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THEFT AND ROBBERY IN THE BOOK OF MORMON
AND IN ANCIENT NEAR EASTERN LAW

John W. Welch

Good evidence establishes that most legal systems in the ancient Near East distinguished quite specifically between thieves and robbers. Under these laws, a thief was usually a local person who stole from his neighbor. He was dealt with judicially. He was tried and punished civilly, most often by a court composed of his fellow townspeople. A robber, on the other hand, was an outsider, a brigand or highwayman. He was dealt with militarily. In most instances, it was the army's task to free the countryside of robbers, and these outlaws could be executed summarily. This article will demonstrate that a virtually identical technical legal and cultural distinction between thieves and robbers exists in the Book of Mormon.

The legal definitions of theft and robbery, especially in the laws of ancient Israel, have been analyzed thoroughly by Bernard S. Jackson.¹ What follows is an abstract and brief discussion of

¹ See his article "Some Comparative Legal History: Robbery and Brigandage," Georgia Journal of International and Comparative Law 1 (1970), pp. 45-103 (cited as "Robbery"), his book Theft in Early Jewish Law (Oxford: Clarendon Press, 1972) (cited as Theft), and the chapter "Principles and Cases: The Theft Laws of Hammurabi," in his Essays in Jewish and Comparative Legal History (Leiden: E. J. Brill, 1975), pp. 64-74 (cited as "Principles and Cases").

his main findings. Along with several other studies,² they provide a wealth of information relevant to many passages in both the Bible and, derivatively, in the Book of Mormon. The following characteristics and legal treatment of thieves and robbers in the ancient Near East can be identified:

1. To some extent, the Hebrew words gānab (to steal) and gannāb (thief) connote stealing in secret, while the terms gāzal (to rob) and gazlān (robber) normally mean taking property openly and blatantly, most often with force.³ This particular distinction between secret and open taking, however, is not always clearly found in the Biblical texts;⁴ it only became a "firmly established" point of law in the tannaitic period of Rabbinic Judaism.⁵ Hence Jackson does not find it to have been

² For example, H. Lutz, "The Alleged Robbers' Guild in Ancient Egypt," University of California Publications in Semitic Philology 10 (1937), pp. 231-42.

³ Jackson, Theft, pp. 2-5. See generally, H. Botterweck & H. Ringren, Theological Dictionary of the Old Testament, II:456-60.

⁴ See also Boaz Cohen, Jewish and Roman Law (New York: Jewish Theological Seminary, 1966), p. 511, n. 177.

⁵ Jackson, Theft, p. 20, 26. Jackson suggests that this development was influenced by the Greek concepts of klopēs (secret theft) and lopodusia (robbery), described further in D. Cohen, Theft in Athenian Law (Munich: C. H. Beck, 1983), pp. 79-83. Lopodusia includes some kinds, but probably not all kinds, of brigandage. As a later development, this distinction would not have been commonly understood in Lehi's day.

the critical difference between these two concepts in pre-Exilic Israelite law and society.⁶

2. More significantly, Jackson concludes that a much earlier and important basic legal distinction can be found in the Biblical texts, namely that a gannāb is typically an insider who belongs to and lives within the same community as his victim, whereas a gazzlān is an outsider.⁷ Jackson explains the cases--mostly in the prophetic literature--where this distinction shifts as owing to historical development or to figurative usage.⁸ Over time, these words could take on different connotations and different words could be used,⁹ but the Hebrew language always found two different words to convey the unchanging societal and

⁶ Jackson, "Robbery," p. 46. The distinction between secretive and open taking, however, was a common popular Western notion in Joseph Smith's day. In 1828, the word thief was defined as "one who takes secretly . . . The thief takes the property of another privately; the robber by open force." Webster's American Dictionary of the English Language (New York: S. Converse, 1828).

⁷ Jackson, "Robbery," p. 46. "ganav is used primarily of the act of an individual, a member of the community, . . . is normally applied to the internal offender." Theft, p. 6, 8.

⁸ Jackson, Theft, p. 10.

⁹ Jackson argues that gannāb came to refer to the outside raider when gazzlān shifted during the monarchy, to mean economic exploitation, at a time when the central authority was increasing in power. Later, listis (which Rabbinic Hebrew borrowed from Greek) and gēdūd were used to refer to these robbers and bandits, when the tannaitic distinction emerged between secret and open taking for the roots gānab and gāzal, discussed above. Jackson, Theft, pp. 10, 33.

legal distinction between neighborhood thieves and outside bands of robbers.

3. Theft included a range of action broader than rude takings of property. Often, bailees who converted the property entrusted to them and the fraudulent finder of lost property received the same punishment as thieves.¹⁰ "Retention of lost property was treated as theft in the Laws of Eshnunna and the Hittite Laws,"¹¹ and Philo included "within theft the defaulting debtor and the fraudulent partner."¹² Thus, other forms of taking were associated with or analogized to theft, although they were probably not thought of as being identical to theft in all respects. Plundering and despoiling (bāzaz and shālal) are associated with the taking of booty in warfare or by violence. Deception was also idiomatically described as a form of stealing, as when Absalom "stole (wayegannēb) the hearts of the men of Israel" (2 Sam. 15:6).

4. Another important factor is that gānab is used primarily of an individual who acts alone, while gāzal denotes action "usually committed by a group." The Hebrew word g^edūd, meaning "bandits" (literally "band"), also conveys the collective character of these raiding groups.¹³ Likewise, in early Roman

10 Jackson, Theft, pp. 17-18. Exod. 22:3, 6, 8.

11 Jackson, Theft, p. 17, nn. 5-6.

12 Jackson, Theft, p. 91, n. 4. Philo, De Decal. 171.

13 Jackson, Theft, pp. 9, 14, 33. Similarly, shōd, pēshat, bāzaz and pāriz.

law the use of a gang was "vital" to the definition of brigandage.¹⁴

5. The evidence is consistent that these groups of robbers were organized in "professional" groups, with recognized leaders and rules of the pack. Achilles Tattius describes one militant band numbering 10,000, with a leader called "king."¹⁵ A band of robbers could, however, be much smaller, and some laws stated numerical tests for distinguishing thieves (acting alone or in small groups) from robbers (in a group large enough to be considered a band).¹⁶ "The robbers lived under their own code, sanctioned by their own religious views and practices. They had their own priests."¹⁷ Still, they were lawless bands, and Josephus says they were not above robbing even from one another.¹⁸ Diodorus takes plundering to be a full-time occupation for these robbers,¹⁹ and Josephus reports that the families of the robbers

14 Jackson, "Robbery," p. 45, 64; Theft, p. 6.

15 III.9, cited in Lutz, p. 233.

16 For example, Ulpian required more than three or four to constitute a group of rioters. Digest 47.8.4.3-6; Jackson, "Robbery," p. 77. Anglo-Saxon law defined a band as ranging from seven to thirty-five. Ibid., p. 90.

17 Lutz, p. 240.

18 Antiquities 15, 348. For a colorful analysis of the writings of Josephus in this area, see David M. Rhoads, Israel in Revolution (Philadelphia: Fortress, 1976), esp. pp. 159-62.

19 I.80.1.2, cited in Lutz, pp. 239-41.

lived with them out in their caves.²⁰ Where these robbers came from is not often clear, but Lutz speculates that they formed from dissidents, foreigners, descendants of foreign mercenaries, and social outcasts--groups caused especially by "political, economic, and social conditions [that] made for a distinct class of human dross."²¹

6. These robbers bound themselves together with oaths and clothed themselves with religious ritual. For example, Josephus reports that one band had an oath which they all swore (synonymenoi kata lochous);²² and according to Dio Cassius, another band, which under the leadership of the priest Isidorus nearly threw all of Egypt into revolt in 172-73 A.D., sacrificed the companion of a Roman centurion and "swore an oath over his

²⁰ War 1, 312; Antiquities 17, 346; Jackson, Theft, p. 34; see also Lutz, p. 233.

²¹ Lutz, p. 241; see also pp. 234, 236. In Rome, 76 B.C., domestic upheavals resulted in "armed bands of slaves running wild in the countryside," a condition leading to the edict of Lucullus against gangs of brigands (hominibus coactis). Jackson, "Robbery," p. 70.

²² War 4, 408. The Greek here probably means more than simply that they "swore together" (synonymenoi), but also that their oath was peculiar to or customary with their band (kata lochous).

entrails and then devoured them."²³ It is said that they would sacrifice and eat these victims to purify their camp.²⁴

7. An important obligation of these robbers was to keep secret their identity and the whereabouts of their hide-out. Their camps were usually located in the mountains.²⁵ For example, Judges 9:25 records that "the men of Shechem set liers in wait for him in the top of the mountains, and they robbed all that came along." Josephus gives a graphic account of the caves opening onto mountain precipices where the brigands lived whom Herod conquered.²⁶

8. The mode of operation of these robbers typically involved swooping down out of their mountain roosts in raids on villages.²⁷ On occasion, however, they could also work within large cities. For example, in Jerusalem under Felix (ca. 51 A.D.), bandits committed a wave of murders, one of Jonathan the high-priest, in broad daylight. They would mingle among the crowds at festival times carrying daggers and stab their enemies, after which they

²³ Lutz, p. 242. Other such oath swearing was accompanied by drinking the blood of slaughtered human victims, cf. Herodotus III.11; Lutz, p. 240.

²⁴ Achilles Tatius, III.12.1. Lutz, p. 240-41.

²⁵ Jackson, Theft, pp. 6-7.

²⁶ War 1.309-16; Antiquities 14, 421-22.

²⁷ For example, the raid of a town called Engaddi, Josephus, War 4, 403ff.

would join in the cries of indignation and alarm.²⁸ Clearly they were bloodthirsty and unscrupulous. One robber butchered his seven sons and wife and then committed suicide before the eyes of Herod.²⁹ Josephus gives the following account of the operations of one of these groups in Judea in the first century A.D.:

These assassins, eluding under cover of night those who might have obstructed them, made a raiding descent upon a small town called Engaddi. Those of the inhabitants who were capable of resistance were, before they could seize their arms and assemble, dispersed and driven out of the town; those unable to fly, women and children numbering upwards of seven hundred, were massacred. They then rifled the houses, seized the ripest of the crops, and carried off their spoil to Masada. They made similar raids on all the villages around the fortress, and laid waste the whole district, being joined daily by numerous dissolute recruits from every quarter. Throughout the other parts of Judea, moreover, the predatory bands, hitherto quiescent, now began to bestir themselves. And as in the body when inflammation attacks the principal member all the members catch the infection, so the sedition and disorder in the capitol gave the scoundrels in the country free licence to plunder; and each gang after pillaging their own village made off into the wilderness. Then joining forces and swearing mutual allegiance, they would proceed by companies--smaller than an army but larger than a mere band of robbers--to fall upon temples and cities. The unfortunate victims of their attacks suffered the miseries of captives of war, but were deprived of the chance of retaliation, because their foe in robber fashion at once decamped with their prey.³⁰

9. The robbers would take any action possible to harass the highways or weaken the local government, to make it easier for

28 Josephus, Antiquities 10, 8; War 2, 255.

29 Josephus, War 1, 312.

30 War 4, 405-409.

them to plunder and pillage.³¹ Indeed, the success of robber bands in Egypt would "immediately flare up again whenever the government showed the least signs of political or economic weakness."³² Josephus expressly correlates the rise of robbers with "sedition and disorder in the capitol."³³ Thus the action of these robbers was often political in nature.³⁴ For example, in 2 Chr. 21:16-17 and 22:1, bands of robbers broke into the king's house, stole his wives, and killed his sons. As a result, it was common for robbers to claim or dispute the throne.³⁵

10. Robbers' raids sometimes involved "large-scale destruction";³⁶ other times they attacked just to restock their supplies or supplement their meager income off the land.³⁷ The

31 Jackson, Theft, p. 15.

32 Lutz, p. 234.

33 War 4, 406-7.

34 For this reason, the Roman government and not the Sanhedrin kept jurisdiction over brigandage in Palestine. Jackson, Theft, pp. 251-60.

35 Jackson, Theft, p. 35, discusses the story told by Rabbi Meir in Tos. Sanh. 9.7 and the characterization of pretenders to the throne as robbers in Roman rhetoric. See Macmullen, "The Roman Concept of Robber-Pretender," Revue internationale des droits de l'Antiquite 10 (1963), pp. 221-25.

36 Lutz, p. 234.

37 Jackson, Theft, pp. 14-15; Lutz, p. 234; 1 Sam. 25.

military strength of some of these groups cannot be doubted: one nearly captured the city of Alexandria from the Romans.³⁸ They were more threatening than foreign invaders.³⁹

11. Robbers would often demand ransom or extort money from towns in lieu of ransacking. One text suggests that robber leagues were so common in Egypt that they became entitled by custom to demand ransom equal to one fourth of the property seized or threatened.⁴⁰ Josephus accuses Albinus of taking kickbacks from brigands.⁴¹

12. The gannāb (thief), if apprehended, was tried according to the legal procedures of the community, while a gazlān (robber) was not considered a member of the community necessarily entitled to the protections of law and therefore could be dealt with by military force and martial law.⁴² How severely robbers were treated seems to have varied with how serious a problem they were at a particular time and with how able the central government was to do something about them.⁴³

38 Lutz, p. 242.

39 Lutz, p. 238.

40 Lutz, p. 232.

41 War 2, 278.

42 Jackson, "Robbery," p. 63. "Against them the laws of war operated." Michaelis, Commentaries on the Laws of Moses (1814), iv. 280, cited in Jackson, Theft, pp. 16, 180, 251.

43 Jackson, Theft, p. 153.

13. The task of clearing the countryside of the menace of these robber bands was the responsibility of the local governmental authorities. Thus, for example, the Code of Hammurabi distinguishes between šarāqu (to steal)⁴⁴ and habātu (to rob).⁴⁵ The thief was a common criminal. He could usually be detected and made to pay. But in the case of a robber who was not caught, "the city and the mayor in whose territory or district the robbery has been committed" was obligated to replace whatever had been robbed; and if the victim had been killed, then the city or the mayor had to pay one maneh of silver to the decedant's heirs.⁴⁶ Thus, a heavy responsibility fell upon the local authorities if a robber--but not a thief--was not caught. The difference seems to rest on the distinctions between "the individual offender and the organized group Such civic responsibility was an attempt to secure the central authority against attack, and existed in similar situations elsewhere in the ancient world."⁴⁷ Indeed, many Babylonian, Ugaritic and Phoenician kings have left inscriptions boasting that they had successfully eradicated the robbers from their territory, and

44 Code of Hammurabi, Sections 6-10, 14.

45 Code of Hammurabi, Sections 22-23.

46 Code of Hammurabi, Sections 23-24. A somewhat similar provision was enacted in England in 1676, 27 Eliz. c. 13; see Leon Radzinowicz, A History of English Criminal Law and Its Administration from 1750 (New York: Macmillan Co., 1956), p. 3.

47 Jackson, Theft, p. 11.

Ipuwer laments the unsafe conditions in Egypt due to these brigands.⁴⁸ Related to this sense of civic responsibility for brigandage was the law that a shepherd or carrier was liable for loss from theft, but not for loss to robbers, against whom he was powerless.⁴⁹

14. Although the evidence is debatable regarding the punishment of thieves,⁵⁰ the death penalty clearly could be imposed on robbers.⁵¹ Indeed, brigands were "often executed summarily."⁵² The mode of punishment in at least one case was

48 Jackson, Theft, pp. 15-16; Lutz, p. 235.

49 Jackson, Theft, pp. 13-14, 39; Exod. 22:9, 11; Code of Hammurabi 103.

50 Thieves were executed under the Code of Hammurabi, Sections 6-13, 21, for several types of theft, for example housebreaking, or stealing from a temple or a palace, or dealing without documentation with a legally disadvantaged person, or concealing stolen goods; but it is not clear that there was a general death penalty for theft under the Code of Hammurabi. Jackson, "Principles and Cases," pp. 66-69. The evidence for capital punishment for theft under Biblical law is even less conclusive, and possibly nonexistent. Jackson discusses the Biblical sources in depth in Theft, pp. 144-154.

51 See, for example, Code of Hammurabi, Section 22. In Egypt, the death penalty applied even if a person could not prove that he had come by his wealth by an honest livelihood, presumably as opposed to having stolen it. Lutz, p. 232. In early Roman law, the penalty for robbery was "the interdict of fire and water"; under Tiberius the penalty became deportation; and for ordinary grassatores (highwaymen) the punishment was sometimes death. Jackson, "Robbery," p. 79, 86.

52 Jackson, Theft, pp. 38, 252, listing examples; "Robbery," p. 86.

crucifixion.⁵³ Decapitation by the sword also seems a likely mode of execution.⁵⁴

15. The leaders of these robber bands were treated especially notoriously. Josephus reports that Herod put to death a robber-chief named Ezekias, who headed a "large horde,"⁵⁵ and records the arrest of another brigand-chief Eleazar, who was sent to Rome for trial, even though he was not a Roman citizen.⁵⁶ We do not know why Eleazar was sent to Rome; perhaps it was for public humiliation, execution, or display as part of a triumph.

16. Robbers were viewed as instruments of divine justice. The wicked were beset with the tumultuous attacks of these brigands as a manifestation of God's judgment. For example, Hosea 7:1 reads: "When I would have healed Israel, then the iniquity of Ephraim was discovered . . . and the troop of robbers spoileth without."

This summary is obviously very condensed. It does not do justice to Professor Jackson's skillful and detailed textual

⁵³ Josephus, War 2, 253; see also the two robbers (kakourgoi, lēstai) crucified with Jesus.

⁵⁴ See Abimelech's slaying of the Shechemite band in Judg. 9:45, and Josephus, War II, 260. Maimonides prescribes decapitation for murderers, Sanh. 15.12, and robbers are often associated with murderers. Cf. Jackson, Theft, p. 186.

⁵⁵ War, 1, 204 and Antiquities 14, 159, in Jackson, Theft, p. 252.

⁵⁶ War 2, 253 and Antiquities 20, 161, in Jackson, Theft, pp. 253-54.

criticism of all his primary sources. Nor does it attempt to display the subtle shifts in meaning or legal practice that occurred over the more than two thousand year period from which these ancient law texts arise. What does emerge, however, is a relatively clear picture regarding the subject of this paper, namely that there was a recognized legal difference between thieves and robbers in these ancient cultures. Moreover, wherever one looks in the ancient Near East, ancient robbers were organized and active in typically the same ways; they caused essentially the same problems, and were dealt with by local governmental authorities under basically the same legal procedures.

Against this ancient Near Eastern background, we are now prepared to understand and appreciate Book of Mormon references to thieves or robbers. Those texts consistently employ the same technical legal and cultural distinctions between thieves and robbers as do their ancient Israelite counterparts.⁵⁷ Each Book of Mormon text will now be discussed in light of the characteristics enumerated above, with particular note of the fundamental distinction between thieves as members of the victim's community and robbers as outsiders or outlaws.

The Small Plates of Nephi

Since theft and robbery are mentioned only three times in the Small Plates of Nephi, it appears that neither was a serious

⁵⁷ Such legal information would have been known to the Nephites best from the law Books of Moses which were contained on the plates of brass, as well as from their linguistic and cultural heritage in general.

concern in early Nephite history. Nevertheless, these few references to theft or robbery can be better understood in light of ancient Near Eastern concepts.

First, the word robber occurs in 1 Nephi 3:13. Although not completely unambiguous, it appears that the word robber is used here in its technical ancient meaning. Laban, who had become angry with Laman over his attempt to get the plates of brass, throws Laman out, saying, "Behold thou art a robber, and I will slay thee." Under ancient law, the death penalty would apply to a robber. The modern reader, however, finds this accusation unseemly: Surely as far as we can imagine, Laman had made no violent attacks on Laban as "he talked with him as he sat in his house" (3:11), nor had Laman taken anything from Laban's person or from his immediate presence, as Anglo-American law would require.⁵⁸ How then can he be accused of being a robber and be threatened with summary execution? The answer may be found in the idea that Laban--who would have been well versed in the law as one of Jerusalem's city elders--was making the following legal arguments: Laman could be accused of being a robber because he and his brothers were now outsiders to Jerusalem. His family-band had left town and set up camp out in the wilderness. Indeed, Lehi had been something of a wanted man (1:20) and might still have been considered an outlaw,⁵⁹ making his group appear-

⁵⁸ See footnote 96 below. Of course, the irony is powerful, since Laban proceeds to steal from the boys.

⁵⁹ Uriah ben Shemaiah, a prophet very similar to Lehi, was considered an outlaw even after he fled to Egypt. He was extradited and executed in Jerusalem. Jer. 26:23.

-at least in Laban's rationalizing mind--like a brigand band of fugitives from justice, now back trying to openly obtain possession of property. Laban, being a military officer (3:31), could undoubtedly exercise summary martial jurisdiction over a robber and kill him, whereas he would have had to give a thief a trial.⁶⁰ Thus Laban's characterization of Laman as a robber and his consequential death-threat were not idle metaphors. They would have been enough to strike Laman to the quick, notwithstanding the fact that he could surely have argued back that he was innocent of the charge. Laman's legal situation would not have improved, either, when the brothers soon returned with arm-loads of precious goods (3:22-25). Laman, Lemuel, Sam and Nephi would have had trouble producing proof of title to this property,⁶¹ and thus they might have been further vulnerable to Laban's trumped up charge that they were robbers.

Second, the word steal (which in Hebrew would have been gānab, the root meaning also "theft," "thief," etc.) appears only once in this period, in 2 Ne. 26:32. Here Nephi lists eight commandments given by God to all men (26:33). Nephi's laws are similar in many ways to the set of so-called Noachide laws, which are said in Jewish law to be binding upon all descendants of

60 See Jackson, Theft, p. 33, 252.

61 Of the requirement at some times in the ancient Near East to prove that it had not been stolen, see, e.g., Lutz, p. 231. Sons generally did not have legal authority to dispose of their father's property before his death. See R. Yaron, Gifts in Contemplation of Death in Jewish and Roman Law (Oxford, 1960).

Noah.⁶² Both the Noachide and Nephi's laws are closely related to the 10 Commandments in Exodus 20, where the eighth commandment reads, "Thou shalt not steal (tignōb, from the root gānab)." The concern in the 10 Commandments is over stealing from one's neighbor,⁶³ as is further evidenced by the fact that the tenth commandment expressly prohibits coveting one's neighbor's property. Thus Nephi's use of the word steal is fitting.

The third instance is irrelevant to the legal distinction between theft and robbery. Behind the English of 2 Ne. 20:2 and 13 stand different Hebrew words, bāzaz and shāsah. Those who "rob (yābozzū) the fatherless" and have "robbed (shōseti) their treasures" are condemned in Isaiah 10:2, 13//2 Ne. 20:2, 13. Isaiah is speaking here of those who exploit the poor. The same meaning is found behind 2 Ne. 28:13, where Nephi (commenting on these words of Isaiah) condemns those churches who "rob the poor because of their fine sanctuaries."⁶⁴

⁶² See generally S. Berman, "Noachide Laws," in M. Elon, The Principles of Jewish Law (Jerusalem: Keter Publishing House, 1975), pp. 708-710.

⁶³ See, e.g., Moshe Weinfeld, "The Decalogue -- Its Uniqueness and Place in Israel's Tradition," Conference on Religion and Law (Brigham Young University, March 8, 1985), p. 8: "[T]hese commandments are . . . a formulation of conditions for membership in the community." See also A. Alt, "Das Verbot des Diebstahls im Dekalog," Kleine Schriften zur Geschichte des Volkes Israel (Munich, 1953-59), p. 339: "[B]ei dem Verbot des Diebstahls im Dekalog ursprunglich nur an den Diebstahl von Menschen, genauer gesagt von Angehörigen des Volkes Israel gedacht war." (emphasis added).

⁶⁴ Cf. Prov. 22:22-23. See also the concern of other Jewish sectarians over "robbing from the poor," mentioned in Jackson, Theft, p. 29, citing Dam. 6.16. "Will a man rob (Footnote 64 Continued on Next Page

The Period of Kings in Zarahemla

As in the Small Plates, robbery is also never mentioned as occurring in the land of Zarahemla in the Book of Mosiah. Robbers were apparently not a serious threat to the Nephites at this time either, a fact consistent with the presence of the strong central government that existed then. When theft and robbery are mentioned during this period, however, theft consistently means stealing within the community, and robbery from without.

Robbery is mentioned in Mos. 10:16-17, which reports that the Lamanites accused Nephi of having "robbed" them of the plates of brass.⁶⁵ The plausibility of this allegation from the Lamanite perspective may have rested on the fact that Nephi had left the Land of First Inheritance and had gone off with his own band of followers. As a result, the Lamanites taught their children to retaliate in kind, to "rob and plunder" the Nephites (10:17). Stealing is not mentioned here, because they would not think of "stealing" from those whom they considered to be outsiders. Indeed, Mos. 24:7 expressly says that they would plunder "except it were among their own brethren." They are only said to rob from other peoples. Thus the basic distinction between community theft and external group robbery is again manifested.

(Footnote 64 Continued from Previous Page)
 (yiqbā^c) God?" from Mal. 3:8//3 Ne. 24:8 is similarly discussed below.

⁶⁵ See also Alma 20:13, discussed further below. Later this charge was expanded into the accusation that Nephi had robbed the Lamanites of their "right to the government." Alma 54:17.

Both King Benjamin and his son, King Mosiah, proudly report on their governmental administrations, with Benjamin stating that he has not allowed his people to "murder, or plunder, or steal" (2:13), and with Mosiah asserting that he has taught that there should be "no stealing, nor plundering, nor murdering" (29:14, 36). In this context, only stealing is ever mentioned, as one would expect in a report on internal domestic affairs.

The Early Period of Judges: Alma Through Pahoran

Through Mosiah's translation of the 24 Gold Plates of Ether (Mos. 28:17), the Nephites became critically aware of the robbers that had plagued the Jaredite government,⁶⁶ and of "their robbings and their plunderings" (Alma 37:21, where it is also noteworthy that stealing is not mentioned), and of their secret oaths and agreements (Alma 37:27). The Nephites were so concerned about this threat that they kept the details secret.⁶⁷ It is understandable why Nephite law in this period begins to take specific cognizance of robbery, as the specific legal remnants from the Law of Mosiah and legal data from this period all show.

In the Book of Alma, three valuable fragments from the Law of Mosiah can be found dealing with theft and robbery: Alma 1:18//30:10, Alma 11:2, and Alma 1:32//16:18. The first, Alma

⁶⁶ Shez was killed by a robber, Eth. 10:3; Com's government was beleaguered by robbers, 10:33; and in the end every man was in his "band" and there were "robbers" in all the land, 13:25-6. Neither thieves nor stealing is ever mentioned in Ether.

⁶⁷ Alma 37:27, Hel. 6:25.

1:18, explains that under the law of Mosiah the people "durst not steal, for fear of the law, for such were punished; neither durst they rob, nor murder, for he that murdereth was punished unto death." As seen above, theft was not a capital offense in Biblical law. The same is true here, as is clearly implied by the absence in both Alma 1:18 and 30:10 of any mention of the death penalty except for murder.⁶⁸ Was robbery a capital offense under the Law of Mosiah? It appears at this stage in Nephite law that it was not. Alma 1:18 simply reads, "neither durst they rob" Alma 30:10 (which undoubtedly paraphrases the same segment of the Law of Mosiah as does 1:18) also speaks of capital punishment only in connection with murder. It reads: "[I]f a man murdered he was punished unto death; and if he robbed he was also punished" This is consistent with what is found in the ancient Near East, where punishments become less severe when the central authority is relatively more secure.⁶⁹ Apparently robbers were not seriously threatening during this period of the Nephite Judges.

A second provision in the Law of Mosiah analogizes delinquent debtors with thieves. Alma 11:2 sets forth the procedure to be followed under Nephite law in collecting an overdue debt. It

⁶⁸ All of which is consistent with ancient Israelite law. See footnotes 50-51 above. Killing was a capital offense unless the slayer did not lie in wait and unless the victim was delivered into his hands by God, in which case the killer was compelled to flee either to a city of refuge or leave the Holy Land. See Exod. 21:13-14; compare 1 Ne. 4:11-12.

⁶⁹ See Jackson, Theft, p. 153, n. 3.

tells where to file the complaint, how the debtor was to be apprehended, on what basis the matter was to be tried, and the consequences if the debtor could not repay the debt: He could "[1] pay that which he owed, or [2] be striped or stripped,⁷⁰ or [3] be cast out from among the people as a thief and a robber." As seen above,⁷¹ fraudulent debtors were indeed analogized to thieves in Near Eastern law, which is precisely what this Law of Mosiah does, not confusing the delinquent debtor with the thief, but treating him "as a thief." Why does this text go on to add the phrase "and a robber"? Was it because the fraudulent debtor would become as a robber, an outsider to the community, once he was banished? Or is this another indication that distinguishing between theft and robbery was not a serious concern at this particular time in Nephite judicial history?⁷² The choice of punishment for a thief under the Law of Mosiah was apparently discretionary with the judge. If the text should read "striped," meaning "lashed" a close relationship between Alma 11:1-2 and Deut. 25:1-3, which provides as follows, may be established:

If there be a controversy between men, and they come unto judgment, that the judges may judge them; then

70 The earlier Book of Mormon manuscripts and editions read "striped," see Printers Manuscript, 1830 Edition, 1837, RLDS 1908, but the more recent editions read "stripped," see the 1840, 1879, 1920, 1981 Editions.

71 See footnote 12 above.

72 As seen above, footnote 9, the distinction between these words could change somewhat from time to time, especially as the strength of the central government rose and fell.

they shall justify the righteous and condemn the wicked. And it shall be, if the wicked man be worthy to be beaten, that the judge shall cause him to lie down, and to be beaten before his face, according to his fault, by a certain number. [Not more than] forty stripes he may give him

Alternatively, "stripping" the guilty party of his clothes or hair would probably have been used as a form of public humiliation similar to that which was common in ancient Near Eastern law.⁷³ It is also possible that a more recalcitrant guilty party could have been both stripped and striped.⁷⁴ For an even more flagrant offender, the judge could declare the debtor to be essentially a thief and banish him from the city--a suitable penal option for punishing a person who had violated the laws of intra-community behavior.

Yet further concern over robbery in the Law of Mosiah is evidenced in Alma 1:32 and 16:18. Both of these verses list basically the same twelve laws, indicating that the same specific part of the Law of Mosiah probably stands behind both of them. These laws appear to have been expanded from Nephi's eight

⁷³ See, e.g., Samuel Greengus, "A Textbook Case of Adultery in Ancient Mesopotamia," Hebrew Union College Annual 40-1 (1969-70), pp. 33-44 (discussing a case in which an adulteress had her private parts shaved, her nose bored with an arrow, and was then "led around the city"); Code of Hammurabi 129 (adulterers were tied together and thrown into the Euphrates River). Since public humiliation was usually not conjoined with enslavement, Alma 11:2 is consistent with Mos. 2:13 which prohibited the people in Zarahemla from making slaves (or debt-servants) of one another.

⁷⁴ See, e.g., Code of Hammurabi 127 (insulting a high-priestess or married lady resulting in flogging and having half your head shaved).

Noachide laws (2 Ne. 26:32).⁷⁵ The pair "thieving and robbing" (1:32) and "stealing, robbing" (16:18) appears in both these passages. The addition of robbery to Nephi's list documents again the growing awareness of the Nephites during this period over the potential problems of robbery. It may also reflect the fact that Nephite society now found itself composed of several fragmented groups --Nephites and Mulekites, Church members and nonmembers--and thus the law would need to be careful to prohibit not only stealing from among the Nephites, but inter-sectional robbery as well.

Just as the Law of Mosiah shows a rising concern over robbery during this period, so do the narrative sections of the Book of Alma, in which the same observable distinctions between theft and robbery are evident. Here again, one is never said to rob from his own people. A robber always robs from outsiders. During this early period in the reign of Judges, the Lamanites are the only ones ever accused of robbing: the word "rob" is used only to describe the Lamanites "robbing and plundering" the Nephites (Alma 17:14). Similarly, when the internal wickedness of the Nephites is described, the text just refers to the "plunderings . . . which were among themselves" (50:21). When Lamanites take

⁷⁵ See footnote 62 above. Since Mosiah knew that his law had to apply to all people both within and without the Church, it is logical that he would have turned to Nephi's Noachide laws and expanded them to meet his people's current needs, for since Nephi's laws applied to all men, a Nephite king would feel justified in insisting, at a minimum, that all people in Zarahelma--whether Nephites or Mulekites, inside the Church or not--comply with them.

the sheep of another Lamanite, it is described not as robbery but as "a practice of plunder among them." (18:7).

Additional detailed evidence of an awareness of this point of law emerges from the account of King Lamoni's severe punishment of his servants, who had failed to protect the king's sheep from raiders. As mentioned above, ancient law made shepherds liable for the loss of sheep due to theft, but not due to robbers.⁷⁶ Even for loss due to theft, imposing a penalty of death would be extraordinarily harsh, although not without precedent where royal property was involved.⁷⁷ The death penalty would be even more unusual in the excusable case of a loss due to robbers. Probably for these reasons, King Lamoni himself began to "fear exceedingly with fear lest he had done wrong in slaying his servants; for he had slain many" ⁷⁸ Perhaps he had been so strict with his servants because the problem had been a repeated one, or perhaps because his sheep were a rare and royal commodity, or perhaps because he suspected his servants of complicity with "their brethren" (18:6) who did the raiding. Perhaps he did not think the servants were entitled to the usual protections of law

⁷⁶ See footnote 49 above.

⁷⁷ See Code of Hammurabi, Section 8, where a person who steals the animals of the palace are put to death if they cannot pay to replace them.

⁷⁸ Alma 18:5-6. Kings in Israel were clearly subject to the rule of law, as the stories of Naboth's vineyard in 1 Kings 21 and of David and Bathsheba in 2 Sam 11-12 illustrate. See generally Z. Falk, Hebrew Law in Biblical Times (Jerusalem: Wahrmann, 1964), pp. 45-51; R. de Vaux, Ancient Israel (New York: McGraw Hill, 1965), p. 151.

regarding losses due to robbers because these were not lone shepherds but should have been able to stand, band for band, against the raiders. Perhaps he tried to justify himself legally by shrewdly never calling the attackers "robbers," but, as the text says, just "plunderers" and "brethren" (18:7).

Finally, in this period, for a brief time the Nephites (as represented by the sons of Mosiah) and the Lamanites (at least as represented by Lamoni) became reconciled. The Lamanites had long accused the Nephites of robbing them,⁷⁹ and Lamoni's father too suspected the sons of Mosiah of coming as robbers, "to rob us of our property" (Alma 20:13). To a modern Western mind, he should have called them thieves, for if these sons came at all with ill motives, they would have done so with stealth and secretive deception, for they would not have dared violence. To an ancient mind, however, they came as robbers, so long as they came in a group from the outside, especially to try to undermine the government with sedition. Accordingly, Lamoni's father commanded him to slay Ammon "with the sword." This manner of execution would suit a robber.⁸⁰ To counteract this long-standing Lamanite sentiment and the idea that Nephites were outsiders to the Lamanites, Lamoni decreed after his conversion that the Lamanites

79 See footnote 65 above.

80 See footnote 54 above, especially where the Lamanites may have traditionally associated Nephi's alleged offense with the crime of Dt. 14:13, namely of "going out" and "withdrawing the inhabitants of a city" and accusing those left behind of "not knowing God," which is there described as being worthy of death "with the edge of the sword." Deut. 14:15.

should "be convinced that they were all brethren [with the Nephites], and that they ought not to murder, nor to plunder, nor to steal . . ." (Alma 23:3). Robbery is not mentioned here, since robbery would necessarily become irrelevant once the Nephites were defined as brothers and members of the same community with the Lamanites. All cases of taking by Lamanites from Nephites after this edict would thus be classified as cases of stealing.

The Later Period of Judges: Pahoran II to Lachoneus II

With the chief judgeship of Pahoran II, robber bands first begin to figure prominently in the Book of Mormon, and the mode of operation of these robbers follows precisely the pattern of ancient Near Eastern brigandage. The parallels between the Gadianton robbers and their counterparts in ancient Egypt, Mesopotamia, Palestine, Greece and Rome, could hardly be more complete.

Several reasons explain why these robbers could rise to such power at this time in Nephite history. The prolonged wars of Moroni, Helaman and Pahoran I must have left the central government in Zarahemla precariously weak. The capitol city Zarahemla itself had fallen in these wars (Alma 61:5-8), and it fell again twice more shortly afterwards (Hel. 1:27, 4:5). Furthermore, the deaths of Alma's sons Helaman (62:52) and Shiblon (63:10), Captain Moroni (63:3), and Chief Judge Pahoran (Hel. 1:2), not to mention numerous other war casualties, along with the departure of Alma's son Corianton (Alma 63:10), all occurred within four or five years of each other, 57 to 52 B.C.,

and left the Nephite government almost leaderless. Helaman II must have been young, probably about 24, when he took the records from Shiblun; and his son Nephi was even younger, probably about 15, when he succeeded his father already in 39 B.C.⁸¹ Just as was the case in ancient Near Eastern civilization, these weaknesses made Zarahemla vulnerable to the repeated raids, pillage, terrorism, corruption and extortion that characterized robber activity.

Moreover, several dissident groups in the Land of Zarahemla could readily swell the ranks of these robber bands. (1) Despite Lamoni's conversion and brotherly proclamation, other Lamanites continued to respond to the idea that Nephi had robbed Laman, and they remained disposed to rob and avenge that wrong.⁸² (2) There probably were some Nephites who had been expelled under the law of Alma 11:2 and branded "robbers." (3) Other Nephites were likely excommunicated under the procedure instituted in Mosiah 26. These or other Nephites affiliated with the robbers were specifically identified as "dissenters from among the Nephites" (Hel. 6:38, 11:24, 3 Ne. 1:28). (4) The followers of Nehor had marginal loyalties and ample antagonism toward the Nephite

⁸¹ See J. Welch, "Longevity of Book of Mormon People and the 'Age of Man,'" forthcoming in Journal of Collegium Aesculapium (Summer 1985) and available as a F.A.R.M.S. Preliminary Report (1984).

⁸² Alma 54:17. Not all Lamanites were the same, of course: certain Lamanites joined with the robbers in Hel. 11:24 and 3 Ne. 1:29, although most Lamanites vigorously fought the robbers in Hel. 6:37.

regime, (5) as also did the Zoramites.⁸³ (6) The entire Mulekite population provided a festering source of second-class citizens, less educated and never really having much role in the Nephite-dominated government, despite their being more numerous than the Nephites.⁸⁴ The Mulekites quite certainly fueled the civil wars fought in Zarahemla shortly after the installation of Alma as Chief Judge (led by Almici in Alma 2-3) and upon the succession of Helaman to the same office (led by Zerahemnah in Alma 44), and again following the accession of Pacumeni to that office (led by Coriantumr in Helaman 1).⁸⁵

Over the years, several of these robber groups came and went.⁸⁶ Robbers were a serious problem in the final years of the

83 Zoramite hostility intensified when Alma and his comrades converted and took with them the lower working class in Antionum; see Alma 35. Amalickiah and Ammoron were descendants of Zoram; see Alma 54:23, 52:3. Zoramites also joined the ranks of the Gadianton robbers. 3 Ne. 1:29.

84 Mos. 25:2; Omni 17.

85 The names Amlici and Zerahemnah both appear to be Mulekite words: Amlici can be associated with the Hebrew root m-l-k meaning king, see F.A.R.M.S. Update "New Information About Mulek, Son of the King" (February, 1984), and Zerahemnah is a likely name for a descendant of Zarahemla, king of the Mulekites. Coriantumr is expressly identified as "a descendant of Zarahemla" in Hel. 1:15. I will argue elsewhere that the assimilation of Mulekites into Nephite culture was not very satisfactory and that these two groups remained distinct. See, e.g., Mos. 25:4.

86 Richard Bushman, Joseph Smith and the Beginnings of Mormonism (Urbana: Univ. of Illinois Press, 1984), p. 130, briefly summarizes the history of two of these groups.

Jaredites (Eth. 10:3, 33; 13:26). Independently (Hel. 6:26), there arose a second group led by Kishkumen and Gadianton, who were fugitives from justice over the violence surrounding Pahoran II's succession to the chief judgeship. This group was active about 50-20 B.C. Another group emerged from among the Lamanites about 12 B.C. after the Nephites had been brought to their knees by famine (Hel. 11:10, 24). Another band that was most active between 15-20 A.D. was led by a man called Giddianhi (3 Ne. 3:9), who represented outcasts and whose motives were political (4:4). His short-lived successor was Zemnarihah (4:17). Yet another group formed about 30 A.D. out of disputes over an attempt by the Nephite governor to limit the lower judges' authority to impose the death penalty (6:21-30); it was led by a man named Jacob, who soon took his followers and left to the north (7:9-13). Robbers reappear after the Great Nephite Peace (4 Ne. 42-46), and they continue as a major factor until the destruction of the Nephites (Mor. 1:18; 2:8, 27; 8:9).

The activities of these groups of robbers follow the pattern of the sixteen factors described at the beginning of this paper, against which the Book of Mormon data will now be compared:

1. Although Book of Mormon robbers worked either in secret or in the open (e.g. Hel. 2:4, 8; 6:17; 3 Ne. 2:17), they were still called "robbers." The tannaitic and Western distinction between secret theft and open robbery is not material here. What is relevant in Book of Mormon culture are the ancient Near Eastern and Israelite connotations discussed above.

2. Instead, the insider/outsider distinction persists and is fundamental here, without exception. These Book of Mormon robbers are perceived of as outsiders, and the talk is therefore always of "robbers." When the record speaks of wickedness "among the Nephites," on the other hand, it always speaks of "stealing" (e.g., Hel. 4:11-12).⁸⁷

3. Different types of theft are not specifically mentioned in this period, but "usurping" political power is.⁸⁸ Just as a range of infractions could be analogized with theft, usurping power could also be associated readily with the actions of robbers.

4. These Book of Mormon robbers operated in groups. The word "band" (g^edūd) appears over twenty times (e.g., Hel. 1:12). Indeed, there may be a connection between the word g^edūd (meaning "band") and the name Gadianton, as is made especially plausible

⁸⁷ There are three other passages from this period in which theft or stealing is mentioned: (1) "Stealing" is the issue in Hel. 6:21-23 because the Nephites have united with the robbers "among the Nephites" (6:18) so that they [including the Nephites] could steal. (2) The same is the case in Hel. 7:5 and 21, both of which mention stealing, because the opposition group now controls the government and the concern is with offenses "against your neighbor" (7:21). (3) Samuel the Lamanite prophesies in Hel. 13:34 that men would set down a tool and the next day not be able to find it (either a neighbor or an outsider could have taken it), and this prophecy is fulfilled according to Mor. 2:10 because of the "thieves and the robbers" in the land.

by the fact that this name is spelled Gaddianton in the Original Manuscript of the Book of Mormon.⁸⁹

5. There is also no question that they were organized in professional groups. They had leaders: Kishkumen and Zemnarihah were each called "leader" (Hel. 2:4, 3 Ne. 4:17); Giddianhi was called "governor" (3 Ne. 3:1, 9); and Jacob, "king" (3 Ne. 7:10). They had laws (Hel. 6:24), as well as their frequently mentioned oaths, covenants and secret alliances (e.g., Hel. 6:21-22). Presumably they had priests to formalize these oaths. They were a bloodthirsty lot, filled with hatred and violence (3 Ne. 3:3, 7:11), committing numerous "secret murders" and being lawless to the point that one robber would kill another (Hel. 8:27). Yet they subsisted as a community, in all probability living with women and children (Hel. 11:33). They surely came from social groups who felt themselves to be outcasts, from those who thought they had been repeatedly "wronged" (3 Ne. 3:4), and from other people who felt socially alienated, as discussed above.

6. Their use of oaths is well attested (Hel. 1:11 reports an oath "by their everlasting Maker;" 6:21; 3 Ne. 3:8). They also identified themselves to each other with secret signs (Hel. 2:7;

⁸⁹ Hel. 2:11-12. I am grateful to Kelly Ward and Robert F. Smith for this information. There may also be a play on words in Alma 37:23, where a stone called Gazelem (possibly from the Hebrew gzh "cut, cut-stones") will reveal the darkness of the gzl-robbers, as suggested by JoAnn Hackett, Robert F. Smith, Blake Ostler, and John Tvedtnes. Cf. also Giddianhi.

6:22). Likely their oath-making was accompanied by blood rituals. When they come to battle, they are covered with blood (3 Ne. 4:7), and Mormon says that the robbers in his day sacrificed women and children (Mor. 4:14-15, 21) and practiced "magic art" (2:10). He also says that his enemies murdered their captives and devoured their flesh as "a token of bravery" (Moro. 9:10).

7. Maintaining their secret identity was one of main duties of these robbers (Hel. 1:11, 2:3, 6:21). Their strongholds were located in the wilderness (2:11) and in the mountains (11:25-31; 3 Ne. 1:27, 2:17, 3:20), except when they were successful in infiltrating population centers.

8. They raided and attacked (3 Ne. 4:19). Reminiscent of the cloak-and-dagger assassination of the high-priest Jonathan by a robber in Jerusalem are the slayings of Pahoran and Cezoram by disguised robbers in Zarahemla (Hel. 1:10, 6:15). Another similar coup against Helaman was narrowly aborted (2:5).

9. Similar to their ancient Near Eastern counterparts, these robbers also preyed on the local government. They attacked its leaders and destroyed its cities (3 Ne. 2:11). Their greatest success came when Nephi abdicated (Hel. 5:1-8:7). They regularly claimed and disputed the throne (3 Ne. 3:10).

10. These robbers were militant. They came as invading armies, in siege warfare (3 Ne. 4:16), with military power capable of defying "whole armies" (Hel. 11:32, 3 Ne. 2:11, 2:17, 4:1, 11). Yet their supply shortage is evident, for they, like the Near Eastern robbers, lived off the land (3 Ne. 4:3, 4:19-

20). Their military strength was terrifying. These robbers were the most feared of all Nephite enemies: Mormon identifies them as the primary cause of the overthrow and almost the entire destruction of the Nephites (Hel. 2:13-14). Their attacks were so "great and terrible" that "there never was known so great a slaughter among all the people of Lehi since he left Jerusalem" (3 Ne. 4:11).⁹⁰

11. Just as robbers in Egypt might demand ransom, Giddianhi attempts to extort from Lachoneus his cities, lands and possessions on pain of being destroyed with the sword (3 Ne. 3:6). In Egypt, the robbers are said to have demanded one-fourth of the threatened property. Here, the robbers also want a share, as they propose to make the Nephites "partners" (3:7). Giddianhi may have thought he was making a reasonable ransom offer, since, on earlier occasions, the Nephites had been willing to unite with and deal with the robbers: The Nephites "supported them . . . and partook of their spoils . . ." (Hel. 6:38), much as Josephus accuses Albinus of taking kickbacks from robbers in Judea.

12. Little effort is made in this period to deal with robbers judicially. Helaman sent soldiers after Gadianton, who fled, fearing that he would "be destroyed" (Hel. 2:11). It is doubtful that any kind of trial would have taken place if Gadianton had been apprehended, for Helaman sent men after these

⁹⁰ Remembering the total destruction and captivity of Jerusalem as exceeding the severity of these attacks has an authentic ring. No Lehiite would likely have ever forgotten Lehi's prophetic warning and confirmation of total destruction, in the face of which they left Jerusalem in the first place.

assassins already intending "that they might be executed according to the law" (2:10). Similarly, the Lamanites "did hunt the band of robbers" (6:37), using "every means in their power" (6:20) and "utterly destroyed" them in Lamanite lands (6:37). "[A]n army of strong men" was sent into the wilderness to "search" and "destroy" the robbers who arose after the famine of Nephi (11:28). Giddianhi was "overtaken and slain" (3 Ne. 4:14), when he could have been taken prisoner. The rank and file robbers under Zemnarihah were summarily slain if they would not become prisoners (3 Ne. 4:27), and even the prisoners were "condemned and punished according to the law" (5:5, they would have been executed for murder if not for robbery), if they would not make a covenant "that they would murder no more" (5:4). Thus, robbery was clearly under the jurisdiction of martial law.

13. Similarly, clearing the countryside of robbers was a responsibility of government. Helaman takes official action (Hel. 2:10), as does Nephi (11:28). The government of Lachoneus consolidated the Nephites and built fortifications against the robbers (3 Ne. 4:3-5). No private plaintiffs were necessary in such cases, as was usually the practice in initiating civil suits in ancient Near Eastern courts of law. Moreover, the government considered itself responsible: Only because the robbers were "not known unto those who were at the head of government" were they "not destroyed out of the land" (Hel. 3:23). Mormon takes pains to exonerate Helaman from any insinuation that Helaman had in any way allowed the secret oaths of the Jaredite robbers to leak out of the records in his custody (6:26). By the same

token, whenever the robbers were defeated, the government boasted or was praised for this success (Hel. 6:37, 11:10, 4 Ne. 17).

14. As already shown, the death penalty was imposed summarily upon robbers in this era of Nephite history. The mode of punishment for Zemnarihah was "hanging," a form of execution related to crucifixion.⁹¹

15. The deaths of robber-leaders were particularly notorious. Zemnarihah's execution was a public spectacle, with all the people in unison chanting loud incantations and supplications, and singing, praising, rejoicing and exulting (3 Ne. 4:28-33).⁹² The deaths of Kishkumen (Hel. 3:9) and Giddianhi (3 Ne. 4:14) are also emphatically recorded.

16. Finally, robbers in the Book of Mormon are also viewed as instruments of divine judgment. They came upon the people as a "great evil . . . because of their iniquity" (Hel. 11:34). Mormon sees robbers as instruments of death and terror sent by God to "chasten his people" (12:3). It may be that the presence of robbers in the land northward was the "great curse" that was said to be upon that land (3 Ne. 3:24). In any event, the only hope for deliverance was righteousness: "As the Lord liveth, except ye repent of all your iniquities, and cry unto the Lord, ye will in nowise be delivered out of the hands of those

⁹¹ 3 Ne. 4:28. Cf. Deut. 21:22. See generally M. Hengel, Crucifixion (Philadelphia: Fortress Press, 1977).

⁹² The detailed way in which this execution followed ancient Israelite practice, as reflected in Maimonides, Sanh. XV.6, is set forth in my "The Execution of Zemnarihah," F.A.R.M.S. Update, November 1984.

Gadianton robbers" (3:15). In the same vein, Nephi cries to God hope that he will finally be "appeased in the destruction of those wicked men" and take mercy upon the Nephites (Hel. 11:11).

We have thus accounted for every occurrence of the words rob, robber, thief, or steal in the Book of Mormon, except for five. Of these five, two are idiomatic cases of deception, or "stealing hearts" (Mos. 27:9, Alma 39:4) This expression was similarly used in Biblical Hebrew (see 2 Sam. 15:6, discussed above). Two others are cases of "robbing God." The word rob in the phrase "will a man rob (yiqbā^C) God," (3 Ne. 24:8; Mal. 3:8), is a different Hebrew word, qāba^C, meaning to "cover up," and hence to "defraud." The same non-legal word probably stands behind the thought of "mercy robbing justice" in Alma 42:25. The fifth is Moroni's prophecy that in the last days there will be great pollutions upon the earth, particularly murders and robberies (Mor. 8:31). Theft is not mentioned, probably because Moroni would not have considered theft to be as serious a matter.

In conclusion, there is clear evidence that virtually the same legal and cultural distinctions between thieves and robbers are present in the Book of Mormon as existed in ancient Near Eastern and Israelite law. These distinctions are constantly maintained throughout the Book of Mormon. Moreover, internal Book of Mormon history itself amply accounts for the legal developments we find in this text, as well as for the rise to power and treatment of these bands of robbers.

It is highly doubtful that Joseph Smith could have detected these legal distinctions or surmised these historical patterns

from his own nineteenth century informational environment. For example, Jahn's Biblical Archaeology⁹³ discusses "Punishment of Theft," but it makes no reference whatever to ideas like Professor Jackson's, and never even mentions robbers. Similarly, if Joseph Smith had relied on his King James Bible, he would have stumbled into error, for that translation is not consistent on this point. The word thieves was rightly used in Mt. 6:19 as a translation of kleptai, but it was wrongly used in Mt. 21:13 in translating the phrase "a den of thieves" from the Greek lēstōn, which should have been translated "a den of robbers." It creates this confusion despite the fact that Mt. 21:13 is quoting Jer. 7:11, which was rightly translated "a den of robbers." Furthermore, how can one in the parable of the Good Samaritan "fall among thieves" in Lk. 10:30? These were highway robbers, and the Greek (lēstais) should have been translated "robbers"! How can Jesus be said to have been crucified between two "thieves" in Mt. 27:38 (lēstai), when the same word (lēstēs) is translated "robber" when describing Barabbas (John 18:40)? With his cultural background in King James terminology, Joseph Smith would have instinctively presumed that there was no significant difference in Biblical law between a thief and a robber.⁹⁴

⁹³ Thomas Upham, ed. (Andover: Flagg and Gould, 1823), p. 313.

⁹⁴ Even today this distinction is not self-evident to Westerners. After all, we do not speak of "Ali Baba and the Forty Robbers."

Moreover, Anglo-American common law would have provided Joseph Smith with quite a different understanding, inconsistent in many ways with the usages found in the Book of Mormon. Although it would require a full paper to explain the English laws regarding theft (usually called larceny) and robbery, and to trace the complicated history of how British and European legal institutions were transplanted into each of the American colonies,⁹⁵ certain general observations can be made. In England, robbery was a crime against the person. It required a "felonious taking, from the person of another, money or goods of any value, by putting in fear The theft [sic] must be from the person."⁹⁶ Robbers were typically highwaymen--they were fancy-dressed dandies, who would rob travellers and sometimes masquerade as aristocratic house-guests, to support their high living and gambling.⁹⁷ The words theft and robbery

95 See generally, Samuel Walker, Popular Justice: A History of American Criminal Justice (New York: Oxford Univ. Press, 1980); Douglas Greenberg, Crime and Law Enforcement in the Colony of New York 1691-1776 (Ithaca: Cornell Univ. Press, 1974); William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830 (Cambridge, 1975).

96 Joseph Chitty, A Practical Treatise on the Criminal Law (London: A. J. Valpy, 1816), pp. 802-9. This law was "strictly" interpreted; see William Holdsworth, A History of English Law (London: Methuen & Co., 1972), 8:304. See also Herbert Broom, Commentaries on the Common Law (Philadelphia: T. & J. W. Johnson, 1856), pp. 633-34.

97 See Patrick Pringle, Stand and Deliver: The Story of the Highwaymen (London: Museum Press, 1951). Highway robbery and putting in fear were the issues in the laws of Massachusetts, see Edwin Powers, Crime and Punishment in Early Massachusetts (Boston: Beacon, 1966), p. 270; Nathan (Footnote 97 Continued on Next Page

were often used synonymously in England, as in the 1751 Act for Better Preventing Thefts and Robberies.⁹⁸ The term robbery seems to have been seldom used in America, where highwaymen were not as much of a threat. Larceny, by way of distinction, was a crime against personal property. It required "a taking from the possession" of another.⁹⁹ Thus "if a party lawfully acquires possession of goods and afterwards misapplies them, this is no felony."¹⁰⁰ Theft was one of the most odious and often prosecuted crimes in the colonies of New York and Massachusetts, but robbery was rare.¹⁰¹ In many ways, therefore, contemporary English and American legal usage was inconsistent with the Book of Mormon's understanding of theft and robbery.¹⁰²

(Footnote 97 Continued from Previous Page)

Dane, A General Abridgment and Digest of American Law
(Boston: Cummings, Hilliard & Co., 1824), p. 180.

98 Ibid., p. 234.

99 Chitty, pp. 917-24. See also Holdsworth, 3:361-66;
7:513.

100 Chitty, p. 917.

101 Greenberg, p. 90; Nelson, p. 37.

102 For example, surely Laban was not put in fear by "an actual violence" or a "struggle," see Chitty, pp. 803-4, and there was no actual passage of possession to Laman; therefore he cannot technically be a robber. Under Anglo-American law, one cannot steal a "right to government," see Alma 54:17, since there is no offense here against personal property. Similarly, a delinquent debtor cannot be treated as a thief under these modern laws, since he "lawfully acquired possession," see Chitty, p. 915. I am grateful to Cole Durham for these last two suggestions. Moreover,
(Footnote 102 Continued on Next Page

Ancient law, however, provides full and reliable information against which to understand the Book of Mormon on this point. By it, the modern reader can appreciate the intense concern and mortal terror which all ancient peoples, including the Nephites, must have felt in the face of the horrible threat of robbers. By it, the modern reader can also reject other facile attempts to explain the Book of Mormon as nineteenth century fiction,¹⁰³ and can see that the comparison between these robbers and twentieth century "terrorist guerrillas" is nonexhaustive.¹⁰⁴ By it, the

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imprisonment was a frequent punishment for delinquent debtors in New York in 1828, see Richard Bushman, Joseph Smith and the Beginnings of Mormonism (Urbana: Univ. of Illinois, 1984), p. 66., but prison is not mentioned in Alma 11:2. Likewise, most of the behavior of the robbers in the ancient Near East and Book of Mormon is different from the highwaymen that plagued eighteenth century English travellers. See also footnote 6 above.

103 For example, an early critic, Alexander Campbell, saw in these secret oath-making robbers as nineteenth century Masons, but he himself abandoned this lame theory before long. See Bushman, pp. 128-131. Had Alexander Campbell known this ancient information, it is doubtful that he ever would have raised the Masonic parallel argument in the first place. It is beyond the scope of this paper to discuss the general similarities of all secret societies, see John L. Sorenson, An Ancient American Setting for the Book of Mormon (Salt Lake City: Deseret, 1985), pp. 300-9; see also Richard Deacon, The Chinese Secret Service (New York: Ballantine, 1976). In addition, Bill Hamblin has suggested that other close parallels can be found in radical Islam; see Marshall G. S. Hodgson, The Order of Assassins (Hague: Mouton & Co., 1955) and Bernard Lewis, The Assassins: A Radical Sect in Islam (New York: Basic Books, 1968).

104 Both Bushman, p. 131, and Ray HILLAM, "The Gadianton Robbers and Protracted War," BYU Studies 15(1975):215-224, suggest this modern parallel.

modern reader can appreciate the precision and completeness with which the Book of Mormon reflects this aspect of ancient Near Eastern law and society--replete with technical legal concepts different from those of Anglo-American law, and brimming with legal distinctions and social pathologies foreign to and unknowable by Joseph Smith and unthought of even by his most capable contemporaneous critics.