



Type: Book Chapter

Chapter LXII

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Source: *The Story of the Book of Mormon*

Published: Salt Lake City; Joseph Hyrum Parry, 1888

Pages: 347-356

Abstract: The Laws under the Judges—The Voice of the People—Elections—Rights of the People—Church and State—The Criminal Procedure

CHAPTER LXII.

THE LAWS UNDER THE JUDGES—THE VOICE OF THE PEOPLE—ELECTIONS—RIGHTS OF THE PEOPLE—CHURCH AND STATE—THE CRIMINAL PROCEDURE.

WE NEXT enter into the consideration of the law as it existed under the Judges, gathering our information from various passages in which it is directly referred to, or wherein some historical incident is narrated which throws light on its powers and manner of execution.

From the death of king Mosiah II. (B. C. 91), the governmental authority was vested in a chief judge and other subordinate judges and officers, all of whom were elected by the voice of the people, to judge according to the laws which had been given to and accepted by the people. Their authority was defined by the law (the code of Mosiah), but within the bounds therein prescribed they appear to have held unrestricted powers. This was especially so in the case of the chief judge. No civil council or parliament divided with the chief executive the authority to make war or conclude peace, to decide the terms of treaties, or frame enactments for the regulation of public affairs. No direct statement is made of the length of the term that a judge remained in office, but from the historical narrative we gather the idea that he was elected for life or during good conduct. We have instances of judges resigning, but none of their removal by the people because their term of office had expired. Each city or land appears to have had its chief judge or ruler as well as its inferior magistrates, all of whom were

responsible to the chief judge of the whole nation, whose seat of government was located in the Nephite capital, Zarahemla, when the city was not in the hands of Lamanites or traitors.

The manner of conducting elections is not clearly defined. The result is always spoken of as the voice of the people. The mode of procedure was uniform, that is, it was the same throughout the land. In the election of the first chief judge (Alma the younger), the people assembled themselves in bodies throughout all the land to cast in their voices, which conveys the impression that they declared their choice *viva voce*, or by acclamation rather than by lot or ballot. It is quite possible that the methods were entirely dissimilar to any known at modern elections; this, however, is but conjecture.

When the sentiments of the people were greatly divided and party feelings ran very high, the opposing factions assembled in separate bodies throughout the land to cast in their voices, as in the attempt to make Amlici king. The decisions of the people in these assemblies or mass meetings were laid before the judges, who proclaimed the result. In cases where the petition was made for any particular object, or for a change in the law, the judge directed that a special election (if we may so term it) be held, and the results were proclaimed according to the voice of the people, as a whole, or if they were divided, according to the voice of the majority.

Under the code of Mosiah, the judges received wages according to the time which they labored to judge those who were brought before them to be judged; and their wages were a sennine of gold, or its equiva-

lent a sennin of silver, for each day that they were thus employed. As the Nephites had changed the names and values of their coins from the old Hebrew standards, we have no direct way of judging from the record how liberally these officers were remunerated. Lawyers, also, were hired and appointed by the people to administer the law at the time of their trials; it is presumable these acted in behalf of the republic somewhat in the capacity of prosecuting attorneys of the United States. If trial by jury was in vogue among the Nephites, we have not been able to find any reference to that method; indeed the evidence is altogether in favor of the idea that the judge decided as to the guilt or innocence of the accused, and, if adjudged guilty, passed sentence on the culprit. The corruption of these lawyers and judges early became, in some portions of the land, a foundation for the destruction of the government.

When the chief judge was elected he took an oath of office, and it is presmable that the lesser officers did the same. The nature of that oath can be easily understood by referring to the case of Pahoran. He was appointed chief judge and governor over the people, with an oath and sacred ordinance to judge righteously, and to keep the peace, and the freedom of the people, and grant unto them their sacred privileges to worship the Lord their God; yea, to support and maintain the cause of God in all his days, and to bring the wicked to justice, according to their crimes.

The punishment of corruption, or malfesance in office, was specially provided for. King Mosiah explains the provisions of the law on this subject in the following language: And now if ye have judges and

they do not judge you according to the law which has been given, ye can cause that they may be judged by a higher judge: if your higher judges do not judge righteous judgments, ye shall cause that a small number of your lower judges should be gathered together, and they shall judge your higher judges according to the voice of the people. These safeguards became strong bulwarks for the protection of the rights of the individual and the preservation of the liberty of the whole people.

When Alma, the first chief judge, resigned that office, so that he might devote all his time and energies to the work of saving the souls of men, he nominated or suggested his successor; but whether this was simply a courtesy extended to him by the people on account of their great love for his person and respect for his judgment, or whether it was a provision of the law, is not plain. The passage states that Alma chose Nephiah as his successor, and gave him power, according to the voice of the people, to enact laws, according to the laws which had been given, and to put them in force according to the wickedness and crimes of the people.

The rights of the people were:*

PERSONAL LIBERTY:

It was contrary to the law of Mosiah that there should be any slaves among the Nephites.

EQUALITY BEFORE THE LAW:

No privileged classes. All men to enjoy their rights and privileges alike.

*The people had doubtless other rights which we have failed to notice, or that are not mentioned by the writers in the Book of Mormon.

UNIFORMITY OF TAXATION :

The burden of supporting the government fell on all the citizens, that every man might bear his part.

THE ELECTIVE FRANCHISE :

Whether the suffrage was confined to men, or universal, or limited by any particular restrictions, does not plainly appear.

THE RIGHT OF PETITION :

As examples of the exercise of this right we introduce the following: At the time when Pahoran was chief judge a part of the people desired that a few particular points of the law should be altered. The chief judge refused to alter the law, whereupon a portion of the people petitioned him, and he directed that an election be held, or rather that the voice of the whole nation be appealed to. This being done, the result proved that the majority of the people objected to a change. Again, Moroni, the commander-in-chief of the Nephite armies, sent a petition to the chief judge for power to compel certain dissenters to help defend their country against the national enemies, or to put them to death. His request being according to the voice of the people, the desired power was given to him. Here we have instances of the right of petition exercised, in one case by a large body of the people, and in the other by a single though important individual. Both were extraordinary circumstances, and in the latter case it appears to have required the all-powerful *vox populi* to give validity to the action of the executive.

The statement is frequently made, though in slightly different phrases, that the law had no power to

punish a man for his belief; for it was strictly contrary to the commands of God that there should be a law which should bring men on to unequal grounds. If a man believed in God it was his privilege to serve him; if he did not believe in him, there was no law to punish him. * * A man was punished only for the crimes he had done; therefore all men were on equal grounds. Unbelief was handled by the church, not by the civil law. The names of those whose hearts were hardened were blotted out and they were remembered no more among the people of God. During the days of the Judges there was no church established by law; when the people served God, they elected righteous men for their rulers; when the masses fell into unbelief and transgression they chose Gadianon robbers and such like to administer their laws.

If the rights of women, under the law, were any different, more or less, than those of men, we have no information; in fact, the inspired record is entirely silent on this subject.

The criminal law inflicted the death penalty for murder, rebellion and treason; for robbery, theft, adultery, sexual abominations, fraud and lying, lesser punishments were inflicted.

The first recorded case of execution for murder under the rule of the judges is that of Nehor, for killing the aged patriot, Gideon. Another noteworthy case is that of Paanchi, the son of Pahoran, of whom it is written that he was tried according to the voice of the people, and condemned unto death; for he had raised up in rebellion, and sought to destroy the liberty of the people.

No high priest, judge or lawyer had power to

inflict capital punishment. When a man had been tried and condemned to death by the law his condemnation had to be signed by the governor of the land, before the sentence could be carried out. The mention of governor in this relation, with other passages in which the chief judge and governor are spoken of as different persons, suggests the idea that as the Nephites grew in numbers and spread over distant regions, the duties of the chief judge became excessive, and a separation was made between the executive and judicial responsibilities, and divided between two officers.

The mode of inflicting the death penalty is not stated, but we incline to the idea that hanging was often resorted to. Military offenders were, as a rule, put to death with the sword. Of Nehor it is said that he suffered an ignominious death at the top of the hill Manti, and that, before his death, he acknowledged between heaven and earth that he had taught false doctrine. Zennarihah was hanged upon the top of a tree until he was dead, and then the Nephites felled the tree to the earth. Many of the martyrs were burned to death by unjust judges, or stoned, as was Timothy, afterwards one of the Twelve Disciples; but we regard this last act as resulting from the violence of a mob, rather than from any pretended execution of the law.

The law with regard to debtors seems to have been somewhat severe. On this point it is stated, Now if a man owed another, and he would not pay that which he did owe, he was complained of to the judge; and the judge executed authority, and sent forth officers that the man should be brought before him; 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 stripped, or be cast out from among the people as a thief and a robber. If a man desired to pay, but could not from misfortune, we doubt not but that the law contained some merciful provision in his behalf.

It is more than probable that the mode of procedure in all criminal cases very much resembled the one cited above, and from it we can gather a very clear idea of the practice of their courts, which differs but little from that of our own day. The complaint was first made, the proper officer was then authorized by the court to arrest the accused and bring him before the judge, the trial next took place, the witnesses gave their testimony, the law and the evidence were examined, the opposing lawyers were heard, the judgment was given, the sentence pronounced and lastly carried out. In times of war the military code seems to have varied according to the exigences of the situation. As a rule, the Nephite armies were composed of volunteers. In times of great danger to the republic, enlarged powers were given to the commander-in-chief. In one place we find the statement that Moroni, having been appointed by the chief judge and the voice of the people, had power according to his will with the armies of the Nephites, to establish and to exercise authority over them; also, he caused to be put to death those of the Amalickiahites (rebels) who would not enter into a covenant to support the cause of freedom and the rights of their fellow-countrymen.

Prisoners of war were evidently treated much the same as in modern civilized nations. Indeed, in one place, the fact that the necessities of his position com-

pelled Moroni to set his Lamanite prisoners to work, is referred to in somewhat of an apologetic tone. When such prisoners attempted to escape, they were slain by their guards. We have numerous instances where prisoners were released on parole, or on their giving such promises as were thought necessary to the Nephite general.

It frequently happened, during the days of the Judges, that the Nephites, in some of their periodical spasms of apostasy and wickedness, would clamor for changes to be made in their just and wise laws, in a manner to better suit their degraded habits and course of life. When the majority of the people were on the side of righteousness, these attempts were in vain. When wickedness abounded, the corrupt majority carried their points. The record of their history shows that in the sixty-second year of the Judges (B. C. 30) they had altered and trampled under their feet the laws of Mosiah, or that which the Lord had commanded him to give unto the people; and that their laws had become corrupted, and they had grown wicked like unto the Lamanites. Seven years later the corruption of the people had become pitiable. The Gadianton robbers were filling the judgment seats, having usurped the power and authority of the land: Laying aside the commandments of God, and not in the least aright before him; doing no justice unto the children of men; condemning the righteous because of their righteousness; letting the guilty and the wicked go unpunished, because of their money; and moreover to be held in office at the head of government to rule and do according to their wills, that they might get gain and glory of the world; and moreover that they might the more

easy commit adultery, and steal, and kill, and do according to their own wills.

Such a condition of affairs, in the course of time, wrought national disintegration, and would have brought about that result much sooner than it did, had it not been that, influenced by the mighty preaching of the inspired servants of God, the Nephites (or portions of them) had now and again returned to the service of heaven. But such happy periods were short-lived, and matters went from bad to worse until thirty years after the birth of Christ, when the republican form of government was entirely broken up, and the people split up into numerous tribes, each tribe caring only for its own interests, and giving obedience to its own particular chief. This state of things continued only for about four years, as during the terrible convulsions at the time of the crucifixion of our Lord Jesus Christ, the more wicked portion of the people were destroyed.

CHAPTER LXIII.

LAWS OF THE NEPHITES CONTINUED—THE DIVISION INTO TRIBES—THE MESSIANIC DISPENSATION—THE FINAL CONVULSION.

WE CAN well understand that the originating or primal cause of the destruction of the Nephite republic was the corruption of the people, especially of those whose duty it was to administer the law. This class, being greedy for power, formed a secret combination (as those of old time) to establish a kingdom; and