental and Judicial Ethics*, 147. Falk, *Hebrew Law in Biblical Times*, 73; and Raymond Westbrook, "Punishments and Crimes," in *The Anchor Bible Dictionary*, ed. David Noel Freedman and others, 6 vols. (New York: Doubleday, 1992), 5:555. Jackson, *Wisdom-Laws*, 191n100, emphasizes the distinction between "literal" *talio* and mirroring consequences.

19. Cohn, "Talion," 525. See Deuteronomy 25:12.

equivalent talion because he had accepted a gift for a miracle that Elisha had performed but for which Elisha had not accepted a reward: Elisha had cured Naaman, captain of the Syrian host, of leprosy; because of his greediness, Gehazi was told that the “leprosy . . . of Naaman shall cleave unto thee, and unto thy seed for ever” (2 Kings 5:27). Abimelech, an ambitious Israelite who had killed seventy of his brothers “upon one stone” in order to become king, was killed not upon a stone but by a piece of a millstone: “Thus God rendered the wickedness of Abimelech, which he did unto his father, in slaying his seventy brethren” (Judges 9:56).²⁰ The sense of justice epitomized in these cases runs deeply throughout biblical law. Thus if a person afflicts any widow or fatherless child in any way, then “your wives shall be widows, and your children fatherless” (Exodus 22:22–24).

Similarly, the Book of Mormon records incidents of God punishing the wicked by afflicting them with the evil (or an equivalent and associated punishment) that they have inflicted upon others. Some of these occasions arise out of judicial settings; others surface in narrative contexts. For example, the prison walls fell upon those who unjustly imprisoned Alma and Amulek (Alma 14:27). After speaking against God, Korihor was cursed so that he could no longer speak (30:50). As Abinadi was being burned, he prophesied unto those who burned him, “Ye shall suffer, as I suffer, the pains of death by fire” (Mosiah 17:18); this came to pass when Noah suffered death by fire at the hands of his own men (19:20). Zemnariyah, the treasonous leader of the Gadianton robbers, “was taken and hanged upon a tree, yea, even upon the top thereof,” after which that tree was symbolically felled to the earth, representing the way that God will fell to the earth all those who elevate themselves and try to bring down the people of God (3 Nephi 4:28–29). Mormon observed that “the judgments of God will overtake the wicked; and it is by the wicked that the wicked are punished” (Mormon 4:5). Following this remark, Mormon recorded a stream of atrocious acts that wicked Nephites and Lamanites committed against each other (vv. 11–18).

Prophets in both the Old Testament and the Book of Mormon taught that the talionic principle was especially part of divine justice. A remarkable chiasmic²¹ statement of this concept of retributive justice is found in Leviticus 24:17–21:

20. See Boogaart, “Stone for Stone,” for a detailed analysis of the talionic principle in this story.

21. The entire case of the blasphemer is chiasmically structured, with verses 17–21 at the heart of this elegant and meaningful composition. See my discussion in “Chiasmus in Biblical Law: An Approach to the Structure of Legal Texts in the Hebrew Bible,” in *Jewish Law Association*

And he that killeth any *man* shall surely be put to death.
 And he that killeth a *beast* shall make it good, beast for beast.
 And if a man cause a *blemish* in his neighbor as he hath done
 so shall it be done to him.
 Breach for breach
 Eye for eye
 Tooth for tooth
 As he hath caused a *blemish* in a man,
 so shall it be done to him again
 And he that killeth a *beast*, he shall restore it.
 And he that killeth a *man*, he shall be put to death.

The inverted symmetry, or reverse parallelism, of this balanced literary passage is worth special attention because it so impressively and fully conveys the balancing principle of talionic justice. Two Hebrew words here are especially important as markers of talionic texts: *ka'asher* (“as that,” as in “*ka'asher* he has done”) and *tahat* (“for,” as in “fracture *tahat* fracture”). If these two words were at one time associated with different legal traditions (with the one word applicable to intentional injury, the other to any actual conduct whether intentional or not), by the time of Leviticus 24 and perhaps other related legal texts, this legal distinction had been “unified” into a single concept,²² potentially covering all actions (planned or implemented, intentional or merely negligent). Completed actions remained of paramount concern: “As (*ka'asher*) thou hast done, it shall be done unto thee: thy reward shall return upon thine own head,” preached Obadiah (Obadiah 1:15). But intentions were also an important consideration in fashioning talionic punishments in ancient Israel.²³ It was considered just and fitting for a person to suffer the same as he had planned for another, even if the plan had not materialized. Thus the rationale for punishing the false witness was to “do unto him as he had thought to have done unto his brother” (Deuteronomy 19:19). Likewise, Jeremiah wrote: “I the Lord search the heart, I try the reins, even to give every man according to his ways, and according to the fruit of his doings” (Jeremiah 17:10).

King Benjamin and Alma similarly taught that men would be judged and rewarded not only according to their actions but also according to their thoughts or intentions (Mosiah 3:24–25; Alma 12:14). The talionic

Studies IV: The Boston Conference Volume, ed. Bernard S. Jackson (Atlanta: Scholars Press, 1990), 7–12; discussed in Jackson, *Wisdom-Laws*, 195, 201–7.

22. Jackson, *Wisdom-Laws*, 206–7.

23. Priest, *Governmental and Judicial Ethics*, 148–49.

principle is evident in Benjamin's teaching that "if ye judge the man who putteth up his petition to you for your substance that he perish not, and condemn him, how much more just will be your condemnation for withholding your substance, which doth not belong to you but to God, to whom also your life belongeth; and yet ye put up no petition, nor repent of the thing which thou hast done" (Mosiah 4:22).

There is no better illustration in the Book of Mormon of a prophet's explanation of the literal talionic nature of God's justice than Alma's admonition to his son Corianton in Alma 41:13–15:

The meaning of the *word restoration* is to bring back again
 evil for evil, or
 carnal for carnal, or
 devilish for devilish

- (a) *good* for that which is (a') *good*,
 - (b) *righteous* for that which is (b') *righteous*,
 - (c) *just* for that which is (c') *just*,
 - (d) *merciful* for that which is (d') *merciful*;
- therefore my son
- (d') see that you are *merciful* unto your brethren,
 - (c') deal *justly*,
 - (b') judge *righteously*,
 - (a') and do *good* continually.

- And if ye do all these things
 then shall ye receive your reward;
- (d) Yea, ye shall have *mercy* restored unto you again;
 - (c) Ye shall have *justice* restored unto you again;
 - (b) Ye shall have a *righteous* judgment restored to you again
 - (a) And ye shall have *good* rewarded unto you again.

For that which ye do send out
 Shall return unto you again
 And be restored

Therefore the *word restoration* more fully condemneth the sinner and justifieth him not at all.

As in the passage from Leviticus 24 discussed above, an elaborate and elegant chiasmic structure embodies the very notion of the talion, an im-

portant teaching in the words of Alma.²⁴ And here too the text reflects a confluence of the *tahat* formula (evil for evil, good for good) and also the *ka'asher* formula (for that which ye do send out).

Although most uses of the talionic formula are found in passages expressing statements of divine justice, the formula was also employed as a juridical principle. The law of Moses, however, prescribed it expressly in only three cases, and even there its meaning and operation have been the subject of much debate. The crimes for which biblical law required judges to be guided by this rubric in fashioning identical punishments were murder (Genesis 9:6; Exodus 21:23; Leviticus 24:17, 21), false witness (Deuteronomy 19:19), and bodily injury (Exodus 21:24–25; Leviticus 24:19–20).

There is little dispute that talionic retribution was applied literally in the case of murder in Lehi's day.²⁵ This becomes clear when the scriptural passages cited above are combined with Numbers 35:31, which prohibits the accepting of compensation for murder in lieu of the execution of the murderer. The reason for this is outlined later in the same passage: "So ye shall not pollute the land wherein ye are: for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it" (v. 33).²⁶ In order that the land might be cleansed, the law assigned an "avenger of blood" the task of slaying the murderer (vv. 12, 19). The English term *avenger* is somewhat misleading; it is "more accurately to be rendered as a redeemer of blood,"²⁷ which demonstrates that the talion in this case was more redemptive than vengeful in nature.²⁸

24. See Alma 9:28 and 11:44 for other talionic teachings.

25. Even Mikliszanski, who otherwise maintains that literal application of the talion was absent in ancient Israel as a juridical principle, admits that the law of Moses prescribes life-for-life retribution in the case of intentional murder. Mikliszanski, "Law of Retaliation and the Pentateuch," 296–97.

26. According to Greenberg, "killing in self-defense and the judicial execution of criminals are explicitly exempted (Exodus 22:2; Leviticus 20:9, etc.)." Priest, *Governmental and Judicial Ethics*, 159, citing Moshe Greenberg, "Bloodguilt," *Interpreter's Dictionary of the Bible*, ed. George Arthur Buttrick (New York: Abingdon, 1962), 1:449.

27. Haim H. Cohn, "Blood-Avenger," in Elon, *Principles of Jewish Law*, 530.

28. As noted earlier, however, those guilty of manslaughter (i.e., killing a man unintentionally) were not condemned to death by the law. The distinction between murder and manslaughter, particularly in the eyes of the blood avenger (who was the next of kin of the victim), was often quite blurry (Cohn, "Blood-Avenger," 530); for this reason cities of refuge were provided for those who had killed unintentionally (Numbers 35:26–28; Deuteronomy 19:4–6). If there was a dispute concerning the guilt of one who had taken refuge in such a city (Cohn, "Blood-Avenger," 531–32), there was a public trial and a judgment by the congregation "between the slayer [manslaughterer] and the revenger of blood" (Numbers 35:24–25; Deuteronomy 19:11–13).

Perhaps the most striking prescription of the talion was in the case of false witness. “If a false witness rise up against any man to testify against him that which is wrong . . . then shall ye do unto him, as he had thought to have done unto his brother” (Deuteronomy 19:16, 19). In other words, if a person falsely accused someone of murder—for which the punishment was death—then the accuser would be executed instead. This seemingly harsh penalty for perjury undoubtedly stems from the nature of Israelite trial law. As Dale Patrick points out, “The Israelite trial depended heavily on testimony; evidence played a much smaller role than it does in modern trial procedure. Consequently, trials were vulnerable to dissembling witnesses.”²⁹ To deter Israelites from abusing this system,³⁰ the law provided a stiff penalty against false accusers. The story of Susanna and the two elders offers a literary case in point. The elders falsely accused Susanna of adultery, for which she was nearly executed before Daniel proved that her accusers were lying. The elders were then put to death “to fulfill the law of Moses” (Daniel 13:62).³¹ This, however, is the only apparent instance of the talion being applied against false witnesses; it is unclear how often and in what manner the talion was generally implemented in actual cases of perjury, let alone in lesser cases of honest mistakes of judgment or memory.³² But at a minimum, this story reflects a widespread cultural expectation.

The practical application of the rules that prescribe talionic punishment in cases of personal injury (Exodus 21:24–25; Leviticus 24:19–20) has been the subject of much discussion.³³ The debate centers around whether the verses call for the literal application of the talion (i.e., if one had poked out another’s eye, his own eye was poked out) or merely the administration of penalties commensurate to the crime or tort (i.e., fines or ransom). Haim Cohn, James Priest, and others tend to believe that literal application of the talion was at least an option sometimes used in ancient Israelite law,³⁴ while other scholars, such as Dale Patrick, view

29. Dale Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1985), 125.

30. See 1 Kings 21 for a case in which this vulnerability was successfully exploited.

31. In the Old Testament Apocrypha, Daniel 13.

32. Miklitzanski argues that *lex talionis* was only literally applied in the case of murder and that consequently perjurers in other cases were only penalized commensurately (i.e., they paid fines instead of receiving the physical punishment) because that is the punishment the accused would have received. Miklitzanski, “Law of Retaliation and the Pentateuch,” 299–300.

33. See Boecker, *Law and the Administration of Justice*, 172–73; Miklitzanski, “Law of Retaliation and the Pentateuch,” 295–303; Patrick, *Old Testament Law*, 180–81; and Bernard S. Jackson, *Wisdom Laws*, 196–208.

34. Cohn, “Talion,” 526; and Priest, *Governmental and Judicial Ethics*, 149–50.

“biblical *lex talionis* as a poetic expression of equivalence applied literally for murder but figuratively for injury.”³⁵ In the Hebrew Bible there is no record of *lex talionis* being applied literally in a legal case involving personal injury. While evidence concerning the matter is inconclusive, the arguments that literal application of the talion was absent or infrequent in cases of personal injury seem more convincing than those to the contrary. By talmudic times, any literal application of the talionic formula was reserved to God; commensurate compensation, complete with an elaborate formula for calculating the amount of the fine, became the norm among the rabbis.³⁶

Thus, while talionic formulas are found mostly in cases of divine justice in the biblical period, the talionic principle guided judges in certain cases as well. The same was the case in Book of Mormon law and society.

The clearest application of the talion in the Book of Mormon was for murder.³⁷ The law of Mosiah prescribed death as the penalty for murder (Alma 1:14; 30:10),³⁸ and at least part of the rationale behind this provision was similar to the explanation given in Numbers 35. Nehor, who had killed Gideon, was told, “Thou hast shed the blood of a righteous man, yea, a man who has done much good among this people; and were we to spare thee his blood would come upon us for vengeance” (1:13). As Nehor had shed blood, his blood was shed in the belief that doing so would cleanse the land and the people and the judges of any guilt.

Talionic principles also figure prominently in the Book of Mormon cases of false witnessing. Abinadi was put on trial because of his prophecies that King Noah would burn “as a garment in a hot furnace” and that the people would “have burdens lashed upon their backs” (Mosiah 12:3, 5). He was accused of and punished for lying or reviling the king (v. 14; 17:12). In an apparent application of the talionic punishment for being a false accuser, the priests of King Noah applied as a punishment the very things that he had prophesied would come upon the king and the people:

35. Patrick, *Old Testament Law*, 180; and Roland de Vaux, *Ancient Israel: Its Life and Cultures* (New York: McGraw Hill, 1965), 1:149–50.

36. Priest, *Governmental and Judicial Ethics*, 149–52. Other ancient Near Eastern cultures, such as the Hittites, also had compensation schemes. Richard Haase, “Anatolia and the Levant: The Hittite Kingdom,” in Westbrook, *History of Ancient Near Eastern Law*, 1:652 (“Compensation is paid in two forms: replacement of the object . . . or pecuniary payment equal to the loss”).

37. This was also known in the ancient Near East. Haase, “Anatolia and the Levant: The Hittite Kingdom,” 1:644.

38. Indeed, murder is the only crime listed in Alma 30:10 for which capital punishment is expressly given as the penalty. This was narrower in scope than capital punishment under Hebrew law, which included adultery and “(other) religious infractions.” Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:1027–28, 1034, 1037.

Abinadi was bound and “scourged [and/or scorched] . . . with faggots” (bundles of sticks) and burned. Abinadi’s testimony, however, was not false—the people soon had heavy burdens placed on their backs (21:3), and the king suffered death by fire (19:20).³⁹

In a similar case of perverted justice, the Ammonihahite judges and lawyers mocked Alma and Ammon by “gnashing their teeth upon them, and spitting upon them, and saying: How shall we look when we are damned?” (Alma 14:21). Alma and Amulek had just warned the people about the consequences of their sins if they did not repent. Perhaps it was in response to these perceived false accusations that the judges and lawyers treated Alma and Amulek in a manner similar to that which they had predicted their Ammonihahite antagonists would encounter in hell.

The Book of Mormon is silent concerning punishments imposed or compensation extracted in cases of personal injury.

In summary, the talionic principle—that one will or should be treated as he treats others—is applied in the Book of Mormon in the same pattern as in ancient Israel. Prophets taught that it was an integral part of God’s justice; divine intervention in human affairs brought about talionic justice on several occasions, and the Nephite legal system clearly acknowledged the talion in the case of murder and probably applied it against those who had falsely testified or sworn false accusations in commencing legal actions.

Stoning

Another form of punishment evident in both biblical law and the Book of Mormon is stoning, the most common mode of inflicting capital punishment in ancient Israel.⁴⁰ Stoning is prescribed as the requisite form of punishment for eighteen different crimes in the Bible. Nevertheless, it was not the only method of execution used, nor was its use limited to those eighteen offenses.⁴¹ Indeed, the mode of execution of a murderer in the early biblical period was often “left to the discretion” of the next of kin of the victim who was acting as the “redeemer of blood.”⁴² But in general, “persons put to death for public crimes were mostly stoned and then hanged.”⁴³ The stoning resulted in the death of the criminal. Hanging the

39. For an extended discussion of the trial and execution of Abinadi, see chapter 6 above.

40. Westbrook, “Punishments and Crimes,” 5:555; and Elon, *Principles of Jewish Law*, 526. See, for example, Leviticus 24:23; Numbers 15:36; 1 Kings 21:13; 2 Chronicles 24:21.

41. Jackson, *Wisdom-Laws*, 261–63; Haim H. Cohn, “Capital Punishment,” in Elon, *Principles of Jewish Law*, 527; and Maimonides, *Yad, Sanhedrin* 15:10.

42. Falk, *Hebrew Law in Biblical Times*, 73.

43. Falk, *Hebrew Law in Biblical Times*, 73.

body was a method of publicly humiliating and making an example of the executed person (Deuteronomy 21:22).

Several theories have been proposed to rationalize the use of stoning. For example, Julius Finkelstein argues that all cases of stoning involved crimes that were “insurrections against the cosmic order itself.”⁴⁴ Anthony Phillips sees stoning as most applicable to infractions of the Decalogue, perhaps, as Jackson suggests, because stoning was ordained in Exodus 19:13 as the punishment “for the offence of breaking the sanctity of the mountain at the time of the revelation of these laws.”⁴⁵ But none of these theories explain all of the cases of stoning. More significant than the nature of the wrong being punished is the public dimension of stoning. Stoning was always the collective responsibility of the community and was carried out to drive away from the village the evil that had been committed. “Stoning was the instinctive, violent expression of popular wrath. . . . All the people had to pelt the guilty one with stones until he died.”⁴⁶ The accusers and witnesses upon whose initiative and testimony the culprit was convicted were required to cast the first stones: “The hands of the witnesses shall be first upon him to put him to death” (Deuteronomy 17:7). Then “all the people” were required to join in the stoning (Leviticus 24:14; Numbers 15:35; Deuteronomy 17:7; 21:21).⁴⁷ In this way, “so shalt thou put evil away from among you” (Deuteronomy 17:7; 21:21). The essence of this punishment is to cast out, or exterminate (*baʿar*), the wickedness by casting the stones, whether spontaneously or after judicial determination of guilt.⁴⁸ In the talmudic period, several legal reforms rendered this procedure perhaps somewhat more humane and less of a public spectacle—the culprit could be thrown down upon the rocks at the “stoning place,” which was a quicker form of death than having stones thrown at him.⁴⁹ But this mode of execution still retained its public character.

A few Book of Mormon texts mention stoning. From their scriptural records, Nephites knew that Zenock and other ancient Israelite prophets

44. Julius J. Finkelstein, “The Ox That Gored,” *Transactions of the American Philosophical Society* 71, no. 2 (1981): 28.

45. Anthony Phillips, “The Decalogue—Ancient Israel’s Criminal Law,” *Journal of Jewish Studies* 34, no. 1 (1983): 1–20; discussed in Jackson, *Wisdom-Laws*, 263.

46. Cohn, “Capital Punishment,” 526.

47. Boecker, *Law and the Administration of Justice*, 40; Priest, *Governmental and Judicial Ethics*, 124–25; and Hyman E. Goldin, *Hebrew Criminal Law and Procedure* (New York: Twayne, 1952), 31.

48. Bernard Jackson, “The Goring Ox Again,” *Journal of Juristic Papyrology* 18 (1974): 55–93; reprinted in Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 112–13, which seeks to distinguish between stoning as an early method of lynching and stoning as a mode of judicial execution, perhaps reflected in the two terms *ṣaʿkeil* and *rāgam*, respectively.

49. Cohn, “Capital Punishment,” 527; and Goldin, *Hebrew Criminal Law and Procedure*, 32.

had been stoned (1 Nephi 1:20; Alma 33:17). Nephi also prophesied that the wicked in the New World would “cast out the prophets, and the saints, and stone them, and slay them; wherefore the cry of the blood of the saints shall ascend up to God from the ground against them” (2 Nephi 26:3). The fulfillment of that prophecy occurred when God destroyed the cities of Laman, Josh, Gad, and Kishkumen because of their wickedness “in casting out the prophets and stoning those whom [God] did send to declare unto them concerning their wickedness and their abominations . . . that the blood of the prophets and the saints whom [God] sent among them might not cry unto [God] from the ground against them” (3 Nephi 9:10–11; see Helaman 13:33; 3 Nephi 8:25). Apparently the people of these communities apprehended those prophets as unwelcome intruders and then executed them by stoning. The fact that this was a community activity is evident from 3 Nephi 7:19, reporting that Nephi’s brother was stoned and suffered death “by the people.”

Several cases during the reign of the Nephite judges are reported in which stoning was used as an extrajudicial, community means of harassing a person or driving him out of a city, but not to the point of putting him to death. The men of Ammonihah who accepted Alma and Amulek were “cast out and stoned” by those who were sent “to cast stones at them,” but these converts survived to hear from Alma and Amulek how their wives and children had been burned (Alma 14:7; 15:1–2). The sons of King Mosiah were “stoned and taken and bound” in the cities of the Lamanites (26:29). Alma’s son Shiblon was stoned but not killed by the Zoramites (38:4), and the people of Zarahemla drove Samuel the Lamanite away by throwing stones at him, as well as by shooting arrows (Helaman 16:2; compare Exodus 19:13, which calls for either stoning or shooting arrows). In these instances, stoning was used to expel, injure, or terrify the victim, but apparently the assailants lacked the judicial power or motivation to carry out the stoning to the point of death. In the land of Zarahemla, the law of Mosiah removed from the people the legal “power to condemn any one to death” (3 Nephi 6:22),⁵⁰ and the sons of Mosiah may have been pro-

50. The final say over capital punishment in the ancient Near East, as in the Book of Mormon, often rested with the king. Kathryn Slanski, “Mesopotamia: Middle Babylonian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 1:489 (“As in other periods, the king is the highest judge in the land and sits on cases concerning loss of life”); and Ignacio Márquez Rowe, “Anatolia and the Levant,” in Westbrook, *History of Ancient Near Eastern Law*, 1:705, 716, 739 (“A crime [*arnu*] that carried the death penalty of the evildoer . . . [was] in all likelihood decided by [the king.] . . . It seems clear that execution was supervised by the king. . . . In all likelihood execution was within the exclusive competence of the king”).

tected somewhat by their royal status. Among the Lamanites, no instances of stoning as a legal punishment are mentioned.

Hanging on a Tree (and Crucifixion)

Hanging presents another close parallel. At the outset, it is important to note that “hanging” could be used either as a means of execution or as a way of displaying the body of an executed criminal. The mode of hanging could vary. It might involve tying a rope around the neck of the victim and hanging him until he died of strangulation or of a broken neck.⁵¹ In other cases, the culprit or his corpse might have been strapped onto the tree (‘*l-‘etz*, Deuteronomy 21:22) or “upon the top thereof” (3 Nephi 4:28), with death then occurring mainly by exhaustion and asphyxiation.⁵²

As a form of punishment used in ancient Israelite society, hanging was sometimes coupled with stoning. Under certain circumstances, the body of the convicted criminal would be hung following the execution by stoning. The purpose of hanging the corpse was to publicly humiliate the offender and deter others from committing similar offenses. When hanging was used as a method for displaying the corpse of an executed criminal, it was done to ensure that the criminal was dead and to expose the corpse infamously to the world. This method of exposing the corpse for public humiliation and warning was practiced by many ancient cultures. For example, as mentioned above, the Code of Hammurabi required that if a man had broken into a house, he was to be put to death and then hung before the breach that he had caused. A similar punishment, that of execution followed by a public hanging of the corpse, was required if a man caused the removal of the identifying marks on another’s slave so that the slave could not be traced.⁵³

On other occasions, however, hanging was the method chosen for the execution itself. Deuteronomy 21:22–23 is the key text: “And if a man have committed a sin worthy of death, and he be to be put to death, and thou hang him on a tree: his body shall not remain all night upon the tree, but thou shalt in any wise bury him that day; (for he that is hanged is accursed

51. The case involving Haman and Mordecai (Esther 5:14; 7:9–10) apparently followed Persian practices. Haman, a Persian, had secretly planned to kill Mordecai, a Jew. When the Persian king discovered Haman’s treachery, he caused Haman to be hanged on the gallows that Haman had built. The gallows, “fifty cubits high,” was probably used to hang Haman with a rope around his neck, but the record does not clearly state the details.

52. For a medical analysis of death by hanging or crucifixion, see W. Reid Litchfield, “The Search for the Physical Cause of Jesus Christ’s Death,” *BYU Studies* 37, no. 4 (1997–98): 93–109.

53. Code of Hammurabi 227.

of God;) that thy land be not defiled, which the Lord thy God giveth thee for an inheritance.”

A graphic case of hanging as a method of execution is found in 3 Nephi 4:28–33. It is one of the most complete accounts of an execution ceremony found in any ancient record. This text gives, in considerable detail, an account of the execution of Zemnarihah, the captured leader of the defeated Gadianton robbers. The account begins with the stark statement “And their leader, Zemnarihah, was taken and hanged upon a tree, yea, even upon the top thereof until he was dead” (3 Nephi 4:28). In Zemnarihah’s case, it is clear that he was not executed by stoning or otherwise before his body was hung on the tree; instead, he was “hanged . . . until he was dead,” apparently dying by strangulation or suffocation. This suggests that the Nephites understood Deuteronomy 21:22 to allow execution by hanging—a reading the rabbis also saw as possible. While the rabbis generally viewed hanging only as a means in their day of exposing the dead body after it had been stoned,⁵⁴ they were aware of an archaic penalty of “hanging until death occurs.”⁵⁵ For example, they mention an occasion when a number of women were “hung” to death as witches in Ashkelon in the first century BC, and Josephus tells of one occasion when eight hundred Pharisees were crucified (a form of hanging) by Alexander Jannaeus, one of the Maccabean high priests in Jerusalem (103–76 BC).⁵⁶ The rabbis, however, rejected hanging as an obsolete means of execution, since this was “as the government does.”⁵⁷ This reasoning implies that they had no objection to hanging as a legally and historically possible form of execution, but they rejected it because it had become too closely identified with Roman practices from which the rabbis sought to distance themselves.

Crucifixion is often thought of only as a Roman or Persian mode of punishment; but execution by hanging a person on a tree is now found in the Dead Sea Scrolls, especially as a mode of execution for traitors or people involved illegally in wonder-working.⁵⁸ In the Temple Scroll from Qumran, the prescribed penalty for one who “informs against [or slan-

54. “Persons put to death for public crimes were mostly stoned and then hanged.” Falk, *Hebrew Law in Biblical Times*, 73.

55. Cohn also acknowledges strangulation by hanging as an extraordinary remedy. Cohn, “Capital Punishment,” 529. See also Babylonian Talmud (hereafter TB) *Sanhedrin* 6:6.

56. Josephus, *Wars*, I, 97.

57. TB *Sanhedrin* 6:6–7.

58. John W. Welch, “Miracles, *Maleficium*, and *Maiestas* in the Trial of Jesus,” in *Jesus and Archaeology*, ed. James H. Charlesworth (Grand Rapids, MI: Eerdmans, 2006), 381–82. See generally John C. Robison, “Crucifixion in the Roman World: The Use of Nails at the Time of Christ,” *Studia Antiqua* 2, no. 1 (Brigham Young University, 2002): 25–59.

ders] his people, and delivers his people up to a foreign [pagan] nation,” or one who “has defected into the midst of nations, and has cursed his people, [and] the children of Israel,” is that he shall be “hung on a tree.”⁵⁹ It should be noted that the Temple Scroll’s description of the kinds of cases that deserve hanging fits Zemnarihah’s case exactly. As a robber who had defected away from his people, who had been party to threatening demands that the Nephites deliver up their lands and possessions (3 Nephi 3:6), and who had attacked his people, Zemnarihah was a most notorious and despicable traitor. He received nothing short of the most humiliating public hanging.

The execution of Zemnarihah closely followed ancient customs of ceremony and law. The Book of Mormon text goes on to say that after he was dead, “they did fell the tree to the earth” (3 Nephi 4:28). Quite clearly, the main reason for hanging Zemnarihah on the *top* of the tree was to make the greatest spectacle of his death and also of his fall when the tree was chopped down. Upon the felling of the tree, the people chanted together “with a loud voice, saying: May the Lord preserve his people in righteousness and in holiness of heart, that they may cause to be felled to the earth all who shall seek to slay them because of power and secret combinations, even as this man hath been felled to the earth” (vv. 28–29). Next they exulted and rejoiced and cried out “with one voice” for God to “protect this people in righteousness, so long as they shall call upon the name of their God for protection” (v. 30). Then they “broke forth, all as one, in singing and praising their God for the great thing which he had done for them, in preserving them from falling into the hands of their enemies” (v. 31). They also shouted “Hosanna!” (literally “Save us now!”),⁶⁰ which fittingly here, as in Psalm 118:25, “expresses the prayer that God will grant help and success.”⁶¹ Although the usage and history of the word *hosanna* is puzzling in many instances, it has been suggested that Jewish liturgical usage dating to at least 163 BC understood the word as having “political, as

59. 11QT 64:6–11. See also Otto Betz, “The Temple Scroll and the Trial of Jesus,” *Southwestern Journal of Theology* 30, no. 3 (1988): 5–8; Max Wilcox, “‘Upon the Tree’—Deut 21:22–23 in the New Testament,” *Journal of Biblical Literature* 96, no. 1 (1977): 85–99; J. Massyngberde Ford, “‘Crucify him, Crucify him’ and the Temple Scroll,” *Expository Times* 87, no. 9 (1976): 275–78; Joseph M. Baumgarten, “Does *tlh* in the Temple Scroll Refer to Crucifixion?” *Journal of Biblical Literature* 91, no. 4 (1972): 472–81; Yigael Yadin, “Peshar Nahum (4Q pNahum) Reconsidered,” *Israel Exploration Journal* 21, no. 1 (1971): 1–12; and Samuel Rosenblatt, “The Crucifixion of Jesus from the Standpoint of Pharisaic Law,” *Journal of Biblical Literature* 75, no. 4 (1956): 315–21.

60. On the meaning of *hosanna*, see Eduard Lohse, “Hosanna,” in *Theological Dictionary of the New Testament*, ed. Gerhard Kittel and Gerhard Friedrich (Grand Rapids, MI: Eerdmans, 1974), 9:682–84.

61. Lohse, “Hosanna,” 9:682.

well as . . . religious, implications. . . . It is a one-word prayer with potential political impact to unsettle oppressors everywhere.”⁶² The Nephite usage on this occasion appears to have served identical purposes. Finally, they blessed the name of the Lord and wept profusely in a great and joyous celebration (3 Nephi 4:32–33). This outburst may have been spontaneous, but it seems more likely that the people were repeating customary or ritualistic words, since they all shouted and sang out in unison.

Several factors indicate the antiquity of the execution of Zemnarihah. First, no trial is mentioned; the people took him straightaway and executed him. This treatment can be explained by Zemnarihah’s status as a robber. Robbers in the ancient world were more than common thieves; they were outsiders and enemies to society itself. As such, the ancients reasoned, they were outlaws, outside the law, and not entitled to legal process. Against bandits and brigands, “the remedies were military, not legal.”⁶³

It is also significant that the tree on which Zemnarihah was hung was chopped down. This appears to have been done consciously in accordance with ancient legal custom. Although the practice cannot be documented as early as the time of Lehi, Jewish practice shortly after the time of Christ expressly required that the tree upon which the culprit was hung had to be buried with the body.⁶⁴ Hence the tree had to be chopped down. The rabbis understood that this burial should take place immediately, and thus the Babylonian Talmud⁶⁵ recommends hanging the culprit on a detached tree or a post. This way, the eminent medieval Jewish scholar Maimonides explains, “no felling is needed.”⁶⁶ Unfortunately, the origins of this particular practice in Israelite legal history are obscure. Only these rabbinic instructions and the execution of Zemnarihah have survived as evidences of this unusual practice. The rather striking similarities between these two sources, however, bespeak a common historical base. Accordingly, one

62. Marvin H. Pope, “Hosanna—What It Really Means,” *Bible Review* 4, no. 2 (April 1988): 16–25, quotations on 25. Much has also been written propounding various theories about the word *hosanna* and why the people shouted “hosanna to the Son of David” when Jesus entered Jerusalem (Matthew 21:8–9; Mark 11:7–10; Luke 19:35–38; John 12:12–15). For example, see Eric Werner, “‘Hosanna’ in the Gospels,” *Journal of Biblical Literature* 65, no. 2 (1946): 97–122; and J. Spencer Kennard Jr., “‘Hosanna’ and the Purpose of Jesus,” *Journal of Biblical Literature* 67, no. 2 (1948): 171–76. See generally Bjørn Sandvik, *Das Kommen des Herrn beim Abendmahl im Neuen Testament* (Zürich: Zwingli, 1970).

63. Jackson, *Wisdom-Laws*, 306; and *Theft in Early Jewish Law*, 180, 251–60.

64. TB Sanhedrin 6:7, 46b.

65. TB Sanhedrin 6:7, 46b.

66. *Code of Maimonides*, Sanhedrin 15:9. See Moses Maimonides, *The Code of Maimonides: Book Fourteen, the Book of Judges*, trans. Abraham M. Hershman (New Haven CT: Yale University Press, 1949), 43.

may assume that the formalities observed in 3 Nephi 4 were brought to the New World by Lehi's people, from which one may plausibly infer that these practices were known in pre-exilic Israel.

The rationale for chopping down the tree seems to relate to the idea of removing all traces and recollections of the executed criminal from the face of the earth, as well as expunging any impurities that the dead body would have caused. According to Maimonides, the tree should be removed "in order that it should not serve as a sad reminder, people saying: 'This is the tree on which So-and-so was hanged.'"⁶⁷

This concern reflected by Maimonides shows that, in the minds of the people, the tree upon which the criminal had been hung was associated with the person who was executed. Similarly, the Nephites expressly identified the tree upon which Zemnarihah was hung with him and all those like him. As mentioned above, the people saw the felling of Zemnarihah's tree as a symbolic act, figuratively representing the downfall and elimination of this infamous robber. They cried out: "May [the Lord's people] cause to be felled to the earth all who shall seek to slay them . . . even as this man hath been felled to the earth" (3 Nephi 4:29).

In addition, the ancient idea of fashioning the punishment to fit the crime was carried out here.⁶⁸ The punishment of Zemnarihah was related symbolically to his offense. He was hung in front of the very nation he had tried to destroy,⁶⁹ and he was felled to the earth much as he had tried to bring that nation down.

Finally, the chanting of the people, proclaiming the wickedness of Zemnarihah, is reminiscent of the ancient practice requiring a notorious execution to be heralded. Deuteronomy 19:20, speaking of the punishment of those convicted of being false accusers, demands that "those which remain shall hear, and fear, and shall henceforth commit no more any such evil among you." In other words, the punishment of an offender was to serve, at least in one respect, as an example and as a warning to others. This was accomplished by immediate publication of the punishment. Commenting on this ancient practice, Rabbi Jeudah explained: "He is executed immediately and a proclamation is written and sent to all places."⁷⁰ In particular, all public matters, such as the execution of a rebelling judge, had to be heralded.⁷¹

67. *Code of Maimonides*, Sanhedrin, 15:9.

68. See generally the discussion of talion above.

69. Compare Code of Hammurabi 21, where the hanging was "in front of the place where he broke in." Similarly, Zemnarihah was hung in front of the nation he had offended.

70. TB Sanhedrin 10:6, 89a.

71. TB Sanhedrin 10:6, 89a.

Thus it is consistent that the execution of Zemnarihah, a notorious public offender, was proclaimed long and loud in immediate connection with his death. Much the same occurred with the prompt heralding of the outcome of Korihor's case (Alma 30:57). Lying behind both these cases were obvious political and religious motivations seeking to ensure that all those who remained would "hear and fear" and not follow the ways of these men who had radically opposed the central government. Thus the fear of God was specifically instilled in the people by an incantation against "all who shall seek to slay [the righteous]" (3 Nephi 4:29).

Burning

Burning represents a Book of Mormon expansion on Near Eastern practice since it was rarely employed as a means of execution or punishment in the Bible.⁷² Burning is first mentioned in the patriarchal period, when Judah said of his daughter-in-law Tamar, "Bring her forth, and let her be burnt" (Genesis 38:24). Fire was also used, after execution by stoning, to exterminate the household of Achan, who had "sinned against the Lord God" by secreting booty under his tent (Joshua 7:20, 25).⁷³ These two early accounts typify the two kinds of offenders for whom burning was prescribed or mandated: first, it was used in cases involving "grave sexual offenses," such as the man who has sexual relations with his mother-in-law (Leviticus 20:14) or the daughter of a priest who becomes a whore (21:9);⁷⁴ and second, it "was applied as a penalty for grave offenses against the divinity,"⁷⁵ as in the case of Achan.⁷⁶ In situations where God had been

72. Burning as punishment was not unknown in other ancient cultures. For example, in Egypt it appears that "the Tod Inscription of Sesostri I may mandate burning as a legal punishment." Richard Jasnow, "Egypt: Middle Kingdom and Second Intermediate Period," in Westbrook, *History of Ancient Near Eastern Law*, 1:256; see also Richard Jasnow, "Egypt: New Kingdom," in Westbrook, *History of Ancient Near Eastern Law*, 1:343 ("Death through burning is apparently attested in the New Kingdom"). It also appears in Mesopotamia: "The edicts encourage informing, threatening witnesses who fail to report a breach of the rules with severe punishments, even burning at the stake (Edict 19)." Sophie Lafont, "Mesopotamia: Middle Assyrian Period," in Westbrook, *History of Ancient Near Eastern Law*, 1:535.

73. Frymer-Kenski, "Anatolia and the Levant: Israel," 2:1014 ("The reason [for the stoning and burning was] the nature of *herem*: the presence of a *herem* object turned the whole household into a *harem*. They were stoned for violation of the *herem* and were then burned to get rid of all traces of *herem* contamination").

74. Falk, *Hebrew Law in Biblical Times*, 73–74.

75. Falk, *Hebrew Law in Biblical Times*, 75.

76. Burning was also involved in the case of an apostate city: "A town that commits apostasy is to be put to the sword. The cattle are to be killed; all the town and spoil are to be burned with nothing spared and the town is not to be rebuilt (Deut. 13:13–19)." Frymer-Kenski, "Anatolia and the Levant: Israel," 2:1041.

offended, it has been suggested that the offender was being “devoted” to God as a burnt offering from which there was no “redemption,” there being no way for the victim to offer other forms of sacrifice or compensation to exculpate himself. “No devoted thing, . . . both of man and beast, and of the field . . . , shall be redeemed, but shall surely be put to death” (27:28–29). After the time of Lehi, cases of burning include the Babylonians’ attempted execution of Shadrach, Meshach, and Abednego outside Israel for their refusal to serve pagan gods (Daniel 3:6, 15) and Herod’s order that those who had incited others to defile the temple should be burned alive.⁷⁷ However, these later cases go beyond the precedents in biblical law, which did not allow a person to be punished by burning merely for his beliefs.

Burning is mentioned in similar contexts in the Book of Mormon, especially during an exceptional period between 150 BC and 75 BC. First and foremost, Abinadi was burned alive, his skin being scourged and/or scorched with faggots as he stood bound (Mosiah 17:13, 20). He had been accused of speaking of God sacrilegiously (v. 8), for which burning could have been an appropriate remedy. In the end, however, he was sentenced to die for reviling the king (v. 12), and his punishment by fire was apparently fashioned according to talionic principles. Abinadi went down in Nephite history as “the first that suffered death by fire because of his belief in God” (Alma 25:11).

About seventy years later, the wives, children, and followers of several men who were ostracized from the city of Ammonihah were also burned, along with their religious records (Alma 14:8). Much like the eradication of Achan and his family and possessions from the camp of Israel, the expulsion or annihilation of these people and their religious texts was motivated ostensibly by religious concerns, if not by superstitions. Presumably, however, their obliteration was not complete; since no mention is made of their cattle or other property being destroyed by fire (v. 8), that property may have been confiscated by their persecutors.

Eventually, descendants of the priests who had executed Abinadi and Noah by burning were found among the Lamanite soldiers, who soon after the burnings of the women and children in Ammonihah invaded and destroyed that city (Alma 25:4). When some of their Lamanite cohorts began to believe what had been preached to them by the sons of Mosiah, those descendants of the priests of Noah punished them “by fire because

77. Cohn, “Capital Punishment,” 528; and Josephus, *Wars*, 1:655. “That burnings may also have taken place at the stake appears from midrashic sources (compare Gen. R. 65:22; Mid. Ps. 11:7).” Cohn, “Capital Punishment,” 528.

of their belief” (v. 5). This fulfilled another prophecy of Abinadi—that the seed of the priests, like their fathers, would “cause that many shall suffer . . . even the pains of death by fire” (Mosiah 17:15), and for this those descendants were hunted “even as a wild flock is driven by wild and ferocious beasts” (v. 17; see Alma 25:12).

These cases of burnings, however, went beyond the customary law. Human agents rarely had authority to impose death by fire. Perhaps this expansion of the law seemed justifiable because the word *ba‘ar*, meaning “to exterminate, put away, or cast out ‘the evil from among you’” in such passages as Deuteronomy 17:7, 19:11–13, 21:21, 22:22, 24:7, also means “to burn” as well as “to be stupid.”⁷⁸

More typically, burning was viewed as God’s mode of purifying the earth. By fire he would cleanse from sin (2 Nephi 31:17), destroy wicked cities (Jacob 5:7, 47, 77; 3 Nephi 9:3, 9–10), impose final judgment upon the world (Jacob 5:77; 3 Nephi 25:1), and actually or figuratively punish the wicked in the eternities (Mosiah 2:38; 27:28; Mormon 8:17).

Slaying by the Sword

Several instances of slaying by the sword occur in the Book of Mormon, but none are strictly legal in nature. The destruction of Ammonihah “by the sword” (Alma 10:22–23; 16:9–11) at the hands of the Lamanite army conforms closely with the ancient Israelite law regarding the annihilation of apostate cities found in Deuteronomy 13:12–16.⁷⁹ This is the only place in the law of Moses that calls for execution “by the sword.” Apparently, the reason why Alma carefully recorded and documented the fact that the inhabitants of Ammonihah had satisfied every element of the crime of being an apostate city was so that when the justice of God destroyed that city, it was clear that this fate was in accordance with divine law. In light of the fact that *apostates* were to be executed by the sword, it is ironic that the crime for which Nehor was executed was trying to enforce an apostate priestcraft “by the sword” (Alma 1:12). The slaying of Laban specifically by the sword in order to prevent the apostasy of an entire nation (1 Nephi 4:13, 18) may be associated here as well.

Flogging

Beating was the main penalty imposed under biblical law for minor offenses or other infractions where no form of punishment was expressly

78. Helmer Ringgren, “*b‘ar*,” in *Theological Dictionary of the Old Testament*, ed. Johannes G. Botterweck, Helmer Ringgren, and Heinz-Josef Fabry (Grand Rapids, MI: Eerdmans, 1975), 2:201–5.

79. See the discussion of the case of Alma and Amulek in Ammonihah in chapter 8.

provided.⁸⁰ Biblical law specifically limited the number of lashes that might be inflicted, and its purpose was primarily to correct rather than to exact retribution. Parents could discipline or chastise children by beating them (Deuteronomy 8:5; 21:18). First offenders in simple legal cases would be flogged;⁸¹ those slandering a virgin were beaten (22:18), and masters could whip disobedient slaves (Exodus 21:20, 26). The key text in this regard is in Deuteronomy, which prescribes flogging as a possible general punishment for any losing litigant: “If there be a controversy between men, and they come unto judgment that the judges may judge them; then they shall justify the righteous and condemn the wicked. And it shall be, if the wicked man be worthy to be beaten, that the judge shall cause him to lie down and to be beaten before his face, according to his fault, by a certain number; forty stripes he may give him, and not exceed” (Deuteronomy 25:1–3).⁸² Flogging could also be combined with other forms of social punishment such as banishment or isolation, as is attested at least in later periods in Jewish history. For example, in post-talmudic times some argued that serious offenders were to be “flogged and ostracized.”⁸³ Nevertheless, it was usually the case that only one punishment would be inflicted upon an offender for each ordinary guilty action. Thus, for example, “where reparation must be made by money, as for the crime of stealing (Exodus 20:13; Deuteronomy 5:17), the payment of damages and fines is preferred to flogging; . . . the rule is that he who pays is not flogged.”⁸⁴

Flogging is mentioned several times in the Book of Mormon. The most notable passage is in Alma 11:2. Very much like Deuteronomy

80. For example, in Egypt, beating was the punishment for nonpayment of taxes. Richard Jasnow, “Egypt: Old Kingdom and First Intermediate Period,” in Westbrook, *History of Ancient Near Eastern Law*, 1:131.

81. Falk, *Hebrew Law in Biblical Times*, 74. See also Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:1028 (“Where flogging was prescribed, the number of lashes could vary ‘according to his wickedness’ but could not exceed forty lashes, for the sake of the culprit’s dignity [Deut. 25:3]”). Flogging was also known elsewhere in the ancient Near East. Joachim Oelsner, Bruce Wells and Cornelia Wunsch, “Mesopotamia: Neo-Babylonian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 2:966 (“One text mentions flogging and the pulling out of men’s beards and hair”).

82. The interpretation of this provision has been the subject of considerable debate. Some rabbis limited its application to cases of assault (reading *controversy* in a narrow sense) or perjury (or having falsely testified in losing the case). But remedies in cases of assault are specifically prescribed (as in Exodus 21:22), and the punishment of a false accuser is handled pursuant to Deuteronomy 19:16–21. Thus the instruction in Deuteronomy is best understood, as Cohn has stated, “as a self-contained exhortation to do justice in civil cases as well as in cases of mutual criminal accusations (compare Mid. Tan. to 25:1).” Haim H. Cohn, “Flogging,” in Elon, *Principles of Jewish Law*, 533.

83. Haim H. Cohn, “Homicide,” in Elon, *Principles of Jewish Law*, 477.

84. Cohn, “Flogging,” 534.

25:1–3, Alma 11:2 gives instructions to judges on how to handle private controversies. It provides, “Now if a man owed another, and he would not pay that which he did owe, he was complained of to the judge; . . . and he judged the man according to the law and the evidences which were brought against him, and thus the man was compelled to pay that which he owed, or be striped, or be cast out from among the people.” This summary of Nephite civil procedure seems to indicate that a Nephite judge had three alternatives open to him in resolving a case of a delinquent debtor: first, the judge could compel the debtor to pay what he owed, which would certainly be the preferred outcome of the case; second, if the offender could not or would not pay, he would be “striped”⁸⁵ (i.e., flogged) to discipline and reform him; third, the more severe option of banishment was also open, but this was quite certainly reserved as a last resort for repeated violators or recalcitrants. Also consistent with Jewish jurisprudence generally, it appears that these remedies were alternative punishments, since they are connected with the word *or*; the offender would not be given multiple sanctions for the relatively petty offense of nonpayment.

Flogging and other forms of beating also occur often in the Book of Mormon as general means of discipline. For example, Nephi’s elder brothers spoke many hard words to him and Sam, trying to persuade them to abandon their efforts to obtain the plates of brass, and in these efforts they beat them “even with a rod” (1 Nephi 3:28–29). Specific mention of the rod may be significant since the usual form of beating in later Jewish law was with a whip made of calfskin,⁸⁶ whereas a rod was used in earlier times by the Assyrians⁸⁷ and is mentioned in the Bible (Exodus 21:20–21; Proverbs 13:24).

Morianton was known as a man of passion who once grew angry with one of his maid servants and “fell upon her and beat her much” (Alma 50:30). His right to flog his servant even quite excessively, so long as the servant did not die within a day or two (Exodus 21:21), cannot be contested; but by beating her severely he contravened the spirit of Deuteronomy 25:3, which prohibited excessive beating.

85. The printer’s manuscript, along with the 1830, 1837, 1841, 1852, and RLDS 1908 editions of the Book of Mormon, read “striped.” Other editions read “stripped.” If the guilty party was “stripped,” the penalty was confiscation, discussed further below.

86. Cohn, “Flogging,” 534.

87. Middle Assyrian Laws Tablet A7: “If a woman has laid hand on a man and a charge has been brought against her, she shall pay 30 manehs of lead and shall be beaten 20 stripes *with rods*” (emphasis added). Reuben Yaron comments on “rod” as the correct translation in “The Middle Assyrian Laws and the Bible,” *Biblica* 51 (1970): 549, 552.

In 2 Nephi, the prophet Nephi warns people who believe that God will treat their offenses lightly. They wrongly believed that his punishment would only be token: “God will beat us with a few stripes, and at last we shall be saved in the kingdom of God” (2 Nephi 28:8). As the lightest form of punishment in his legal system, flogging is the obvious example of punishment for Nephi to use in this context.

Banishment, Ostracism, or Excommunication

Another option available to ancient courts was to banish or expel the offender from the land.⁸⁸ Some people, such as Socrates, preferred death over banishment. Most people saw themselves as being inseparably connected with their families, their villages, and their lands. Evidence of the use of banishment can be found “in the records of all ancient nations,”⁸⁹ and the Israelites and Nephites were no exception.

The basic principle behind the practice of banishment, or forced separation, was to purge the people of contagious iniquities. Such separation of unrighteous and impure people and things from that which is pure and righteous can be traced, in the Hebrew mind, back to the beginning when God drove Adam and Eve out of the Garden of Eden (Genesis 3:23–24). In Old Testament times, such punishments ranged from complete annihilation to a mere seven-day separation from the community. An uncircumcised male (Genesis 17:14) or one who flouted the observance of Passover (Exodus 12:15, 19; Numbers 9:13) was to be excluded from the assembly. Lighter infractions of purity laws calling for *karet*, however, “could not possibly have been punished by exile [from the land, but] would be adequately punished by temporary seclusion or excommunication.”⁹⁰ “Utter destruction”⁹¹ was the severest form of *herem*. Through this punishment the community purged itself and preserved its purity by eradicating the transgressor as completely as possible.⁹² This extreme form of excision

88. This punishment was generally reserved for offenses against the gods, such as witchcraft and adultery, which “were thought to cause ‘pollution’ of the surrounding area.” Raymond Westbrook, “Introduction: The Character of Ancient Near Eastern Law,” in Westbrook, *History of Ancient Near Eastern Law*, 1:76. It was often an alternative to capital punishment; see Ignacio Márquez Rowe, “Anatolia and the Levant: Ugarit,” in Westbrook, *History of Ancient Near Eastern Law*, 1:734.

89. William D. Morrison and Janet I. Low, “Banishment,” in *Encyclopaedia of Religion and Ethics*, ed. James Hastings, John A. Selbie, and Louis H. Gray (New York: Charles Scribner’s Sons, 1981), 2:346–47.

90. Mayer Sulzberger, “The Ancient Hebrew Law of Homicide,” *Jewish Quarterly Review* 5, no. 4 (1915): 594.

91. See Exodus 22:20; Leviticus 27:29; Numbers 21:2–3; Deuteronomy 7:2; 13:16–17; 20:17–18.

92. Haim H. Cohn, “Herem,” in Elon, *Principles of Jewish Law*, 540.

could be pronounced not only upon individuals and all their family and property (as in the case of Achan),⁹³ but upon entire apostate cities as well (Deuteronomy 13:13–17).

Jeremiah appears to have pronounced a *herem* when he cursed the false prophet Hananiah: “Therefore thus saith the Lord; Behold, I will cast thee from off the face of the earth: this year thou shalt die, because thou hast taught rebellion against the Lord” (Jeremiah 28:16). Because Hananiah posed a danger to the spiritual welfare of the community, he was to be separated from it completely. Hananiah died within the year.

A milder form of expulsion from God’s people was imposed upon Moses’s sister, Miriam, when she spoke against Moses and became leprous: “Let her be shut out from the camp seven days, and after that let her be received in again” (Numbers 12:14). She was separated from the community but was allowed to live. This temporary removal was later termed *niddui*, meaning the “punishment of an offender by his isolation from, and his being held in enforced contempt by, the community at large.”⁹⁴

Thus the pre-exilic texts recognize banishment or removal options as ranging from mild to severe and as being imposed by either God or man. Later Jewish law refined and developed these options in great detail. Following the return from Babylon, Ezra recognized expulsion from the religious community as a form of punishment (Ezra 7:26). *Herem* was reintroduced in rabbinic times as a harsher form of *niddui* (both being compulsory), while *nezifah*, a voluntary form of dissociation usually lasting a week, developed even later. In the rabbinic writings there is much discussion about how long these different forms of separation should last, who could pronounce them, and who could renounce them. For example, with *niddui* a transgressor was allowed social intercourse “for purposes of study and of business,” whereas with *herem* a transgressor “had to study alone . . . and find his livelihood from a small shop he was permitted to maintain.” In both cases the transgressor could not, among other things, wear shoes, wash (except for his face, hands, and feet), cut his hair, or wash his laundry; he had to “live in confinement with his family only, no outsider being allowed to come near him, eat and drink with him, greet him, or give him any enjoyment.” In the Talmud, such punishments are sometimes referred to as “civil death” or “the utter loneliness”; yet *niddui*

93. The idea of inflicting punishment unto the third, fourth, or tenth generation (Deuteronomy 5:9; 23:2, 3, 8) may mean to “wipe out the memory of the guilty person, even to the point of executing the person’s family as well.” Patrick, *Old Testament Law*, 85, although Patrick declines to endorse this position.

94. Cohn, “Herem,” 540.

was still considered a “relatively light penalty, . . . perhaps because it could so easily be lifted.” A severe *herem* was pronounced publicly, with a “warning not to associate with the anathematized.”⁹⁵ As might be imagined, the lot of outcasts was often extremely miserable.

Having left Jerusalem before the exile, Lehi would have been familiar at least with the early Israelite practices of *herem*, as well as with Miriam’s temporary quarantine. Lehi himself had been forced to flee from Jerusalem, in effect an extralegal form of banishment. As with the post-exilic Jewish experience, which saw the addition of rules regarding banishment and ostracism in the Old World, other rules and forms of excommunication also arose in the Book of Mormon.

The first appearance in the Nephite record of a form of rooting out occurs in the case of Sherem. Jacob pronounced the curse of God upon Sherem, much as Jeremiah had done to Hananiah. Both Hananiah and Sherem were seen by the prophets as deceivers. Hananiah had made the people in Jerusalem “trust in a lie” (Jeremiah 28:15), while Sherem “preached many things which were flattering” and “did lead away many hearts” (Jacob 7:2–3). As with Hananiah, the consequence that befell Sherem was executed by God. Sherem was smitten and never recovered.

Events in Ammonihah involved an extreme form of *herem* as well. When the judges and lawyers in Ammonihah burned the wives, children, and religious writings of the converts of Alma and Amulek, they were practicing their own version of *herem* to eradicate them from their city.⁹⁶ In a talionic twist of fate, a stronger form of *herem* soon returned to Ammonihah when the Lamanite armies attacked it: “Yea, every living soul of the Ammonihahites was destroyed” (Alma 16:9), fulfilling Alma’s prophecy that the Ammonihahites would suffer “utter destruction” (9:18).

Because the Nephite faithful needed to differentiate themselves from sinners and apostates, the Book of Mormon speaks of the rise of the more common practice of cutting off, or excommunication. This practice was introduced during the late second century BC. At that time, the Nephites were a minority group in control of Zarahemla (Mosiah 25:2). As they came under increasing social and political pressures from competing groups such as the followers of Nehor, the Nephites responded by drawing their own ranks closer together. Alma was given authority to maintain seven groups and to enforce membership requirements (vv. 19, 23; 26:28–32). Whoever would repent would be allowed in, but “whosoever will not repent of his sins the same shall not be numbered among my

95. Cohn, “Herem,” 540, 541, 544.

96. See note 73 above.

people; and this shall be observed from this time forward” (26:32). This form of excommunication preserved this group’s identity and purity, and covenant-breaking members simply reentered the mainstream society.

Procedural guidelines for dealing with offending members of the church were introduced at this time. Impenitent transgressors were first “admonished by the church” (Mosiah 26:6). The teachers of the church then brought them to the priests, who took them to Alma, the high priest. “Many witnesses” called from among the people “stood and testified of [the transgressors’] iniquity in abundance” (vv. 6–9). Alma, “troubled in spirit” by the severity and implications of these cases (v. 10), first implored King Mosiah to judge these cases, but Mosiah refused (v. 12). Alma then “poured out his whole soul to God” concerning the matter. It was revealed to him that he was to judge the people according to the commandments of God, and the names of the unrepentant offenders “were blotted out” (v. 36).

Being “blotted out” or “cast out” of the group had severe religious, social, political, economic, and legal consequences. In the Pentateuch, “the Lord said unto Moses, Whosoever hath sinned against me, him will I blot out of my book” (Exodus 32:33; see Deuteronomy 9:14; 29:20). In the Psalms, the weak and the poor ask that when their wicked persecutors are judged, “let [their] posterity be cut off; and in the generation following let their name be blotted out” (Psalm 109:13). Although this type of expulsion was seen primarily as a form of divine judgment (v. 15; 2 Kings 14:27), it is also possible that written or oral lists of names were created and that when a person was cast off (as was Achan), his and his children’s names were effectively removed from the group roster.⁹⁷

Around 100 BC, Benjamin took down the names of all those who had entered into the covenant he administered (Mosiah 6:1), and “numbering” serves to define righteous groups—either for religious, political, military, or legal purposes—throughout the Book of Mormon.⁹⁸ The typical form of excommunication among the Nephites apparently involved blotting the

97. Such lists may have been created on census days or New Year festivals, when the people were “numbered” for religious, civic, and military purposes. See Ephraim A. Speiser, “Census and Ritual Expiation in Mari and Israel,” in *Oriental and Biblical Studies*, ed. J. J. Finkelstein and Moshe Greenberg (Philadelphia: University of Pennsylvania Press, 1967), 171–86, esp. 183–84.

98. See, for example, 2 Nephi 4:11 (Sam to be numbered with Nephi’s seed); Mosiah 25:12 (the children of Amulon “took upon themselves the name of Nephi” and are numbered among the Nephites); Mosiah 25:13 (the Mulekites are numbered with the Nephites); Alma 27:27 (after entering into the covenant, the Ammonites are numbered among the Nephites and are given land); 3 Nephi 2:14–16; 3:14 (the righteous Lamanites are numbered among the Nephites, especially for military purposes); 3 Nephi 21:22 (Gentiles who repent and come in unto the covenant shall be numbered among the remnant of Jacob, to whom the land has been given for an inheritance).

wicked person's name off such a list (26:36; Alma 1:24; 6:3; Moroni 6:7). The people expelled in this fashion "were remembered no more among the people of God" (Alma 1:24; compare Deuteronomy 25:19), for it had been given as a "word of God" that "the names of the wicked shall not be mingled with the names of my people" (Alma 5:57; compare Psalm 69:28, "Let them be blotted out of the book of the living, and not be written with the righteous"). Apparently, the Nephites understood and applied this concept literally—not just theologically or figuratively—at least during the time of Alma.

Blotting a person's name out of the religious and civic community had severe connotations. Not only was the person removed from the congregation of Israel on earth, but "the remembrance" of the wicked person was also blotted out "from under heaven" (Deuteronomy 25:19). The full extent of ostracism of one expelled from society in ancient Israel during the early biblical period is not fully known. However, among the Nephites, excommunication was a severe sanction. Church members were instructed to forgive transgressors, but until there was repentance on the transgressors' part, the faithful were to come "out from the wicked, and be ye separate, and touch not their unclean things" (Alma 5:57). The righteous remained separate from and probably refrained from social and perhaps business dealings with those whose names had been blotted out. Such harsh treatment of apostates would be consistent with later Jewish practices, and it may well account for the resentment and persecution of church members by those who were expelled. In fact, persecutions occurred immediately after the main instances of expulsion during this era (e.g., Mosiah 26:38; Alma 1:25).

Korihor's case illustrates the severity of banishment among the Nephites. Korihor was first physically expelled from Jershon by the religious authorities (Alma 30:21). After his trial in Zarahemla, he "was cast out, and went about from house to house begging for his food" (v. 56). Heralds were sent out by the chief judge proclaiming this banishment "to all the people in the land" (v. 57). Though not precisely clear, Korihor was apparently forbidden from engaging in business transactions to earn a living, since he was reduced to begging for food. In any case, he soon was deported to, or left to go voluntarily among, the Zoramites in Antionum, who had voluntarily "separated themselves from the Nephites" (v. 59); and so Korihor's banishment would not have precluded him from associating with the Zoramites. However, his fate was miserable there as well: "As he went forth among them, behold, he was run upon and trodden down, even until he was dead" (v. 59). Thus Korihor's banishment appears to

have been more severe than that of those who had simply been excommunicated from the church. He had been cursed by God (v. 54) and condemned by the chief judge (v. 57), not merely reprimanded or anathematized by the high priest.

As mentioned above in connection with flogging, banishment was an option open to the judges when dealing with delinquent debtors under the law of Mosiah. They could be “cast out from among the people” (Alma 11:2). In a somewhat similar way, under post-talmudic law, creditors could impose *niddui* on defaulting debtors, and in some Jewish loan documents borrowers were expressly required to stipulate “in writing beforehand to be placed under *niddui* by the creditor in the event of non-payment.”⁹⁹

In addition, several apparently extrajudicial instances of expulsion also occurred during this time period. Alma the Elder and his followers were forced into the wilderness by King Noah and his priests (Mosiah 18:34; 23:1).¹⁰⁰ The converts of Alma the Younger and Amulek were driven away from the city of Ammonihah (Alma 14:7). About eight years later, the Zoramites banished the poor who believed the words of Alma; they “were cast out of the land” (35:6). Later, the Nephites cast out Samuel the Lamanite, who never returned to the land of Zarahemla (Helaman 16:2, 8). These may or may not have been formal actions, but either way they show a pervasive concern at this time of maintaining the integrity of these communities by regulating who was let in and who was kept out.¹⁰¹

Nephite law regarding excommunication for both civil and religious purposes changed in 3 Nephi. Speaking to the Nephites at Bountiful, the resurrected Jesus Christ taught that while an unrepentant member should “not be numbered among my people, that he may not destroy my people,” the faithful were not to cast such a person “out of your synagogues, . . . for unto such shall ye continue to minister” (3 Nephi 18:31–32).

At the end of Nephite civilization, Moroni recorded that the believers “were strict to observe that there should be no iniquity among them; and whoso was found to commit iniquity and three witnesses of the church did condemn them before the elders, and if they repented not, and confessed not, their names were blotted out, and they were not numbered among the people of Christ” (Moroni 6:7). This procedure is basically the

99. Cohn, “*Ḥerem*,” 542.

100. Perhaps Alma the Elder was later motivated to deal directly with the excommunication process because he had personally suffered the injustice of this expulsion.

101. Consider also restrictions on travel and expatriation in my discussion in “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), 57–59. Apparently people were not always free to travel outside of their homeland.

same as the one established by Alma the Elder in Mosiah 26:29–32; both required sincere repentance and confession of guilt for exoneration. But the rules in Moroni’s day specifically required three witnesses (compare Deuteronomy 19:15), and jurisdiction was now given to the elders. In all cases, “as oft as they repented and sought forgiveness, with real intent, they were forgiven” and reinstated (Moroni 6:8; Mosiah 26:30–31).

Shaming

Another punishment connected with ostracism and excommunication was that of public shaming. This was a strong factor in coercing compliance with the law and also in contributing to the odiousness of judicial punishments in biblical Israel and in ancient societies generally.¹⁰² The most salient example is found in Deuteronomy 25:5–10, where a widow is permitted to bring her brother-in-law before the elders for not fulfilling his duty of taking her to wife to raise seed for his dead brother. The widow was allowed to take the sandal off the brother-in-law’s foot, spit in his face, and have the derisive epithet “the man who had his sandal pulled off” attached to his family name. Although such actions might appear innocuous today, they were extremely shameful for several reasons: they were done in public, the “dominant” man was shamed by the usually “submissive” woman, the spitting rendered a person ritually unclean, the removal of the sandal represented the removal of the priestly privilege, and the family’s reputation would be perpetually scarred in Israel.¹⁰³ Such public shaming was a serious matter because the Israelites saw themselves as a collective whole, so if one member was shamed, everyone was shamed.¹⁰⁴ There are several other instances of shaming in the Old Testament, and the fear of shame was used as an effective way of preventing wrongdoing.¹⁰⁵

Shame is mentioned often enough in the Book of Mormon to prove that a strong culture of honor and shame operated in Nephite society. For

102. See generally Lyn M. Bechtel, “Shame as a Sanction of Social Control in Biblical Israel: Judicial, Political, and Social Shaming,” *Journal for the Study of the Old Testament* 49 (1991): 47–76.

103. Bechtel, “Shame as a Sanction of Social Control in Biblical Israel,” 57–61; comprehensive list of various shaming techniques on p. 72. See Johannes Pedersen, “Honour and Shame,” in *Israel: Its Life and Culture* (London: Oxford University Press, 1973), 1:213–44; and David Daube, “The Culture of Deuteronomy,” *Orita* (Ibadan, Nigeria) 3, no. 1 (1969): 27–52.

104. Bechtel, “Shame as a Sanction of Social Control in Biblical Israel,” 51–53. At least one ancient Near Eastern culture employed collective punishment under a similar rationale. “Hittite law applied collective punishment in certain circumstances; thus if a person rejects a judgment of the royal court of justice, his ‘house’ (his whole family) is destroyed.” Haase, “Anatolia and the Levant: The Hittite Kingdom,” 1:651.

105. For a comprehensive list of various shaming techniques, see Bechtel, “Shame as a Sanction of Social Control in Biblical Israel,” 72. See also Isaiah 20:3–5; 2 Samuel 10:1–5; Job 12:4; 19:2–5; 21:3.

example, Jacob used a heavy dose of shame in castigating the men in the city of Nephi for their sexual infidelity and greed, berating them because their actions had wounded their wives and children and even caused himself “to shrink with shame” (Jacob 2:6–9). Alma tried to sway his accusers in Ammonihah by telling them that eventually they would have to acknowledge before God to their “everlasting shame that all his judgments are just” (Alma 12:15).

Imprisonment

Unlike most modern legal systems, which employ imprisonment as their principal form of long-term punishment for criminal acts, ancient Near Eastern courts used prisons more temporarily, in the spirit of the Roman jurist Ulpian’s dictum “Prison is intended for the confinement, and not punishment, of people.”¹⁰⁶ Biblical law does not mention imprisonment as a judicial penalty.¹⁰⁷ The first solid legal evidence that incarceration was sanctioned in a punitive or coercive sense comes from the time of Ezra. When he reestablished the law of Moses in Jerusalem upon the return of the Jews from Babylon, Ezra brought a decree from the king of Persia providing that those who “will not do the law of God” will be subject to punishment, “whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment” (Ezra 7:25–26). This use of imprisonment as a punitive device was unusual in the Israelite experience; it was also absent from the Greek and Roman legal systems.¹⁰⁸ Prisons, however, were well known to the Jews from their experiences and contacts with other cultures in Egypt (Genesis 40:3) and Mesopotamia (Jeremiah 52:11); and several words for prisons, pits,

106. Menachem Elon, “Imprisonment,” in Elon, *Principles of Jewish Law*, 536. See Bertrand Lafont and Raymond Westbrook, “Mesopotamia: Neo-Sumerian Period (Ur III),” in Westbrook, *History of Ancient Near Eastern Law*, 1:221 (“Imprisonment is mentioned but not specifically as a punishment. It applied to debtors and criminals pending payment of penalties”); Jasnow, “Egypt: Middle Kingdom and Second Intermediate Period,” 1:266 (“Imprisonment in the sense of our ‘jails’ or prisons does not figure very prominently in the sources,” though it was not unknown). The practice in some ancient Near Eastern cultures is not as clear, but it appears that prisons were used for punishment to some extent. See Ignacio Márquez Rowe, “Anatolia and the Levant: Alalakh,” in Westbrook, *History of Ancient Near Eastern Law*, 1:716 (“Another kind of punishment consisted in being placed in prison or in the ‘workhouse,’ an institution which is also known at Nuzi. Unfortunately, our text only records the final confinement of two men and does not refer to the grounds for the penalty”); Oelsner, Wells, and Wunsch, “Mesopotamia: Neo-Babylonian Period,” 2:967 (“There is ample evidence that prisons were in use, but their exact nature and purpose remains unclear. They were used for those guilty of theft, fraud, and, presumably, other offenses”).

107. Falk, *Hebrew Law in Biblical Times*, 74.

108. Elon, “Imprisonment,” 536.

stocks, or other places of detention or confinement are used in pre-exilic Hebrew texts.¹⁰⁹

In ancient Israel, imprisonment was primarily employed for two purposes: first, to detain alleged transgressors during their trial and pending their execution; and second, as a purely political measure,¹¹⁰ with trouble-makers being “shut up by police action, often arbitrarily.”¹¹¹ Two Old Testament incidents demonstrate that the typical use of prisons in pre-exilic Israel was for temporary confinement. In both the case of the man who gathered sticks on the Sabbath and that of the son of the Egyptian who blasphemed the name of the Lord, the witnesses apprehended the alleged transgressor and took him to Moses, who “put him in ward, that the mind of the Lord might be shewed” (Leviticus 24:12; see Numbers 15:34). Upon learning what should be done, Moses issued the sentence—in both cases stoning—which the people immediately carried out (Leviticus 24:13–14; Numbers 15:35). Incarceration served merely to hold the accused until his fate could be determined.

The use of imprisonment for political detention occurs at least three times in the Old Testament, and each incident involves a prophet and a king. King Ahab commanded that the prophet Micaiah be carried to Joash, the king’s son,¹¹² to be cast into prison because Micaiah’s prophecies displeased the king (1 Kings 22:26–27). Micaiah’s confinement was worse than that of the Sabbath breaker’s, for Micaiah was to be fed “with the bread of affliction and with the water of affliction” (v. 27), but the purpose of his imprisonment seems to have been to silence him rather than punish him for a crime. King Asa similarly sentenced the seer Hanani to “a prison house: for he was in a rage with him” because of what he had prophesied (2 Chronicles 16:10).

Jeremiah was also held “in the court of the prison,” which was in the king’s palace (Jeremiah 32:2). His case differs slightly from the other two since he was at least given the appearance of a judicial proceeding, for the princes charged him with sedition, treason,¹¹³ or false prophecy and

109. Sulzberger, “The Ancient Hebrew Law of Homicide,” 598, arguing that this evidence works against the assumption that “the ancient Hebrews did not know deprivation of liberty as a punishment for crime.” See further David L. Blumenfeld, “The Terminology of Imprisonment and Forced Detention in the Bible” (PhD diss., New York University, 1977).

110. Elon, “Imprisonment,” 536.

111. De Vaux, *Ancient Israel*, 1:160. See 1 Kings 22:27; Jeremiah 37:15–18.

112. Both King Ahab and King Zedekiah had their sons act as the keepers of the prison (1 Kings 22:26; Jeremiah 38:6).

113. John Bright, *Jeremiah: A New Translation with Introduction and Commentary* (Garden City, NY: Doubleday, 1965), 232.

sought his execution (38:4). However, this passage does not clearly establish that Jeremiah's imprisonment resulted from a judicial decision, since Zedekiah relinquished the case to the princes to do as they wished (v. 5). They lowered Jeremiah into a dungeon of mire, apparently hoping he would starve to death. Since such a judicial penalty for treason is unprecedented, it appears that the main reason Jeremiah was confined was not because it was the result of a legal proceeding, but because he was being silenced from making disturbing prophecies. Jeremiah's treatment, along with that of other prophets confined pursuant to administrative prerogatives, was worse than the treatment of those imprisoned in the course of judicial procedures.

The judicial and governmental use of prisons in the Book of Mormon needs to be approached in three different categories: (1) practices among the Nephites, which closely parallel those of their ancient Israelite ancestors; (2) inhumane practices of the Lamanites and the Nehorites; and (3) the long-term use of prisons among the Jaredites.

Among Lehi's descendants, the use of imprisonment was limited. As in ancient Israel before Lehi left Jerusalem, prisons were used only for temporary detainment, in arbitrary police actions, and on rare occasion for political detentions under martial law.¹¹⁴

Ammon and his scouting party, for example, upon discovering the people of King Limhi in the city of Nephi, were promptly bound and cast into prison (Mosiah 7:6–16, about 120 BC). Ammon and three of his men had come too close to the city walls when the king and his guards were outside the gate. The king took them into custody, bound them, and held them in prison, having mistaken them for the priests of King Noah, who had stolen daughters of the Lamanites. Two days later, Ammon and his companions were brought before the king, who soon determined they were not the priests of Noah and released them. Ammon's company had been imprisoned pending interrogation concerning crimes they were suspected of committing. Once their innocence was established, they were liberated. Had their guilt been determined, they would have been executed (vv. 7–11; 21:23). Limhi's father, the corrupt King Noah, had also used prisons in much the same way. Abinadi was held in prison three days during his trial (Mosiah 12:17; 17:5–6).

The suspected murderers of Pahoran were similarly cast into prison in the city of Zarahemla, only to be freed when their innocence was promptly proved (Helaman 9:9, 18). In such cases imprisonment served as

114. The case of imprisoning captives of war is considered in my chapter on martial law in Ricks and Hamblin, *Warfare in the Book of Mormon*, 75–82.

a temporary detainment measure during the judicial process rather than a lasting punishment imposed on a convicted criminal. There is no hint here that sentencing the convict to imprisonment was a penal option open to the court. The one case of prolonged incarceration among the Nephites, namely, the imprisonment of the leaders of the rebel king-men (about 67 BC), was justified under martial law on the asserted grounds that “there was no time for their trials at this period” (Alma 51:19).

Among the Lamanites, other incidents of imprisonment are somewhat less informative, primarily because divine intervention ended these periods of imprisonment before their cases were heard; yet it appears that the Lamanites used prisons for prolonged periods to humiliate or torture their enemies or undesirable intruders. In the case of Nephi and Lehi (Helaman 5:21–22, about 30 BC), an army of Lamanites cast them in prison in the city of Nephi (the same prison that had held Ammon and his companions ninety years earlier). There they were held for “many days without food,” but the intent was not to confine them indefinitely, for the Lamanites “went forth into the prison to take them that they might slay them” (v. 22). Although angelic intervention prevented the Lamanites from carrying out the execution, the incident demonstrates that this imprisonment was temporary in nature.

Though not clear, it is likely that the Lamanites had used prisons in a similar manner approximately sixty years earlier when they confined Aaron and his brethren “for many days” at Middoni and caused them to suffer nakedness, “hunger, thirst, and all kinds of affliction” (Alma 20:29–30; 21:13). They were liberated when King Lamoni “found favor in the eyes of the king of the land” (20:28). There is no indication what otherwise would have happened to them.

Alma and Amulek’s imprisonment in the Nehorite city of Ammonihah also deviated from the normal pre-exilic Israelite uses of imprisonment. Though Alma and Amulek were held in prison while their trial was in progress (a normal practice), it appears that imprisonment was also a punitive option available to the judges in Ammonihah. Those who attempted to snare Alma and Amulek in their words hoped to see the prophets arrested and “judged according to the law, . . . that they might be slain or *cast into prison*, according to the crime which they could make appear or witness against them” (Alma 10:13; emphasis added). That Alma and Amulek remained in prison somewhat longer than usual (about four to six weeks)¹¹⁵

115. Although Alma and Amulek were held in prison “many days” before the city’s miraculous destruction (Alma 14:22–29), it is clear that they could not have been held there more than a few months. Since Amulek first met Alma on the fourth day of the seventh month of the tenth year (10:6), and since they were miraculously delivered from the prison three months and eight days

and received very poor treatment¹¹⁶ by the officials finds negative precedent in the Old Testament experiences of Jeremiah, Hanani, and Micaiah. The asserted allowance of imprisonment as a post-judicial part of the Ammonihahite penal system, however, is unprecedented in the pre-exilic Israelite legal texts,¹¹⁷ although imprisonment would have been known to these people either from stories on the plates of brass or from the Jaredite record, which had been translated in Zarahemla only ten years earlier. The adoption of incarceration as a form of judicial punishment by the Ammonihahites may be another example of how that society had stretched the law in order to prolong litigation and increase legal fees.¹¹⁸

The Jaredite experience differs even further from Israelite practice. While no incident of long-term imprisonment is ever recorded among the Lehites, the Jaredites regularly imprisoned political rivals for life and even made their posterity “serve many years in captivity” for generations thereafter (Ether 8:3; 10:15, 30). The Jaredites left Mesopotamia centuries before the time of Moses, so their traditions and legal customs were undoubtedly different from those of the Nephites. Hugh Nibley describes the background of Jaredite traditions: “Moving back to the earliest records of all, we find a large class of legends all over the ancient world telling how the victorious god in the beginning bound and imprisoned his rebellious relatives—not killing them, since they partook of his own divine nature; the earliest myths of Zeus and Osiris at once come to mind.”¹¹⁹ The book of Ether contains several accounts of kings imprisoning their sons, brothers, and even fathers. Akish did this when he became jealous of his son, eventually starving him to death (Ether 9:7). This is the only case in

later on the twelfth day of the tenth month in the tenth year (14:23), and since they had also spent “many days” together before beginning to preach (8:27), it is reasonable to estimate that they were held in the prison about four to six weeks.

116. The similarity between the treatment received by Alma and Amulek and that received by Aaron and his brethren is striking. Both parties were stripped and bound with strong cords and denied food and drink while in prison (Alma 14:22; 20:29).

117. It is doubtful that imprisonment would have been a long-term disposition of this case open to the court. It is hard to imagine the city of Ammonihah holding a Nephite dignitary like Alma for very long. As with Nephi and Lehi in Helaman 5, the intended outcome of that process is unknown because the trial was halted by divine intervention.

118. Other possible explanations of this anomaly in Ammonihah are that Alma 10:13 has oversimplified the legal complexities involved or that the threatened imprisonment was not asserted as a punishment under law but rather as a police measure available to the judges. It seems more likely, however, that the legal system in Ammonihah was corrupted, and thus the use of prisons there as a form of judicial punishment does not represent legitimate Nephite legal practices in general.

119. Hugh Nibley, *Lehi in the Desert; The World of the Jaredites; There Were Jaredites* (Salt Lake City: Deseret Book and FARMS, 1988), 207.

the Jaredite record of imprisonment accompanied by repressive measures leading to death. Most other rivals to the throne were made to serve and were allowed to beget children while imprisoned (10:13–14; 11:18–19, 23); one family earned the dubious honor of begetting five generations while imprisoned (10:30–31). Of such practices Nibley writes, “It seems to us a perfectly ridiculous system, yet it is in accordance with the immemorial Asiatic usage.”¹²⁰ Nibley cites several examples of relatives imprisoning one another but allowing the imprisoned royalty to enjoy surprising degrees of freedom.¹²¹

King Riplakish employed imprisonment in an unparalleled way when he imposed heavy taxes and imprisoned all subjects who could not or would not pay them. To incarcerate so many people he needed “many prisons,” and he caused all those in prison to “labor continually for their support”; whoever refused to work was put to death. Not only did Riplakish cause these prisoners to labor for their own support, but “all manner of fine workmanship he did cause to be wrought in prison” (Ether 10:5–7). No other cases of widespread imprisonment of common citizens appear in Ether’s account. The practice of holding prisoners in a form of house arrest and requiring them to work at a craft solved the major problem that made imprisonment unfeasible in most ancient societies. It was enormously expensive to hold and care for prisoners otherwise (even in some form of work detention; see Mosiah 23–24), making long-term imprisonment an unattractive judicial option in ancient Israel as well as among the Nephites.

Jurisprudential Rationales for Judicial Punishment

Finally, although only a few examples of actual punishments are found in the Book of Mormon, sufficient information yields insights into the theological, religious, social, and jurisprudential principles that stood behind those punishments. The following discussion of various punishments moves from most to least important, with importance measured by the number of references found in the Book of Mormon, the explicit nature of the references, and the status of the lawgiver or enforcer.¹²²

120. Nibley, *Lehi in the Desert*, 206.

121. Nibley, *Lehi in the Desert*, 205–10.

122. It should be noted that the various punishments described in the Book of Mormon can be discussed under several headings because they were often influenced by several factors. For example, Nehor’s execution served not only as a public deterrent but also as a way of avenging Gideon’s death, purging the people of an evil influence, and atoning for breaking God’s commandments. This should not be surprising since modern executions are also based on several of the same principles,

Public Deterrence. One of the most dominant reasons behind Book of Mormon punishments is the theory of public deterrence. It is not surprising that this would be the case. Such a principle has held wide appeal through the centuries and in various societies. From the Roman crucifixions outside town gates to the public French guillotine decapitations and the lynchings in the American West, the purpose was to scare people into obeying the law: Don't step out of line or this will happen to you. Such punishments almost always took place before large audiences and were usually for heinous crimes such as murder. It was important that as many people as possible be able to view the punishments as a deterrent to further crimes.

A prominent example is Nehor, one of the most notorious criminals in the Book of Mormon. Nehor had been preaching false doctrines (Alma 1:3–4) and had established a profitable ministry to support himself (vv. 5–6). When confronted by Gideon about his practices, Nehor became “wroth,” so much so that he inflicted several sword blows, enough to kill the aged Gideon (vv. 8–9). Nehor was brought in and arraigned before Alma and formally charged with priestcraft and the murder “of a righteous man,” a charge that merited death (vv. 12–14). His “ignominious” execution took place on top of the hill Manti (v. 15). This was not a private execution carried out in secrecy, but rather a humiliating and disgraceful public display. In order to deter any potential criminals, Alma wanted as many people as possible to see what becomes of murderers. The record specifically records that the execution was “ignominious,” and although we do not know exactly what that entailed, the chief judges probably felt that such was the only way to deter any further practice of murder and priestcraft. In any event, the nature of Nehor’s execution was in line with ancient Hebrew capital punishments that were intended to be public deterrents.¹²³

Another example of the public deterrent rationale is found in the trial and execution of Abinadi, which was certainly meant by King Noah to keep anyone else from challenging him about his ways. King Noah appears to have wanted to show that he was the potentate and that anyone

mainly deterrence, rehabilitation, and retribution. See generally David M. Adams, *Philosophical Problems in the Law*, 4th ed. (Belmont, CA: Wadsworth Learning, 2005), 442–66.

123. Falk, *Hebrew Law in Biblical Times*, 73. Deterrence was also a major consideration of other ancient Near Eastern cultures, in which capital punishment, for instance, was often imposed for treason. See Westbrook, “Introduction,” 1:76; Amalia Catagnoli, “Anatolia and the Levant: Elba,” in Westbrook, *History of Ancient Near Eastern Law*, 1:236; Jasnow, “Egypt: Middle Kingdom and Second Intermediate Period,” 1:282; Rowe, “Anatolia and the Levant: Alalakh,” 1:716; Ignacio Márquez Rowe, “Anatolia and the Levant: Canaan,” in Westbrook, *History of Ancient Near Eastern Law*, 1:742; and Oelsner, Wells, and Wunsch, “Mesopotamia: Neo-Babylonian Period,” 2:965.

who disapproved or disagreed with him would meet a violent death. He reinstated the gruesome death-by-fire penalty in order to make a statement and keep silent any other critics (Alma 25:11).¹²⁴ It was probably a fairly effective deterrent.

King Noah's fiery mode of execution seems to have achieved some degree of popularity among the more wicked people in the Book of Mormon. Following successful missionary efforts by Alma and Amulek in Ammonihah, the government leaders became violently upset due to the many conversions (Alma 14:1–2). The judges who saw this missionary activity as social upheaval wanted to show Alma and Amulek, along with everyone else, who really had the power and authority in Ammonihah. Following a speedy trial, those who "believed or had been taught to believe in the word of God . . . [were] cast into the fire" along with all of their scriptures (v. 8). For purposes of intimidation, Alma and Amulek were allowed to watch: the judges wanted to make clear the fate of those who opposed the government and were involved in supposedly subversive behavior (v. 9). The gruesome spectacle certainly would have made all people in the city extremely wary of listening to the missionaries. However, the public deterrent did not have long to take effect since the city was destroyed soon after (16:9–11).

A series of executions appear to have been instituted as public deterrents in Alma 62. While the Nephites were crumbling under the persistent attacks from the Lamanites, the men of Pachus and the king-men were involved in some type of civil disobedience linked with treason: they "would not take up arms in the defense of their country, but would fight against it" (Alma 62:9). Pahoran had to take quick action or face his government's internal collapse. He had all persons who were found "denying their freedom" and who were not true to the cause of freedom executed (vv. 10–11). Such measures were evidently effective in deterring any further acts of treachery because peace was restored to the land of Zarahemla (v. 11).

The execution of Zemnarihah is another example of public deterrence (3 Nephi 4:28–32). Zemnarihah was responsible for much bloodshed because of his involvement as leader of the Gadian-ton robbers (v. 17). Following some successful maneuvering by the Nephite armies, the Gadian-ton robbers were captured and given the choice of becoming prisoners of war or being slain (v. 27). Zemnarihah, who was apparently not given the choice of becoming a prisoner of war, was subsequently executed in

124. Abinadi's execution seems even more heinous in light of the fact that burnings were usually reserved for those guilty of "grave sexual offenses," a charge that did not even come up at the trial. Compare Falk, *Hebrew Law in Biblical Times*, 73–74.

an elaborate manner. In front of the entire Nephite nation, he was hung on the top of a tree “until he was dead” (v. 28).¹²⁵ A ritualistic celebration followed with the chopping down of the tree and chanting in celebration of the failed attempts of the wicked (vv. 28–32). The Nephites wanted all to see the fate of vicious criminals such as Zemnarihah.

In a few cases, divinely enforced punishments served as public deterrents. The punishments of Sherem and Korihor, for example, deterred false preaching and sign seeking. At the beginning of Alma 30, the laws concerning freedom of religion are explicitly set forth, under none of which could Korihor be indicted for his false preaching (Alma 30:7–12). Similar laws probably protected Sherem as well. However, both Sherem and Korihor knew they were trying to get around the law. After wrongly accusing Jacob and asking for a divine sign, Sherem died within a few days (Jacob 7:13–20). Korihor became mute after his trial, was cast out, and died in rather unclear circumstances: he was “run upon and trodden down, even until he was dead” by some Zoramites (Alma 30:58–59). The news of the unusual fates of Sherem and Korihor would certainly have become well known, especially to any false preachers, and probably would have made any sign seeker wary of asking for a sign from a Nephite judge. Korihor is the last example of such a person in the Book of Mormon, so it is probable that others were successfully deterred.

The destruction of the city of Ammonihah certainly served as a public deterrent (Alma 16:2–3).¹²⁶ Such a quick and total destruction by the Lamanites would have sent a clear message to the rest of the Nephite nation that God would not tolerate cities awash in sin. This evidence of divine judgment probably prompted repentance among other Nephites, frightened by the possibility of a similar impending doom.

Purging the Nation. The second most prevalent reason for punishment in the Book of Mormon is the desire to keep the nation pure. Whereas public deterrence is a preventative measure, purging is more remedial in nature. It was believed that if heinous offenders were not cast out, the whole society would remain contaminated. Nehor’s story provides insight into this aspect. In addition to being charged with murder, Nehor was charged with priestcraft (Alma 1:12–13). Alma saw Nehor’s priestcraft as a serious threat to civilization, stating that “were priestcraft to be enforced

125. Under Hebrew law, “persons put to death for public crimes were mostly stoned and then hanged.” Falk, *Hebrew Law in Biblical Times*, 73.

126. In the Old Testament “the idolatrous city . . . [was] put to death by the sword, like the enemy killed in battle.” Falk, *Hebrew Law in Biblical Times*, 74. Such was the fate of Ammonihah at the hands of the Lamanites.

among this people it would prove their entire destruction. . . . Therefore thou art condemned to die” (vv. 12, 14). This was the first time priestcraft had been introduced among the Nephites. Alma knew that this new evil had to be eradicated as soon as possible, and he determined it could be done most effectively by getting rid of the source. Though the record implicitly indicates that Nehor’s removal was intended to stop the priestcraft, “nevertheless, this did not put an end to the spreading of priestcraft” (v. 16). Alma’s efforts to keep the nation pure did not succeed.

The trials and subsequent sentences of Abinadi and Alma and Amulek also represent a desire to keep society pure. The recalcitrant individuals who conducted these trials were motivated by a perceived need (misplaced though it was) to eradicate evil from their societies. Abinadi was charged with causing contention and strife among the people (Mosiah 11:28), while Alma and Amulek were charged with contempt of the law and legal system and with causing upheaval among the populace (Alma 14:2–5). Their trials represent a correct principle wrongly applied.

Zemnarihah’s ritualistic execution also demonstrates a desire to purge wickedness from society. As leader of the Gadianton robbers, Zemnarihah had caused the deaths of “tens of thousands” and was executed by being hung on the top of a tree “until he was dead” (3 Nephi 4:21, 28). The tree was then cut down, and the people praised the Lord for protecting them. A man as wicked as Zemnarihah could not be permitted to live, even as a prisoner of war (an option offered to his soldiers). Society had to be purged of him.

The cases of Sherem and Korihor, although examples of divine punishments, can be included as punishments intended to purge the nation of evil. Sherem had been preaching false doctrine, leading others to sin, and denying the Christ (Jacob 7:1–3, 7–9, 19). When confronted with these charges, Sherem asked for a divine sign and was promptly given one (vv. 13–15). He became physically incapacitated and was unconscious for several days and then became conscious only long enough to confess his sins before he died. Obviously the Lord felt that Sherem needed to be removed or he would cause much damage to the Nephites. Once he was gone, “peace and the love of God was restored again among the people” (v. 23). Society had been purged and righteousness restored.

Korihor’s case is similar. He too had preached false doctrines, had encouraged many people to commit sexual sin, and had blasphemed (Alma 30:6, 12, 18, 29–30). He was banished from the lands of Jershon and Gideon: the inhabitants wanted to keep their lands pure (v. 21). But he was allowed to dwell, and was even listened to, in Zarahemla (vv. 6, 18).

When Korihor was brought before Alma, he denied God, accused Alma of priestcraft, and finally asked for a sign (vv. 31–43). Korihor became mute, confessed in writing that he had preached falsely, and asked for the curse of muteness to be removed (vv. 49–50, 56). Alma denied his request, reasoning that “if this curse should be taken from thee thou wouldst again lead away the hearts of this people” (v. 55) and furthermore that “it is better that thy soul should be lost than that thou shouldst be the means of bringing many souls down to destruction, by thy lying and by thy flattering words” (v. 47). Korihor suffered a pathetic end begging for food as an outcast and being trodden to death. Alma clearly understood the danger that Korihor posed to Zarahemlan society and rendered him incapable of causing further damage.

Vengeance. Although considered inappropriate in a strictly rational legal system, vengeance is a natural human response; instinctively, people want to “get even” after being wronged. Vengeance is usually motivated more by personal desire than by an institutional desire for deterrence. Vengeance is often understood to be revenge, which generally carries a negative connotation, but it can also mean *avenge*. This is the interpretation the ancients would have understood, for they felt a duty to their wronged departed friends and family members who, they believed, were still alive in the spirit world. It would have been inexcusable for the living not to avenge a wrongful death. It is interesting to note that in the Book of Mormon there are punishments that served to avenge deaths as well as those that sought revenge. The examples of avenging death occur under righteous governments, while the examples of getting revenge occur under corrupt governments. Avenging Gideon’s death was the primary reason for Nehor’s execution. Apparently priestcraft was not a crime punishable by death, but capital punishment for murder had been reaffirmed by Mosiah not long before Nehor’s trial (Alma 1:14; see also 2 Nephi 9:35). The principle of avengement is clearly stated by Alma: “Were we to spare thee his [Gideon’s] blood would come upon us for vengeance. Therefore thou art condemned to die, according to the law” (Alma 1:13–14). If Nehor had not been executed, the people would have been held responsible for Gideon’s death. The acceptable retribution was taking the life of the murderer in place of the murdered.

Avengement also brought about the execution of Zemnariyah described in 3 Nephi 4:26–32. As the leader of the murderous band of outlaws known as the Gadianton robbers, Zemnariyah was one of the most evil men alive. When he was finally captured and executed, the Nephites were evidently seeking to avenge not only the deaths of the bloody battle

of year 19, in which Zemnarihah was undoubtedly highly involved, but also the “tens of thousands” who were killed during the siege of year 21 (3 Nephi 4:21). The Nephites who died in these conflicts with the Gadianton robbers were certainly the brothers, fathers, and sons of those still living. It would have been unacceptable not to have punished the man responsible for so much carnage. The principle of avengement helps to explain the symbolic meaning of cutting down the tree on which Zemnarihah was hung and of the celebration that followed.

Some punishments were promulgated for revenge’s sake, as in the execution of Abinadi. He had caused quite a disturbance with his preaching (Mosiah 11:27–29). Just before he was finally sentenced, Abinadi warned that if Noah executed him it would stand as a testimony against Noah at the last day (17:10). The record states that Noah “feared” Abinadi’s word and was “stirred up in anger against him” (vv. 11, 12). Then, with the urging of the priests, Noah ordered execution by burning, the first burning among the Nephites (Alma 25:11). It appears that because Abinadi had frightened him and questioned his authority as king, Noah handed down a much harsher judgment than would normally have been given. He wanted to get back at Abinadi in a severe manner for the embarrassment he experienced.

Revenge also appears as a theme in the trial of Alma and Amulek. While preaching in Ammonihah, they had been charged with reviling the law, the lawyers and judges, and the people, all very serious charges (Alma 14:5). The casting out of Zeezrom when he sided with Alma and the burning of the believers and their scriptures indicate that the Ammonihahites wanted harsh revenge for such disturbances to their society (vv. 7–8). If the objective was to quiet Alma and Amulek, the people of Ammonihah could have simply expelled them from the city. On the other hand, in the cases of Sherem and Korihor it appears that they could not be punished for false preaching since it was treated as an expression of religious belief, for which no punishment was allowed under the law (30:7–12). Although Abinadi, Alma, and Amulek were all charged with the identical crime of false preaching, they were given extremely harsh sentences best explained by a factor of revenge.

Atonement. One theory of punishment that is all but absent from most modern societies is atonement. In ancient societies acts of atonement, or reconciliation, were of utmost importance, required for any deed believed to be a sin or offense against God. If God had been offended, the situation needed to be remedied or the nation would pay the price. Nehor’s execution is a clear example of Alma enforcing God-given commandments,

evident when he declared, “Thou hast shed the blood of a righteous man [Gideon], yea, a man who has done much good among this people; and were we to spare thee his blood would come upon us for vengeance” (Alma 1:13). Alma had no choice but to execute Nehor as God had prescribed (2 Nephi 9:35). Under Hebrew law, capital punishment was seen as a form of atonement.¹²⁷

The celebration following Zemnariyah’s execution also indicates that the people killed Zemnariyah as an atonement for the numerous deaths he had caused. They praised God for preserving them “from falling into the hands of their enemies” and surely were encouraged in their belief that, pursuant to Zemnariyah’s atoning execution, God would “protect this people in righteousness” in the future (3 Nephi 4:30–31). There appears to have been an understanding that they were keeping the commandments of God by executing Zemnariyah and that had they not done so they would have been destroyed. The Nephites shouted upon Zemnariyah’s death, “May the Lord preserve his people . . . that they may cause to be felled to the earth all who shall seek to slay them” (vv. 28–29). Zemnariyah’s life had to be taken in exchange for his crimes.

The punishments given to Sherem and Korihor also indicate a need to enforce God’s rules. These punishments are quite self-evident: God will not tolerate false preaching and priestcraft and will enforce his commandments.

Monetary Fines. In certain circumstances in various cultures, it has been considered appropriate to make monetary compensation in lieu of corporeal punishment.¹²⁸ There is some direct evidence in the Book of Mormon that a criminal could buy his way out of punishment for a civil offense (*kofer*), as well as a few instances indicating that money did enter the judicial process from time to time. In Alma 11 there is record of a specific debtor’s law, which was apparently part of the corpus of law created by Mosiah. After a complaint was made to a judge concerning a debtor and proper evidence submitted, the debtor was either “compelled to pay that which he owed, or be stripped, or be cast out from among the people as a thief and a robber” (Alma 11:1–2). This payment should probably be understood as a form of restitution since it appears that the

127. Falk, *Hebrew Law in Biblical Times*, 73; also Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:1027–28 (“Capital punishment is never imposed for property offenses, but is reserved for homicide, adultery, and [other] religious infractions”).

128. See Westbrook, “Mesopotamia: Old Babylonian Period,” 1:416 (discussing fines for injury offenses); and Haase, “Anatolia and the Levant: The Hittite Kingdom,” 1:645–46, 651–52 (discussing fines among the Hittites).

debtor was required to pay back only what he owed. Apparently that was the preferred punishment. Only if he was unwilling or unable to pay back the money did the debtor suffer the other punishments. However, technically speaking, if the debtor did pay he was buying his way out of being stripped naked, flogged, or cast out, and so this kind of settlement can be considered a *kofer*.

The other references to money in legal disputes are instances of bribery. Zeezrom was one of those corrupt judges or lawyers who “did stir up the people to riotings . . . that they might have more employ, that they might get money” (Alma 11:20). While contending with Alma and Amulek, Zeezrom offered Amulek “six onties of silver” if he would “deny the existence of a Supreme Being” (v. 22). The fact that Zeezrom would try to bribe a party in a legal proceeding indicates that judicial officers in this system were probably not immune from accepting money for a favorable decision. After all, these judges were trying to increase their personal wealth. This type of bribery shows up again when Nephi was accused of killing a chief judge. The tribunal offered him money and a plea bargain if he would confess his presumed confederate villain (Helaman 9:20). These two examples, of course, are the opposite of *kofer* since the judge was offering money in order to extract a confession, rather than an accused seeking to obtain leniency. Perhaps these were corruptions of the use of *kofer* since we know that Mosiah’s sound law system was still in effect, at least during the time of the encounter with Zeezrom.