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Entering the Ancient Legal World

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CHAPTER ONE

ENTERING THE ANCIENT LEGAL WORLD



The interdependence of law and society complicates the analysis of any legal system, be it the law in modern America or in the ancient world of the Bible, the Near East, or the Book of Mormon. As one biblical scholar has correctly stated, “All judicial systems are an integral part of the societies in which they are found.”¹ This reality manifests itself in various circularities that are quickly confronted by every first-year law student. On the one hand, laws govern the choices that people make; but on the other hand, laws are the results of choices made by people. Similarly, laws are norms or pronouncements that judges use in forming their opinions, but those judicial decisions in turn become laws that will be used as precedents in the next round of pertinent cases. Further, any body of law generally reflects the highest ideals and the timeless values embraced by a community or civilization, yet at the same time individual laws are based on the prevailing policies or needs of that time and place and are expedient solutions to immediate, temporal problems. For reasons such as these, law is sometimes called a “seamless web,”² whose threads are so interwoven that it is impossible to discover where they begin or end.

1. Robert R. Wilson, “Israel’s Judicial System in the Preexilic Period,” *Jewish Quarterly Review* 74, no. 2 (October 1983): 231, has set forth the following agenda for understanding the legal system in pre-exilic Israel: “Any adequate reconstruction of Israel’s judicial system must satisfy two important requirements. First, the reconstruction must take into account all of the Biblical evidence in an acceptable way. Second, the reconstruction must be compatible with what we know of the structure of ancient Israelite society. This is so because all judicial systems are an integral part of the societies in which they are found. The political, economic, social, and religious organization of a society does not necessarily determine the nature of its judicial system, but social factors do limit the types of judicial systems that can function effectively within the society. This interrelation between the judiciary and the overall social structure means that the judicial system cannot be studied in isolation but must be seen in a larger social context.” The same considerations apply to the study of the legal system in the Book of Mormon.

2. The expression “The law is a seamless web” is of uncertain origin, but the general idea is often attributed to English legal historian Frederic W. Maitland, who used the phrase “seamless

Thus no single door leads into an open chamber in which any student of the Nephites, Lamanites, or other groups that populate the pages of the Book of Mormon can readily comprehend the full meaning and operation of law in that world. To understand law in Nephite civilization fully is to understand virtually everything about Nephite society, values, religion, government, morals, economy, customs, and practically every other aspect of their personal, family, and collective life. But in order to grasp all that, one must also understand the law, the legal rules, regulations, policies, and institutions that shaped and controlled those very elements of Nephite life. Given this circularity, the question is obviously a bit perplexing: Where do we best begin a systematic study of law in the Book of Mormon?

First, it helps to see the workings of the law as an ongoing process. Beginning students of American law soon learn that law is a complicated process that moves from legislative debates to constitutional rights, statutes, private choices, administrative rulings, police enforcement, political opinion, public policy, economic efficiency, moral duties, individual cases, judicial decisions, jury verdicts, appellate jurisdiction, criminal sanctions, equitable remedies, civic concerns, and back again to more legislative debates, whereupon the process of legislation, enforcement, and adjudication is repeated over and over again. To enter the flow of this cycle, one must dive in at some point and try to swim along.

Second, to understand the root nature of the law—that which drives the legal system at crucial points when push comes to shove—it is probably best to do as most legal educators advise: begin with the case method. For more than a century, the study of law in American law schools has begun with the careful study of individual cases, their findings of fact, and judicial opinions as issued by various prominent courts resolving significant issues or controversies. Experience has shown that the case method is more instructive than other points of departure, such as digesting statutes or treatises on separate topics such as property, contracts, torts, or tax. Only individual, real-life cases reveal the actual inner workings of a particular legal system. One learns more about how the law operates—how conflicts are abstracted, formulated, presented, and analyzed as legal issues; how parties work their way through a judicial trial; how judges and other adjudicators think of the law; and what the law ultimately means—by studying individual cases than by pursuing any other method.

web” to refer to the “unity of history” in a law-related context. Frederic W. Maitland, “A Prologue to a History of English Law,” *Law Quarterly Review* 14 (1898): 13–33; also Frederick Pollock and Frederic W. Maitland, *The History of English Law*, 2nd ed. (Cambridge: Cambridge University Press, 1899).

And so it seems best to begin studying law in the Book of Mormon by examining the Nephite legal cases. This choice becomes even clearer when we recognize that while the Book of Mormon has not preserved any copy of any Nephite law code, it contains excellent detailed accounts of several significant legal disputes. Because these reports contain not only a statement of the final decision but also a considerable amount of information about the unfolding of the case, studying the Nephite legal cases provides a good idea of how the law was understood and enforced in that society.

Not Thinking Like a Modern Person

A challenge inherent in this kind of study is to reconstruct the Nephite legal system, so far as possible, as the Nephites themselves might have understood and experienced law in the context of their own world. Thinking like an ancient person, whether in Lehi's Jerusalem in the seventh century BC or in any other ancient setting, is not a simple undertaking.³ Dallin H. Oaks, a former law professor and president of Brigham Young University, has said that a lawyer "is a student of meaningful differences among apparently similar situations, and meaningful similarities among situations of no apparent connection."⁴ It is difficult enough to spot such differences or similarities in a modern context, to explain their importance or unimportance, or to describe the current state of a law in federal court; it becomes all the more challenging to reconstruct an understanding of law in pre-exilic Israel, under the pharaohs of Egypt, or during the Nephite reign of the judges in first century BC in the land of Zarahemla. Even in cuneiform studies, a field that presents students with numerous legal records in various languages, many technical legal questions remain unanswerable concerning the meaning and administration of the law in Mesopotamian societies.

In this light, it is crucial for modern readers to step back from their own world, leave behind their modern experiences, and make an effort, however incomplete, to think like an ancient Israelite, Egyptian, Babylonian, or Nephite. In order to do this, modern (or postmodern) people

3. For a broader example of an effort to transport oneself back into the cultural setting of ancient Jerusalem, see John W. Welch and Robert D. Hunt, "Culturegram: Jerusalem 600 B.C.," in *Glimpses of Lehi's Jerusalem*, ed. John W. Welch, David Rolph Seely, and Jo Ann H. Seely (Provo, UT: FARMS, 2004), 1–40, together with the sources cited there, discussing such topics as ancient travel, foods, clothes, health, family, daily routines, housing, employment, politics, and religion in the daily lives of people in pre-exilic Israel and in the ancient Near East.

4. Dallin H. Oaks, "Opening Remarks," August 27, 1973, posted at http://www.law2.byu.edu/law_school/foundingdocumentsnew/index.php (accessed March 12, 2008).

must divest themselves of a host of presuppositions and expectations conditioned by the modern concept and practice of law.

Even though we cannot always know exactly how the law operated in these ancient civilizations, we do know of many things that surely did *not* exist in their legal systems two or three thousand years ago.⁵ Thus appreciating in general what the ancient world was like is a useful way to begin any study of how law developed and was practiced over the thousand-year history of the Nephite people. Consider the following representative observations.

Most legal systems in the ancient world operated without enforcers comparable to police officers or FBI agents as we know them. Judicial proceedings or legal disputes were initiated as private lawsuits; there were no district attorneys, public prosecutors, or state-appointed public defenders.⁶ Accordingly, the distinction between public criminal law and private civil law had not yet developed in any formal sense.

In many societies, there were no paid professional judges, at least in any modern sense. Instead, in most parts of the ancient world, town elders, priests, and leading citizens of the village served as citizen-judges hearing lawsuits that were initiated quite spontaneously and were usually argued, deliberated, decided, and concluded within a fairly short period of time.⁷ Occasionally, officials were appointed by the king to hear certain kinds of cases, but we do not know how they were paid or how much of their time was spent in judging cases. No lawyers served as advocates for paying clients before the fourth century BC, when professional forensic orators appeared mainly in Athens. There were very few officially reported

5. For discussions of the daily life and society of ancient Israel, see, for example, Roland de Vaux, *Ancient Israel* (New York: McGraw-Hill, 1965); Philip J. King and Lawrence E. Stager, *Life in Biblical Israel* (Louisville: Westminster John Knox, 2001); Victor H. Matthews and Don C. Benjamin, *Social World of Ancient Israel, 1250–587 B.C.E.* (Peabody, MA: Hendrickson, 1993); Shunya Bendor, *The Social Structure of Ancient Israel: The Institution of the Family from the Settlement to the End of the Monarchy* (Jerusalem: Simor, 1996); Philip R. Davies, *In Search of "Ancient Israel"* (Sheffield, England: JSOT Press, 1992); Frank S. Frick, *The City in Ancient Israel* (Missoula, MT: Scholars Press, 1977); Frank S. Frick, *The Formation of the State in Ancient Israel: A Survey of Models and Theories* (Decatur, GA: Almond, 1985); and Raphael Patai, *Family, Love and the Bible* (London: MacGibbon and Kee, 1960).

6. See generally Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible*, trans. Michael J. Smith (Sheffield, England: Sheffield Academic Press, 1994), 62–92, 217–25.

7. See Samuel Greengus, "Law: Biblical and ANE Law," in *The Anchor Bible Dictionary*, ed. David Noel Freedman (New York: Doubleday, 1992), 4:244–45, discussing both royal and local judicial bodies and also the town elders, priests, and officials who served in judicial capacities. On the judicial responsibilities of the head of the household, see C. J. H. Wright, "Family," in *Anchor Bible Dictionary*, 2:764.

decisions; wisdom, customs, and common sense rather than strict adherence to controlling statutes or binding precedents usually formed the basis for judgment by judges.⁸ Enforcement mechanisms were few and relatively simple. A pit, cistern, or dungeon might be used occasionally for temporary restraint, but long-term imprisonment was rarely an option.⁹

In the world of the ancient Near East and eastern Mediterranean, there existed no state-creating constitutions, no popularly elected law-making legislatures, no true separation of powers between branches of government, and little formal distinction between church and state or between the temple estate and the king's palace. Government was fairly unsystematic. There were no organized political parties, universal suffrage, paid professional judges, or career lobbyists; and except to a limited degree in a few places such as classical Greece, people did not have representative legislatures or bureaucratic administrative agencies, and even in Greece public officials were selected by lot rather than by campaigning for office.¹⁰ The concept of legal rights was scarcely developed, let alone the idea of a bill of rights. Duties and obligations, together with honor and shame,¹¹ formed a greater part of the legal consciousness among ancient peoples than they do in modern Western societies, which have come to focus more on rights than on duties.

We know of no legal treatises, hornbooks (scholarly explanations of the law), or law manuals from the ancient world, and it is doubtful that the so-called law codes of the Bible and the ancient Near East functioned

8. Bernard Jackson argues that the biblical concept of adjudication was fundamentally guided by the idea that "justice is divine," making the judicial process more "charismatic" than "rational." Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 411–12.

9. For a survey of the uses of prisons in ancient Israel, see Karel van der Toorn, "Prison," in *Anchor Bible Dictionary*, 5:468–69. Also, for a brief discussion of imprisonment in the broader context of punishment, see Zeev W. Falk, *Hebrew Law in Biblical Times: An Introduction*, ed. John W. Welch, 2nd ed. (Provo, UT: Brigham Young University Press; Winona Lake, IN: Eisenbrauns, 2001), 73–75.

10. For a detailed description of the organization of the government in Athens, see Aristotle, *The Athenian Constitution*, trans. Frederic G. Kenyon (Adelaide: eBooks, 2004). For a general discussion of governmental institutions in Israel, see de Vaux, *Ancient Israel*, 1:92–99, 127–38.

11. See, for example, Lyn M. Bechtel, "Shame as a Sanction of Social Control in Biblical Israel: Judicial, Political, and Social Shaming," *Journal for the Study of the Old Testament* 49 (1991): 47–76; and David A. DeSilva, "The Wisdom of Ben Sira: Honor, Shame, and the Maintenance of the Values of a Minority Culture," *Catholic Biblical Quarterly* 58 (1996): 433–55. "Unlike our Western guilt-oriented society, the pivotal value of the Mediterranean society of the first century was honor-shame." Bruce J. Malina and Richard L. Rohrbaugh, *Social-Science Commentary on the Synoptic Gospels* (Minneapolis: Augsburg Fortress, 1992), 76.

in that world in the same way as do statutes in the modern world.¹² No specialized schools of law existed, although the scribal tradition prepared people to record legal agreements and to advise others involved in legal transactions in the use of traditional manners of documentation.¹³ A systematic sense of jurisprudence was still centuries away, and no attempts to rationalize decisions in individual cases appear to have been made. Legal decisions proceeded on a case-by-case basis, and while rules were significant, ancient evidence is scanty that express principles or broad policies were theoretically advocated or officially adopted.

A modern person can scarcely imagine running a courtroom or law office without telephones, computer technology, libraries, faxes, and copy machines. In antiquity, messengers were occasionally used and some legal matters could be reduced to writing on papyrus, parchment, or clay tablets; but few other resources were available as tools of the infant legal profession. While customs regarding property law, family law, and personal injury law were relatively well established, no one had even begun to dream of such things as intellectual property rights, class actions, or Internet access.

Life in the ancient world revolved around different instruments and institutions than are known in the modern world. With no cars, trucks, or tractors, speeding laws were not needed. Because foot travel and draft animals played crucial roles in society, laws dealing with oxen that gored pedestrians were of greater importance than now. National and municipal borders were much less distinct, with large areas of unoccupied land lying between villages and towns. Consequently, no standard passports existed, border crossings were very difficult to regulate, and even the concept of a nation or state with territorial boundaries held little meaning. Village security and the need to be able to mobilize a citizen army for defense posed constant challenges. Obviously, there was no United Nations to keep the peace. Other cultural institutions, such as reliance on the gods to guarantee treaties, were customary.

12. See Greengus, "Law: Biblical and ANE Law," in *Anchor Bible Dictionary*, 4:243–44, affirming that writing played a fairly minor role in ancient legal systems. In antiquity, nothing close to a complete collection of written laws or prescriptions for any society ever existed.

13. Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (Sheffield, England: Sheffield Academic Press, 1999), 146–77. For general discussions of education in ancient Israel and the ancient Near East, see Piotr Bienkowski, "Education," in *Dictionary of the Ancient Near East*, ed. Piotr Bienkowski and Alan Millard (Philadelphia: University of Pennsylvania Press, 2000), 101; Miguel Civil, "Education: Education in Mesopotamia," in *Anchor Bible Dictionary*, 2:301–4; de Vaux, *Ancient Israel*, 1:48–50; and André Lemaire, "Education: Ancient Israel," in *Anchor Bible Dictionary*, 2:305–12.

There were no sophisticated banks, insurance companies, or stock markets. To a large extent, temples provided the storehouses of gold and silver that supplied needed capital and resources in many societies.¹⁴ The king (with his palace and officers) and the temple (with its priests and sacred structures) were closely affiliated in most kingdoms, and virtually all local residents in an area accepted and revered the same principal patron god or religious system. The people feared their gods, and oaths sworn in the name of a god were taken extremely seriously.¹⁵ A person would usually rather die than break a sworn oath and thereby incur the wrath of a god who could inflict famine, disease, plagues, and other disasters upon a person, his family, or his people—all of which were fates more fearful than death.

In the absence of anything like a land survey and a county recorder's office, property boundaries were often indistinct, and therefore moving a boundary stone was a serious offense (Deuteronomy 27:17). Deeds were duplicated and sealed up to preserve them against breakage or damage (Jeremiah 32:11–14). Without a standardized system of currency or money in place, prescribed weights and measures were generally used instead of coins.¹⁶ Accordingly, a merchant who had bogus weights in his bag was not only despicable but also very hard to apprehend and punish.

In daily life, families and workers had to be largely self-sufficient. No permanent employees worked for corporations or employers. Slaves, debt servants, indentured servants, or day laborers were regularly used, but there was little or no job security for anyone. Workers had no long-term employment contracts, no workers' compensation, no employee benefit plans, and no unemployment insurance.

The tools of life were relatively simple in the absence of electricity, gas, machinery, or other complex equipment. From what we can tell, there was little in the way of long-term food storage or refrigeration, and families faced a constant risk of famine, a regular theme in the Bible

14. William A. Ward, "Temples and Sanctuaries: Egypt, Economic Functions of the Temple," and John F. Robertson, "Temples and Sanctuaries: Mesopotamia, Social Role of the Temple," in *Anchor Bible Dictionary*, 6:371, 375–76.

15. See Raymond Westbrook, "Evidentiary Procedure in the Middle Assyrian Laws," *Journal of Cuneiform Studies* 55 (2003), 87–97, examining the role of oaths and ordeals in evidentiary procedure. On the importance of oaths and ordeals and the differences between them, see Karel van der Toorn, "Ordeal," in *Anchor Bible Dictionary*, 5:40–42. See generally Manfred R. Lehmann, "Biblical Oaths," *Zeitschrift für die alttestamentliche Wissenschaft* 81 (1969): 74–92.

16. John W. Betlyon, "Coinage," in *Anchor Bible Dictionary*, 1:1076–89; de Vaux, *Ancient Israel*, 195–96, 199–209; and Falk, *Biblical Law in Hebrew Times*, 90–91.

(Genesis 12:10; 26:1; 41:27; 47:13; Ruth 1:1).¹⁷ By modern standards, markets were mainly small, local, and inefficient; the producers of goods usually took their own wares to market. If the rain did not fall and the year's crops did not grow, immediate disaster was imminent. There was no little way to insure against that risk. These economic conditions had direct bearing on legal concerns such as contracts, debt collection, interest rates, and care for the poor and needy.¹⁸

At home, women spent most of their time cooking and weaving and caring for children. With no real indoor plumbing, villages of even moderate size experienced serious problems with sanitation. Homes were typically small, and several members of the family shared the same bedroom and kitchen. Privacy was not the norm in antiquity; suspicions were probably aroused whenever doors were closed. Family conditions generally influenced the concepts of justice pertinent to family law.

Since social security was nonexistent, if a woman did not have a husband or son to care for her in her older age, her life became extremely impoverished and difficult. No orphanages, hospitals, or other formal charitable organizations existed. As one might expect under these conditions, life expectancy was fairly short. Ordinary people could not expect to live beyond the age of forty-five or fifty. If a priest happened to live beyond the average number of years, the mandatory retirement age from temple service in ancient Israel, which involved the heavy work of making sacrifices, was fifty: "And from the age of fifty years they shall cease waiting upon the service thereof, and shall serve no more" (Numbers 8:25). In ancient Greece, seventy was considered an extraordinarily full lifetime. Solon, the great lawgiver-poet of Athens around 600 BC, ended his lyrical lines about the ages of a man's life with these two lines: "But if he completes ten ages of seven years each, full measure / death, when it comes, can no longer be said to come too soon."¹⁹

17. William H. Shea, "Famine," in *Anchor Bible Dictionary*, 2:769–73.

18. For an in-depth treatment of the socioeconomic conditions that served as the setting for laws regarding debt-collection, debt-slavery, and the poor, see Gregory C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East* (Sheffield, England: JSOT Press, 1993); see also Falk, *Hebrew Law in Biblical Times*, 93–97; Bruce V. Malchow, *Social Justice in the Hebrew Bible* (Collegeville, MN: Liturgical Press, 1996); Léon Epsztein, *Social Justice in the Ancient Near East and the People of the Bible*, trans. John Bowden (London: SCM Press, 1986); and Richard D. Patterson, "The Widow, the Orphan, and the Poor in the Old Testament and the Extra-Biblical Literature," *Bibliotheca Sacra* 130 (July–September 1973), 223–34.

19. Solon, "The Ten Ages of Man," in *Greek Lyrics*, trans. Richard Lattimore, 2nd ed. (Chicago: University of Chicago Press, 1960), 23.

No professional organizations, bar associations, or medical associations existed. Health and medicine were scarcely understood.²⁰ The brain was thought simply to be the marrow of the skull. The circulation of blood had not been discovered. Causes of death were not well understood, and partly for such reasons the laws pertaining to homicide or tort focused on issues different from the medical or technical concerns that can consume so much of the time and attention in modern lawsuits involving wrongful deaths.

When common people died, no professional morticians took care of the burial. Relatives buried their dead, taking care to ensure minimal sanitation and to protect burial sites.²¹ The ancients were much more immediately familiar with death than are most modern people, who have sanitized, institutionalized, and impersonalized death and dying in most respects. Tombs were protected places, and enduring legal institutions arose to honor and serve the dead.

Although we cannot know exactly how such factors played themselves out in the Nephite world, we can be fairly sure that Nephite civilization was not dramatically different from other pretechnical societies around the world.²² Inhabitants of the Book of Mormon world found ways within their means to address their needs, their concerns, their exposure to risks and problems, and their societal challenges, many of which are no longer problematic in a modern age. Ancient legal systems served those respective purposes sufficiently, and in many cases with sophistication and durable success. Some of the challenges confronting ancient societies, of course, reflect universal human conditions and struggles with which all people can readily identify; but most of their legal problems were by necessity addressed and resolved in terms of social policies and practicalities that were unique to their age and circumstances.

Thinking of Law in the Ancient World

A primary purpose of this book is to discover the legal world of the Nephites. Once their legal concepts, rules, and decisions are understood

20. For an anthropological approach to the health care systems of ancient Greece, Mesopotamia, and Israel, see Hector Avalos, *Illness and Health Care in the Ancient Near East: The Role of the Temple in Greece, Mesopotamia and Israel* (Atlanta: Scholars Press, 1995); and Avalos, *Health Care and the Rise of Christianity* (Peabody, MA: Hendrickson, 1999). See also Howard Clark Kee, "Medicine and Healing," in *Anchor Bible Dictionary*, 4:659–64.

21. For further discussion on burial practices in ancient Israel, see Elizabeth Bloch-Smith, "Burials," in *Anchor Bible Dictionary*, 1:785–89; and de Vaux, *Ancient Israel*, 56–61.

22. For an excellent archaeological and anthropological discussion of the main elements of Book of Mormon culture in the New World, see John L. Sorenson, *Images of Ancient America: Visualizing Book of Mormon Life* (Provo, UT: FARMS, 1998).

in their own context, we may then be able to extrapolate from those specific elements a collection of legal doctrines, teachings, principles, and policies that can be carried across cultural boundaries and made relevant to a modern world. But that end result must follow a careful reading of the Book of Mormon text on its own terms.

In general, we know that law was extremely important to the ancient Nephites, as well as to the Israelites and all ancient Near Eastern peoples. Modern people can scarcely fathom the degree to which law was venerated and respected by people in the ancient world. Lehi's blessing to his son Jacob gives us insight into the importance of law in Nephite religion and society. In describing the very purposes of God, Lehi reasons: "If ye shall say there is no law, ye shall also say there is no sin," and thus no righteousness, nor happiness, nor punishment, nor misery; "and if these things are not there is no God" (2 Nephi 2:13). Without law, the virtues of righteousness, the conditions of happiness, and even the existence of God himself were logically unimaginable in Lehi's world. Contrast this prevailing Nephite attitude—which Lehi presents as irrefutable and self-evident—with the general attitude of modern people about the law as a whole, to say nothing of modern perceptions of specific laws, such as the Internal Revenue Code. Can we imagine a prophet today saying that if there were no Internal Revenue Code or even no Constitution, there would be no God? Clearly, much has changed over the past two thousand six hundred years in what societies mean by "law."

Most people in the ancient world believed that their laws had in some significant sense come from divine sources.²³ The book of Exodus presents Moses as establishing laws that he received directly from Jehovah on Mount Sinai. The prologue to the laws of King Hammurabi affirms that he was commissioned by Marduk, the god of Babylon, and that he was obedient to Shamash, the god of justice, in establishing his laws.²⁴ King Lipit-Ishtar said that he acted by the command of the god Enlil in establishing justice in his lands in Mesopotamia.²⁵ In the Greek world, Plato consid-

23. For more on the divine origin of law, see Joseph P. Schultz, "Max Weber and the Sociological Development of Jewish Law," *Diné Israel* 16 (1991–92): 71–82.

24. The text appears in English translation in James B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. (Princeton: Princeton University Press, 1975), 164–65.

25. The text appears in English translation in Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, ed. Piotr Michalowski (Atlanta, GA: Scholars Press, 1995), 25. "The date-formula for his second year, 'The year he enacted the law of the land,' indicates that he promulgated his famous lawcode at the very beginning of his reign." James B. Pritchard, *The Ancient Near East: An Anthology of Texts and Pictures* (Princeton: Princeton University Press, 1958), 138.

ered it axiomatic that “no mortal man frames any law,”²⁶ and Heraclitus, another Greek philosopher, once said, “All human laws are nourished by a divine one. It prevails as it wills and suffices for all and is more than enough.”²⁷ In Roman times, worshippers of Isis believed that the goddess “established laws for humans, and created legislation which no one has the power to change, . . . invented marriage contracts, . . . delivered the person plotting unjustly against another into the hands of the person plotted against, [to] inflict punishment on those acting unjustly.”²⁸ Even in the late Roman period, the emperor Justinian saw Deity as necessarily involved in the legal process: “Justice is an unswerving and perpetual determination to acknowledge all men’s rights. Learning in the law entails knowledge of god and man, and mastery of the difference between justice and injustice.”²⁹ Accordingly, in the ancient world, law was much more than a matter of pragmatic policy or economic regulation. Law was an expression of the divine will, the highest ideals of a civilization, the necessary order of life, and the fundamental substance of justice and reality.

For these reasons, people in the ancient world held their laws in the highest esteem possible. Heraclitus moralized, “People should fight for their law as for a city wall.”³⁰ Similar expressions of reverence for the value of law are found in the Bible. The book of Deuteronomy asks, “Who else has ‘statutes and judgments so righteous as all this law?’” (Deuteronomy 4:8). All Israelites were commanded to talk about the law when at home, when walking down the street, “when thou liest down, and when thou risest up” (6:7; see Joshua 1:8). C. S. Lewis marveled, at first, how mysterious and strange it seemed to him that the ancient Israelites could speak of the law as being so exhilarating and delicious, even “sweeter than honey”; but then he came to understand how deeply these people valued the law: “[The psalmist] felt about the Law somewhat as he felt about his poetry; both involved exact and loving conformity to an intricate pattern.”³¹

In particular, three “torah-psalms,” as James Mays has classified them, give modern readers important insights into the prominence of law, the

26. Plato, *Laws*, 709a.

27. Heraclitus frag. 30, as cited in Charles H. Kahn, *The Art and Thought of Heraclitus: An Edition of the Fragments with Translation and Commentary* (Cambridge: Cambridge University Press, 1979), 43.

28. From an inscription in Memphis, Egypt, in front of a temple to Hephaistos, in Mary Beard, John North, and Simon Price, *Religions of Rome* (Cambridge: Cambridge University Press, 1998), 2:297–98.

29. Justinian, *Institutiones* 1.1.

30. Heraclitus frag. 65, as cited in Kahn, *Art and Thought of Heraclitus*, 179.

31. C. S. Lewis, *Reflections on the Psalms* (London: Fontana Books, 1961), 49–51.

instruction of the Lord, in the minds of pious members of the ancient house of Israel. In Psalm 1, which sets an important tone for the whole collection of biblical psalms, “the torah of the Lord replaces wisdom and its human teachers.”³² The first verses of Psalm 1 read: “Blessed is the man . . . [whose] delight is in the law of the Lord; and in his law doth he meditate day and night. And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in his season; his leaf also shall not wither; and whatsoever he doeth shall prosper” (vv. 1–3). The law (broadly understood) defines the way that allows a person to be planted in righteousness as a tree of life.

Second, Psalm 19 places law prominently in the eternal landscape of God’s creation. Here “the heavenly order praises God, and the psalmist praises the instruction [torah] of the Lord.”³³ The body of “law [torah] of the Lord is perfect,” exclaims the psalmist (v. 7). Indeed, Psalm 19, which appears even to have been “part of the liturgical structure of the day of the king’s enthronement,”³⁴ praises and extols the virtues of the law in magnificent terms. The law (the *torah*) was potent, “converting the soul,” and the written law (*edut*) of the Lord was “sure, making wise the simple.” The law’s precepts are upright, the commandment of Jehovah is pure, and his judgments are true and righteous (vv. 7–9).

Third, Psalm 119 is a masterful composition that, from beginning to end, blesses those who “walk in the law of the Lord” (v. 1). In this torah-psalm, “line by line, all the various situations and moods that belong to the relation between the Lord and the servant of the Lord are dealt with, always with one of the torah terms as medium of the relationship.”³⁵ Its point is that “torah applies to everything: . . . to the basic narrative that runs from the fathers to the land, . . . to the offices of priest and king, . . . to Israel’s future, . . . to the life of every person, . . . even to the Lord’s creating and ordering the elements of the world.”³⁶ This psalm concludes: “Great peace have they which love thy law,” and thus “I do not forget thy commandments” (vv. 165, 176). In this world, the law deeply touched and influenced almost every part of life, ranging not only from worship to sacrifice but also from torts to property.

32. James Luther Mays, “The Place of the Torah-Psalms in the Psalter,” *Journal of Biblical Literature* 106, no. 1 (1987): 4.

33. Mays, “Torah-Psalms,” 5.

34. Nicolas Wyatt, “The Liturgical Context of Psalm 19,” *Ugarit Forschungen* 27 (1995): 592.

35. Mays, “Torah-Psalms,” 6.

36. Mays, “Torah-Psalms,” 8–9.

The conventional wisdom of ancient Israel held that “the law of the wise is a fountain of life” (Proverbs 13:14), and Israel was commanded to “do all the words of this law . . . because it is your life” (Deuteronomy 32:46–47). Written law provided the basis for ethical training; it was more than a mere manual for the administration of justice.³⁷ Folk wisdom in early Judaism similarly held that “the Law is the tree of life for all who study it, and everyone who observes its precepts lives and endures as the tree of life in the world to come.”³⁸

The Book of Mormon contains similar expressions indicative of the high value placed on law. The rod of iron symbolized “the word of God” (1 Nephi 15:24), which certainly included all the statutes and commandments that one must obey in order to come to the tree of life and partake of its fruit. The strong image introduced by Psalm 1:1–3 compares closely with the words in Alma 32:41–42, where Alma promises that the “word” will “take root in you” and will become as “a tree springing up unto everlasting life.” In the spirit of Psalms 19 and 119, wisdom-law terms of all kinds relating to law, justice, equity, statutes, ordinances, judgments, commandments, customs, principles, and so on appear throughout the Book of Mormon. As in Jerusalem, law in Zarahemla related to mundane affairs and human justice as well as to revealed law, divine justice, the atonement of Christ, or types and shadows of his salvation. Ultimately, Alma states, without justice “God would cease to be God” (Alma 42:25).

Precisely how these words and concepts were understood by the ancient Israelites is a topic for another discussion; but for present purposes, it is clear that people in the ancient world deeply valued their laws, and they did so for many reasons. Without national flags, Olympic teams, famous artists, or other cosmetically distinguishing characteristics, various groups thought of their laws as the greatest force that unified and defined them as a people. Though many ancient civilizations had their own distinguishing features, including costume, language, and religion, their sense of social cohesion and public order was created mostly out of formless human chaos by virtue of law, strong legal expectations, effective regulations, and cherished legal customs.

37. Bernard S. Jackson, “Ideas of Law and Legal Administration: A Semiotic Approach,” in *The World of Ancient Israel: Sociological, Anthropological and Political Perspectives*, ed. R. E. Clements (Cambridge: Cambridge University Press, 1989), 188, states that “both Deuteronomy and 2 Chronicles also tell us about a written text of law. . . . In both sources, written law has a didactic function; it is not the basis of adjudication.”

38. Palestinian Targum on Genesis 3:24, discussed in Martin McNamara, *Targum and Testament: Aramaic Paraphrases of the Hebrew Bible: A Light on the New Testament* (Grand Rapids: Eerdmans, 1972), 121.

Indeed, civilization in the ancient world was precariously fragile. Cultures would cease to exist if, for whatever reason, the stabilizing language, norms, and rules were not successfully transmitted from one generation to the next.³⁹ Much that was of social importance hinged upon the preservation and perpetuation of the law. The law was not self-perpetuating or self-enforcing. It defined the social order, and it implemented the divine order. No ancient person would doubt the axiom that a nation without law would dwindle and perish in unbelief and disarray (compare 1 Nephi 4:13; Mosiah 1:5). The same is actually true in the modern world, but our legal systems are so much more entrenched, self-perpetuating, verbally established, and massively rooted in modern society through libraries, bureaucracies, buildings, and businesses that we take the stability of law simply for granted. For an ancient city, however, nothing was more important or more vulnerable than its walls and its laws.

Goals and Objectives

Accordingly, the main objective of this volume is to focus on the legal cases in the Book of Mormon in order to gain a better sense of Nephite judicial process in the context of biblical law traditions. Other studies have dealt or will deal further with additional legal topics relevant to the Book of Mormon, such as its many sources of law (ancient Israelite or otherwise), its substantive definitions of crimes and punishments, policies of law and social justice, applications of civil and commercial law, and intersections of law and religion. Many of these subjects will be mentioned in passing in connection with their relevance to the Nephite judicial cases, but more systematic and thorough coverage of those topics will be left for another day.

The goal of understanding the Book of Mormon through the channel of legal research into its judicial procedures will necessarily take us into uncharted territory. No similar attempt has ever been made to examine the Nephite legal system in operation. Consequently, this study is necessarily experimental, probing, and inquisitive. Like any other form of scholarly investigation in its early stages, the following chapters are sometimes tentative in nature, setting forth and testing hypotheses and drawing possible conclusions or leaving further questions for later study. A degree of adventure is involved in this enterprise, and certain detective skills are necessary. Sometimes we seem to be hot on the trail, and the clues seem remarkably fresh and indicative. Other times, the tracks seem

39. Consider, for example, the sudden disappearance of the great ancient cities of Ebla and Ugarit.

to fade out, but when they reemerge, we have some reassurance that we are still pointed in the right direction.

While this effort may seem conjectural in some respects, I prefer to see it not as a speculative venture exposed to unreasonable risks, but similar to speculating for oil or mineral deposits with the help of geological surveys. In Latin, the word *specula* means “hope” and can also mean “watchtower.”⁴⁰ A speculator is a scout or investigator who *hopes* to find good results, or a guard who watches out for new arrivals, and it is in that spirit of alert investigation and observation that we hope, through study and faith, to understand the Book of Mormon better by achieving a clearer understanding of its important legal dimensions. As the legal policies and precedents embedded in the text are brought to the fore, the logic, coherence, internal consistency, and fundamental values of Nephite law can be seen in sharper relief.

Of course, this is not the only way to read the Book of Mormon. For example, it can and should be read as scripture, as literature, as prophecy, as a witness of the Messiah, as a guide to daily religious life, as a moral text, as a lineage history, and in many other ways.⁴¹ However, readers can uniquely find the heart of many important religious and social concepts in the Book of Mormon—including such legally foundational concepts as agency and accountability, warning and confession, error and revelation, justice and mercy, equality and charity—by studying it from a legal point of view.

Thus this study has the following goals and objectives:

- To examine the literary and historical backgrounds of the legal narratives in the Book of Mormon
- To compare the laws in the Nephite world with those in the Hebrew Bible and the ancient world in general
- To understand in detail the relevant facts and specific legal issues raised by each legal case in the Book of Mormon
- To utilize all available tools of textual analysis, word studies, archaeology, and scripture study in illuminating these legal passages
- To appreciate the judicial procedures and outcomes involved in these cases

40. *Specula* is the diminutive of *spes* (“hope”), hence “a small hope”; *specula* also means “watchtower,” and the meaning of the Latin *speculator* includes “lookout,” “scout,” “spy,” “observer,” or “investigator.”

41. Similarly, it is said of the Bible, “Within the one text, there was room for both popular and more specialised audiences.” Jackson, “Ideas of Law,” 196.

- To highlight the roles of logic, persuasion, testimony, and divine intervention in the determination of those legal results
- To extract legal and ethical value from each of these precedents by determining what these cases meant to the Nephites as their own political and religious history unfolded and why these cases were eternally important enough for Mormon to include them in his abridgment of what he considered the sacred records of his people

Finally, this project has spiritual aspirations as well, working to provide and assay evidence of the authenticity of the Book of Mormon as a record of a people of ancient Near Eastern origins. The task facing Joseph Smith simply of translating the Book of Mormon in such a miraculously short period of time is impressive enough,⁴² but when one considers that he accomplished everything else involved in that process while at the same time managing to produce a record that keeps so many details, including all its legal technicalities, coherently straight, the product is simply staggering. The coming forth of the Book of Mormon is all the more impressive when one realizes that the comprehensive study of biblical law as an academic specialty is itself only a relatively recent development in biblical scholarship. Despite all such hurdles, the following outcome on close examination becomes apparent: the Nephite legal system is internally coherent and organically consistent with pre-exilic Israelite jurisprudence. The legal system in the Book of Mormon makes abundant sense as an ancient legal system. Its legal elements are at home in an ancient legal setting and are consistent with the explanation given within the book itself that Nephite law and civilization originated in the legal world of the ancient Near East and then developed logically and distinctively over its thousand-year history.

42. Neal A. Maxwell, "By the Gift and Power of God," in *Echoes and Evidences of the Book of Mormon*, ed. Donald W. Parry, Daniel C. Peterson, and John W. Welch (Provo, UT: FARMS, 2004), 5–12; John W. Welch, "The Miraculous Translation of the Book of Mormon," in *Opening the Heavens: Accounts of Divine Manifestations, 1820–1844*, ed. John W. Welch with Erick B. Carlson (Provo, UT: Brigham Young University Press; Salt Lake City: Deseret Book, 2005), 77–213.