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## Judicial Procedure in Biblical Times

Author(s): John W. Welch

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## CHAPTER FOUR

# JUDICIAL PROCEDURES IN BIBLICAL TIMES



**I**t is one thing to talk of righteous judgment. It is another thing to put the rules of law and justice into practice. The code of civil justice found in Exodus 22–23 gives readers a good idea, in theory, of law and equity in ancient Israel. Reports of actual cases, however, can give careful readers an idea of how those ideals worked in real practice. Of course, in all legal systems, gaps will be found between the theory and the practice of justice. This disparity is visible in the legal cases reported in the Bible as well as in the Book of Mormon, some of which are presented as paragons of righteous judgment while others are examples of the miscarriage of justice.

Over a dozen legal proceedings are found in the books of the Old Testament. Some involve private complaints between family members, such as a grievance raised by a father-in-law against his son-in-law for theft and abduction. Others involve the execution of people who had committed blasphemy, had violated the Sabbath law, had hidden booty taken in battle instead of turning it over to the military commander for consecration to God, or had conspired against the king. Two cases deal with the inheritance rights of daughters in a case where their deceased father had no sons; another proceeding involves a complicated real estate transaction by one kinsman, extinguishing any interests that another kinsman might claim in the property. Cases showing how the legal system was readily vulnerable to abuse include two petitions of women before King Solomon, a trumped-up charge of cursing God and the king, several accusations against prophets claiming that they prophesied falsely, and one near stoning of a virtuous woman maliciously accused of adultery.

These cases have been studied by translators, historians, and legal scholars. Full texts of these cases appear below in appendix 1. These biblical cases feature a variety of judicial procedures, making it difficult, if not impossible, to generalize completely about what constituted a typical

### Legal Proceedings in Biblical Times

Laban against Jacob	Genesis 31:25–55
Trial of the Blasphemer	Leviticus 24:10–23
Trial of the Sabbath Breaker	Numbers 15:32–36
Inheritance of the Daughters of Zelophedad	Numbers 27:1–11
Marriages of the Daughters of Zelophedad	Numbers 36:1–13
Trial of Achan	Joshua 7:1–26
Boaz at the town gate	Ruth 4:1–12
Trial of Ahimelech	1 Samuel 22:6–23
Petition of the Woman of Tekoa	2 Samuel 14:4–11
Petition of the Two Harlots	1 Kings 3:16–28
Trial of Naboth	1 Kings 21:1–16
Trial of Micah the Morasthite	Jeremiah 26:18–19; Micah 3:12
Trial of Urijah ben Shemaiah	Jeremiah 26:20–23
Trial of Jeremiah	Jeremiah 26:1–24
Trial of Susanna	Daniel 13:1–64 (LXX)

judicial procedure in ancient Israel, let alone how Hebrew practices compared with legal procedures in surrounding cultures.

But this variety itself is significant. In analyzing judicial procedure in biblical times, one must recognize that several models of judicial conduct and practice prevailed in ancient Israel. No single set of rules of civil or criminal procedure regulated the administration of justice in that culture.

In much the same way, the Book of Mormon reports a variety of judicial procedures. In the Nephite record are found relatively detailed reports of seven legal actions that were commenced and brought to conclusion. The first involved three complaints raised by one person against the reigning high priest in the city of Nephi; subsequent cases involved charges of lying, false prophecy, blasphemy, reviling the king, slander, sedition, conspiracy, and homicide. Some were private actions; others were of public concern. Some were heard by a single judge, others by bodies of judges or priests. On various occasions, these cases involved the king, public officials, or the general populace.

These seven main legal cases in the Book of Mormon, as the chapters below demonstrate, can be compared successfully and informatively with the same types of legal cases reported in the Old Testament. The legal cases in the Book of Mormon compare favorably with judicial procedures in biblical times, both on individual points of law and in terms of their overall ranges of substantive issues, their approaches to ascertaining the law, the variety of personnel they involved, the forms of procedures they followed, and the judicial and societal results that occurred.

Before turning to the seven legal cases in the Book of Mormon, it will be helpful to survey in general the judicial procedures in ancient Israel. The Hebrew cases provide the best legal backdrop against which the Book of Mormon cases can be compared and understood.

### **Justice and Injustice**

In the biblical cases, justice is sometimes done and sometimes not. The standard against which the success or failure of these actual cases can be judged, in the biblical mind, is always the set of high expectations for judicial conduct set forth in Exodus 23.

*Injustice.* The execution of Naboth (1 Kings 21:1–16) is the most salient example of the miscarriage of justice in the Old Testament. A convincing case can be made that the entire story of Ahab and Jezebel's scheming actions, which led to the wrongful execution of the innocent and unsuspecting owner of an attractive vineyard, is told in such a way as to let readers know that the king and his queen violated virtually every one of the apodictic commandments found in Exodus 23:1–3, 6–9.<sup>1</sup> Desiring to own Naboth's ancestral land near the king's palace and not being able to convince Naboth to accept a reasonable offer to sell or trade his land for another, more valuable property, King Ahab became despondent. His queen came up with a plan to get Naboth executed so that his property would escheat to the king. Her plan succeeded, but in so doing she broke every rule in the Israelite book of justice. She raised a false report, sending letters in the king's name that contained false accusations and that proclaimed a fast, apparently on some kind of false or odd pretense. She put her hand together with two wicked men who stood as false witnesses, and the crowd was swayed to do evil by the queen's influence. Naboth was given little or no opportunity to defend himself, and justice was wrested in favor of the high and the mighty. Compared to the king,

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1. This argument has been successfully developed by Debra Peck in "The Trial of Naboth as a Violation of the Covenant Code" (2006), available in the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University.

Naboth was a poor, ordinary citizen who was wrongfully accused and disadvantaged. The witnesses against him lied, and no one stayed far from this false matter. In the end, an innocent man was executed. While the trial of Naboth raises several interesting legal issues regarding property law, sealed documents, royal authority, and offenses against the king, the dominant legal purpose of this narrative is to illustrate the abuse of judicial process. This outrageous case led Elijah to prophesy against Ahab that “in the place where dogs licked up the blood of Naboth shall dogs lick thy blood” (1 Kings 21:19), and the precise fulfillment of that curse (22:38) attested that divine justice eventually prevailed.

In a similar way, two of the legal cases in the Book of Mormon illustrate the evils and risks of injustice that result when the ideals of Exodus 23:1–3, 6–9 are not put into practice. For example, in the trial of Abinadi, a group of self-interested priests and a wicked king wrongfully execute a lone, righteous man of God; and in the case of Alma and Amulek, group pressure and bribery exemplify injustice. In both cases, divine justice was shown to prevail where human justice had failed.

*Justice.* At the same time, many righteous cases in the Hebrew Bible set the standard for proper conduct in administering justice. Seeking divine wisdom always undergirds righteous judgment, either implicitly or explicitly, as is displayed in the case of the blasphemer (Leviticus 24) and in the case of Achan (Joshua 7). Unforgettable examples of judging righteously are found in the unselfish legal action of Boaz in obtaining the right to marry Ruth the Moabitess and in protecting her inheritance of the property of her mother-in-law, Ruth’s previous husband and Naomi’s husband and sons all having died (Ruth 4); and in the courageous and innovative action of Daniel in separately cross-examining the witnesses against Susanna and exposing them in their perjury (Daniel 13 in the Greek Septuagint and Catholic Bible).

Likewise, in the Book of Mormon most of the legal cases are examples of successful righteous judgment. Divine factors are determinative in the cases of Sherem, Korihor, and Seantum. The unselfish sacrifice of Amulek in standing up as a second witness in defense of a falsely accused Alma (Alma 10, 14) and the courageous and innovative rulings handed down by the judge Alma in the case of Nehor (Alma 1) are powerful, formative instances of the proper conduct of justice in the biblical tradition as well.

### **Justice without Judges**

Underlying the entire biblical tradition of justice is the assumption that having no court is often better than having any court at all. Initially, it

was expected in the biblical system of justice that every man would simply do that which was right “in his own eyes” (Deuteronomy 12:8), which becomes a major theme of the book of Judges: “In those days there was no king in Israel: every man did that which was right in his own eyes” (Judges 17:6; 21:25). While there is an upside and a downside to the idea that doing justice is essentially the task of all individual members of society, and while governmental institutions assumed increasing responsibility for administering justice as Israelite civilization became more established and politically regulated, the principle of individual responsibility for creating a just society remained a strong feature of Israelite law and wisdom. One of the Proverbs requires individuals to rise above their own superficial personal prejudices and to do right instead in the depths of the heart: “Every way of a man is right in his own eyes: but the Lord pondereth the hearts. To do justice and judgment is more acceptable to the Lord than sacrifice” (Proverbs 21:2–3; see 1 Samuel 16:7).

So interwoven are the private and public concepts of justice in the Bible that, as Moshe Weinfeld has said, “One cannot always determine whether a biblical passage which speaks of justice and righteousness applies to acts performed by the government (= monarchy) and its leaders, or whether the intention is of good deeds carried out by the individual.”<sup>2</sup> The duty of doing justice oscillates between the obligations of the king and the tasks of the people. As the appointed task of the people (Isaiah 5:1–7; Jeremiah 7:5–6; Ezekiel 18:7–8), justice and righteousness should happen without the need for the judicial enforcement of morals.<sup>3</sup> The words of Jesus, that a person should settle legal disputes “quickly, whiles thou art in the way with him” (Matthew 5:25), reflects this long-standing biblical value that trespasses should be resolved “between thee and him alone” (18:15).

Thus legal disputes are often handled in the biblical world without involving judges. Pietro Bovati has denominated these legal cases as “juridical” to distinguish them from “judicial” actions, in which judges are involved. Juridical (or pre-judicial) crises were serious legal clashes that used recognizable verbal expressions and followed customary rules of accusation, defense, and peaceful resolution.

The confrontation between Laban and Jacob (Genesis 31) is one of the very best examples in the Hebrew Bible of such a legal controversy (*rib*) between two parties who settled their dispute without the mediation of a

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2. Moshe Weinfeld, *Social Justice in Ancient Israel and the Ancient Near East* (Jerusalem: Magnes, 1995), 215.

3. Weinfeld, *Social Justice in Ancient Israel*, 222–30.

judge or judges.<sup>4</sup> This account gives a detailed view of the informal and unstructured way in which many legal disputes would have been resolved in biblical society.

Laban's sons were upset and accused Jacob of taking too much of the family's property (Genesis 31:1). From Laban's countenance, Jacob could tell that he had fallen into disfavor and that Laban would side with his sons in this matter. Thus, after having labored for Laban for twenty years, Jacob took his two wives, children, flocks, and household goods and left in secret. Jacob's legal justification for this unilateral termination of his relationship with Laban and for his departure with household properties was that Laban had changed Jacob's wages ten times (v. 7). The angel of God confirmed Jacob's decision to him in a dream, recalling to Jacob a vow that he had made to God after setting up a pillar back home in Bethel and then telling him to return to the land of his kindred (v. 13).

Rachel and Leah agreed with Jacob's decision (vv. 14–16). They asserted an additional legal point, claiming that they had never received a dowry from Laban and lamenting that their father had "sold" them to Jacob and "hath quite devoured also our money." (It violated custom, but not law, for a father not to give his daughters a dowry.) When they left, Rachel secretly took Laban's household "gods" (figurines that Laban worshipped in the belief that they protected his house).

Laban learned of Jacob's departure three days later and pursued his son-in-law, overtaking him in seven days. The two men met to lodge and discuss their respective complaints against each other. In the tent where they worked out their differences, no judges or lawyers were present. The two men argued their cases personally, passionately, and honorably and reached a legal resolution and personal reconciliation.

Laban's legal and personal claims against Jacob were that Jacob had (a) departed in secret, (b) taken Laban's daughters like captives taken by a robber, (c) deprived Laban of the opportunity to send them off with ceremony and affection, and (d) stolen Laban's gods (vv. 26–30).

Jacob (a) counterclaimed that he had feared Laban would take his daughters back by force (v. 31), and he (b) offered to kill anyone who had the household gods. After searching, Laban did not find the gods, because Rachel was sitting on them (vv. 32–35). Feeling vindicated, Jacob (c) denied that he had wronged Laban in any way, (d) complained that Laban had wrongfully pursued him, (e) averred that Laban had been given open access to search among Jacob's camp and goods, (f) affirmed that he had served

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4. Charles R. Mabee, "Jacob and Laban: The Structure of Judicial Proceedings (Genesis XXXI 25–42)," *Vetus Testamentum* 30, no. 2 (1980): 192–207.

Laban faithfully for twenty years, (g) pointed out that he had borne the loss of Laban's torn cattle and thus went beyond that which was legally required of ordinary herdsmen (compare Exodus 22:10–13), and (h) counterclaimed that Laban had unilaterally changed Jacob's wages often (Genesis 31:36–42).

Jacob and Laban settled their dispute and mutually restored their honors (v. 43). Laban's honor was restored when he was allowed to assert ownership of all of Jacob's wives, children, and property (v. 43) and when he obtained concessions that benefited his daughters and grandchildren (v. 50).

The two men then made a covenant to solemnize their settlement. The covenant was memorialized by a "pillar" (v. 45), a monument symbolizing that in the future the parties could call on heaven and earth to witness that the covenant had been made between Laban and Jacob. Each man named the stone separately: Laban called it "Jegarsahadutha" ("the heap of witness" in Aramaic); Jacob called it "Galeed" ("the heap of witness" in Hebrew). The parties promised that they would not cross over the monument to harm each other and that God was their witness and the enforcer of this agreement (vv. 51–53). Jacob agreed that if he were to mistreat Laban's daughters or if he were to take more wives, the agreement would be nullified (v. 50).

To consummate their resolution, Laban swore an oath by "the God of Abraham, and the God of Nahor," and Jacob swore an oath "by the fear of his father Isaac" (v. 53). Jacob offered a sacrifice and provided food for a covenantal meal, and he invited all to celebrate together the entire night. In the morning, Laban kissed and blessed his children and departed in peace (v. 55).

The way in which this controversy between Laban and Jacob was handled provides useful points of reference in analyzing many other instances of juridical clashes in the Bible or in other texts that reflect such disputes in biblical culture. An excellent example found in the Book of Mormon, discussed in detail in chapter 5, is the controversy raised by Sherem against Jacob, the son of Lehi. Although this confrontation does not end as happily for Sherem as it did for Jacob and Laban in the hill country of Canaan, the contention between Sherem and Jacob in the city of Nephi resembles the case in Genesis 31 in many fundamental ways. Most especially, no human judges were brought into this case that instead was handled by the two parties with God as the ultimate witness, judge, and enforcer.

### **Who Served as Judges?**

In the biblical world, if attempts at private reconciliation proved unsuccessful, people could resort to adjudication. The cases show that many



people qualified and served as judges. Sometimes single judges were involved, but at other times “more than one judge would hear a case; the number may have varied.”<sup>5</sup> Nothing was entirely typical.

At first, Moses heard all kinds of cases, but at the behest of his father-in-law Jethro, he set up a system of lower judges, “able men, such as fear God, men of truth, hating covetousness,” to judge small cases but to bring the hard cases to him (Exodus 18:21–26). Accordingly, Moses heard the cases of the blasphemer,<sup>6</sup> the wood gatherer,<sup>7</sup> and the daughters of Zelophehad<sup>8</sup> and other matters, while routine cases were heard by lower officials. Later, in a similar fashion, King Jehoshaphat appointed subordinate judges to travel and handle cases throughout the kingdom of Judah (2 Chronicles 19:5). Comparably, in the Book of Mormon, as the political situation in Zarahemla became more complex, it became advisable to broaden the base of the judicial system; a reform instigated by the king gave a chief judge jurisdiction over the great matters, and lower judges were installed to handle the ordinary cases (Mosiah 29:28–42).

In biblical society, local elders also served as judges in various capacities and configurations. The judicial authority of the elders, the senior men in the area, can be traced back to Numbers 11:16–17, which reports the creation of another auxiliary system: “And the Lord said unto Moses, Gather unto me seventy men of the elders of Israel, whom thou knowest to be the elders of the people, and officers over them; . . . and they shall bear the burden of the people with thee, that thou bear it not thyself alone.”

Extending this administrative system, the book of Deuteronomy begins with the appointment of tribal leaders to serve as judges in cases involving private disputes: “So I took chief of your tribes, wise men, and known, . . . and I charged your judges at that time, saying, Hear the causes between your

5. Tikva Frymer-Kenski, “Anatolia and the Levant: Israel,” in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook (Leiden: Brill, 2003), 2:992.

6. Jacob Weingreen, “The Case of the Blasphemer, Leviticus XXIV 10ff,” *Vetus Testamentum* 22, no. 1 (1972): 118–23; Rodney R. Hutton, “Narrative in Leviticus: The Case of the Blasphe-ming Son (Lev 24,10–23),” *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 3 (1997): 145–63; “The Case of the Blasphemer Revisited, Lev. XXIV 10–23,” *Vetus Testamentum* 49, no. 4 (1999): 532–41; and Jacob Milgrom, *Leviticus 23–27: A New Translation with Introduction and Commentary* (New York: Doubleday, 2001), 2101–45.

7. Jacob Weingreen, “The Case of the Woodgatherer (Numbers XV 32–36),” *Vetus Testa-mentum* 16, no. 3 (1966): 361–64; and Gnana Robinson, “The Prohibition of Strange Fire in Ancient Israel: A New Look at the Case of Gathering Wood and Kindling Fire on the Sabbath,” *Vetus Testamentum* 28, no. 3 (1978): 301–17.

8. Jacob Weingreen, “The Case of the Daughters of Zelophchad,” *Vetus Testamentum* 16, no. 4 (1966): 518–22; and Josiah Derby, “The Daughters of Zelophehad Revisited,” *Jewish Bible Quarterly* 25, no. 3 (1997): 169–71.

brethren, and judge righteously between every man and his brother, and the stranger that is with him” (Deuteronomy 1:15–16). Exactly how the judicial systems described in Exodus 18, Numbers 11, and Deuteronomy 1 related to each other has been debated over the centuries,<sup>9</sup> yielding various interpretations and several configurations based on these precedents.

Cases involving public concerns, however, such as whether a man-slayer who had sought refuge at the altar in one of the cities of refuge should be granted asylum, were heard by a local assembly composed, apparently, of groups of city elders in each city of refuge (Numbers 35:24).

On other occasions, perhaps mainly in cases concerning family and property affairs,<sup>10</sup> a group of ten town elders could be convened rather spontaneously at the town gate to witness and resolve legal matters (Ruth 4:2).<sup>11</sup> In some cases, local courts may have consisted of a single judge (Numbers 25:5; Deuteronomy 25:1–3), perhaps assisted by some of the elders; in other cases, they sat as a body (Deuteronomy 19:17).<sup>12</sup> In Israel, as elsewhere, ad hoc courts of various configurations were often the rule locally: “The local courts give the impression of being ad hoc assemblies. . . . ‘The judges’ seem to be different from the official- or council-based courts but remain shadowy figures in the sources. At all periods, it is a matter of debate whether the term designated a profession or merely a function. Certainly, they were not trained jurists in the manner of modern judges.”<sup>13</sup> Still, these judicial bodies had great power and influence.<sup>14</sup>

9. Hanoch Reviv, “The Traditions Concerning the Inception of the Legal System in Israel: Significance and Dating,” *Zeitschrift für die alttestamentliche Wissenschaft* 94, no. 4 (1982): 566–75.

10. Of Anatolia (Asia Minor) and the Levant, Israel, Frymer-Kenski notes: “The judges sat for the judgment. The number of judges is not specified, and it may be that in simple cases one judge would have sufficed. Family law procedures may have anticipated all the men of the town sitting together.” “Anatolia and the Levant: Israel,” 2:995.

11. Thomas Thompson and Dorothy Thompson, “Some Legal Problems in the Book of Ruth,” *Vetus Testamentum* 18, no. 1 (1968): 79–99; Derek R. G. Beattie, “The Book of Ruth as Evidence for Israelite Legal Practice,” *Vetus Testamentum* 24, no. 3 (1974): 251–67; Robert Gordis, “Love, Marriage, and Business in the Book of Ruth: A Chapter in Hebrew Customary Law,” in *A Light unto My Path: Old Testament Studies in Honor of Jacob M. Myers*, ed. Howard N. Bream, Ralph D. Heim, and Carey A. Moore (Philadelphia: Temple University Press, 1974), 241–64; and Baruch A. Levine, “In Praise of the Israelite *Mišpāhā*: Legal Themes in the Book of Ruth,” in *The Quest for the Kingdom of God: Studies in Honor of George E. Mendenhall*, ed. H. B. Huffmon, F. A. Spina, and A. R. W. Green (Winona Lake, IN: Eisenbrauns, 1983), 95–106.

12. Zéev 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), 49. See also Joachim Oelsner, Bruce Wells, and Cornelia Wunsch, “Mesopotamia: Neo-Babylonian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 2:919.

13. Raymond Westbrook, “Introduction: The Character of Ancient Near Eastern Law,” in Westbrook, *History of Ancient Near Eastern Law*, 1:30.

14. Westbrook, “Introduction,” 1:31.

In certain instances, kings would serve as judges, especially in Mesopotamia and Egypt,<sup>15</sup> but apparently less often in Israel.<sup>16</sup> Kings would sometimes reserve the power to judge capital cases: “A capital offence comes before the king” (Law of Eshnunna 48; compare the law in 3 Nephi 6:22 that no one could impose the death penalty “save their condemnation was signed by the governor of the land”). Kings would naturally handle cases of conspiracy or disloyalty against them, as occurred in King Saul’s handling of the conspiracy of Ahimelech: “And the king said, Thou shalt surely die, Ahimelech, thou, and all thy father’s house” (1 Samuel 22:16). Border disputes and the arrival of unidentified foreigners into the land were natural extensions of the king’s jurisdiction over his lands (e.g., the arrest of Ammon by King Limhi in Mosiah 7:6–16). The false petition before King David by a woman from Tekoa, feigning to be a widow with two sons, one of whom had supposedly killed the other and was now about to be killed by her clansmen (2 Samuel 14:4–11), and also the famous vignette of the two harlots arguing before King Solomon over whose baby had died (1 Kings 3:16–28), show that the poorest people in Israelite society could seek legal protection from the king, even should these cases be viewed more as literary depictions than historical reports.

Priests in Israel served in various judicial capacities (Deuteronomy 17:9; 19:17; 33:10), especially in proceedings that called for the swearing of oaths or ordeals or purification rituals. For example, the husband who suspected his wife of adultery could take her before a priest, and her oath and drinking of the bitter waters could exonerate her (Numbers 5:15); and after the discovery of a slain person outside of a village, there being no witnesses to the crime, the Levitical priests would put the matter completely

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15. “The king was everywhere the supreme judge, although his judicial activity is more in evidence in some periods than in others. There was no formal machinery of appeal from a lower court; rather, a subject would petition the king to redress an injustice suffered by a lower court or official. The king could also try cases at first instance. Various law-code provisions suggest that certain serious crimes involving the death penalty were reserved for the king, but he is also found judging apparently trivial matters.” Westbrook, “Introduction,” 1:30. In Mesopotamia, in the Old Babylonian period, “the king might deal with a case brought before him in one of three ways. He either tried the case himself and gave final judgment, decided a point of law and remitted the case to a local court for a decision on the facts, or remitted the entire case to a local court.” Westbrook, “Mesopotamia: Old Babylonian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 1:367. In Egypt, “the pharaoh himself . . . constituted the highest court.” Ignacio Márquez Rowe, “Anatolia and the Levant: Canaan,” in Westbrook, *History of Ancient Near Eastern Law*, 1:739.

16. Margaret Elizabeth Bellefontaine, “Customary Law and Chieftainship: Judicial Aspects of 2 Samuel 14:4–21,” *Journal for the Study of the Old Testament* 38 (1987): 47–72; and Theodore J. Hoftijzer, “David and the Tekoite Woman,” *Vetus Testamentum* 20, no. 4 (1970): 419–44.

to rest by requiring all the men in the village to swear an oath of ignorance and innocence (Deuteronomy 21:5).

Ultimately the people as a whole remained a constant force in the judicial system (Jeremiah 26:16). As Jacob Milgrom has concluded: "One factor remains unchanged. As the trials of Naboth and Jeremiah clearly demonstrate, the people, *'am*, persists as an integral element of the judiciary."<sup>17</sup>

The trial of Jeremiah clearly illustrates the wide array of people and officers who could get involved almost spontaneously in a lawsuit in Jerusalem in the seventh century. Shortly after the catastrophic defeat and death of King Josiah in 609 BC, Jeremiah (a contemporary of Lehi) positioned himself prominently in the court of the temple at Jerusalem and called the people of Jerusalem to repentance, their wickedness having well been the cause of God's disapproval that led to the debacle at Megiddo. Jeremiah was instructed by the Lord to deliver a certain message word for word ("diminish not a word," Jeremiah 26:2). The substance of Jeremiah's complaint against the people was that they had not conducted themselves according to the laws that God had set before them (v. 4) and that they had not obeyed the words of the prophets that God kept sending to them (v. 5). Significantly, Jeremiah required obedience to both the law and the prophets. The threat from the Lord lodged by Jeremiah against the people in Jerusalem took the form of a simile curse: "I will make this house like Shiloh" (v. 6), alluding to the destruction of the shrine at Shiloh that resulted in the loss of the ark of the covenant in the disastrous battle of Ebenezer around 1050 BC when the Philistines dealt a severe military blow to the Israelites.

Legal action against Jeremiah was immediately initiated by the priests, prophets, and all the people who heard him (v. 8). The people indicted Jeremiah with the phrase "Thou shalt surely die" (v. 8). Before matters could develop very far in the trial of Jeremiah, however, certain princes or officials (*sarim*) from the palace arrived (v. 10). It is unclear whether they heard the commotion and came on their own accord or if they were summoned by Jeremiah's friends or other concerned citizens. It is also unclear exactly what legal authority these officials held.

17. Jacob Milgrom, "The Ideological and Historical Importance of the Office of Judge in Deuteronomy," in *Isaac Leo Seeligmann Volume: Essays on the Bible and the Ancient World*, ed. Alexander Rofé and Yair Zakovitch (Jerusalem: E. Rubinstein's Publishing House, 1983), 139. See Ze'en Weisman, "The Place of the People in the Making of Law and Judgment," in *Pomegranates and Golden Bells (Studies in Biblical, Jewish, and Near Eastern Ritual, Law and Literature in Honor of Jacob Milgrom)*, ed. David P. Wright, David Noel Freedman, and Avi Hurvitz (Winona Lake, IN: Eisenbrauns, 1995), 407–20.

They took their seats in the New Gate of the house of the Lord. Doing “justice ‘at the gate’” was idiomatic in ancient Israel. Before these seated officials, the prophets and priests pressed their charge against Jeremiah, accusing him of having “prophesied against this city” (v. 11). In defending himself, Jeremiah simply testified that he spoke in the name of the Lord, telling the officials that he was willing to have them do what they thought was “good and meet [proper]” (v. 14), raising the specter of “innocent blood,” the shedding of which would bring divine judgment upon the judges, the city, and all the people (v. 15). The earlier cases of Micah and Urijah were invoked as precedents. The officials announced their verdict fairly quickly, finding Jeremiah innocent without much difficulty, having decided that he had indeed spoken in the name of the Lord (v. 16). Ultimately, Jeremiah was defended and protected by Ahikam, an influential prince.<sup>18</sup>

Perhaps because Lehi came out of Jerusalem shortly after this trial (and probably other similar litigations), a similar variety of judicial functionaries greets readers in the Book of Mormon. As will be discussed below, the trial of Abinadi was conducted in the palace of King Noah, whose judicial role was significant but was limited by his council of priests who took charge in certain ways. Alma sat as a single judge in the trial of Nehor. Other judges and priests were involved in the trial of Korihor. Local elders and appointed officials participated in the trial of Alma and Amulek. And Paanchi “was tried according to the voice of the people” (Helaman 1:8).

Trials were held essentially wherever the judges could be found. In Mesopotamia, “there appears to have been no special term for courthouse before the Neo-Babylonian period. The location of the court is occasionally mentioned as a temple or temple gate, but it was by no means the universal practice and, where so situated, did not necessarily involve participation of priests in the court.”<sup>19</sup> In Egypt, “justice was often apparently administered at a gate, forecourt, or portico, presumably of a temple.”<sup>20</sup> In Israel, places of judgment could vary from the city gate, the palace, temple, or other places. A similar range of judicial settings is found in the legal cases in the Book of Mormon. Cases were originated or heard in the palace or temple of King Noah, as judges sat on their judgment seats, or in places open to the general populace.

18. Frank-Lothar Hossfeld and I. Meyer, “Der Prophet vor dem Tribunal. Neuer Auslegungsvorschlag von Jer 26,” *Zeitschrift für die alttestamentliche Wissenschaft* 86 (1974): 30–50; and John W. Welch, “The Trial of Jeremiah: A Legacy from Lehi’s Jerusalem,” in *Glimpses of Lehi’s Jerusalem*, ed. John W. Welch, David Rolph Seely, and Jo Ann H. Seely (Provo, UT: FARMS, 2004), 337–56.

19. Westbrook, “Introduction,” 1:30.

20. Richard Jasnow, “Egypt: New Kingdom,” in Westbrook, *History of Ancient Near Eastern Law*, 1:306.

### What Procedures Were Generally Followed?

An interesting degree of variety is also found in the judicial procedures followed by various biblical and ancient Near Eastern courts. Again, the rules of civil, criminal, or administrative procedure do not appear to have been particularly rigid, but certain patterns seem to emerge from the surviving documents. Because these patterns add important insights into what it meant in biblical times to do justice in a given case, it is helpful to get a general sense of these customary legal procedures.

Donald McKenzie has attempted to reconstruct the procedural steps and terms used in a typical Israelite lawsuit brought before judges at a town gate. In the picture he paints, no technical term for defendant is found, but the plaintiff is variously called an “adversary,” an “attacker” or “accuser” (the Hebrew word in each of these instances is *satan*; 2 Samuel 19:22; Psalm 38:20; 71:13; 109:20, 29), or a “man of quarrel.” This party makes “violent accusations” against the alleged offender, who “vehemently denies them.” The two decide to submit their dispute to the town elders. One of the elders announces that a trial is beginning. The accuser then presents his case, lays out the matter before the judges, and perhaps suggests or demands certain punishment. The proceeding is “entirely public,” open to anyone who might be passing in or out of the city gate. Volleys of accusations and responses ensue, witnesses or advocates step forward for both sides, the elders deliberate, and eventually they rise to declare either party innocent or culpable. The onlookers may chorus their assent, and the prescribed remedy or punishment is administered immediately.<sup>21</sup>

Robert Wilson offers a somewhat different overview of a typical biblical trial. In his view, the elements include the following: an initial act that “emphasizes the justness of the proceedings and the fairness of the elders”; during the hearing, “litigants are encouraged to present their view of the dispute”; the elders then question the parties and “attempt to suggest a compromise that will be acceptable to both parties”; should one of the parties prove guilty, the elders invite that party “to confess his guilt” and impose a penalty in order to restore order and unity to the society.<sup>22</sup>

What words signaled the commencement of litigation? As Bovati points out, in the biblical world verbs of motion such as *draw/come unto*,

21. Donald A. McKenzie, “Judicial Procedure at the Town Gate,” *Vetus Testamentum* 14, no. 1 (1964): 100–104.

22. Robert R. Wilson, “Israel’s Judicial System in the Preexilic Period,” *Jewish Quarterly Review* 74, no. 2 (1983): 236–37. See also Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible* (Sheffield, England: JSOT Press, 1994), part II, discussing acts and procedures preceding the debate, the accusation, the defense, bringing one or both of the parties to silence, the sentence, and execution of judgment.

*draw/come near, go up, enter into, and arise* often signaled that legal proceedings were about to begin.<sup>23</sup> Consider, for example, the expressions such as “come unto judgment” (Deuteronomy 25:1), “come together in judgment” (Job 9:32), or “let us come near together to judgment” (Isaiah 41:1; see Malachi 3:5).

Along this line, Book of Mormon usage seems to draw directly on the active biblical mandate to “take hold of” the accused and “bring” him before the judges,<sup>24</sup> the words used in the King James translation to describe an accused’s apprehension and arraignment (“lay hold on him, and bring him [to the court],” Deuteronomy 21:19). In both Nephite and Lamanite contexts, an accused was generally said to be “taken” before the court.<sup>25</sup> The comparable idea of “bringing”<sup>26</sup> an accused to be judged also occurs often in the Book of Mormon. These cases of “taking” or “bringing” often involved “binding” the accused (e.g., Mosiah 12:9; Alma 17:20; 30:20) and “carrying” him before the decision maker (e.g., Mosiah 12:9; Alma 30:21), whether before judges or the populace. To visualize the dramatic scenes that these otherwise relatively bland words might ordinarily connote, consider the Sumerian instance of binding and carrying in which a husband “strapped his wife and her lover caught in *flagranti delicto* to the bed and brought them bed and all before the Assembly of Nippur.”<sup>27</sup>

Many cases in the Book of Mormon also contain references to “laying hands” on the accused.<sup>28</sup> “The hand,” according to Bovati, “has a certain relevance in legal testimony . . . [as evidenced by Exodus 23:1], which seems to echo the custom of the laying of a hand on the culprit in the act of making an accusatory declaration.”<sup>29</sup> Thus it seems that laying hands

23. Bovati, *Re-Establishing Justice*, 218–21; Falk, *Hebrew Law in Biblical Times*, 64n33; Zéev W. Falk, “Hebrew Legal Terms,” *Journal of Semitic Studies* 5, no. 4 (1960): 350–54.

24. Falk, *Hebrew Law in Biblical Times*, 58.

25. As in the cases of Ammon (Mosiah 7:16), Abinadi (Mosiah 12:9; 17:1, 13), Alma (Alma 9:33; 14:4), Ammon (Alma 17:20), Aaron (Alma 22:19), Korihor (Alma 30:20, 21), and Nephi (Helaman 9:19); and it was attempted against Samuel (Helaman 16:6).

26. As in the case of Abinadi (Mosiah 11:28; 12:18; 17:6), the capture of a Lamanite king (20:13–14), the prosecution of those accused of apostasy (26:7, 10, 11), the trial of Nehor (Alma 1:2, 10), and in the cases of Alma and Amulek (11:1–2, 20; 14:8) and Korihor (30:30).

27. Raymond Westbrook, “Judges in the Cuneiform Sources,” *MAARAV, A Journal for the Study of the Northwest Semitic Languages and Literatures* 12, nos. 1–2 (2005): 34. See Samuel Greengus, “A Textbook Case of Adultery in Ancient Mesopotamia,” *Hebrew Union College Annual* 40–41 (1969–1970): 33–44.

28. As in the cases of Abinadi (Mosiah 13:2–3), Alma (Alma 9:32), Ammon (Alma 17:35), Aaron and his companions in the court of Lamoni’s father (Alma 22:20), and Nephi (Helaman 8:4, 10; 10:15). For a time this practice was forbidden by Lamoni’s father with regard to the Nephite missionaries in order to assist them in their proselyting efforts (Alma 23:1–2).

29. Bovati, *Re-Establishing Justice*, 281.

on an accused not only served to keep him from fleeing but also was an integral part of the formal proceeding (tantamount to service of process), as the seized was then formally accused.<sup>30</sup>

Not all litigants were compelled to appear before a judicial body. Accusers often “came” of their own accord to commence a legal proceeding.<sup>31</sup> When the accused was brought before a presiding authority, the king or judge could either extend benevolence by raising him up<sup>32</sup> (apparently a practice among the Nephites and Lamanites, Alma 47:23) or simply proceed with the trial.

*Contend* (Hebrew *rib*) is probably the most prominent biblical (Isaiah 50:8; Micah 6:1) and Book of Mormon term<sup>33</sup> connected with legal disputes, and hence the absence of contention was a distinctive sign of peace in biblical cultures (Helaman 3:1–2). As mentioned above, an accuser under Hebrew law had various titles, one of them being *satan*. This may explain why contending with “adversaries” was so strongly condemned in the Book of Mormon (Alma 1:22) and why the spirit of contention was said to be “of the devil, who is the father of contention” (3 Nephi 11:29).

Who could commence a legal action? In Israel, “when a crime was discovered, legal process began with the pronouncement of an *ʾalah*, a general imprecation that demanded that anyone with knowledge step forward. . . . A procedure could also be initiated by an accusation brought by a witness.”<sup>34</sup> Bovati describes the accusation itself as “lay[ing] the responsibility for an illegal or forbidden act upon a particular person (or

30. Bovati, *Re-Establishing Justice*, 281, citing Leviticus 24:14 and Job 9:33.

31. Bovati, *Re-Establishing Justice*, 221. Language of “coming” is found in Sherem’s accusation of Jacob (Jacob 7:3, 6) as well as in the questioning of Alma and Amulek (Alma 12:20; 14:14, 18, 20).

32. Bovati, *Re-Establishing Justice*, 199.

33. Nephi describes his brothers’ reaction and his subsequent reply to the Lord’s commandment that they build a ship as a contention (1 Nephi 17:52). Jacob uses the same word to characterize his dispute with Sherem (Jacob 7:7). So too do various authors—such as Amaleki, Zeniff, Moroni, Mormon, Alma, and Helaman—to describe Zeniff’s dispute with many of his settling party (Omni 1:28; Mosiah 9:2); Gideon’s arguments in favor of slaying King Noah (Mosiah 19:3); Nehor’s argument with Gideon and the subsequent social debate (Alma 1:7, 22); political debate over the Amlici question (2:5); the people of Ammonihah’s accusations of Alma (9:1); the Lamanite debate over Ammon upon seeing King Lamoni and his royal household lying on the palace floor (19:28); Amalekite accusations against Aaron, Muloki, and Ammah (21:5, 11); the Morianton-Lehi border dispute (50:25); arguments over the king-men question (51:9; 60:16); the succession dispute between Pahoran’s three sons (Helaman 1:2–3); the argument between the five falsely imprisoned messengers immediately preceding the trial of Nephi (9:18); and the debate over the fulfillment of Samuel’s prophecy (16:17).

34. Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:994.



group).<sup>35</sup> This could take place when the accused was apprehended or at the commencement of the formal argumentative proceedings.

Similarly, the word *accuse* always arises in legal contexts in the Book of Mormon.<sup>36</sup> Another commonly used term is *complain*.<sup>37</sup> Another's wrongdoing could also be denounced by a "declar[ation]" from an accuser of a particular crime.<sup>38</sup> Forms of the word *say* (*said*, *saying*, *tell*, and so on)<sup>39</sup> or of the word *question*<sup>40</sup> constitute a large majority of the accusatory terminology used in a number of cases in the Book of Mormon.

How would the action move forward? In the ancient Near East, "the parties were normally responsible for marshaling their own case and bringing witnesses and other evidence. The court, however, also had inquisitorial powers: it could interrogate parties and witnesses and could summon witnesses on its own initiative. In cases of serious public interest, the proceeding was in the nature of a judicial investigation."<sup>41</sup> In Hellenistic Egypt "the trial itself began with a statement by the plaintiff in the case, followed by a response from the defendant. Another round of response and counterresponse followed. The judges (often members of the local priesthood) verified testimony by asking questions and also had authority

35. Bovati, *Re-Establishing Justice*, 62.

36. See the cases of Laman and Lemuel against Nephi (2 Nephi 1:25), King Benjamin's address (Mosiah 2:15, declaring that his purpose was not to accuse), Abinadi (12:19; 17:7, 12), the apostates brought before Mosiah to be judged (26:11), Alma and Amulek (Alma 10:12, 31), Korihor (30:31), and Nephi (Helaman 9:19).

37. This language appears in Laman and Lemuel's accusations against Nephi (1 Nephi 17:18, 22), the people's allegations to Alma and Mosiah concerning persecution of church members (Mosiah 27:1), Moroni's explanation of Nephite legal proceedings during the trial of Alma and Amulek (Alma 11:2), and the unlawful killings of prophets during the end of the judge period (3 Nephi 6:25).

38. See the case of Jacob and Sherem (Jacob 7:2, 7).

39. Forms of the word *say* appear in the accounts of Jacob and Sherem (Jacob 7:6, 11, 20), the prophetic suit brought by King Benjamin (Mosiah 2:15), the trial of Alma and Amulek (Alma 10:24, 26, 27, 28; 11:26, 36; 14:15, 21), and the trial of Korihor (Alma 30, 19 times).

40. "Questioning" an accused of allegations against him is also common, as shown in the cases of Ammon the explorer (Mosiah 7:8), Abinadi (12:18–19), and Alma and Amulek (Alma 10:13, 16, 17; 11:21; 14:18) and in the trial of Nephi (Helaman 9:19). The only time in the Book of Mormon that *question* is not used in a legal context involves Amulek's preaching to the impoverished people of Ammonihah (Alma 34:5, the "great question" concerning the coming of Christ). The sincerity of the questioning varied, of course. In the trial of Alma and Amulek, for example, the point of questioning was not to illicit responses to sincere inquiries but to "catch" them (10:13, 17), or make them contradict themselves (10:16). Ironically, this strategy backfired and resulted in the accusers themselves being "caught" (12:1). The same overtone of insincerity pervades the trials of Abinadi (Mosiah 12:20–24, when Abinadi is asked about the meaning of Isaiah's "proclaiming peace" passage) and Nephi (Helaman 9:20, when Nephi's accusers attempt to bribe him to falsely confess).

41. Westbrook, "Introduction," 1:32.

to send out investigators through the chief of police to verify facts. Both parties were responsible for marshalling and presenting their own evidence, documents, and witnesses.<sup>42</sup> In Israel “the parties would stand and the accuser might approach the accused (Isa. 50:8), but in Naboth’s trial, he was seated at the head of the people, and the witness sat facing him and testified against him (1 Kings 21:13). The accuser would declare the particulars of his case, and the other party would then examine his statements (Prov. 18:17). The accused might have a representative (vindicator) to assist him to help him examine the witness (Isa. 50:8 and Job, throughout). Judgment would be given in the morning (Jer. 21:11–12; Zeph. 3:5).”<sup>43</sup>

It was necessary in making one’s case to present the “evidences” against the accused (Alma 11:2), whether by physical evidence (as in the cases of Achan and Seantum), by documentary evidence (as in the letters produced in the case of Naboth), or by oral testimony (as in the cases of Susanna and Korihor).<sup>44</sup> “Examples of physical evidence are the blood-stained sheet that attests to a bride’s virginity (Deut. 22:13–17) and the remains of a sheep that a shepherd must bring to prove that it was devoured by a wild beast (Exod. 22:13). In a Neo-Babylonian trial for the theft of two ducks, the carcasses of the stolen ducks are brought into court for examination.”<sup>45</sup>

Oral evidence, including hearsay,<sup>46</sup> was the most common type of evidence, and it was supplied by witnesses. Who could stand as witnesses? “The parties were competent witnesses on their own behalf. . . . Witnesses did not initially give their evidence under oath; the court might then order them to take an oath.”<sup>47</sup> In Deuteronomy 19:15 as well as under the Middle Assyrian laws, “a criminal conviction has to be based on the testimony of two witnesses (MAL A47).”<sup>48</sup> A particularly severe risk involved accusers or witnesses who committed perjury: “Prohibition of false witness is included in the Ten Commandments and the Book of the Covenant, which enjoins Israel not to enter conspiracies to be an *‘ed hamas* (Exod. 23:1). According

42. Joseph G. Manning, “Egypt: Demotic Law,” in Westbrook, *History of Ancient Near Eastern Law*, 2:831.

43. Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:995.

44. On Achan, see Joshua 7:22–23; Seantum, Helaman 9:31, 37; Naboth, 1 Kings 21:8–13; Susanna, Daniel 13:36–40, LXX (Greek Septuagint); and Korihor, Alma 30:32–47.

45. Westbrook, “Introduction,” 1:33.

46. Westbrook, “Introduction,” 1:33.

47. Westbrook, “Introduction,” 1:33.

48. Sophie Lafont, “Mesopotamia: Middle Assyrian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 1:528.

to Deuteronomy 19:16–20, a witness who proved false was to suffer the same penalty that the accused would have suffered if convicted.”<sup>49</sup>

The Hebrew word for “witness” (*‘ēd*) can refer to one “who says (or who is able to say) publicly something of another,” to an “accuser,” or to one “officially present at an act.”<sup>50</sup> The trial of Alma and Amulek illustrates all three of these uses. In the context of accusation, Alma and Amulek played the first role, “witness[ing] . . . of the things whereof [the people of Ammonihah] were accused” (Alma 10:12). On the other side, the legal authorities of Ammonihah acted as accusatory witnesses in their attempt to get Alma and Amulek to contradict themselves in front of a crowd so that the accusers “might find witness against them” and bring them up for trial (v. 16). The strategy yielded the desired accusations, which were presented (presumably publicly) “before the chief judge of the land” (14:5). Shortly thereafter, Alma and Amulek were forced to be “officially present” (as “witness[es]” of) the act of burning sacred texts, women, and children (vv. 8–10).

How would the defendant respond? The response to many accusatory questions is often characterized, appropriately, simply as an “answer.” As Bovati points out, this pattern appears in the Old Testament, as there are “continual references to ‘saying’ and ‘answering’ by the disputants within the individual speeches.”<sup>51</sup> Comparable language is also found in many places in the Book of Mormon.<sup>52</sup>

In answering, if he chose not to confess judgment, the accused would either (1) deny and produce his own witnesses or (2) make a counteraccusation.<sup>53</sup> Such responses in the Book of Mormon legal cases use verbs such as *deny*, *confound*, and *rebuke*. In the cases of Sherem, Korihor, and Nephi, for example, the accused, when responding to accusations against him, counters with predictions of false initial denials by the ultimately guilty party, which were later renounced as a result of a subsequent confession of guilt<sup>54</sup> or a divine manifestation.<sup>55</sup> Other denials from the innocent parties themselves often involve “confounding” one’s accusers;<sup>56</sup> still others

49. Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:995.

50. J. Van der Ploeg, “Studies in Hebrew Law,” *Catholic Bible Quarterly* 12, no. 3 (1950): 257.

51. Bovati, *Re-Establishing Justice*, 74, citing Job 9:14–16; 13:22.

52. See the cases of Ammon the explorer (Mosiah 7:11), Abinadi (Mosiah 12:19, 32), Alma and Amulek (Alma 11:21, 29, 34; 14:17–19), and Korihor (Alma 30:36, 38).

53. Bovati, *Re-Establishing Justice*, 31–32.

54. On Sherem, see Jacob 7:14, 19; Nephi, Helaman 8:13, 24; and Seantum, Helaman 9:30, 35–37.

55. On Korihor, see Alma 30: 41–50.

56. This occurs in the cases of Nephi (1 Nephi 2:14; 2 Nephi 4:22), Jacob and Sherem (Jacob 7:8), Abinadi (Mosiah 12:19), and the five wrongly accused messengers prior to Nephi’s trial (Helaman 9:18).

may “rebuke” their accusers,<sup>57</sup> which was well known in biblical times as effective defense advocacy.<sup>58</sup> Battle metaphors were also employed,<sup>59</sup> as in saying that the accused withstood his accuser(s).<sup>60</sup>

The burden of proof quickly shifted to the accused, who needed to produce evidence in his own behalf; if a strong defense was forthcoming, the burden would shift back to the accuser, requiring him to strengthen his original allegations. An accused was not presumed innocent until proven guilty. Thus defendants such as Jeremiah, Abinadi, and Nehor all found it necessary to argue and “plead” (Alma 1:11) vigorously for themselves. In addition, cases often involved witnesses in favor of the accused. A number of cases feature outright denials of guilt voiced by third parties who “plead” for the innocent, a known ancient Near Eastern practice.<sup>61</sup> Ancient litigants would also at times call physical objects—such as mountains, the heavens, and the earth—as witnesses to the truth of their allegations.<sup>62</sup> Aside from this exception, it seems, witnesses generally testified from personal knowledge, and thus forms of the word *know* in connection with witness testimony appear in various trials in the Book of Mormon.<sup>63</sup> Lawyers were not present to argue the case on behalf of either side. Lawyers played small roles in ancient Near Eastern law courts. One ruling of a city assembly authorized a plaintiff, “in order to ‘win his case,’ to hire an ‘attorney,’ who could be empowered to inspect tablets or to summon and interrogate people, and could represent him in court.”<sup>64</sup>

57. See examples of numerous spectators at Lamoni’s palace in Alma 19:20, 21, 26, 31.

58. Bovati, *Re-Establishing Justice*, 336, citing Genesis 31:42.

59. Bovati, *Re-Establishing Justice*, 292–94.

60. For example, the prophet Abinadi being unfazed by the interrogation of Noah’s priests (Mosiah 12:19), righteous Gideon standing his ground when assaulted by Nehor (Alma 1:7, 9), and the wicked people of Ammonihah resisting Alma’s accusations (8:13).

61. Bovati, *Re-Establishing Justice*, 336; and Westbrook, “Introduction,” 1:31. Forms of “pleading” in advocating the cause of others appear when Alma pleads the cause of Abinadi (Mosiah 17:2), the wives and daughters of the Limhites and Amulonites plead for their husbands and fathers (19:13; 23:33), the king of the Lamanites pleads for the Lehites (20:25), Zeezrom pleads for Alma and Amulek (Alma 14:7), and Lamoni offers to plead the cause of Ammon’s imprisoned brothers and companions in Middoni (20:7).

62. Bovati, *Re-Establishing Justice*, 40n12 and pp. 81–82. Such also takes place in Alma’s response to Korihor’s accusations concerning the coming of Christ (Alma 30:41).

63. This is seen in the case of Sherem (Jacob 7:7, 9, 12), the testimony of Lamoni’s servants concerning Ammon’s feats in defending the king’s flocks (Alma 18:3–4), the trial of Korihor (30:39, 52), and the testimony of the five messengers sent to the royal palace during the trial of Nephi (Helaman 9:15).

64. Klass R. Veenhof, “Mesopotamia: Old Assyrian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 2:443.

There were no established standards of proof (such as “by the preponderance of the evidence,” “substantial evidence,” or “beyond any reasonable doubt”). In the ancient Near East, “the law of evidence knew no standard of proof such as ‘beyond reasonable doubt’ because if conventional evidence failed to reveal the truth, it could be ascertained by supra-rational methods. For the same reason, and given the inquisitorial powers of the court, it is difficult to speak of a burden of proof as in modern law.”<sup>65</sup> Making the standards of proof even lower than in modern courts, “use was made of evidentiary presumptions, where evidence of a provable state of affairs gave rise to the presumption that a second state of affairs existed.”<sup>66</sup> For example, “a buyer is presumed a thief if he cannot identify the seller . . . : a woman is presumed to have consented to intercourse in the city (because she could have cried out) but not in the country.”<sup>67</sup>

The presenting of evidence was aimed at convincing and silencing one party or the other. Guilt (or at least a successful refutation) was established by the opposing party’s silence.<sup>68</sup> In the ancient world, because there was no right against self-incrimination, silence was tantamount to confession, the reason being that the accused was unable to refute the charges against him because they were true. Guilt was accompanied in some Book of Mormon cases by reports of “trembling.”<sup>69</sup> It seems that a physical manifestation (at least in the case of Seantum) could carry as much weight as silence in determining guilt (as in Helaman 9:32–34, declaring knowledge of guilt, in part, from paleness and fear manifested by trembling).

If neither party could be brought to silence, the deadlock was broken by bringing God into the court. “The supra-rational methods were [1] the oath, [2] the ordeal, and [3] the oracle. The latter were generally administered by the priests.”<sup>70</sup> Regarding oaths sworn in a judicial context, the court could require either party to confirm his claims or accusations by swearing an oath in the name of a god. Some oaths were assertive, affirming the truth of certain statements or documents; other oaths were declaratory or self-imprecatory. “The declaratory oath was a solemn curse that the taker called down upon himself if his statement were not true. . . . It invokes the name of a god and is taken at the temple or before a symbol of the god. . . . The oath is deemed irrefutable proof. . . . The theory was

65. Westbrook, “Introduction,” 1:32.

66. Westbrook, “Introduction,” 1:32.

67. Westbrook, “Introduction,” 1:35.

68. See the case of Zeezrom in Alma 12:1 and the dispute between Moroni’s followers and the king-men in Alma 51:7.

69. As in the cases of Zeezrom (Alma 11:46; 12:1, 7) and Seantum (Helaman 9:33).

70. Westbrook, “Introduction,” 1:32.

that fear of divine retribution would constrain the oath-taker to speak the truth. (If later uncovered, a false oath could also lead to punishment by the court.) Indeed, so great was the fear in practice that persons sometimes refused to take the oath, or the parties reached a compromise rather than proceed with the oath.”<sup>71</sup>

Second, sometimes judges required parties to submit to some form of ordeal. “The ordeal was not so much a means of giving evidence as a referral of the issue to a higher court—that of the gods. . . . The trial could involve one or both parties.”<sup>72</sup> In Mesopotamia, it was common to subject litigants to the river ordeal, in which they were thrown into the river to see if they would sink or be delivered. “All the parties must go to the river. The ordeal itself, however, is undergone by a single person, chosen by the judge on the basis of his considered opinion.”<sup>73</sup> In biblical law, the drinking of the “bitter water” can be seen as another type of ritual ordeal (Numbers 5:11–31).

Third, consulting the gods by priestly augury or divination, seeking some kind of divine sign or oracle, could also be used to bring a case to closure. For example, the “taking by the Lord” first of a tribe, then of a family, and then of a household to detect the guilt of Achan (Joshua 7:14–18) and Nephi’s prophetic identification of the culprit Seantum (Helaman 8:27) are clear cases of forensic uses of oracles. While parties such as Sherem or Korihor could call for the court to consult God or to request that signs of the will of God be given or read, it remained in the discretion of the court when to use oracles, oaths, or ordeals.

Of course, at any point, a party could admit his wrong and seek to reestablish the former relationship with the accuser, or at least agree to be subject to justice.<sup>74</sup> When “Achan confessed after divination identified him as the culprit,”<sup>75</sup> no further legal action was necessary, and he and his dependents were summarily executed. Sherem’s and Zeezrom’s confessions demonstrate Bovati’s insight that the original accuser may become the accused as a result of a successful defense by the innocent.<sup>76</sup>

71. Westbrook, “Introduction,” 1:33–34.

72. Westbrook, “Introduction,” 1:34.

73. Lafont, “Mesopotamia: Middle Assyrian Period,” 1:529.

74. Examples of these types of confessions include Seantum (Helaman 9:35, 37), Sherem (Jacob 7:19), and Zeezrom (Alma 14:7). See Bovati, *Re-Establishing Justice*, 32, 94.

75. Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:996.

76. Bovati, *Re-Establishing Justice*, 114; see also McKenzie, “Judicial Procedure at the Town Gate,” 101–2: “Perhaps the reason there is no special word for ‘defendant’ is that the accused man did not think his task consisted merely in proving his own innocence. He could also use the opportunity provided by the lawsuit to accuse his accuser (cf. Gen[esis 31:41]).”

If an accused would not confess, recall his words, or enter into a covenant to keep the law (e.g., 3 Nephi 5:4), however, a verdict would be rendered and the appropriate punishment imposed forthwith. (When and why which punishments were used will be discussed in chapter 13 below.) In any event, legal cases in biblical times usually ended quickly. Thus the blasphemer in Leviticus 24:23, the Sabbath breaker in Numbers 15:36, Achan, and Naboth were all executed immediately; and Pachus's men in Alma 62:9–10 (62 BC), who would not take up arms in defense of their country and who fought against it, were convicted and “speedily executed.” Only exceptionally would parties be granted time to produce specifically named witnesses. More important than producing further evidence was the overall character and credibility of the accuser and of the accused, which the court could judge directly.

With regard to judicial rulings in Israel, there was no appeal on the merits, although appeals were commonly available elsewhere unless the written judgment made the decision *res judicata* and barred any further litigation. In New Kingdom Egypt, for example, one could appeal a local court ruling handed down by another bench; one party litigated “four times over compensation for the same dead donkey.”<sup>77</sup> But “a challenge to the court’s decision, by the plaintiff or the defendant, was subject to severe penalties in excess of those imposed in the original decision. The court could also order the parties to take an oath not to challenge the decision in the future.”<sup>78</sup> In Mesopotamia, “the ‘King’s Word’ overruled any earlier decision, and thus many individuals who felt unfairly treated appealed directly to the king. . . . There were two ways to appeal to the king: either a written petition was addressed to the king or an audience was requested. In the latter case, the petitioner was led veiled into the king’s presence, where he would plead his cause. The king was not only approached in matters of life and death, but also for more trivial reasons.”<sup>79</sup> But in Israel, the only appeal seems to have been in cases where a party accused the judges of perverting justice (Mosiah 29:28–29). In such a case “the remedy is an appeal to the [judge’s] superior . . . on up through the king. . . . Ecclesiastes advises that one not be shocked if the abuse continues on up the line (Eccles. 4:1). The ultimate appeal is to God.”<sup>80</sup>

77. Westbrook, “Introduction,” 1:32.

78. Kathryn Slanski, “Mesopotamia: Middle Babylonian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 2:493.

79. Karen Radner, “Mesopotamia: Neo-Assyrian Period,” in Westbrook, *History of Ancient Near Eastern Law*, 2:887.

80. Frymer-Kenski, “Anatolia and the Levant: Israel,” 2:998. Compare the unsuccessful complaint against corrupt judges in 3 Nephi 6:25–30 (AD 30), which went “up unto the land of

As is apparent for many reasons, ancient lawsuits were risky propositions. There was danger in starting a lawsuit, since accusations might fly against the initial accuser. The rules were quite indefinite, and the evidentiary standards were vague. Who might turn out to sit that day as a judge was rather random, how those judges might evaluate the evidence or persons involved was highly unpredictable, and the decision of the judges was for all practical purposes final. These risks created a high cost threshold to litigation, which must have induced many parties to settle their disputes outside of court (Isaiah 1:18, “come now, and let us reason together”; and Matthew 5:25, “agree with thine adversary quickly”).

### Turning to the Main Legal Cases in the Book of Mormon

Only a few points remain to be mentioned before analyzing the legal cases in the Book of Mormon one by one. Although much can be said about these cases, our view remains incomplete. It is unknown, for example, to what extent these legal cases were typical or atypical. The seven main cases deal principally with what the modern mind would classify as religious offenses—allegations involving blasphemy, false prophecy, causing apostasy, reviling against God or ruler, and enforcing priestcraft. One wonders if trials involving such matters were common or rare in that society, if they followed consistent or idiosyncratic rules, and if they were conducted in a different manner from ordinary secular cases of breach of contract, personal injury, theft, divorce, or even capital cases such as murder, adultery, or treason. While we know that Nephite law prohibited murder, plunder, theft, and adultery (Alma 30:10; 51:19; 62:9–10; 3 Nephi 6:22), Mormon’s abridgment gives little indication of how the Nephites resolved cases involving delinquent debtors (Alma 11:2), ordinary business disagreements, torts, family matters, or property disputes between two private litigants. Thus much remains uncertain.

Even if all kinds of serious legal problems were handled essentially according to norms or customs from the biblical world, it is still likely that considerable flexibility and discretion existed within all ancient legal systems to allow each case to be handled on an individual basis as justice was thought to demand. Beyond the provisions of the law of Moses found on the plates of brass, or the general rules and customs that developed in Nephite society, no code of civil procedure in a modern sense, or *Manual of Discipline* in the Essene sense, or Talmud in a Pharisaical sense set forth

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Zarahemla, to the governor.” The judges were taken and brought up before the judge, but the accused judges entered into a compact with their friends, kindreds, lawyers, and high priests “to combine against all righteousness” (3 Nephi 6:28), thwarting the process.



### **Legal Cases and Procedures in the Book of Mormon**

The Case of Sherem against Jacob .....	Jacob 7:1–23
The Arrest of Ammon .....	Mosiah 7:6–16
The Trial of Abinadi .....	Mosiah 7:26–28; 11:20–17:20
The Trial of Nehor .....	Alma 1:1–15
The Trial of Alma and Amulek .....	Alma 9:1–14:29; 16:1–11
The Imprisonment of Aaron and Brethren .....	Alma 21:12–14
The Trial of Korihor .....	Alma 30:6–60
The Imprisonment of King-Men .....	Alma 51:19
The Trial of Pachus’s Men and the King-Men .....	Alma 62:9–10
The Case of Paanchi .....	Helaman 1:1–10
The Imprisonment of Lehi and Nephi .....	Helaman 5:21–22
Gadianton Trials of Their Defectors .....	Helaman 6:24
The Trial of Seantum .....	Helaman 8:27–9:41
The Execution of Zemnah .....	3 Nephi 4:28–33
The Trial of Captured Robbers .....	3 Nephi 5:4–5
Corrupt Execution of Inspired Prophets .....	3 Nephi 6:20–24
Complaint against the Corrupt Judges .....	3 Nephi 6:25–30

for Jacob and Alma a legal glossary of detailed definitions or a mandatory digest of rigid rules governing the Nephite judicial system. Their system, like most in antiquity, tried to do justice and settle cases fairly, quickly, and unambiguously as the facts and circumstances of each case seemed to require.

But to complicate matters further, two of the seven main Book of Mormon cases may have been atypical since they were heard by corrupt courts. Although Noah and his priests openly purported to teach and observe the law of Moses (Mosiah 12:28), it is evident that they were prone to distort or interpret the law to suit their own purposes. Likewise, while the judges and legal officers in the city of Ammonihah were bound to apply the law of Mosiah—the governing law throughout the land of Zarahemla, which they themselves invoked in claiming that they were entitled to be paid for their legal services (Alma 11:1, 3, 20)—it is

apparent that the trial of Alma and Amulek was in many respects retrograde and abnormal.

While these problems and shortcomings raise some interpretive obstacles in analyzing these cases, the difficulties are not insuperable. Valuable legal information can still be found in cases handled by unrighteous judges or in cases that present aberrational facts or that deal with issues of first impression. Fortunately, the writers of the Book of Mormon were sometimes careful to point out instances when corrupt judges did not follow the traditional law. For example, the briefly mentioned trials by the Gadianton robbers of their defectors in Helaman 6:24 (25 BC) used “laws of their wickedness” and did not judge according to the laws of their country. When King Noah acted contrary to the traditional rules in putting Abinadi to death by fire, the record specifically points out that this was extraordinary and irregular: “Abinadi was the first that suffered death by fire because of his belief in God” (Alma 25:11). Because Noah is accused of many things, including whoredoms, greed, laziness, idolatry, drunkenness, and not keeping and teaching the Ten Commandments (Mosiah 11:2, 3, 6, 15; 12:37; 13:25–26), one must assume that he would not have worried very much about ignoring a simple procedural rule if it worked to his advantage to do so. Nevertheless, it appears that Noah and his priests attempted to maintain the outward appearance of following the customary rules of Nephite judicial procedure—at least they claimed to keep the law of Moses. Thus, unless there is reason to believe otherwise, one should presume that Noah and his priests in most instances attempted to act legally.

Finally, one must also remember that some of these following seven cases arose in different centuries. A similar chronological challenge faces scholars in studying the administration of law and justice in the Bible, which also spans many centuries.<sup>81</sup> Nevertheless, while some significant legal changes occurred in the course of Israelite and Nephite history, the fundamental elements in most ancient legal systems were typically very stable over long periods of time. The early cases of Sherem (about 500 BC) and Abinadi (about 150 BC) arose under the traditional law of Moses, as that law was strictly observed in all respects by the Nephites from the beginning (2 Nephi 5:10; Jarom 1:5). About 91 BC, the changes introduced into the Nephite legal system by King Mosiah, the son of Benjamin

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81. For more information, see John M. Salmon, “Judicial Authority in Early Israel: An Historical Investigation of Old Testament Institutions” (PhD diss., Princeton: Princeton Theological Seminary, 1968); and Herbert Niehr, “Grundzüge der Forschung zur Gerichtsorganisation Israels,” *Biblische Zeitschrift* 31, no. 2 (1987): 206–27.

(Mosiah 29:11, 25–29),<sup>82</sup> primarily reformed procedural and administrative rules, not the substantive rules of law, and accordingly the Nephite judges in this era as in previous times were required to judge cases “according to the laws which have been given . . . by [the] fathers” (vv. 25, 28). Thus the law of Moses continued to be administered by the judges who were appointed to office pursuant to the law of Mosiah. Therefore, traditional Israelite law still formed the controlling body of law at the time of the trials of Nehor (91 BC), Alma and Amulek (82 BC), Korihor (74 BC), Paanchi (52 BC), and Seantum (about 23–20 BC), all five of which arose during the first seventy years of the reign of the judges.

Thus, while the administration of Nephite justice can and must be considered as developing over time, five of the seven principal cases come from a single era in Nephite history and yield sufficient information and points of reference to sustain several general conclusions about the Nephite legal system especially in that era, but they also allow conclusions about Nephite law as a whole, its Israelite origins, its internal developments, and its typical jurisprudence. Similarities between those five cases and the two earlier Nephite proceedings, as well as with biblical precedents, show that continuity and stability was not the exception but the rule in Nephite legal history.

Subject to these caveats, the following chapters seek to understand these seven cases in the way that an educated member of Nephite society most likely would have understood these legal cases at the time they arose. The purpose is not only to comprehend the precise legal issues involved in each proceeding and to extract from each case the prevailing legal principles and probable historical consequences, but also to allow modern readers to experience, as much as possible, these ancient episodes as if they were standing before the judge, side by side with the plaintiffs and defendants who faced these extreme moments of crisis in their lives and received profound manifestations of God’s spirit in connection with these significant legal proceedings.

Much was at stake in these trials: legally, personally, socially, politically, and religiously. Most of the cases involved capital charges in unusual circumstances. In light of Israelite and Nephite law, we can reconstruct enough of the picture to see why those issues presented difficult legal problems at the time and to form opinions about what rules, statutes, or principles would

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82. John W. Welch, “The Law of Mosiah,” in *Reexploring the Book of Mormon*, ed. John W. Welch (Salt Lake City: Deseret Book and FARMS, 1992), 158–61.

have guided the strategies and tactics of the parties and would have influenced the decisions of the judges and outcomes in these cases.<sup>83</sup>

From this study emerges not only an appreciation for ancient legal jargon but also a sense of the remarkable judicial consistency and rational policies that existed within both the Nephite system itself and its ancient Israelite wellsprings regarding righteous judgment and the establishment of justice. As a whole, these seven Nephite legal cases manifest a high degree of coherence and sophistication. These legal narratives bespeak intimate familiarity and mature experience with an intricate body of law, and they display that law in actual operation within a vigorous cultural tradition and a vital spiritual community.

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83. For more information on judges, see Zeev W. Falk, "Ruler and Judge" (Hebrew), *Le-shonenu* 30 (1965–66): 243–47; F. Charles Fensham, "The Judges and Ancient Israelite Jurisprudence," *Ou Testamentiese Werkgemeenskap in Suid-Afrika* (Potchefstroom) 2 (1959): 15–22; S. Gervitz, "On Hebrew *sebet* = Judge," in *The Bible World: Essays in Honor of Cyrus H. Gordon*, ed. Gary Rendsburg and Cyrus H. Gordon (New York: KTAV, 1980), 61–66; Rolf P. Knierim, "Customs, Judges and Legislators in Ancient Israel," in *Early Jewish and Christian Exegesis: Studies in Memory of William Hugh Brownlee*, ed. Craig A. Evans and William F. Stinespring (Atlanta: Scholars Press, 1987), 3–15.