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## The Ideal of Righteous Judgment

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## CHAPTER THREE

# THE IDEAL OF RIGHTEOUS JUDGMENT



Every legal system, so it would seem, is founded on a set of theoretical ideals or ultimate values that are recognized by its culture as essentially constituting its concept of justice. Sometimes such ideals are articulated very succinctly in a prologue or preamble, as in the prologue to the Laws of Hammurabi or the Preamble to the Constitution of the United States. Other times these judicial values are embedded more symbolically in the founding epics of the civilization, as is the case with the crystallization and inculcation of civic ideals in Homer's *Iliad*, in Virgil's *Aeneid*, in the Vedic literature, or in Germanic, Celtic, or Norse sagas. Most civilizations that become self-reflective eventually produce philosophical expositions about the meaning of justice, as we find in ancient Greece in Plato's *Republic* and Aristotle's *Ethics* and *Politics*, in China with Confucius, in medieval Catholicism with Thomas Aquinas, or in Reformation Protestantism with Thomas Hobbes. Occasionally a society sets forth in a founding document its vision of what it means to do justice, as we find in the English Magna Carta or the American Bill of Rights.

Among the laws issued on Mount Sinai and recorded in Exodus 19–23 is a passage that may appropriately be called “Jehovah’s Code of Civil Justice.”<sup>1</sup> It embodies *in nuce* the ideal qualities of justice as far as biblical law traditions are concerned, and in it are found the fundamental values that inspired and guided the administration of justice in ancient Israel. Similar to how lawyers in the United States are held accountable to the standards of professional conduct established by the Code of Professional Responsibility and adopted by the judiciary and bar associations of the various states, in ancient Israel all judges and litigants were similarly expected to conduct themselves in accordance with high ethical principles—namely, those distinctively set forth in the latter part of

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1. John W. Welch, “Jehovah’s Code of Civil Justice,” *Clark Memorandum* (Spring 2005): 12–20.

the Covenant Code of Exodus 21–23. These verses in Exodus 22:18–23:19 may well contain the earliest code of professional responsibility in the history of the world. Not only do these standards tell us the rules of ethics and judicial conduct that governed Israelite legal cases, they also establish the foundational rules that would have operated in the judicial system of the Nephites as well. The legal narratives and ethical teachings of the Book of Mormon confirm that this set of ideals and judicial values in fact defined the essence of what it would have meant in Nephite legal minds to judge righteously, and thus this set of judicial ideals provides a fundamental theoretical background for understanding the legal cases in the Book of Mormon.

### **Beyond the Ten: Three More Sets of Apodictic Commandments**

Familiar to all readers of the Bible is the issuance of the list of ten “thou shalt not” commandments in Exodus 20, commonly known as the Ten Commandments. Following this decalogue in Exodus 20 is found a body of “if a man” rulings, known as the Covenant Code, in Exodus 21–22. The Covenant Code then culminates in a further series of “thou shalt not” provisions dealing with religion and society in general and with the legal system in particular. In the midst of these apodictic provisions, one Old Testament scholar, J. W. McKay, counts ten judicial commandments in Exodus 23:1–3 and 6–8 and has called those ten a “decalogue for the administration of justice in the city gate.”<sup>2</sup> These rules applied to all judges and officials in Israel, but also to any plaintiffs and witnesses involved in legal disputes. Nowhere else in scripture or in ancient law codes can one find a comparable cluster of judicial mandates stated so succinctly.

Furthermore, other biblical scholars are convinced that behind or alongside this series of ten judicial guidelines in Exodus 23 there once stood in ancient Israel actual formalized sets of instructions that were given to, or were expected of, all who participated in the legal process.<sup>3</sup> Frank Crüsemann has stated that “like no other texts, the instructions regarding behavior in a trial, which we find in [Exodus 23:1–2, 7–8], give us a picture of legal procedure during the monarchic period” in pre-exilic Israel.<sup>4</sup> By easy extension, one may also see these commandments as

2. J. W. McKay, “Exodus XXIII 1–3, 6–8: A Decalogue for the Administration of Justice in the City Gate,” *Vetus Testamentum* 21, no. 3 (1971): 311–25.

3. See the contributions of S. R. Driver, Roland de Vaux, and others, discussed in McKay, “Exodus XXIII 1–3, 6–8,” 322–25.

4. Frank Crüsemann, *The Torah: Theology and Social History of Old Testament Law* (Minneapolis: Fortress, 1996), 189.

constituting the theoretical ideal of what it meant to do justice in Lehi's Jerusalem and among his righteous descendants.

Less noticed even by regular readers of the Bible is the fact that if one begins counting at Exodus 22:18, the Covenant Code actually ends with an even longer series of twenty-five "thou shalt not" prohibitions, appearing in Exodus 22:18–23:19. As a distinct stylistic cluster, these twenty-five requirements can be broken into three sets of apodictic commandments. The rules in the first set of ten (Set A) deal with the creation of a just society. These commandments are addressed to all people of the covenant and set forth legal conditions that define the conditions of social justice that should prevail among the people at large. The second set (Set B) is basically McKay's ten, dealing with the operation of a just legal system. These prohibitions are directed more specifically toward those involved in the judicial process. A final group of five (Set C) ends in Exodus 23:19. These five pertain to religious duties, shifting attention to the articulation of obligations toward God. All together, these twenty-five "thou shalt not" injunctions can be seen as setting forth responsibilities toward one's neighbor, one's government, and God.

These twenty-five rules set forth in Exodus 22–23 are briefly explained as follows:

Set A: Ten Commandments for Righteousness at Large

- Thou shalt not allow a witch to live (22:18)
- Thou shalt not vex or mistreat a resident alien (22:21)
- Thou shalt not oppress a resident alien (22:21)
- Thou shalt not afflict or take advantage of a widow or orphan (22:22)
- Thou shalt not loan money (silver) to the needy (22:25)
- Thou shalt not charge interest to the needy (22:25)
- Thou shalt not revile or blaspheme God (22:28)
- Thou shalt not curse a ruler over the people (22:28)
- Thou shalt not delay to offer the first of thy ripe fruits (22:29)
- Thou shalt not eat of torn flesh in the field (22:31)

Set A is aimed at the general population. These commandments strive to regulate and direct general citizens in their civic dealings with each other. The so-called motive clause, "ye shall be holy men unto me" (Exodus 22:31), which stands at the conclusion of these provisions and explains their overriding purpose, points the general community to the ultimate purpose and benefit of keeping these commandments. In this ideal, a just society is grounded in the conduct of the general populace.

## Set B: Ten Commandments of Jehovah's Code of Legal Justice

- Thou shalt not bring up a false rumor or report (23:1)
- Thou shalt not be in cahoots with a wicked person as a false witness (23:1)
- Thou shalt not follow the crowd with intent to do evil (23:2)
- Thou shalt not speak against the majority with intent to pervert justice (23:2)
- Thou shalt not be partial toward the poor in a lawsuit (23:3)
- Thou shalt not deny justice to the poor in a lawsuit (23:6)
- Thou shalt stay away from lies (23:7)<sup>5</sup>
- Thou shalt not execute the innocent or righteous (23:7)
- Thou shalt not take a bribe (23:8)
- Thou shalt not oppress a resident alien (23:9)

Set B is concertedly aimed at those involved in the administration of justice, although in principle these ethical mandates can also be applied to all human conduct. All people involved in the legal process, especially those who act as judges, are to be honest, independent, impartial, careful, and compassionate. In particular, under this theoretical model of justice, those who officiate or function within the legal system must be beyond any reproach of spreading hearsay, colluding with the guilty, caving into group pressure, obstructing justice, favoring the rich, telling lies, killing the innocent, accepting bribes, or abusing their power over the vulnerable.

## Set C: Five Provisions for Ritual Obligations

- Thou shalt not invoke the name of other gods (23:13)
- Thou shalt not speak the name of other gods (23:13)
- Thou shalt not offer blood sacrifice together with leavened bread (23:18)
- Thou shalt not leave the fat of my sacrifice until morning (23:18)
- Thou shalt not seethe a kid in its mother's milk (23:19)

The focus of Exodus 23:10–19 is on the observance of religious obligations to God, specifically observing the Sabbath and other holy days and offering sacrifice of the firstfruits. This section includes five final “thou shalt not” provisions. It is prohibited to speak in the name of any other gods, and sacrifices may not be offered in an improper or unseemly

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5. In this one case, the command is stated in the form of a positive command. McKay and others believe that it may have originally been expressed as a command not to listen to or utter lies (McKay, “Exodus XXIII 1–3, 6–8,” 317–18). In Exodus 20, two of the ten are also formulated as positive commands, “Remember the sabbath day” and “honour thy father and thy mother.”

fashion. According to this view, justice is a divine virtue that cannot become a reality without the support of God, whose presence and guidance in the judicial process is made possible only by the worthiness and purity of the hearts and minds of those who strive to do justice and have “clean hands and a pure heart” (Psalm 24:4).

From this overall arrangement it is clear that, from the biblical perspective, the actualization of justice requires social, legal, and religious confluence. Without a sense of social justice among the populace at large, legal enforcement will never bring about a just society. Without a judicial system that functions with impeccable integrity, written norms will never be effective. And without reverence to God, people will not be deeply committed and motivated to judge as God does.

Perceptively, Thomas Leclerc has found a similar threefold configuration in the construction of the book of Isaiah that confirms the depth of this conception of justice throughout the law and the prophets in ancient Israel. Leclerc has argued that, first, the concept of justice in Isaiah 1–39 is grounded in social settings, such as defending the weak, the widows and orphans, resident aliens, and the poor; second, in Isaiah 40–55 justice is centered in the procedural administration of justice; and third, in Isaiah 56–66 the idea of law and justice is associated with God and covenant obligations.<sup>6</sup>

Thus, in biblical law traditions, justice happens when these twenty-five commandments are followed. Injustice happens when they are not. This is true of the legal narratives and prophetic exhortations in the Bible; the same is true of the legal cases and ethical teachings in the Book of Mormon, as the following discussion of each of these twenty-five principles demonstrates.

### **Righteousness at Large: Creating a Just Society**

*A1. Thou shalt not allow a witch to live (22:18).* Perhaps curious to modern readers, the Bible’s code of justice begins with the injunction “Thou shalt not allow a witch to live.” At the foundation of any ancient legal system was the assumption that justice could be achieved in court only if the god’s or some divine influence was directly present in the proceeding. This assumption operated not only in the ancient Near Eastern laws generally<sup>7</sup> but specifically in the Bible and also in the Book of Mormon.

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6. Thomas L. Leclerc, *Yahweh Is Exalted in Justice: Solidarity and Conflict in Isaiah* (Minneapolis: Fortress, 2001).

7. Raymond Westbrook, “Witchcraft and the Law in the Ancient Near East,” in *Recht gestern und heute*, ed. Joachim Hengstl and Ulrich Sick (Wiesbaden: Harrassowitz, 2006), 45–52.

Just and righteous people are to stay away from sorcery or divination precisely because, first and foremost, God and not some oracle or astrologer is to be the source of true guidance and revelation.<sup>8</sup>

For example, the divine will was consulted in the case of the blasphemer in Leviticus 24 and in the detection of Achan in Joshua 7. Properly consulting the will of the true God was essential, but any other form of augury, divination, oracular consultation, or conjuring up spirits would fundamentally deny the sole jurisdiction of the true God over the case and would render it impossible for his spirit to produce a just result. Accordingly, allowing a witch to live would effectively deny God's jurisdiction over the justice system.

The Book of Mormon is fundamentally in accord with this basic premise. Beyond the examples of divine manifestations during the cases of Sherem, Abinadi, and Korihor (discussed in chapters 5, 6, and 8 below), the hand of God was essential in detecting the criminality of Seantum (see chapter 12 below). The Book of Mormon also strongly denounces priestcraft, which is another form of false priesthood or lack of loyalty to the true source of justice. It was due to priestcrafts that the trial of Jesus could result in the death of a God (2 Nephi 10:5); and for this reason the prophet Nephi issued a commandment that "there shall be no priestcrafts" (26:29), but rather that "all men are privileged the one like unto the other, and none are forbidden" (v. 28), in order that equal justice and welfare in Zion could be established. Because the inauguration of priestcraft threatened the fledgling reign of the judges so deeply, Alma was all the more justified in taking drastic action against Nehor in an albeit unsuccessful effort to prevent "the spreading of priestcraft through the land" (Alma 1:16), which indeed threatened the very establishment of this new system of justice among the Nephites. At the end of Nephite history, of course, the justice system collapsed. Not only did Gadianton robbers "infest the land, insomuch that the inhabitants thereof began to hide up their treasures in the earth" (Mormon 1:18), but also it soon "came to pass that there were sorceries, and witchcrafts, and magics; and the power of the evil one was wrought upon all the face of the land" (v. 19). With the loss of individual security and the lack of protection of property, the total fabric

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Westbrook concludes: "Amateur, opportunistic acts of sorcery tended to be treated as a serious crime analogous to homicide or adultery, which gave the right of revenge or ransom to the victim, while creating some pollution which might have public repercussions. The work of professional sorcerers, typically women, was a source of public concern and could lead to repressive measures analogous to the treatment of polluting crimes like incest and bestiality" (p. 51).

8. Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes, 1995), 20–23, 179–214.

of Nephite civilization came unraveled, so that “no man could keep that which was his own” (2:10). This situation was apparently due not only to crimes against persons and property but also to the people’s tolerance for “the magic art and the witchcraft which was in the land” (v. 10). While the presence of thieves, robbers, and murderers indicates the deterioration of the social order, the presence of priestcraft, witches, and magic gives even deeper evidence of the corruption of the judicial order away from the correct spirit of God and of true, righteous justice.

*A2 and A3. Thou shalt not vex or mistreat a resident alien (22:21). Thou shalt not oppress a resident alien (22:21).* The ideal biblical code of justice is also concerned with the fair treatment of strangers, or resident aliens, people from other lands or nations living within the local boundaries. Biblical law emphasized this social value because the Israelites themselves were once “strangers in the land of Egypt” (Exodus 22:21); and for that reason followers of the law of Moses were frequently reminded that “ye know the heart of a stranger, seeing that ye were strangers in the land of Egypt” (23:9). To fail in sympathizing with strangers would, in effect, be tantamount to forgetting the deliverance of God in rescuing the Israelites from their condition as strangers in a foreign land. Sympathizing with the plight of these resident aliens did more than extend the niceties of civil courtesy. Judges operating under the judicial code of the Bible have need to extend justice to other people in order to retain the favors and blessings of their redeeming and saving God.<sup>9</sup>

For this same essential reason, the writers of the Book of Mormon were likewise sensitized to the demands of social justice that prohibited any mistreatment of strangers. Seeing themselves as “wanderers in a strange land” (Jacob 7:26; Alma 13:23; 26:36), the Nephites understood that treating all people hospitably was a necessary condition for being treated favorably by God themselves. For example, the Ten Commandments proscribed work on the Sabbath day by any member of the society, including the “stranger that is within thy gates” (Exodus 20:10). Abinadi quoted this text to the priests of Noah at a time when the members of that Nephite colony were aliens in the sense of being subjects to the Lamanite king even in their own ancestral lands (Mosiah 13:18). Several decades later, when the sons of Mosiah traveled to the land of Nephi, they were likewise considered strangers and suffered imprisonment and judicial mistreatment (see Alma 21:13), showing the vulnerability of foreigners in places where people were highly suspicious of outsiders. On yet another

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9. See generally Christiana van Houten, *The Alien in Israelite Law* (Sheffield, England: Sheffield Academic Press, 1991).

occasion, in reminding his inhospitable audience in Ammonihah that they all were “wanderers in a strange land” (13:23), Alma hoped their injustice might be tempered by greater sensitivity to his own plight as an outsider among them.

Perhaps for this reason, in particular, the Nephites welcomed wholeheartedly, as fellow citizens, the foreigners who migrated into their land as converts of Ammon (Alma 26:36). Knowing of this judicial principle to treat strangers equitably that theoretically prevailed in the land of Zarahemla, Ammon confidently said to the king of the displaced Ammonites, “I will go and inquire of the Lord, and if he say unto us, go down unto our brethren, will ye go?” (27:7). When the king even offered that he and his people would become slaves in the land of the Nephites, Ammon assured him further with an additional provision of social justice among the Nephites that “it is against the law of our brethren, which was established by my father, that there should be any slaves among them; therefore let us go down and rely upon the mercies of our brethren” (v. 9). The outcome of the humble willingness of the Ammonites is well known: neither God’s justice nor the Nephites’ sense of fundamental fairness disappointed them in any way. The chief judge sent forth a proclamation treating the Ammonites as brethren and giving to them the land of Jershon “for an inheritance” (v. 22). In reciprocation, these people of Anti-Nephi-Lehi were themselves “perfectly honest and upright in all things” (v. 27), becoming models of justice and loyalty to God, as their expulsion of Korihor (30:19–21) and their obedience to their oath of nonviolence (56:6–8) demonstrate.

This principle of justice was reestablished and reinforced among the Nephites gathered at the temple in the land of Bountiful when the resurrected Lord gave them the concluding words of the prophet Malachi: “And I will come near to you to judgment; and I will be a swift witness against the sorcerers, and against the adulterers, and against false swearers, and against those that oppress the hireling in his wages, the widow and the fatherless, and that turn aside the stranger, and fear not me, saith the Lord of Hosts” (3 Nephi 24:5). This passage from Malachi actually confirms seven of the provisions in the biblical code of judicial justice in Exodus 23: God will come near to his people in the judicial process (a desirable thing); but in that setting he will not be tolerant of those who worship other gods or spirits, those who are secretively deceptive or untrustworthy (such as adulterers or perjurers), those who oppress the weak (including day workers, widows, and orphans), and, ultimately, those who “turn aside the stranger,” for they also are children of the Lord of Hosts.

A4, A5, and A6. *Thou shalt not afflict or take advantage of a widow or orphan (22:22). Thou shalt not loan money (silver) to the needy (22:25). Thou shalt not charge interest to the needy (22:25).* People in a just society must avoid taking advantage of the weak, the poor, or the vulnerable (specifically mentioned are widows, orphans, the impoverished, and people from other lands).<sup>10</sup> The prohibitions against oppressing widows, orphans, children, the weak, the poor, or the needy are pervasively present in Nephite ethics and jurisprudence from beginning to end. For example, the words of the prophet Isaiah, well known to the early Nephites, sharply condemned those who were not generous and merciful to the widows and orphans. Because of their hypocrisy and evildoing, the Lord will reciprocate by having no “mercy on their fatherless and widows” (Isaiah 9:17; 2 Nephi 19:17). At the waters of Mormon, the righteous followers of Alma committed to “bear one another’s burdens” (Mosiah 18:8). Meanwhile, back in the city of Nephi, faced with a problem because of the “great number of women, more than there was of men,” King Limhi issued a royal edict “that every man should impart to the support of the widows and their children” (21:17). The importance of protecting such individuals as a basic purpose of civilization is reflected to the end in the Nephites’ awareness of the deep suffering of “many widows and their daughters” who in the final hours of Nephite depravity suffered in the extreme, being “carried away and left to wander whithersoever they can for food; and many old women do faint by the way and die” (Moroni 9:16).

In the Book of Mormon, aversion to oppression is connected with the just conduct of government. Among the evils and iniquities of King Noah and his priests, who are prime examples in the Book of Mormon of the miscarriage of justice, was the fact that they “oppressed” people and held them “in bondage” (Mosiah 23:12). Further, in the sixty-first year of the reign of the judges, the Nephites lost half of their lands because of wickedness and abomination among their own people. In particular, the record tells us that, among other breaches of righteousness and justice, they oppressed the poor specifically by “withholding their food from the hungry, withholding their clothing from the naked, and smiting their humble brethren upon the cheek” (Helaman 4:12). Hitting poor people on the cheek may well be a euphemism for turning them aside from the judicial process, not granting them a hearing, or even accusing them wrongly of having transgressed the law, because elsewhere in the Book of Mormon

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10. See generally Bruce V. Malchow, *Social Justice in the Hebrew Bible: What Is New and What Is Old* (Collegeville, MN: Liturgical Press, 1996); and Leon Epsztein, *Social Justice in the Ancient Near East and the People of the Bible*, trans. John Bowden (London: SCM, 1986).

we see people being smitten upon the cheek precisely in a judicial context of accusation and humiliation (Alma 14:15).

Extending generosity to the poor, for Book of Mormon prophets, meant more than simply allowing them access to the judicial system. Affirmative assistance to the poor was required by King Benjamin as a condition for being worthy to accept the generosity and support of God (Mosiah 4:16–21), and Amulek makes it clear that if a person turns away the needy and does not impart of his substance to them, God will be perfectly fair in ignoring that person's prayers, which avail nothing (Alma 34:28).

*A7 and A8. Thou shalt not revile or blaspheme God (22:28). Thou shalt not curse a ruler over the people (22:28).* Jehovah's code of judicial conduct also makes a strong point of prohibiting any reviling against God or his rulers. In order for a religiously based judicial system to operate, the people subject to the decisions of their leaders must hold their rulers in high esteem. Reviling leaders who represent God is tantamount to blasphemy against God himself, and hence these two problems are linked in Exodus 22:28.

The judicial sense of Book of Mormon writers accords with this sentiment precisely. Reviling and blasphemy go hand in hand, as they do in the case of Korihor: he not only reviled against the priests and teachers (Alma 30:31) but he went on to "revile even against God" (v. 29) and, a small step later, to "blaspheme" (v. 30). According to Nephi, the Israelites in the wilderness "did revile against Moses, and also against God" (1 Nephi 17:42). Amulek was accused of reviling against the laws in the land of Ammonihah (Alma 10:24), and Alma accused Zeezrom of plotting to "revile us and to cast us out" (12:4), referring to his plan to reject and expel Alma himself as high priest over the land of Zarahemla. The leaders in Zarahemla challenged the people, asking why they would suffer Nephi to "revile against us" (Helaman 8:5). In these and several other similar passages in the Book of Mormon, it is evident that reviling against leaders, against the truth, against the prophets, and especially against God was a terribly indicative symptom of injustice and corruption in society.

*A9 and A10. Thou shalt not delay to offer the first of thy ripe fruits (22:29). Ye shall be holy men unto me: Thou shalt not eat of torn flesh in the field (22:31).* The final two "thou shalt not" provisions of this set of public virtues are not directly evidenced in the Book of Mormon. Nevertheless, the Nephite record extols the virtue of having "holy men in the land" (Words of Mormon 1:17) and of being "just and holy men" (Alma 13:26).

If a moral or legal lesson may be drawn from the need for promptness, it can be pointed out that combating the problem of delay was of

considerable ethical and religious concern to the Nephite leaders. Stern warnings against procrastinating “the day of [one’s] repentance” were commonly issued (Alma 13:27; 34:33–35; Helaman 13:38). Being “quick to hearken unto the words of the Lord” was seen as a powerful virtue (Helaman 7:7; see Alma 5:28–29), while its opposite, being “quick to do iniquity” (Mosiah 13:29; Alma 46:8; Helaman 12:4), was a strong indicator of wickedness. Delay in making thank offerings to God or in obtaining forgiveness from God increased the likelihood that these essential oblations would be neglected, leaving people impure and unfit to stand individually and collectively as a holy people (Exodus 22:31) and as a justly righteous community.

### **Doing Judicial Justice**

*B1. Thou shalt not bring up a false rumor or report (23:1).* Leading the list of prohibitions in Exodus 23 is “Thou shalt not raise a false report” (v. 1). Spreading rumors and misunderstandings is the first step in churning up false litigation and abusing the judicial system. Gossip and rumors almost always damage reputations and the standing of people in the community. Hearsay and talebearing are off-limits for all people, a fortiori those who work in the justice system (Leviticus 19:16). Lawyers are in a particularly strong position to have inside information and to have reason to accuse or disparage their opponents. People who spend all day trying to judge cases, advocate causes, or criticize opponents must exert special efforts to stop judging others in ordinary social settings. Especially because judges and lawyers are often influential and powerful people in the community, rumors or false reports started by them are likely to be given much higher credence than information coming from those without insider information. With this high degree of potency comes a high level of responsibility. Thus the biblical code of legal conduct requires its agents to be especially scrupulous in respecting confidences and in guarding against the dissemination of false information. The Hebrew speaks literally of “spreading” or “carrying” any false report: one should simply drop such matters. Particularly, one should not carry such things “up,” that is, to the temple or to the city gates, where judgment takes place. The Septuagint Greek adds the connotation that one should not “accept” or “welcome” any such rumors either. The Hebrew *shema*<sup>c</sup> can refer to any hearing, report, rumor, news, evidence, or witness. Truth is to be promoted. To be avoided is anything that is *shav*<sup>2</sup>: false, empty, lying, vain, worthless, destructive, or deceitful.

The Book of Mormon peoples were certainly sensitive to the enormity of this problem. In one of the most suspense-filled judicial moments in

the Book of Mormon, when believers were waiting to see if the prophecy of Samuel would be fulfilled by the sign of Christ's birth coming within five years after the prophecy was given, the legal system itself was controlled by corrupt judges. Even though preliminary indications were given that the scriptures were beginning to be fulfilled, people explained these occurrences away and rationalized them so that most of the people remained "in their pride and wickedness" (Helaman 16:10). They went so far as to set a day on which those who believed in the prophecies of Samuel "should be put to death except the sign should come to pass" (3 Nephi 1:9). It is conceivable that these people could have been legally put to death on the grounds that they continued to believe in a prophet who had been shown to be a false prophet. In other words, if the sign predicted by Samuel did not come to pass, then he was clearly a false prophet who, accordingly, should be put to death (Deuteronomy 18:20). At the same time, those who continued to believe in his words should receive that same reward, so to speak. But only an extreme court could go so far as to exact such a toll, and so it is significant that the Book of Mormon establishes the perversion and injustice that reigned in the hearts of these would-be accusers at this time. Several elements preventing justice are mentioned. The people made false assumptions and jumped to unjust conclusions, and they went around spreading rumors and initiating arguments, dissension, and probably legal actions throughout the land: "And many more things did the people imagine up in their hearts, which were foolish and vain; and they were much disturbed, for Satan did stir them up to do iniquity continually; yea, he did go about spreading rumors and contentions upon all the face of the land, that he might harden the hearts of the people against that which was good" (Helaman 16:22). Having set the stage with a dire judicial tone, the book of Helaman closes and the record glides seamlessly into the seriousness of the judicial threat hanging over the believers at the beginning of 3 Nephi.

*B2. Thou shalt not be a malicious witness to help a wicked man (23:1).* Righteous conduct is inimical to malicious prosecution. Suborned witnesses, revengeful plaintiffs, and compliant counsel who use the legal system to promote unjust causes wield power and manipulate the judicial process wrongfully. The legal system is a tool. Like any other tool, it can be used either to build up or to tear down. Those who sit in seats of power must be careful at all times to use that power to promote just and right causes. The Hebrew concept behind the word *maliciousness* in this context involves greedy desire, ill will, exploitation of the socially helpless, or even

hatred. Fallacious and overreaching use of legal process is to be abhorred. Kindness must be cultivated.

Bearing false witness is also strongly condemned in the Book of Mormon, as one would expect. At the heart of any legal system stands the absolute dependence on people telling the truth. The book of Deuteronomy, especially, condemns the false witness and imposes on him the same punishment that would have befallen the victim if the false testimony had been accepted: "Then shall ye do unto him, as he had thought to have done unto his brother" (Deuteronomy 19:19). In addition to appearing in the Ten Commandments recited by the prophet Abinadi, the prohibition against perjury is strongly stated by Nephi, the son of Helaman, as he spoke to the people in the city of Zarahemla from his tower. Among the crimes that he alleges against the people are murdering, plundering, stealing, and bearing false witness against one's neighbor (Helaman 7:21).

*B3. Thou shalt not follow the crowd with the intent to do evil (23:2).* Judicial morals require individuals to stand up courageously for what is right, regardless of peer pressure or the prevailing consensus. The Hebrew word for "follow" here includes the connotations of submitting to or answering to those who would pervert justice. The pressures on judges and lawyers are no less potent today. The majority is often swayed by wicked desires. Anyone involved in defending or advocating justice must always guard against being intimidated by unjust influences.

Although the prohibition against following the crowd to do injustice is not specifically mentioned in the Book of Mormon, the force of social pressure is evident as a negative social quality on several occasions. For instance, the independent vote of Alma the Elder in favor of acquitting Abinadi in the Book of Mormon is a classic example of one who did not follow the crowd (Mosiah 17:2). A generation later, in the beginning of the book of Alma the Younger, when the people forgot their commitment to the word of God, Alma bore down against those popular pressures in "pure testimony against them" (Alma 4:19).

*B4. Thou shalt not speak against the majority with intent to pervert justice (23:2).* Interestingly, biblical justice requires people not only to oppose the majority when it is wrong, but also to be careful not to speak out *against* the majority with intent to obstruct justice. Minority views need to be heard, but special interests can become just as tyrannical as majority domination, especially if their advocates lack the intent of doing principled justice or wish to pervert, literally to "turn aside," the course of justice. Cooperation is crucial to civic-mindedness and collective well-being. The repeated, prominent concern in the Book of Mormon about

the minority voices or “dissensions” (Mosiah 26:5; Alma 51:16; Helaman 3:3) of “dissenters” (Alma 31:8; 47:35–36; 51:15; 61:17; Helaman 4:4) who “dissented from” and left the main body of the community (Alma 43:13; 46:7; Helaman 5:35) reflects the attitude toward justice found in this biblical precept.

*B5. Thou shalt not be partial (hidor) toward the poor (dal) in a lawsuit (KJV: “Neither shalt thou countenance a poor man in his cause”) (23:3).* It has always been the case since the beginning of civilization that the rich have had easier access to the law. In addition, judges and lawyers are inclined to favor the rich, for many reasons. The briefs of rich clients are usually better written than those of poor people. The rich may appear more credible. The effects of this bias must be overcome (see, for example, commandment B6). The focus of commandment B5, however, prohibits people also from bending over too far in the opposite direction. The main question in interpreting this provision is, What does the Hebrew word *hidor* (“partial”) mean? This word may actually mean that one should not give “undue honor” to the poor, to the weak, or to anyone. In other words, the text prohibits partiality of any kind, whether to the rich or to the poor (Leviticus 19:15, “thou shalt not respect the person of the poor [*dal*], nor honor the person of the mighty [*gadhol*]”). The Septuagint Greek goes so far as prohibiting the judge from showing too much mercy to the poor or from being swayed by pity.

Impartiality was also an ideal of Nephite justice and jurisprudence. God himself, being no respecter of persons, has commanded men to avoid a long list of injustices, including malice and contention (2 Nephi 26:32), “for none of these iniquities come of the Lord; for he doeth that which is good among the children of men; . . . and he inviteth them all to come unto him and partake of his goodness; and he denieth none that come unto him, black and white, bond and free, male and female; and he remembereth the heathen; and all are alike unto God, both Jew and Gentile” (v. 33). Impartiality toward both the rich and the poor is also reflected in the Nephite sense of judicial justice at the beginning of the reign of judges, at which point the record states positively the prosperous circumstances in which the Nephites thrived when they did not turn away the poor and the needy but were “liberal to all, both old and young, both bond and free, both male and female, whether out of the church or in the church, having no respect to persons as to those who stood in need” (Alma 1:30). Accordingly, Alma and Amulek also “did impart the word of God without any respect of persons, continually” (16:14). Likewise, in his discussion about the justice of God that does not require infant baptism, Mormon argues

that if God were to require the baptism of little children, he would be “a partial God, and also a changeable God and a respecter to persons; for how many little children have died without baptism!” (Moroni 8:12). Curiously, to a modern mind, it might appear that God is “partial” if he has one rule for children and another rule for adults, but to the ancient mind the argument did not seem to run that way. Instead, God is partial and a respecter of persons if he does *not* come to the defense of the weak and the helpless children, for the lack of such affirmative defense would disadvantage them, which would in turn benefit the strong and the advantaged.

*B6. Thou shalt not deny justice to the poor in a lawsuit (KJV: “Thou shalt not wrest the judgment of thy poor in his cause”) (23:6).* In this commandment, readers must wrestle with the meaning of the word *deny* or *wrest*. The Hebrew words here are broad in meaning and application but suggest that if a poor person asserts a claim of right, the legal process should not make it difficult for that person to obtain the entitled benefit. The poor are granted several rights under biblical law: the right to glean in the fields of local farmers, the right to redeem sold property, the right to be given start-up capital upon release from servitude, and other such rights. If a poor person comes forward and claims these benefits, the law should not stand in the way. This commandment is related to the earlier commandment (A4) not to take advantage of a widow or orphan (Exodus 22:22).

Justice in the biblical tradition is indeed not blind. It makes a difference who the parties are. The weak need protection. Widows and orphans are especially vulnerable because they lack a husband or father who in biblical society would have advocated and defended their interests. Negotiating one’s way through the legal system requires knowledge and experience. Widows and orphans in their loneliness are sometimes prone to making weak decisions; they may be in special need of counsel and advice. Just as a football game between a championship college team and a regular high school team would be inherently unfair, even though the football field is exactly the same size for both teams and even if the referees blow the whistle evenhandedly on both sides, the contest could in no way be thought of as a fair competition. Similarly, for the judicial code of the Bible, human law *should* be a respecter of persons, in the sense of looking out for proper interests. People are required to administer justice in a manner that is suitable to the parties. Indeed, if lawyers and judges do not fashion justice in a fitting way, God will apply a fitting reciprocal punishment: “Your wives shall be widows, and your children fatherless” (Exodus 22:24). In the book of Mosiah, King Benjamin similarly required his people to give to the poor and the needy who asked for sustenance;

and the reciprocal consequence of failing to give to the poor was that God would deny their petitions that they put up to him and cause their remitted sins to return (Mosiah 4:22, 26).

*B7. Thou shalt stay away from lies (23:7).* In the better-known Ten Commandments, one reads, “Thou shalt not bear false witness” (Exodus 20:16). Applied to broad society, this means “don’t lie.” But in a judicial context, this commandment requires judges and lawyers to avoid any form of deception, misrepresentation, misleading omission, and perjury. Biblical law was especially hard on perjury. Deuteronomy 19:19 requires the judges to impose on a perjurer the following penalty: “Then shall ye do unto him, as he had thought to have done unto his brother.” In other words, in a capital case the penalty for perjury was death. Lying under oath was especially problematic in ancient Israel where God was a presence in the legal process. Plaintiffs and witnesses verified their claims and assertions in the name of God. Defendants certified their innocence by solemn oaths and vows pledged before God or in his sanctuaries. Both taking the name of God in vain and swearing a false oath by the name of God were forms of blasphemy. Thus the Hebrew law code requires the judge or participant to be “far away from, be distant from, to depart from, or to withdraw from” anything that approaches perjury. One should not get even close to this line.

Any form of lying is also strongly decried in the Book of Mormon, but especially in the context of lawsuits. Those who lied were punished (Alma 1:17). Korihor lied as a witness (30:44). Abinadi was accused of lying about King Noah (Mosiah 12:14). Amulek was accused of lying to people in Ammonihah (Alma 10:28). Indeed the devil is identified as “the father of all lies” (2 Nephi 2:18), making it all the more important for those involved in the judicial process to “keep thee far from a false matter” (Exodus 23:7).

*B8. Thou shalt not execute the innocent or righteous (23:7).* Biblical law requires a righteous legal system to take special precautions to prevent the miscarriage of justice. The innocent, literally “those who are free from liability,” are explicitly entitled to protection. The judicial system must particularly see that those people are never executed. Those who break this commandment are themselves guilty of a serious infraction of the law, not just an excusable or unfortunate error (Deuteronomy 19:16–21).

Executing the innocent receives particular opprobrium and condemnation in the Book of Mormon. The trial of Abinadi, whose innocent blood was demanded by the wicked court of King Noah, epitomizes the miscarriage of justice in the Book of Mormon (Mosiah 17:10). For their

gross injustice, Noah and his priests were burned to death in fulfillment of the curse placed upon them by the dying prophet Abinadi (vv. 14–18; 19:20; Alma 25:7–12).

*B9. Thou shalt not take a bribe (KJV “gift”)(23:8).* Next, the code of judicial conduct in the ancient Israelite law prohibited any judge from taking gifts or bribes that would blind the wise or pervert justice. Any kind of bribery or financial influence on judicial decision should be eschewed. Jewish law went so far as to prohibit any judge from accepting money from any party to a lawsuit, whether before, during, or after the lawsuit.<sup>11</sup> Even an expectation that a wealthy or influential person might sometime in the future give favors to a judge in return for a favorable verdict or judgment was eschewed under Jewish law. The biblical code prohibits even a “gift” or “donation” (*shachad*) of any kind to judges. Any such influence, according to the biblical command, will “twist, pervert, or overturn” the words of even an otherwise righteous man.

Therefore, when Zeezrom offered to give Amulek six onties of silver if he would only “deny the existence of a supreme being” (Alma 11:22; see chapter 8 below), it would be particularly obvious to any ancient jurist operating under the biblical code that even such a “gift” (Zeezrom uses the words “will I give thee”) was indeed a bribe and not an acceptable form of inducement. Any use of money by gift or otherwise to influence or affect testimony or the resolution of the case against Alma would have been considered deeply offensive and unjust under this code of judicial conduct.

*B10. Thou shalt not oppress a resident alien (23:9).* Returning to commandments A2 and A3 found near the top of Set A, Set B ends with the requirement that the legal system not be used to mistreat or take advantage of foreigners living in the land. This point, made applicable to the general population in Set A, is now directed also at those involved in the administration of justice, and for good reason. Oppression of foreigners is especially easy because of language barriers and a lack of familiarity with the local judicial and governmental systems. Biblical law makes this mistreatment of foreigners especially odious because the people of Israel themselves were foreigners who were oppressed in a distant land. The law requires all participants in the judicial process to empathize with these disadvantaged parties; and just as God was kind to Israel in liberating them from bondage, so it is becoming of all lawyers to emulate this divine characteristic in promoting fairness in the interest of resident aliens. In this vein, it is particularly commendable that King Benjamin extended

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11. Discussed below, particularly in chapter 8.

full justice to “all the people who were in the land of Zarahemla” (Mosiah 1:18), even though there were cultural groups and some language differences among them (Omni 1:17).

### Righteousness before God

*C1, C2, C3, C4 and C5. Thou shalt not invoke the name of other gods (23:13). Thou shalt not speak the name of other gods (23:13). Thou shalt not offer blood sacrifice together with leavened bread (23:18). Thou shalt not leave the fat of my sacrifice until morning (23:18). Thou shalt not seethe a kid in its mother’s milk (23:19).* Finally, idolatry or any corruption of the proper form of worshipping God was prohibited, for reasons discussed under A7 above. The seriousness of performing unauthorized sacrifices is unmistakably represented in the case of Aaron’s sons, Nadab and Abihu, who were devoured by fire (Leviticus 10:1–2). In the Book of Mormon, the archetype of judging unrighteously was King Noah, who for apparent reasons was characterized mainly as an idolater (Mosiah 11:6) and corrupter of the temple and its priestly order (vv. 10–11). In the end, King Noah also suffered death by fire (19:20).

### Instructions to Judges to Follow These Ideals

Whatever their shortcomings, many of the ancient Israelites made conscious efforts to honor these rules of judicial conduct. As mentioned above, scholars strongly suspect that behind or alongside the series of judicial rules in Exodus 22–23 there once stood in ancient Israel specific sets of instructions that were given to or expected of those who participated in the legal process.<sup>12</sup> We see evidence to support this suspicion in several places. To begin with, judges in Israel were charged with the general duty of judging righteously, and these charges reflect the provisions of this judicial code of conduct.

For example, in 2 Chronicles 19:7 and 9, King Jehoshaphat installed judges and sent them to do justice. As he did so, he reportedly charged them to observe certain standards that bespeak his familiarity with the Covenant Code: shun “iniquity” (A1, A7, A10, C1–4), avoid “respect of persons” (B3–5), and refuse the “taking of gifts” or bribes (B9).

Further, several classic formulations of judicial ethics are found in Deuteronomy: “Judge righteously between every man and his brother, and the stranger that is with him [A2, B10]. Ye shall not respect persons in judgment [B3–5]; but ye shall hear the small as well as the great [B6]; ye shall not be afraid of [or be intimidated by] the face of man [B3]”

12. Discussed in McKay, “Exodus XXIII 1–3, 6–8,” 322–25.

(Deuteronomy 1:16–17); “judge the people with just judgment. Thou shalt not wrest judgment [B4]; thou shalt not respect persons [B3, 5], neither take a gift [B9]” (16:18–19); “they shall justify the righteous, and condemn the wicked [B2, 8]” (25:1).

This ideal of righteous judgment was also projected onto God. People in pre-exilic Israel expected that God would “judge the people righteously” (Psalm 67:4). He was addressed as the “Lord of hosts, that judgest righteously, that triest the reins and the heart” (Jeremiah 11:20). And he promised exaltation only to those who walked accordingly: “He that walketh righteously, and speaketh uprightly; he that despiseth the gain of oppressions, that shaketh his hands from holding of bribes, that stoppeth his ears from hearing of blood, and shutteth his eyes from seeing evil, he shall dwell on high” (Isaiah 33:15–16).

Conversely, the violation of these rules of judicial conduct would call down the wrath of divine disapproval and justice. Amos condemned these particular abuses: “For I know your manifold transgressions and your mighty sins: they afflict the just, they take a bribe, and they turn aside the poor in the gate from their right” (Amos 5:12). The prophet Zechariah demanded, “Execute the judgment of truth and peace in your gates: and let none of you imagine evil in your hearts against his neighbor; and love no false oath: for all these are things that I hate, saith the Lord” (Zechariah 8:16–17). The violation of these ideals would bring upon the people the fearful judgment of God, and for this reason “the fear of the Lord” is listed in Psalm 19 as one of the six defining, operative components of Hebrew law, namely the Torah, the testimony, the statutes, the commandments, the fear, and the judgments of the Lord (Psalm 19:7–10).

When these expectations of appropriate judicial conduct are laid against the Book of Mormon, it is evident that the Nephite sense of societal and judicial justice corresponded very closely with the ideal profile of justice found in the biblical code of judicial responsibility articulated in Exodus 22–23. As devoted followers of the laws of Moses found on the plates of brass, Nephite jurists would have had every reason to perceive and administer justice in the light of the concepts set forth in the Covenant Code. The following chapters confirm that this was precisely the case. In every instance, Nephite judicial sensitivities align congruently with the requirements of the code of judicial conduct set forth in the law of Moses. Nephite prophets, judges, leaders, and the people at large understood and perpetuated this code of justice throughout their one-thousand-year history. Nephite judges were held accountable to judge righteously. During the Nephite reign of judges, the chief judge was obligated, first and

foremost, “to judge righteously, and to keep the [social justice of] peace and the freedom of the people, and to grant unto them [ritual justice respecting] their sacred privileges to worship the Lord their God, yea, to support and maintain the cause of God all his days, and to [establish legal justice by] bring[ing] the wicked to justice according to their crime” (Alma 50:39). In theory, a number of lower judges reflecting the will of the people at large would judge the higher judges if the “higher judges do not judge righteous judgments” (Mosiah 29:29). Presumably, those cases of judicial misconduct would be judged according to the ideals embodied in this foundational cluster of 25 apodictic laws that supported the concept of social justice, legal process, judicial fairness, and righteous judgment in the biblical law tradition.